

U.S. DEPARTMENT OF COMMERCE

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NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

+ + + + +

MARINE FISHERIES ADVISORY COMMITTEE (MAFAC)

+ + + + +

WEDNESDAY
MAY 23, 2012

+ + + + +

The MAFAC met in the Ravenna Room,
Sheraton Seattle Hotel, Seattle, Washington,
at 8:00 a.m., Keith Rizzardi, Chair,
presiding.

MEMBERS PRESENT

- KEITH RIZZARDI, Chair
- MARTIN FISHER, Vice Chair
- TERRY ALEXANDER
- JULIE BONNEY
- DICK M. BRAME
- RANDY CATES
- ANTHONY CHATWIN, PhD
- PAUL CLAMPITT
- PATRICIA DOERR
- PHILIP J. DYSKOW
- EDWIN EBISUI
- MICHELE LONGO EDER, JD
- KEN FRANKE
- ELIZABETH HAMILTON
- MICAH McCARTY
- JULIE MORRIS, PhD
- GEORGE C. NARDI
- ROBERT RHEAULT, PhD
- KEITH RIZZARDI, MA, JD
- HENRY SESEPASARA

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MEMBERS PRESENT (cont)

DAVID H. WALLACE

PAMELA YOCHER, DVM, PhD

CONSULTANT TO MAFAC

RANDY FISHER

STAFF PRESENT

MARK HOLLIDAY, PhD, Designated Federal
Official

DEBRA LAMBERT

HEIDI LOVETT

JIM McCALLUM

ALAN RISENHOOVER

LANCE SMITH (via telephone)

JOHN STEIN

ALSO PRESENT

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

2 (8:04 a.m.)

3 CHAIR RIZZARDI: Good morning
4 everybody. Thank you for being here bright
5 and early. I'm going to get us started this
6 morning. I've got a couple of procedural
7 things. The first one is we have one of our
8 members who was a straggler who has finally
9 come back to join us.

10 So, Judge Ebisui, do you want to
11 introduce yourself?

12 MEMBER EBISUI: I'm late, I'm late,
13 I'm late. I'm Ed Ebisui from Hawaii.
14 Morning.

15 CHAIR RIZZARDI: Thanks for being
16 here Ed. It was quite a night last night so a
17 big thank you to Paul for the hospitality.

18 (Applause)

19 MEMBER EBISUI: Did you bring a
20 plate for me?

21 CHAIR RIZZARDI: For the rest of
22 you who continued the night afterward,

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1 congratulations on making it here at 8
2 o'clock. I have a sign-up sheet which is --
3 or asking all of you to identify your
4 subcommittees.

5 Mark had a good idea of asking
6 everybody to identify your primary with a 1,
7 and your secondary interest with a 2, and what
8 we will try to do over time is accommodate as
9 many people's interests as possible and try to
10 create as few conflicts as possible when we
11 structure the subcommittee meetings in the
12 future. So we'll pass this -- yes, Pam.

13 MEMBER YOCHER: Would it be
14 possible for the new folks to visit some
15 subcommittees this afternoon and then choose?

16 CHAIR RIZZARDI: Of course.

17 MEMBER YOCHER: I mean, we might
18 think we know what our primary is, but --
19 okay. Thanks.

20 DR. HOLLIDAY: For planning
21 purposes, you know, you can put it in pencil
22 and you can change your mind. It's -- we know

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1 which people will be going to which room so we
2 can make the choice. We have this large room
3 and we have a smaller breakout room, so just
4 in terms of numbers and logistics, a
5 preliminary indication this morning would be
6 helpful, but you can certainly change your
7 mind. It's not locked in.

8 CHAIR RIZZARDI: All right. So
9 what we are going to be doing to start off the
10 morning is talking about Vision 2020 and its
11 transition to Vision 2040.

12 I put Martin in charge of that
13 effort as the Ad Hoc Committee chair, and one
14 of the events of being vice chair is you get
15 the miscellaneous assignment, and this one is
16 a really important miscellaneous assignment.

17 Now, my initial hope was that we
18 would be able to finish this document at this
19 meeting. A number of you have already engaged
20 in the process and I'm really grateful for
21 that. I think the more people we can get
22 engaged in the Vision document, the better.

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1 I understand the feedback that's
2 coming back. People want a little bit more
3 time to process the document and want to make
4 some edits, want to make some changes. I
5 think that's great.

6 I'm going to suggest that it's the
7 same issue that we had in talking yesterday
8 about budget and reorganization and the
9 opportunity for Tony Chatwin's committee to
10 generate some work product that could
11 eventually be used to educate the next
12 administration, and having that document done
13 by October.

14 That same analysis applies to
15 Vision 2020 or 2040 as it morphs. This
16 document really needs to be done this fall, so
17 that we are casting what our committee is
18 recommending and advising the government as,
19 here's some really big policy considerations
20 for the next decade and beyond.

21 So with that in mind, Martin is
22 going to be leading the ad hoc discussion this

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1 morning about Vision 2020, where we think we
2 can go, and what we think can get done.

3 So thanks everybody for starting us
4 off.

5 VICE CHAIR FISHER: Good morning
6 everybody. As you may or may not know, MAFAC
7 starting working on Vision 2020 in the end of
8 2006 and actually created a document, the
9 first report, in 2007.

10 I don't think there's anybody on
11 the Committee that was actually here, except
12 for maybe Randy Cates, for the beginning of
13 that process. So this is a living document
14 that's been evolving and handed up to us, and
15 some of us feel like there's an opportunity to
16 make it a voice for MAFAC, and that's what
17 we're going to try to do, at least get started
18 here this morning.

19 So we basically have seven trends
20 with attendant findings and recommendations --
21 the importance of aquaculture, commercial
22 fishing, recreational fishing, ESA issues,

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1 climate change and sea level rise, indigenous
2 people, tribal fisheries and hopefully, we are
3 going to add Working Waterfront as a trend
4 that needs attention.

5 I have met with some very generous
6 people here this morning that got up early and
7 we talked about what we might want to
8 accomplish. And one of the things that we
9 all, that seems to be a common feeling, is
10 that as you read through this document, it's
11 got very many voices in it, and some of them
12 are discordant.

13 So I was hoping that we would be
14 able to form a team today that would go
15 forward into the future and put together --
16 and take these concepts and break them down
17 into a language that's a little bit more
18 cohesive.

19 And it was suggested by one of the
20 panel members this morning that perhaps --
21 perhaps Mark could find us a technical science
22 writer that would be able to then take the

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1 document and make it into something that has a
2 smooth voice and could really stand for MAFAC
3 as a transition paper for the next
4 administration.

5 So we need to ask you a couple of
6 process questions, Mark. As we work on it
7 this summer, if there's an Ad Hoc Committee,
8 would that have to -- could we do
9 teleconference without public notice? Would
10 we be able to just pass the document back and
11 forth and make changes? What would be the
12 process?

13 DR. HOLLIDAY: Yes. The answer is
14 yes, the committee can -- the subcommittee can
15 continue to deliberate on it if it chooses.
16 The final version of it, as approved and sent
17 forward to NOAA, would have to be made at a
18 publicly noticed meeting, either at a
19 teleconference or a face to face meeting.

20 But interim work products can be
21 conducted without advance public notice, as
22 long as you're not reaching a final

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1 recommendation. That final committee vote has
2 to be at a public session.

3 VICE CHAIR FISHER: Okay. So one of
4 the things we have to decide this morning is
5 how many people would actually like to work
6 through the summer on making this into a
7 document that we feel confident ratifying and
8 moving forward in October as our vision.
9 Michele? Oh, okay. Michele, Patty, Liz,
10 Julie, Dave.

11 Go ahead, Tony.

12 MEMBER CHATWIN: So, I like the
13 idea that this is focused on making it work,
14 that's what counts. It's probably something
15 that we want to have that is -- that stands on
16 its own, not only targeted on -- for that
17 specific purpose.

18 But it does seem to me that the
19 Vision is a document that encompasses all the
20 work of the Committee, and so I'm trying to
21 connect in my mind how the different pieces of
22 work that the subcommittee is going to do,

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1 relate to the Vision 2020 document.

2 So if we are going to come up with
3 a recommendation for budget priorities and a
4 recommendation for -- on the reorganization,
5 should that be incorporated into the Vision
6 2020 document or not?

7 That's what I'm struggling with.
8 And so the answer to your question is, on the
9 one hand I think, yes, I think we worked on
10 stuff that is going to go into the --

11 VICE CHAIR FISHER: Right. Sure.
12 That's a really good question and I don't -- I
13 don't certainly have the answer for that.
14 Hopefully we are going to determine that as a
15 group this morning.

16 CHAIR RIZZARDI: Let me --

17 VICE CHAIR FISHER: Go ahead.

18 CHAIR RIZZARDI: Let me make a
19 suggestion. One of the things I'm hoping will
20 happen with all of our subcommittees is that
21 there would be a teleconference between
22 meetings.

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1 You know, the reality of this body
2 is we have two meetings a year. That's not a
3 whole lot of time to be generating outputs.
4 For us to be more successful, for us to
5 generate more information, we are going to
6 have to have some other discussions in
7 between.

8 So a webinar or a telephone
9 conference of the subcommittees can happen.
10 If there's a draft Vision document that's out
11 there, that document could be on the agenda
12 for each of the subcommittees to make sure
13 that their piece of the puzzle is represented
14 in the Vision document.

15 But that's going to require our
16 Executive Committee to do some coordination on
17 it as far as the calendar is, and when we set
18 the -- when we set the subcommittee meetings
19 it would require the Vision team to have a
20 working draft out there in time for those
21 subcommittee conference calls.

22 But we could at least come up with

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1 a process that would allow each subcommittee
2 to weigh in, and that would be a good way also
3 to make sure that we are heading in the right
4 direction in terms of having, you know, final
5 group consensus on the document when we get
6 back in October.

7 So does that, does that work?

8 MEMBER CHATWIN: Yes, that works.

9 VICE CHAIR FISHER: So, in the past
10 --

11 CHAIR RIZZARDI: Randy.

12 VICE CHAIR FISHER: I'm sorry.

13 MEMBER CATES: I just want to say
14 that the Vision 2020 document was an enormous
15 amount of work and it was very well vetted
16 out. I'd hate to see that you guys have to go
17 through that again and it consume all of your
18 time on MAFAC, doing what -- because it very
19 well could.

20 So it should be a document that you
21 should pull out, go through it, dust it off,
22 make quick updates. But if you really dive

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1 into it and try and do a major redo, just be
2 aware that it could easily consume most of
3 your time.

4 VICE CHAIR FISHER: I think the
5 target date is to have it done by October for
6 MAFAC review.

7 MEMBER CATES: I remember when I
8 first started, very similar, "Oh, this will
9 take a short time." But it took a lot of
10 time, and it was very well vetted.

11 CHAIR RIZZARDI: I think one of the
12 challenges we're having, Randy, is the
13 document right now doesn't have, for example,
14 a substantial discussion of climate change,
15 sea level rise, ocean acidification. And yet
16 those are real issues that warrant some
17 mention in the document. There's --

18 MEMBER CATES: They were discussed.

19 CHAIR RIZZARDI: They were
20 discussed.

21 MEMBER CATES: There's reasons why
22 certain things are in and certain things are

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1 not in.

2 CHAIR RIZZARDI: Well, then there
3 may be reasons why we need to revisit that,
4 and that's what the Committee is going to have
5 to tackle.

6 MEMBER CATES: If you guys choose
7 to do that, I'm just trying to give some past
8 experience, that you could spend all your time
9 on MAFAC tackling that one issue and if that's
10 what you guys want to do, by all means.

11 But it started out being what I
12 thought would -- everyone was discussing that
13 it wouldn't take that long, and then it ended
14 up being very time consuming.

15 VICE CHAIR FISHER: Well, we have
16 one process issue, I believe. And that is
17 this is the product or the child of the
18 strategic and planning committee. Right,
19 Mark? The subcommittee that Heather used to
20 be chair of?

21 CHAIR RIZZARDI: It started that
22 way, yes.

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1 DR. HOLLIDAY: Well, no, there was
2 an ad hoc working group for 2020 that Heather,
3 in her capacity as the strategic planning --

4 MEMBER RHEAULT: Can you guys speak
5 up a little for the people down here?

6 DR. HOLLIDAY: It wasn't
7 necessarily the subcommittee. There was an ad
8 hoc 2020 committee of people identified
9 themselves as who wanted to work on certain
10 chapters or sections of 2020.

11 You are correct that Heather
12 chaired that ad hoc working group for 2020.

13 VICE CHAIR FISHER: Okay.

14 DR. HOLLIDAY: So it wasn't an
15 assignment to the strategic planning
16 subcommittee.

17 VICE CHAIR FISHER: Okay. So
18 there's -- there wouldn't be anything wrong
19 with carrying it forward with -- continuing as
20 an ad hoc Vision quest?

21 DR. HOLLIDAY: As a process
22 question there's nothing wrong with that,

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1 proceeding along those lines.

2 VICE CHAIR FISHER: Okay.
3 Excellent. You had your hand up before. Is
4 there something you want to say?

5 DR. HOLLIDAY: You'd asked, it was
6 in the form of a question about technical
7 editor capacity. And so we do have, in house,
8 editors who can provide that service to the
9 Committee to do that type of editing to make
10 it a smoother, more coherent document.

11 VICE CHAIR FISHER: Great.

12 DR. HOLLIDAY: That led to my
13 question about the conclusion that you reached
14 about, is the current version -- I think Keith
15 clarified some of it -- but I'd just like to
16 hear some more, if I could, for my own
17 understanding, is it the content that's
18 lacking? In other words, we had -- the
19 Committee identified topical areas that people
20 volunteered to write sections on at prior
21 meetings, and that was the task in front of
22 that working group.

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1 Is it that there are now additional
2 -- it's a content issue that's not complete or
3 people are just uncomfortable that they
4 haven't had sufficient time to digest what's
5 already written?

6 Do you see what I'm saying? Which
7 -- or is it something else, that would cause
8 you to reconvene for another six months?

9 MEMBER LONGO: I'd say, Mr.
10 Chairman, I'd say both. I think that, just,
11 there's been some discussion among some of us
12 that with seven new members on MAFAC -- well
13 first of all I do want to acknowledge Randy's
14 comments and be cognizant and appreciative of
15 the fact that people put an enormous amount of
16 work into this document over a long period of
17 time, and these are never easy projects to say
18 the least.

19 But as a new member coming on, and
20 I can't speak for anybody else, as I went
21 through the document, I found some significant
22 subject areas that I'd like to revisit, and

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1 thought that with seven new members on MAFAC,
2 that that might be the thoughts of some other
3 people too, since we haven't even had an
4 opportunity really to look at it and discuss
5 and digest it.

6 So both, somewhat in the change of
7 the membership of the group and the
8 opportunity to look at it. So I envision
9 there may be some content, looking at some
10 content changes, as well as just, you know,
11 reorganizing or better technical writing or
12 something like that, so I see it as a
13 two-pronged process.

14 VICE CHAIR FISHER: Pam, did you
15 want to weigh in?

16 MEMBER YOICHEM: I'll volunteer to
17 serve on the ad hoc group.

18 VICE CHAIR FISHER: Okay.

19 MEMBER YOICHEM: But no, I think
20 what Michele is saying, she makes good points
21 about making sure that we get input of the new
22 members. I appreciate what Randy said about it

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1 taking a lot of time.

2 I think what's nice is we're not
3 starting from scratch. We're starting with a
4 very well organized and thought out document
5 and it's always easier to edit something than
6 to start from scratch. So I hope that that
7 would be -- cut down the timing and effort
8 involved.

9 VICE CHAIR FISHER: Thank you.
10 Randy?

11 MEMBER CATES: As we changed a lot
12 of members, we had two basic periods recently
13 where quite a few members went off and new
14 members came on. There was a -- with some of
15 the outgoing members there was discussion on
16 what was accomplished and what wasn't, and one
17 of the discussions was we had some pretty
18 difficult issues that MAFAC was starting to
19 discuss, but didn't follow through.

20 And I remember one of the comments
21 was, "Well, Vision 2020 just took so much time
22 that we didn't get those other things done."

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1 And so I guess my point is, if I were starting
2 fresh, knowing what I know now, my advice
3 would be to take on the hard issues and when
4 your time is up at MAFAC, you can look back
5 and say, "We were willing to do the hard
6 things and not the easy things."

7 And if you remember when Heather
8 was leaving, we openly discussed that. And
9 that was reflecting this, that Vision 2020
10 just sort of took too much of that time, where
11 we didn't get that out or make suggestions or
12 get things done regarding, you know,
13 aquaculture for example, the marketing that we
14 discussed yesterday. That started back in
15 2008.

16 And I guess my point is, maybe, as
17 there are so many new members on here,
18 prioritize what you guys want to do, because
19 if Vision 2020 is going to be a priority, then
20 some of the other things may be lacking.

21 VICE CHAIR FISHER: I think that's
22 a really good perspective. I also just

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1 remembered we need to add food safety and
2 perhaps certification as a topic here too
3 because that's going to be the next buzzword.

4 That's going to be a big deal here in the
5 near future.

6 MR. McCULLUM: I'm sorry, I can't
7 hear you, Mark.

8 VICE CHAIR FISHER: I'm sorry, I
9 think that we should add food
10 safety/certification, traceability as a trend
11 as well, because certainly we are seeing that
12 as a growing trend.

13 So one of the things about a living
14 document is it's a living document. It grows,
15 breathes, changes, it loses weight some months
16 and gains weight other months, and that's
17 what's going to happen to this document as we
18 go along. Seven years from now it's going to
19 be 2050 or 2060, and a group of people are
20 going to be saying the exact same things that
21 Randy just said.

22 But that's the beauty of it. It's

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1 also one of the challenges for all of us here
2 in the room because it does require so much
3 work and focus. Keith?

4 CHAIR RIZZARDI: I think that was
5 well said.

6 VICE CHAIR FISHER: Okay.

7 CHAIR RIZZARDI: That was my list
8 of -- just going through the document I
9 identified eight kind of themes that are in
10 the document and when you look at it there are
11 the trends -- the trends aren't numbered and
12 when you get to -- in part one. You get to
13 part two and there's a list of 13 different
14 findings.

15 One of the things that I was hoping
16 we could achieve was at least getting some
17 clarity on -- of the content in this document,
18 which are the major themes that we are going
19 to focus on for the next six months as we work
20 on this document because I am cognizant of
21 Randy's point. This document does have the
22 potential to become an enormous workload so I

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1 think it's important today to try to achieve
2 some focus and some clarity as to here are the
3 major topics that we plan to tackle within
4 this document, here are the pieces of the
5 document that we plan to edit.

6 You know, Mark's question is, what
7 are we doing? Well, we're going to revise a
8 few sections I think, and we are going to
9 supplement or maybe add a section or two,
10 because that's the feedback I've heard.

11 I think what this Committee could
12 do over the course of the next two days is
13 agree upon what those major issues are that
14 are going to be addressed and come up with a
15 plan for how we get from today to approving a
16 final document in October.

17 I think that would be a successful
18 outcome of today's and tomorrow's discussions.

19 VICE CHAIR FISHER: So let me go
20 through the list again of who wants to
21 participate. Mark?

22 DR. HOLLIDAY: My comment is I

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1 think if we are waiting to do this until our
2 next meeting, which is now scheduled for the
3 last part of October, I think that's too late.

4 For you to have a document that's
5 going to have impact on the transition, there
6 are a lot of things that have to happen
7 between the time that you're document is
8 completed and to use that material to inform
9 people.

10 So I would urge you to consider
11 trying to save at least another month's worth
12 of time so that you have the product and you
13 have the other -- you have the conclusions,
14 you allow some slippage in your schedule in
15 your schedule despite the best plan.

16 Our experience has shown both in
17 the original document, the 2009 version that
18 never was adopted, and now this version, which
19 you're going to spend another six months on; I
20 would hate to see this effort slip into
21 November, December, and we're not prepared to
22 actually roll this out.

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1 So for planning purposes I would at
2 least choose a target that gives you a little
3 bit more slack time, so that you can have a
4 polished document, you can make the copies,
5 you can have your abstracts, you can post it
6 in various places, and have materials that are
7 ready to execute during the transition.

8 And it's not the only purpose of
9 the document, I realize; but I think that's
10 one of the targets you are trying to hit by
11 saying October, versus let's do it by
12 December.

13 So I would, if you are indeed
14 trying to meet those demands, I'd be cognizant
15 of allowing for some slippage because that
16 will be inevitable, and to make sure that you
17 have enough time for it to be effectively
18 used.

19 VICE CHAIR FISHER: Do you think
20 August would be a more realistic target date,
21 to provide that buffer?

22 DR. HOLLIDAY: It needs to -- you

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1 need to at least have a month. So when you
2 say October, if it's the beginning of October,
3 I'd say the beginning of September, that's the
4 end of August, you know --

5 VICE CHAIR FISHER: Right.

6 DR. HOLLIDAY: But I think if
7 you're waiting until our next face to face
8 meeting, which is the end of October, right
9 now, and something happened, you're really not
10 going to be well positioned to use that
11 document for the transition, particularly if
12 something happened in the schedule.

13 VICE CHAIR FISHER: And what kind of
14 burden does it put on you and MAFAC's staff to
15 have a full MAFAC teleconference during the
16 summer, because obviously we would have to --

17 DR. HOLLIDAY: Right well we did
18 that -- that's not a terrific burden on us --

19 VICE CHAIR FISHER: Okay.

20 DR. HOLLIDAY: -- because we've
21 done that in January for the NOP comments.
22 It's basically finding -- the hard part is

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1 finding a time when members can participate.

2 VICE CHAIR FISHER: Right.

3 DR. HOLLIDAY: But the mechanics
4 and the logistics and the cost of that are
5 trivial. It's the timing of it, from the
6 members' perspective.

7 VICE CHAIR FISHER: Pam.

8 MEMBER YOICHEM: So if we were
9 shooting for an early September target date to
10 actually vote as a body on adopting the
11 document, how much time, Mark, do you need to
12 have your technical writers take a look at it?

13 In other words would we need to get it to you
14 in early August?

15 DR. HOLLIDAY: There would be at
16 least a couple of weeks' time. If we know
17 it's coming, we can schedule a time and that
18 person can reserve that slot. If we know
19 enough in advance, that could be as short as a
20 couple of weeks' time in advance notice.

21 MR. RISENHOOVER: So maybe the
22 Committee needs to come up with a schedule as

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1 well that --

2 DR. HOLLIDAY: Right. And that's
3 my point. I think that's a great idea. It's
4 just that the endpoint of that schedule I
5 think was a little too tight, based on what I
6 was hearing in your plan, in order to
7 accomplish your objective.

8 VICE CHAIR FISHER: Tony.

9 MEMBER CHATWIN: I think I like
10 where we're going. I just have a question on
11 the technical writer, and my experience is,
12 when you develop a report as a committee,
13 often there are -- there's a negotiation that
14 happens on certain words and certain
15 paragraphs.

16 I think it's a great idea to use a
17 technical writer, but I think we all need to
18 agree that -- agree to be flexible if the
19 technical writer comes back with some changes
20 that people don't recognize.

21 It's just an expectation management
22 issue.

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1 CHAIR RIZZARDI: Underlying
2 structure is important.

3 MR. RISENHOOVER: And so our writer
4 is used -- the person Mark and I are thinking
5 about is used to that. We'll put letters and
6 reports through. So she's used to making sure
7 we're not changing meaning, but it's
8 smoothing, consistency --

9 VICE CHAIR FISHER: Yes, Heidi.

10 MS. LOVETT: Two things. So there
11 are some technical writing differences between
12 the hard copy that Martin had requested get
13 printed out and the version that's on the
14 computer, so, that's on the website, so
15 there's some minor differences along those
16 lines.

17 And the second thing is, is that if
18 you are -- I just wanted to have clarity, if
19 the Committee is going to request research be
20 done for clarity of facts and figures, because
21 that's a little more difficult and more time-
22 consuming.

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1 There was things in the document
2 that when -- because I was asked to help pull
3 it together -- where trends had actually
4 changed, and so starting to, you know, find
5 data and that's why there's some questions in
6 it, was because the research I did said that's
7 not the same trend. But if you want that kind
8 of assistance, then we would need more time to
9 be able to verify that kind of information.

10 And secondly, the other part is, is
11 that some of the new text that was brought to
12 the document had no references, and so, you
13 know, I just -- I think you should discuss,
14 you know, how -- the consistency of that,
15 having reference sections versus paragraphs
16 that talk about ideas but have no references.

17 And I don't know again if that was,
18 you know, the person -- if you are requesting
19 to have, to be consistent in the fact of
20 really having supportive references supporting
21 your various statements, and if the -- you all
22 are going to be doing that kind of research

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1 and bringing that to the table, if you're
2 going to request it of staff, just to have
3 that clarity up front so we know.

4 CHAIR RIZZARDI: That's a good
5 comment, Heidi. So, working backwards, if we
6 were going to shoot for a document in October,
7 technical editors would need something in --
8 or we want the document completely done early
9 October, late September? Mark, does that get
10 you where you need to be?

11 VICE CHAIR FISHER: Well, he said
12 September.

13 CHAIR RIZZARDI: I know you said
14 September, which then got translated to early
15 September and I want to make sure that I'm
16 giving us enough time to work my way
17 backwards.

18 DR. HOLLIDAY: Right. So I think
19 September 30th as the handoff date --

20 CHAIR RIZZARDI: Okay. So
21 September 30th it needs to be done, which
22 means there needs to be a MAFAC conversation

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1 that takes place, a final MAFAC conversation,
2 and assuming there were some minor tweaks that
3 came out of that, to allow for changes to be
4 done.

5 So we'll shoot for mid-September to
6 have that final MAFAC conversation, which
7 would mean it would have to be in the hands of
8 the technical editor by September 1?

9 Okay. And then --

10 DR. HOLLIDAY: Assuming it's still
11 of the same order of magnitude and size as it
12 is now. If you go to 300 pages, we are going
13 to reserve the right to --

14 (Laughter)

15 CHAIR RIZZARDI: I think one of the
16 conversations that has taken place has been
17 for the document itself perhaps even to get a
18 little shorter, but maybe the appendices get a
19 little bigger. That was one of the ideas
20 that's been bantered about, is that some
21 things can get pushed to the appendix that are
22 currently in the text.

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1 But then, being aware of Heidi's
2 point on the potential need for some technical
3 research, identifying that and having it be
4 supplemented over the course of August, does
5 that work?

6 DR. HOLLIDAY: I think to that
7 point, I would recommend, with your approval,
8 that the staff be involved in the iterative
9 process --

10 CHAIR RIZZARDI: Absolutely.

11 DR. HOLLIDAY: So if questions come
12 up with respect to citations, research,
13 whatever, that we don't wait until the end to
14 find that out --

15 CHAIR RIZZARDI: Right.

16 DR. HOLLIDAY: -- that we can be,
17 as part of that, working on issues throughout
18 to make sure that it hits the target.

19 MR. DUENAS: Mr. Chairman.

20 CHAIR RIZZARDI: Yes, sir.

21 MR. DUENAS: I suggest that perhaps
22 some of the updating on trends, that if people

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1 identify trends have changed, that we have an
2 assignment and something gets back to us with
3 notations on the document on what trends have
4 changed or how we think they have changed,
5 people to verify it. In a way we are starting
6 with that taken care of already.

7 VICE CHAIR FISHER: So everybody at
8 the table has their own expertise. They bring
9 something special here, and we all have a
10 certain way of looking at these trends.

11 So what you're really saying, Mike,
12 is that each and every one of us at this table
13 should provide a comment back to the working
14 committee on how they think trends have
15 changed or stayed the same.

16 Is everybody willing to do that?
17 So we should probably set a target date for
18 when we would get those comments, and so on
19 the team, I have Michele, Liz, Dave, Pam,
20 Julie, Patty, myself. Is there anybody else
21 that wants to join in? Bob. Cool. The more
22 the merrier.

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1 And how are your guys' times this
2 summer? Anybody going on vacation in June,
3 July, August? All of the above?

4 MEMBER DYSKOW: You said early
5 September. The Republican convention is the
6 end of August, the Democratic convention is
7 the first week of September. Conceivably
8 there's people involved in that. I know I'm
9 in --

10 VICE CHAIR FISHER: Okay.

11 MEMBER DYSKOW: Those are hard
12 dates to work around.

13 VICE CHAIR FISHER: Okay. So I
14 think the sooner we get going on this the
15 better. So would it be unreasonable to ask
16 for individual comments by --

17 CHAIR RIZZARDI: June 15th.

18 VICE CHAIR FISHER: June 15th? Can
19 everybody commit to that? Okay.

20 CHAIR RIZZARDI: So what I charted
21 out here is try to get comments from all
22 members by June 15th, have the team who has

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1 agreed to be the editing team for the new
2 Vision document review those individual
3 comments and come up with a draft that can be
4 bantered around by July 15th.

5 VICE CHAIR FISHER: Okay.

6 CHAIR RIZZARDI: To have that draft
7 turned over to NOAA staff so that they can do
8 the necessary supplementing and research
9 associated with it, and then have a document
10 that can go to the technical editor by
11 September 1.

12 So there would be a six-week period
13 after the team takes its initial crack at
14 drafting -- reshaping this document the way
15 they are envisioning, to work cooperatively
16 with NOAA staff and the research team, to get
17 that document into a shape that it can get
18 passed on to the technical editor, and then
19 there would be a MAFAC meeting by
20 teleconference on September 15 or thereabouts.

21 Tony.

22 MEMBER CHATWIN: That sounds good.

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1 I think you might want to consider adding a
2 deadline in there after you get your draft
3 done to give the full committee an opportunity
4 to read that. I think if you leave it until
5 it's gone through the whole writing process
6 and highlighting process and expect --

7 CHAIR RIZZARDI: Right.

8 MEMBER CHATWIN: -- a final product
9 in September, it would be good to give the
10 Committee an opportunity to look at your --

11 CHAIR RIZZARDI: Right, so getting
12 a document in their hands by September 1st,
13 does that get us --

14 VICE CHAIR FISHER: No, before that.

15 CHAIR RIZZARDI: Well it was
16 September 1st with the expectation of a
17 September 15 meeting.

18 VICE CHAIR FISHER: Oh.

19 CHAIR RIZZARDI: We're not on the
20 same page?

21 MEMBER CHATWIN: That could work,
22 I'm just --

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1 CHAIR RIZZARDI: Not enough time,
2 is your concern.

3 MEMBER CHATWIN: Not enough time if
4 somebody has an issue. It's plenty of time
5 for people to read it and come with it pre-
6 read, but it -- I just want to make sure that
7 we can address the issues before we go to that
8 conference call where we kind of get a final
9 vote.

10 VICE CHAIR FISHER: So what date
11 would you choose to insert that?

12 MEMBER CHATWIN: Perhaps when you
13 send it to get the research done? Because
14 those are filling in details, and in this
15 document you can see where that might change,
16 just to see if there are any glaring red flags
17 that are raised by anybody?

18 That's a good time, where you are
19 planning to have the document pretty much
20 finalized anyway. You can just send it to
21 everybody and give the Committee, the
22 Committee of the whole, a deadline by which to

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1 send any major concerns.

2 VICE CHAIR FISHER: So we're still
3 not -- we're still not yet to your goal of
4 identifying the trends that the Committee
5 wants to go forward with.

6 CHAIR RIZZARDI: So working through
7 the document, and after hearing from folks, I
8 identified eight, nine themes. Heidi, can you
9 put something up on the screen? Just word
10 processor or something, just so that I can
11 read this and everybody could see what I've
12 identified?

13 MEMBER DOERR: And what are these
14 eight themes?

15 CHAIR RIZZARDI: These are straight
16 of the document.

17 MEMBER DOERR: Ones that we want to
18 keep and focus on?

19 CHAIR RIZZARDI: Correct, and it's
20 just right now, there's not a -- one of the
21 comments that came is there's not a matching
22 between trends and then between part two,

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1 where it talks about -- how is it
2 characterized --

3 MEMBER DOERR: The findings.

4 CHAIR RIZZARDI: The findings. And
5 the idea was to try to match up the concepts,
6 and have big themes that worked through the
7 whole document.

8 MEMBER RHEAULT: We're having a
9 hard time hearing the discussion that's going
10 on down at that end.

11 CHAIR RIZZARDI: Okay. I'll try to
12 be even louder.

13 MEMBER RHEAULT: Otherwise we'll
14 start our own down here.

15 CHAIR RIZZARDI: Okay, so it was
16 data and stock assessment. Fishery
17 regulation. Ecosystems. Food security.
18 Aquaculture. Water quality. Those six themes
19 captured most of what was in the Vision
20 document as currently written.

21 The additional points that have
22 been brought up were sustainability

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1 certification, which is the conversation that
2 we had yesterday; protected resources, which
3 is a little bit in there but the conflicts are
4 becoming more acute so the question is can we
5 enhance that dialogue and that will be the
6 next conversation that we have today; changing
7 oceans -- again it's mentioned in there but
8 there's the concern that we should be talking
9 more, and that has the subcategories of
10 climate, sea level rise, acidification; and
11 then the other issue that came up was working
12 waterfronts.

13 MS. LOVETT: So you did discuss
14 these?

15 CHAIR RIZZARDI: Sorry?

16 MS. LOVETT: You were planning to
17 discuss these?

18 CHAIR RIZZARDI: Does anybody have
19 concerns about what's there, anything they
20 think has been left off the list?

21 MEMBER LONGO: I just -- it's hard
22 to address these because they are -- you know,

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1 we have aquaculture, and then you've got
2 something really much more specific, but
3 there's not recreational fishing or there's
4 not commercial fishing.

5 And there's not a cultural
6 component on there. And so, I don't, you
7 know, cultural component, you know, social
8 science, you know, value of recreational
9 fishing to the nation, you know, value of
10 commercial fishing communities and culture,
11 you know, so there's a social science kind of
12 component that could even cross all of those
13 or is completely absent.

14 So, indigenous peoples. There's a
15 lot that's not theirs that doesn't necessarily
16 fall in there. So it's hard for me to say
17 yes, okay, that's great, I'll check off on
18 this. I'm not comfortable doing that at this
19 point.

20 CHAIR RIZZARDI: Okay. Other
21 comments?

22 MEMBER HAMILTON: Just to say it

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1 more specifically, aquaculture is a sector in
2 my mind, but the other sectors aren't called
3 out, and I think that's more specific to what
4 she said.

5 So, you know, I think that maybe
6 putting in the emerging issues from the
7 different sectors might be better than saying
8 aquaculture, and you might --

9 CHAIR RIZZARDI: Okay, so --

10 MEMBER HAMILTON: I know that the
11 document has sections that do that --

12 CHAIR RIZZARDI: Right.

13 MEMBER HAMILTON: I mean, I've seen
14 that. But it's still --

15 CHAIR RIZZARDI: These are lifted
16 from the trends and the headers of the trends,
17 which then goes to, if we're going to be
18 supplementing the document and adding more of
19 this analysis, then there may be new themes
20 that emerge, and some of these cultural issues
21 may get enhanced. The indigenous people may
22 get enhanced.

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1 And I think at this point I'm
2 realizing, the technical team that gets
3 together is going to have to come up with this
4 list, and for the document that gets
5 circulated on July 15, those themes are going
6 to have to be articulated. And maybe some of
7 these are still going to be on the list and
8 maybe some of them aren't.

9 VICE CHAIR FISHER: Or maybe these
10 will be a subset of other headings.

11 CHAIR RIZZARDI: Right. Exactly.
12 Exactly.

13 VICE CHAIR FISHER: So is there any
14 FACA restrictions for us emailing each other
15 on this Ad Hoc Committee?

16 DR. HOLLIDAY: No, as I said
17 earlier, as long as you're not making a
18 public, a final vote or recommendation, and
19 you're a working group, to develop a draft in
20 a working group, that's fine. No final
21 recommendation can be made in a private email.

22 That has to be done in the full committee, a

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1 publicly noticed session.

2 MR. RISENHOOVER: So no consensus,
3 this is what we want.

4 CHAIR RIZZARDI: Right.

5 MR. RISENHOOVER: Everything is
6 draft or --

7 CHAIR RIZZARDI: Right, exactly.
8 Heidi, at the end of that list would you
9 please add cultural components? And I'm just
10 going to leave it to the Ad Hoc Committee to
11 flesh out where this document goes from here.

12 We've got a draft. There's going
13 to be a lot of cut and paste that's going to
14 take place with the existing draft document.
15 There's going to be a series of new headers
16 that's going to identify that may or may not
17 look like this list.

18 And then there -- what we've talked
19 about is July 15, that team -- or June 15 all
20 members here share comments on the current
21 version.

22 VICE CHAIR FISHER: By June.

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1 CHAIR RIZZARDI: By June 15. By
2 July 15, the ad hoc group puts together a
3 draft document. That document gets sent to
4 the entire membership and also to staff to
5 work on supplementing the research.

6 And then by September 1, there is a
7 final draft work product that gets sent to the
8 MAFAC members with the expectation of a
9 September 15 conference call.

10 I am not envisioning that this
11 effort is going to be a dramatic, new
12 document. A lot of the material that is here
13 will be reused. It will be supplemented. It
14 will be moved. It will be cut and paste to
15 comply with the desires of the technical
16 editors and the ad hoc team.

17 So I'm hoping to avoid the point
18 that Randy has made, which is a complete
19 rewrite of the document that becomes a giant
20 time sink. Right?

21 But, I'm listening to the technical
22 team and our ad hoc team, and if they come up

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1 with issues, and if they work with staff and
2 staff comes up with issues, well then we'll
3 deal with it when it happens.

4 All right, and I'm also sensitive
5 to the seven new members who feel like they
6 haven't had enough of an opportunity to review
7 this document, can't speak up on it. I
8 understand that.

9 You know, there's been a lot thrown
10 at you in the last couple of days and this is
11 one of them. So I appreciate the feedback.
12 Paul.

13 MEMBER CLAMPITT: So we are going
14 to comment on the present document.

15 CHAIR RIZZARDI: Yes.

16 MEMBER CLAMPITT: And these 11
17 items here, are we going to comment on those
18 too, or as they are represented in the
19 document?

20 CHAIR RIZZARDI: I think it's as
21 they are represented in the document.

22 MEMBER CLAMPITT: Okay.

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1 MEMBER DOERR: I have a version
2 question, because back in the fall, we went
3 through a process of commenting and providing
4 some changes to Vision 2020 with Heather, and
5 that created another version which had changes
6 that I just got yesterday because Heather had
7 my old email address.

8 So -- and that's different than
9 what is on the website, so which version
10 should be working off of? Does it matter?

11 DR. HOLLIDAY: Well, it does
12 matter. The version -- so Heather collected
13 responses from different members over the
14 course of the winter from October until late
15 March. All of those changes that she received
16 from Keith and others, yourself, Julie, were
17 incorporated into a version that was given to
18 Martin as we handed off from Heather to Martin
19 to take the leadership on this.

20 And so the document that he
21 produced incorporated all of the input that
22 Heather had received. In addition, Ken Franke

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1 ran a process in the last week leading up to
2 this meeting with the Rec Fish working group,
3 which is an entity of the recreational
4 subcommittee, to get recreational input for
5 that document. That as well has been
6 incorporated into the version that we -- is
7 this incorrect?

8 (Off mic comment)

9 DR. HOLLIDAY: So the recreational
10 component was added, and then George had
11 indicated there were factual changes and other
12 updates necessary for aquaculture back in the
13 October meeting.

14 The staff had worked with the
15 aquaculture office to make those changes and
16 those were also incorporated into the version
17 that we have posted for your consideration.

18 So, a long-winded answer but I
19 wanted to make sure you understood what
20 elements went into it. The document that you
21 should be using and working from is the one
22 that Martin had -- that had been posted.

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1 MS. LOVETT: Okay, because I don't
2 see all the additions from Heather in the
3 version that's posted.

4 DR. HOLLIDAY: They are there.

5 (Simultaneous speaking)

6 DR. HOLLIDAY: I can do this
7 offline and confirm that, but it was our
8 intent to make sure they were all there. If
9 something's missing we can talk offline and
10 make sure --

11 MEMBER DOERR: And that's fine when
12 you just add it back in in the process.

13 DR. HOLLIDAY: Right.

14 MEMBER DOERR: But I just want to
15 make sure we as a group, we are all working
16 off-of the same version and that version is
17 what is on the website. Right?

18 DR. HOLLIDAY: Right.

19 MEMBER DOERR: Okay.

20 DR. HOLLIDAY: I would not take any
21 private messages that Heather has sent as more
22 complete or recent than the one Martin's been

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1 using.

2 So you said you just received
3 something from Heather recently.

4 MEMBER DOERR: No, no, no, no. It
5 was a version that Heather had sent around
6 back in the fall that I didn't receive it in
7 the fall --

8 DR. HOLLIDAY: Okay.

9 MEMBER DOERR: because she had my
10 wrong email address. And so I just got it.

11 VICE CHAIR FISHER: But that version
12 would be different than the one that I sent.

13 MEMBER DOERR: Yes. So this is --
14 hence my huge confusion. So I'm fine working
15 off of what's on the website. I just want to
16 make sure we're all working off of what's on
17 the website.

18 VICE CHAIR FISHER: I think we have
19 Manny and then Bob.

20 MR. DUENAS: Yes just on the
21 Councils' side I'm just hoping that this
22 doesn't go straight to the agency. I'm hoping

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1 to share this document with the councils and
2 maybe looking at endorsement, or support for
3 this document.

4 No, because you guys are a
5 different group, and I think that sharing this
6 information with the Council would be
7 important; a good document for us to look off,
8 or work off, because you guys are individuals
9 that have expertise in all these issues.

10 The other thing I'm looking at is
11 management regimes. You know, everybody
12 claims that oh, MPAs is the best thing in the
13 world and then other people say catch share is
14 the best thing in the world, that -- no one
15 has analyzed all that and put that in one
16 document either. So I just want to share that
17 thought with you, because you guys are all
18 experiencing that in your different areas.

19 Remember, our Council only deals
20 with our region. You guys have the broader
21 expertise than we have, so I really am -- I'm
22 admiring this group. I really look forward to

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1 some working document from this group, to
2 assist our Council.

3 CHAIR RIZZARDI: Manny, I really
4 like your comment about engaging the Councils.

5 I'm also recognizing that it's hard enough to
6 have a document with 20-odd authors --

7 MR. DUENAS: No, no, we're not
8 asking to review it.

9 CHAIR RIZZARDI: Right.

10 MR. DUENAS: We're not asking to
11 edit it, be part of the process. We --

12 CHAIR RIZZARDI: Right.

13 MR. DUENAS: What I just --

14 CHAIR RIZZARDI: What I'm thinking
15 is, just the same way we are putting a
16 September 1st date for the document to go out
17 to the membership, we could share that draft
18 document with the Councils at that point.

19 MR. DUENAS: No, after --

20 CHAIR RIZZARDI: You want the
21 final?

22 MR. DUENAS: I want the final.

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1 CHAIR RIZZARDI: Okay.

2 MR. DUENAS: To give us something
3 different, yes.

4 CHAIR RIZZARDI: Okay.

5 MR. DUENAS: I'm not trying to
6 interfere. I'm not asking the Councils to get
7 involved in this.

8 CHAIR RIZZARDI: Okay.

9 MR. DUENAS: You guys are doing a
10 fantastic job, better than I've ever seen in
11 any working group, so I applaud that. That's
12 what I have. But the point is the Councils
13 should share this document.

14 CHAIR RIZZARDI: I think we would
15 be thrilled.

16 MR. DUENAS: Okay.

17 CHAIR RIZZARDI: To share the
18 document with the Councils. That's why we're
19 here.

20 MR. DUENAS: Okay.

21 CHAIR RIZZARDI: We're trying to be
22 a national perspective on fisheries and to

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1 share our thoughts with the regions makes
2 complete sense.

3 MR. DUENAS: Thank you.

4 VICE CHAIR FISHER: And, may I add,
5 in '09 that was the intent of MAFAC, to send
6 representatives of all the regional councils,
7 to present Vision 2020 at that time.

8 We've got Bob and then Randy Cates.

9 MEMBER RHEAULT: I just want to
10 reemphasize what Patty has saying. I have
11 participated in some of these nightmarish team
12 editing processes, and we -- it's critically
13 important that we are all working from the
14 same version at the same time and we discard
15 all of the versions as we are working on it
16 moving forward.

17 VICE CHAIR FISHER: Great comment.
18 So then it's agreed we are working off what's
19 on the website.

20 MEMBER RHEAULT: I'm just trying to
21 emphasize that I agree with Patty. It's going
22 to be very important.

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1 VICE CHAIR FISHER: Randy.

2 MEMBER CATES: We're getting into
3 an area that I remember vividly well on what
4 to do with the document. And you know, our
5 job is to advise the Secretary of Commerce.
6 It's not necessarily to advise or go out to
7 all the Councils, you know, there was a great
8 debate on that.

9 So for procedure, you've got to go,
10 you've got to figure out what you're going to
11 do with the document first, and then make sure
12 that it's appropriate that you take it to
13 other entities and in the case, I think we
14 sent it to the Secretary first, and we waited
15 for a period of time and then we were taking
16 that document to whoever we would want to look
17 at it at the Councils and stuff, because
18 you've always got to remind yourself what the
19 job -- the role you are -- and it's not
20 advising Councils, it's advising the Secretary
21 of Commerce. So just be careful of that,
22 because we kind of got caught in that trap a

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1 little bit too. It's important to figure out
2 what you're going to do with your document,
3 what's the goal. He may not want you to
4 disseminate it.

5 CHAIR RIZZARDI: Fair comment
6 Randy. I think I've got good direction from
7 the group, and I think the key comment to put
8 up at this point is everybody here, the
9 version that is on the web, comments by June
10 15. Paul.

11 MEMBER CLAMPITT: I just wonder if
12 I could get an edible text, Word Doc or --

13 CHAIR RIZZARDI: A Word version of
14 the document?

15 MEMBER CLAMPITT: Yes, so I could -
16 -

17 CHAIR RIZZARDI: So you could send,
18 like, underline, strike through edits?

19 MEMBER CLAMPITT: Exactly.

20 MEMBER HAMILTON: Yes, I actually -
21 - I actually got a bunch of documents from
22 Heidi for the whole meeting just for that

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1 reason so that I could be able to take notes
2 on the things we were discussing since things
3 it's so new to me.

4 I don't know if other people think
5 that's valuable, but I don't have a program to
6 edit PDFs and so it would be super helpful
7 just to get them in document form for our
8 meetings, everything.

9 CHAIR RIZZARDI: Mark.

10 DR. HOLLIDAY: All right. So I
11 hear the comment. I think when we publish
12 things on the public website for everyone to
13 see, including members, we normally convert
14 them to PDF files so that they don't -- for
15 that very purpose, so people are not taking
16 the documents and rewriting them and, even
17 though you can do that.

18 But we will employ technology for
19 version control on the document. We will set
20 up a site for people to access the Word
21 versions of this and maintain the integrity of
22 the documents, date of changes, author of

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1 change, so we can track changes, and we'll set
2 up protocols to ensure the quality control of
3 the different versions of the 2020, as well as
4 ensure that the Word documents for members are
5 available in all of our activities.

6 But the public side of the website
7 is designed to minimize mischief by converting
8 things to PDF files.

9 CHAIR RIZZARDI: Okay, any last
10 thoughts?

11 DR. HOLLIDAY: I did have a
12 technical question.

13 CHAIR RIZZARDI: Yes please.

14 DR. HOLLIDAY: By show of hands,
15 there are existing technologies out there, but
16 if people have an existing Gmail account, can
17 you just raise your hand? I'm just looking to
18 see how prevalent that is, in terms of using
19 another technology, so --

20 CHAIR RIZZARDI: All right, so two
21 members need to get Gmail accounts.

22 MR. McCULLUM: Google Docs, is that

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1 --

2 DR. HOLLIDAY: Yes, there are a
3 number of different tools out there that we
4 might use as a Committee that might more
5 advantageous in the future. So thank you.

6 CHAIR RIZZARDI: Very good. Okay.
7 Thank you for a healthy discussion. Thank
8 you to all the folks who have already weighed
9 in on Vision 2020. A big thank you to the new
10 members. I know this was a beast to tackle,
11 and a number of you really ramped up over the
12 last 24 hours, going through that document,
13 giving really specific thoughts, and I think
14 we'll end up with a much better work product
15 when we get to the end of September.

16 So, thank you everybody for your
17 collective thoughts and really engaging in
18 this one because I think it's an important
19 document.

20 The next item on our agenda is
21 protected resources, and there are going to be
22 two presentations. The first one is going to

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1 be Lance Smith, who is doing a webinar for us.

2 He's from the Pacific Islands
3 regional office. He's going to be talking
4 about the status of the coral issues, and
5 after his presentation, I'm going to share
6 with MAFAC the same presentation that I gave
7 to the CCC earlier this month about the bigger
8 context of Endangered Species Act and how it
9 works and what some of the challenges that
10 we've been facing are, and the idea is that
11 these two items will help the protected
12 resources subcommittee as it goes into it
13 later this afternoon and tries to shape what
14 its work plan is for the next few months
15 ahead.

16 So is Lance available?

17 CHAIR RIZZARDI: Good morning
18 Lance, this is Keith Rizzardi.

19 MR. SMITH: Morning.

20 CHAIR RIZZARDI: I'm Chairman of
21 MAFAC. We really appreciate to you agreeing
22 to give us an update on coral species. We'd

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1 like to have you do your piece on the status
2 of the corals and then I'll be talking about
3 the Endangered Species Act, some of the
4 litigation realities and giving the
5 presentation that I gave to the CCC.

6 Our idea today is for you to
7 hopefully help educate our protected resources
8 subcommittee so that they can make effective
9 comments on the documents that have been
10 generated by NOAA, and our hope is that MAFAC
11 can help advise NOAA and the Secretary on
12 these issues, so thanks for being here today.

13 MR. SMITH: My pleasure, that sounds
14 like a plan. I'll go ahead and get started if
15 I'm projected up on the screen there.

16 MS. LOVETT: You are.

17 MR. SMITH: So I haven't used
18 GoToMeeting in a little while, so just let me
19 know if you need to instruct me on how this
20 works.

21 So good morning everybody. I'm
22 Lance Smith at NOAA Fisheries' Pacific Islands

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1 regional office. I'm the deputy of the
2 protected resources division and I supervise a
3 group that works on a group that works on a
4 variety of Endangered Species Act and Marine
5 Mammal Protection Act issues, including
6 responding to petitions that list species
7 under the ESA.

8 And as I'm sure you're aware, in
9 the last few years we have received quite a
10 few petitions, specifically here in the
11 Pacific Islands, and that includes a gigantic
12 petition that lists over 80 species at
13 reef-building corals.

14 I'm just going to give you an
15 update today on our response. We got a
16 petition back in October of 2009 -- this
17 petition I have here, I think it should show
18 on your screen there -- to list 83
19 reef-building coral species under the
20 Endangered Species Act, from the Center for
21 Biological Diversity. I am sure you are quite
22 familiar with this group, CBD. They petition

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1 us more than any other environmental group
2 with the possible exception of the Wild Earth
3 Guardians.

4 And I just want to give a little
5 bit of background on corals. I'm using the
6 reef-building corals intentionally because
7 there are about 800 reef-building corals in
8 the world, about 700 of them in the Pacific,
9 including the Indian Ocean, and about 100 in
10 the Caribbean, and obviously as the name
11 implies, reef-building corals provide the
12 physical structure of coral reefs in tropical
13 waters. There are lots of other coral species
14 in cold waters and in deep waters, but this
15 petition is only on reef-building corals.

16 So we went head and initiated a
17 status review under the Endangered Species Act
18 of 82 of the 83 back in 2010, and really, as
19 I'm going to explain, and this is not one
20 status review but 82 simultaneous status
21 reviews, because we have to look at the status
22 of each individual species under the

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1 Endangered Species Act.

2 And the petitioner, the Center for
3 Biological Diversity, selected the 83 species
4 based on occurrence in U.S. waters, and also
5 on the IUCN listing status. So any coral that
6 was red-listed by IUCN and occurs in U.S.
7 waters, was included in the petition.

8 There's about three- or four
9 hundred reef-building coral species occurring
10 in U.S. waters, and that's primarily because
11 of the Pacific Islands territories of Guam,
12 American Samoa, and the Commonwealth of the
13 Mariana Islands. The diversity out there is
14 much greater than in Hawaii and in the
15 Caribbean.

16 Now, last month we completed a pair
17 of reports that together make up the status
18 review and we released those to the public.
19 Now, I just want to emphasize, and I'll get
20 into this a little bit more, that the status
21 review reports that have been released don't
22 make any recommendations on whether any of the

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1 species should be proposed for listing or not.

2 To continue with a bit of
3 background, I just want to give you guys an
4 idea of the range of these species. So this
5 map here is a political map showing the EEZs
6 of the 84 countries where the 82 species
7 collectively occur.

8 So, 75 of the species occur in the
9 Indo-Pacific in a total of 68 countries, and
10 then seven of the species occur in the
11 Caribbean, and there's one missing species
12 here. I said the petitions were 83. But this
13 map only shows 82 and I'll explain that in a
14 second.

15 But the point here is just to give
16 you guys an idea of the geographic range of
17 these species. A lot of the individual
18 species occur across the Indian and Pacific
19 Oceans, so probably at least half of the 75
20 Indo-Pacific species are found in
21 approximately several dozen or more countries,
22 and the reason that's important is because

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1 under the Endangered Species Act, when we do a
2 status review, we have to look at the status
3 of the species across the entire range, not
4 just within U.S. waters, and we also have to
5 look at management issues like laws and
6 regulations for the conservation of the
7 species.

8 So the point here simply is that
9 the status review is a rather large
10 undertaking.

11 And then this map shows the
12 geographic extent of coral reefs throughout
13 the world and you'll note there that the
14 previous map I showed you pretty much overlaps
15 with this map.

16 So the 82 species that we are doing
17 a status review on actually occur pretty much
18 on all of the world's coral reefs with the
19 exception of a few species down off the coast
20 of Brazil.

21 Now, this figure here just is a
22 diagram of the process that we undergo

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1 whenever we do a status review under the
2 Endangered Species Act.

3 We got the petition in October of
4 '09, we completed the first step in the
5 process of February of 2010 here, and that
6 first step is called a 90-day finding for
7 which we determine if the petition provides
8 substantial scientific information supporting
9 the petition's action.

10 And our 90-day finding found that
11 the petitioned matched the standard for 82 of
12 the 83 species, and a public comment period
13 followed the finding and we got about 400
14 public comments, mostly from the aquarium
15 industry in Florida.

16 The 90-day finding initiated a
17 status review, which I just mentioned, for the
18 82 species, and as I said, that's 82
19 simultaneous status reviews.

20 The review took about two years,
21 culminating in the two reports I'll describe
22 for you next. And by court order, our

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1 decision about whether to propose any of these
2 species for listing as threatened or
3 endangered is due on December the 1st of this
4 year.

5 If any of these species is proposed
6 for listing then there will be another public
7 comment period. And this diagram shows the
8 two public comment periods that are in the
9 typical status review process under the
10 Endangered Species Act, first after the 90-day
11 finding, which happened two years ago, and
12 then if we do go forward with any proposed
13 listings -- we don't know yet if we're going
14 to -- but if we do, then there will be another
15 public comment period following the proposed
16 rule.

17 Now, what is going on right now is
18 a little bit odd. We usually don't have a
19 public information gathering period that
20 precedes the so-called 12-month finding, but
21 in this case, because the status review is so
22 large and complex, and has pretty major

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1 implications, we decided that we wanted to
2 open it up for gathering of additional
3 information before we make the decision about
4 whether to propose any species or not.

5 I guess I'm supposed to be
6 monitoring the screen here to see if anybody
7 has any questions. I just wanted to pause.
8 I'm throwing a bunch of ESA process at you.
9 I'm not sure if all of you are terribly
10 familiar with that, so I just wanted to pause
11 and open the floor to any questions anybody
12 might have.

13 MS. LOVETT: So Lance, I'm standing
14 by. We only have one speaker phone. I'll
15 relay questions to you. I'm the only one
16 typed on the screen and your presentation is
17 on my screen.

18 MR. SMITH: I see, okay.

19 MS. LOVETT: Do we have any
20 questions at this time?

21 (No response)

22 MS. LOVETT: Okay. Why don't you

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1 continue and we'll do questions at the end?

2 MR. SMITH: Sounds real good. Now a
3 status review under the Endangered Species
4 Act, it's prescribed under the Statute,
5 section 4, that the ESA requires us to
6 consider five factors, and these can be
7 summarized as follows.

8 A is essentially habitat problems;
9 B overharvest, which applies for some species
10 and not others; disease or predation; D is a
11 rather interesting one called the inadequacy
12 of existing regulatory mechanisms, which
13 refers to the lack of laws and regulations; E
14 is a catch-all for other problems that the
15 species may be facing.

16 And then under the ESA we also have
17 to consider conservation efforts that are
18 being undertaken by the state where the
19 species occurs, state or states, or
20 territories, and also this is where it gets
21 kind of interesting, any efforts by foreign
22 nations to conserve the species.

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1 So I guess when Congress passed the
2 ESA back in '72 they were thinking of things
3 like the bald eagle, the grizzly bear and
4 things like that, that occur in the U.S. or
5 North America, and they weren't necessarily
6 thinking of a widespread tropical species like
7 these corals that occur in half or more of the
8 countries of the world.

9 And so it gets complicated when you
10 are trying to consider all the conservation
11 efforts that are being done within the 84
12 countries around the world, but that's in fact
13 what we are required to look at in the status
14 review.

15 And the status review itself
16 includes these two reports, the coral BRT
17 refers to the Biological Review Team that we
18 established to conduct the status review. The
19 coral BRT completed their status review report
20 last month, and here in this office, myself
21 and my staff, we completed something called
22 the Coral Management Report and those two

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1 reports constitute the status review as it
2 stands right now, and those were made
3 available to the public last month.

4 There's the petition. Here's the
5 status review report. It's 530 pages. It
6 does cover 82 species. And here's the
7 management report, which is on the laws and
8 regulations affecting the 82 species
9 throughout its range.

10 It's also really important to
11 recognize that one of the major threats to
12 corals and coral reefs are greenhouse gas
13 emissions, so the management of greenhouse
14 gases globally is something that we have to
15 consider in the management report.

16 Now, these two reports will be used
17 for the basis for our listing determination,
18 and I'm not referring to a final
19 determination. I'm referring to the initial
20 determination, which is either not warranted,
21 or propose to list as either threatened or
22 endangered.

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1 And that decision document is due
2 on December 1st of this year. Like I've said,
3 if we propose any species for threatened or
4 endangered we'll go ahead and have another
5 public comment period following the proposed
6 rule.

7 A little bit of information about
8 the status review report. It looked at the
9 status and trends for each of the 82 species.

10 It identified major threats, both kind of
11 generally for all reef-building corals and
12 specifically for each of the 82 species, and
13 altogether, in terms of the general threats,
14 the Biological Review Team identified 19 or 20
15 threats.

16 The three greatest threats to reef-
17 building corals in general, according to the
18 coral BRT is first of all global warming,
19 because of the seawater -- the increases in
20 seawater temperature and the resulting
21 bleaching of coral; second of all was coral
22 disease, which is a function of many different

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1 things including warming; and third was ocean
2 acidification.

3 And then I think threats four, five
4 and six were more localized, like the effects
5 of fishing, and land-based sources of
6 pollution like sedimentation and things like
7 that.

8 And then for each of the 82 species
9 they provided an estimated level of extinction
10 risk. They did not make recommendations on
11 whether the species should be proposed as
12 endangered or threatened or should be not
13 warranted, and the Coral BRT Status Review
14 Report considered all of the factors except
15 for the regulatory mechanisms, which is the
16 management, and that's why we did a separate
17 management report.

18 And this management report looks at
19 all the laws and regulations on conservation
20 efforts throughout the world for greenhouse
21 gas emissions and each of the 84 countries for
22 localized threats, and essentially that's a

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1 catalogue of regulatory mechanisms.

2 And of course we focused on our own
3 country, naturally, but it's real important to
4 recognize that U.S. waters contain a small
5 minority of the overall ranges of these
6 species.

7 The next steps, after releasing the
8 status review reports last month, we are
9 soliciting feedback from the public. We'd
10 like to get any information that we missed to
11 help inform our decision that is due in
12 December.

13 And we want to know things like how
14 well does the BRT report characterize the
15 status of the 82 species, and you know, other
16 information, like did we characterize the
17 threats to corals correctly, did we include
18 the best available information, how well does
19 the management report characterize laws and
20 conservation efforts.

21 I'm fairly certain that we were
22 unable to look at every single, you know,

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1 state, territory, county and city law and
2 regulation throughout the range of these
3 species that might be relevant.

4 So we are asking people to let us
5 know what we might have forgotten. There's
6 probably some important conservation efforts
7 that we didn't include just because we didn't
8 have the time or the staff to thoroughly look
9 at every single relevant law and conservation
10 effort.

11 And then, like I said, the listing
12 determination decisions, 82 separate decisions
13 are due on December 1st.

14 Now yesterday we came out with an
15 FR Notice that announced scientific workshops
16 and public listening sessions that will be
17 part of this public listening period.

18 We are going to have a scientific
19 workshop for one day on the 18th of June in
20 Honolulu. We are going to have a public
21 listening session the evening of the 25th of
22 June in Honolulu.

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1 We are going to have a scientific
2 workshop on the 27th of June in Florida which
3 will also be for one day. We are going to
4 have a public listening session the evening of
5 the 28th in Florida.

6 And we are also doing briefings and
7 updates and providing presentations like this
8 one today for -- upon request and also for our
9 federal and non-federal partners like the
10 Hawaii Department of Land and Natural
11 Resources, we are doing a webinar for all
12 their staff throughout all the islands on
13 Hawaii next week or the week after next and we
14 will continue to provide information upon
15 request, so if you guys have requests or if
16 you know people who would like to know more
17 about this effort, then please let me know,
18 and we would be happy to provide information
19 in any way that we can.

20 The coral status review reports can
21 be downloaded from this website, which is the
22 Office of Protected Resources.

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1 MS. LOVETT: We have it on our own
2 website also.

3 MR. SMITH: You already have it?
4 Okay.

5 MS. LOVETT: We posted it to the
6 MAFAC website.

7 MR. SMITH: Awesome, and here it is,
8 there's a link. So you guys already have the
9 link. That's great. And you can download the
10 two reports I just described, which constitute
11 the status review.

12 You can also look at pretty
13 interesting information here. We had a peer
14 review of the status review report and those
15 peer reviews are available on the website,
16 here, by Terry Hughes and a couple of other
17 coral experts, and there's some other
18 information available there on that website.

19 Okay, that's all I have, so if you
20 have any questions, please let me know. And I
21 didn't go into implications of listings and I
22 know that is probably one of the major

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1 questions, is, what does it all mean.

2 And I'll be happy to entertain
3 questions on that if you have them.

4 MEMBER ALEXANDER: I'd like to know
5 how much money this is costing. How many
6 millions of dollars are we doing and is there
7 any portion of the ESA that allows us to do
8 cost recovery from these groups that just
9 blanket --

10 MS. LOVETT: So, Lance, I don't
11 know if you can answer this, but the question
12 is how much is this status review costing us
13 and are there any mechanisms available to
14 recoup some of the costs from those groups
15 that are suing us, or that petitioned us, I
16 should say. Excuse me. MR. SMITH: Good
17 question. So that's actually a really good
18 question and one that we think about all the
19 time, because this effort, as you can tell, is
20 extremely effort-intensive.

21 It took, let's see, it took the
22 coral biological review team, which has seven

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1 members, all federal, almost two years to
2 complete their report. They weren't working
3 on it full time, but they spent a lot of time
4 and they had a lot of staff support, my staff
5 and I.

6 I don't know how much that -- I
7 haven't calculated how much time that adds up
8 to, but it's quite a bit of staff time over
9 the course of two years, and we're not to the
10 finish line yet, so I don't know what the
11 overall cost is but it's substantial, and
12 there is no mechanism for recouping costs.
13 No, there's no way of doing that.

14 The ESA provides the citizens of
15 the U.S. the opportunity to petition its
16 government to list species, so yes, it doesn't
17 really sound fair now at this point, but I
18 think the original intent of Congress was to
19 allow the citizens the opportunity to do that,
20 but it's morphed into this environmental
21 industry basically that petitions the
22 government constantly and I'm not aware of any

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1 mechanism to recoup costs, no.

2 MS. LOVETT: Alan is going to
3 comment also. He's here. He's going to
4 answer this as well, so hold on.

5 MR. SMITH: Oh awesome, thank you.

6 MR. RISENHOOVER: I think Lance
7 answered it well but I just want to add a
8 little bit more context. While we are required
9 to provide this process under the ESA, it is
10 something we are thinking about in the context
11 of our budget overall.

12 So when we think back to our
13 discussion yesterday of what the trends of our
14 protected species budget is, and if that stays
15 level or starts trending down, input from
16 MAFAC on how do we manage this, when we get
17 these large, broad listings or even the
18 smaller, singular species listings, how does
19 the agency deal with those? How should the
20 agency deal with those? We'd be looking for
21 input from MAFAC on that.

22 The Fish and Wildlife Service I

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1 believe has a specific amount appropriated for
2 listing reviews each year, and they plan, and
3 once that's money's gone, that's all they do
4 that year.

5 So we're thinking of perhaps some
6 similar mechanisms in our budget that identify
7 what we will spend on, on listing
8 determinations each year.

9 So input from you all today would
10 be helpful on that as well.

11 MS. LOVETT: So, okay. Micah.

12 MEMBER McCARTY: I compare this
13 petition to the Lake Ozette Sockeye Recovery
14 Plan under ESA. I wonder if there's a matrix
15 or if there's a standard that a petition like
16 this could be measured with plausibility of a
17 recovery plan, and to accommodate -- for the
18 existing infrastructure to accommodate these
19 kind of things.

20 And I think of things like -- at
21 the CITES Convention it's been said that some
22 of the environmental industry, it's like the

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1 Olympics, they try to get as many species
2 listed at every CITES Convention that they
3 can, and the problem is that a lot of the
4 countries don't have the infrastructure to
5 monitor, maintain or enforce.

6 MS. LOVETT: Have you been able to
7 hear this Lance, this particular --

8 MR. SMITH: No, I'm afraid not.

9 MS. LOVETT: Okay. So --

10 MR. SMITH: It's okay though.

11 MS. LOVETT: So is there some way
12 to measure the plausibility of recovery plans
13 through the listing process, the determination
14 of whether a species should be listed or not.

15 And are things like existing
16 infrastructure and capacity to improve or
17 recover a stock, is that taken into account?

18 MR. SMITH: Ah, that's a very good
19 question. No, it's not. So I get -- as far as
20 I know, the capacity for the recovery of a
21 species is not part of a consideration for
22 whether it should be protected under the ESA

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1 or not.

2 MS. LOVETT: Okay.

3 MR. SMITH: So, I think the idea
4 here is, hey, there are so many global
5 problems that aren't being caused by the
6 United States that we don't have control over,
7 why would we protect a species under our
8 federal statute if we don't have control over
9 its recovery.

10 And that's a very good logical
11 point. But I do not think that there is any
12 way to weigh that in our determination of
13 whether it should be listed or not, because
14 the listing is supposed to be based on the
15 status of the species, not on the ability to
16 recover the species.

17 MEMBER McCARTY: I guess --

18 MS. LOVETT: One moment please.

19 MR. SMITH: I think there may be
20 some people who can add to that, but that's my
21 understanding, which kind of -- it puts us
22 into somewhat of a box, but we do have some

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1 discretion though, but I think it's pretty
2 limited.

3 MS. LOVETT: Okay, Alan's going to
4 -- we're going to have some other discussion
5 here. I'm sorry it's hard for you to hear
6 it.

7 MR. SMITH: Oh, that's okay.

8 MR. RISENHOOVER: We base the
9 listing determination on the status of the
10 species. We don't, at that stage, bring in
11 things like the economics of it. That would
12 be dealt at the recovery stage.

13 Also there's that separation in the
14 ESA of what the characteristics are for
15 listing, and that's the extinction threat or
16 risks, and then the separate question, or next
17 question, if these corals, or any of them,
18 should be listed, is what do you do about that
19 and what does that cost, and that comes in at
20 the recovery stage.

21 MS. LOVETT: So Alan noted that the
22 assessment of what it might cost and how you

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1 can recover a species, or what is involved in
2 a recovery comes in at that stage, after the
3 listing stage.

4 So, Randy?

5 MEMBER CATES: I had a question on
6 this presentation. If I heard right, you
7 stated that threats from global warming, sea
8 level rise and acidification was a higher
9 threat than sedimentation. Is that correct?

10 MS. LOVETT: I think what he is
11 saying that these were the three largest
12 threats, yes, was global warming -- because I
13 wrote this down -- coral disease and ocean
14 acidification. Is that correct Lance? That's
15 what you had noted in your presentation?

16 MR. SMITH: Yes. I can show you a
17 table. The BRT's report shows the general
18 threats of corals, if you'd like. But yes,
19 they are ocean warming, disease and ocean
20 acidification. But there's a lot of other
21 threats as well.

22 MS. LOVETT: So I think there's a

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1 question so hold on just a moment.

2 MR. SMITH: Okay.

3 MEMBER CATES: I find it stunning
4 in that I would answer that with a question,
5 what historically has damaged more corals?

6 MS. LOVETT: So, one person here,
7 he said he finds that stunning and what has
8 historically damaged more corals, if you know
9 the answer to that?

10 MR. SMITH: What has historically
11 been the greatest threat to corals and coral
12 reefs?

13 MS. LOVETT: Yes.

14 MR. SMITH: I would say localized
15 threats, like sedimentation from land-based
16 activities, like, you know, agriculture and
17 runoff from cities, and things like that.
18 That's probably been historically the biggest
19 threat.

20 And the degradation of coral reefs
21 has been going on for, you know, quite a few
22 decades of course as those of you from the

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1 Caribbean probably know.

2 And I think that up until about 20
3 years ago, the greatest threats were localized
4 threats, but as greenhouse gases have had more
5 of an impact, I think that those global
6 threats have become more of a threat.

7 And disease is kind of a
8 combination of a variety of threats together
9 that enables the disease to get a foothold.

10 MS. LOVETT: Thank you.

11 MEMBER CHATWIN: So, thanks for
12 your presentation. I have two questions. One
13 is what are the criteria used for ranking the
14 threats?

15 MS. LOVETT: So, a couple of
16 questions. One is what are the criteria used
17 to rank the threats?

18 MR. SMITH: Let's see. There's not
19 really a set of criteria. I would say it's
20 professional opinion of the seven BRT members.
21 So they -- I'm just scrolling through the
22 threats chapter of the BRT's report, and they

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1 describe all these threats and they eventually
2 get to the end, and they come up with this
3 table of the different threats, and they did
4 rank them, I believe, based just on some kind
5 of a vote.

6 So I don't think they had the
7 criteria set up in order to quantitatively
8 determine which of the threats are the
9 greatest.

10 MS. LOVETT: Okay.

11 MEMBER CHATWIN: My other question
12 is, when they do the regulatory analysis of
13 the rules and regulations that exist to
14 protect coral, do they do an assessment of the
15 effectiveness of those rules and regulations?

16 MR. SMITH: So here is the table in
17 the BRT's report that shows all the threats.
18 But this is a table of all the threats that
19 applies to all reef-building corals.

20 The status review, or 82 status
21 reviews, is really focused more on individual
22 species, but this introductory chapter on

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1 general threat is very interesting because it
2 provides the general framework that is really
3 relevant to all species. And --

4 MS. LOVETT: Okay, we have a --

5 MR. SMITH: Go ahead.

6 MS. LOVETT: We have a second
7 followup question, so hold on a minute. So
8 you're saying during the regulatory analysis,
9 what kind of assessment is made? I didn't
10 catch the end. What kind of assessment is
11 made of the actions to recover?

12 MEMBER CHATWIN: Well yes, do you
13 only look at whether rules and regulations
14 should protect coral exist, or do you also
15 assess whether they are being implemented, and
16 are being effective?

17 MS. LOVETT: Ah, so looking at the
18 laws and regulations, when you were doing that
19 as part of the assessment, when you are
20 looking across the board at other nations and
21 countries across the U.S., are you looking
22 strictly at whether or not these laws and

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1 regulations exist, or do you also try to
2 assess whether -- whether or not they are
3 being successfully implemented?

4 MR. SMITH: That is an excellent
5 question, and one that we struggle with
6 mightily, and we still are struggling with.
7 But first and foremost we look at the
8 existence of the laws and regulations.

9 So, there's two components to this.
10 There's the laws and the regulations,
11 otherwise known as the regulatory mechanisms,
12 and then there are the conservation efforts
13 that aren't based on laws but are more like
14 voluntary efforts.

15 So what we have to consider after
16 Factor D in our status reviews is the laws and
17 regulations that are on the books, and there's
18 a lot of internal discussion about whether we
19 should be getting deeply into things like how
20 well is the Indonesian government implementing
21 their fisheries management laws, you know,
22 that sort of thing.

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1 It's endless. So you have to, I
2 think, look first of all at what's on the
3 books, and evaluate what it says in black and
4 white, and then there also needs to be some
5 kind of consideration of how effective it is,
6 but it's very fuzzy how to do so.

7 So we focused more on what's on the
8 books, because we don't have information
9 really to tell us how well these relevant laws
10 and regulations are being implemented in one
11 country, you know.

12 So I know that's kind of a
13 wishy-washy answer but it's a pretty grey area
14 that we haven't been able to get really good
15 answers on yet from our legal advice.

16 But we do consider, in the end we
17 do consider how well the laws and regulations
18 are being implemented, but in a rather
19 superficial manner.

20 MS. LOVETT: Thank you. Do you
21 want to spend more time with this Keith, or --
22 okay. Everybody is very appreciative. Oh

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1 wait a minute, one more question. Paul?

2 CHAIR RIZZARDI: Two more. Paul
3 then Julie.

4 MS. LOVETT: Okay, we have just two
5 more questions.

6 MR. SMITH: No problem.

7 MEMBER CLAMPITT: I was wondering
8 if we took into account the Great Barrier
9 Reef. They lost a tremendous amount of coral
10 but it recovered, and if, you know, obviously
11 these corals, either they adapted, or you
12 know, they didn't have to adapt because the
13 event didn't occur again.

14 And I was wondering if you -- if
15 you look at some of the recoveries of these
16 corals then you can --

17 MS. LOVETT: Did the BRT team look
18 at the Great Barrier Reef and the fact that
19 they lost a lot of corals but then they also
20 recovered, and they seemed to have been able
21 to recover so did you assess that?

22 MR. SMITH: Yes, that's a really

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1 good question, because that is a lot of
2 encouraging signs of coral being able to
3 recover, adaptive capacity of corals seems to
4 be greater than was previously realized, and
5 there has been some really good recoveries
6 from bleaching events, like the '98 bleaching
7 event, and some of these corals have come back
8 really impressively.

9 So, yes, the BRT in its report did
10 consider adaptive capacity of corals to the
11 various threats.

12 MS. LOVETT: Okay, we have one more
13 question. Julie.

14 MR. McCULLUM: Thank you Lance.
15 The report that we were looking at said that
16 the status of most of the 82 species were more
17 likely than not to fall below something called
18 the critical risk threshold by 2100. So what
19 does that mean?

20 MR. SMITH: Okay, that really gets
21 to the bottom of all this, so those are great
22 questions. In order to be useful, the status

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1 review needs to provide information that we
2 can use in order to make a decision about
3 whether species should be listed as either
4 threatened or endangered.

5 In order to do that, the BRT needed
6 to consider how likely extinction would be
7 within the foreseeable future, which is a
8 phrase that comes out of the ESA Section 4 as
9 you probably know.

10 And so what they did is they
11 decided that the foreseeable future in terms
12 of corals was the year 2100, based on climate
13 modeling.

14 So they said okay, between now and
15 2100, we need to provide some number that
16 summarizes our opinion about the extinction
17 risk of the species.

18 And they came up with this thing
19 that you just mentioned, the critical risk
20 threshold, which is a reference to the
21 likelihood of a species not going extinct, but
22 dropping below a threshold where it would

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1 become very likely to become extinct.

2 So what they did is they took a
3 vote for each of the 82 species regarding
4 whether that species is likely to drop below
5 the critical risk threshold by the year 2100.

6 So the numbers that you are
7 referring to are the mean results for the 82
8 species. So more than half of the 82 were
9 determined by the BRT to be more than 50
10 percent likely to drop below the critical risk
11 threshold by the year 2100. I know it's a lot
12 of -- a lot of info, but in order to really
13 get a better understanding, you definitely
14 have to get into the report itself.

15 MS. LOVETT: Keith, do you want to
16 --

17 CHAIR RIZZARDI: Okay. Lance I want to
18 thank you so much for your presentation. I
19 think you've opened up an awful lot of folk's
20 eyes to the status of the coral effort and
21 given us a much better understanding of how
22 hard NOAA has been working on this.

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1 So thanks for your time, and I know
2 it's bright and early in Hawaii. So --

3 MR. SMITH: You're very welcome.
4 Thanks for your interest.

5 CHAIR RIZZARDI: All right. You
6 have a great day.

7 MR. SMITH: Thank you.

8 CHAIR RIZZARDI: Bye. Earlier in
9 May I was asked by the CCC to come talk to
10 them about the Endangered Species Act and some
11 of the litigation realities associated with
12 it.

13 By way of background, I spent five
14 years with the Justice Department litigating
15 the Endangered Species Act -- yes, Randy.

16 MEMBER CATES: Can you explain what
17 CCC is?

18 CHAIR RIZZARDI: The Council
19 Coordinating Committee, which is the group
20 that Manny, who is here, is the chair of, and
21 they are the body that is assembled twice a
22 year where each of the fishery management

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1 councils gets together to discuss their
2 national issues.

3 They have all been wrestling with
4 the Endangered Species Act, and there is a
5 sense amongst many of the fishery management
6 folks, that they are finding themselves
7 engaged in the Endangered Species Act more
8 often than they are the Magnuson Act.

9 So I'm just putting on Professor
10 Rizzardi hat right now. I'm going to walk you
11 through what the Endangered Species Act says,
12 what its requirements are and sort of give you
13 the overview of these issues and why these
14 tensions exist between the ESA and the
15 Magnuson Act, and I'm trying to lay sort of
16 the educational foundation so the protected
17 resources committee can look at the letter
18 that they have gotten from the CCC saying
19 these are the things that we're concerned
20 about, this is the stuff that we want some
21 feedback on.

22 I'm trying to give you some context

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1 as to why this issue is bubbling up. So, all
2 right. The first thing I want you to do, is I
3 want everybody to think like a plaintiff.

4 We have heard about these groups
5 that are out there and they are filing these
6 lawsuits, and the Center for Biological
7 Diversity or the WildEarth Guardians -- who
8 sues when and why do they sue?

9 And the reality is that anybody can
10 file a suit under the Endangered Species Act,
11 and what we have are a group of or a number of
12 committed organizations that believe
13 passionately is endangered species protection.
14 They have identified coral species or they
15 identify a terrestrial species, and they will
16 file a petition with the federal government
17 saying please list these species, and if the
18 government doesn't do it within the deadlines
19 of the Endangered Species Act they can file
20 suit, or if the government makes a decision
21 one way or the other and they disagree with
22 that decision they can file a suit, because

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1 Section 11 of the Endangered Species Act says
2 that any person may commence a civil suit.

3 So this is the platform that the
4 fishery management councils are working with.

5 They have the reality that anybody can file a
6 lawsuit against them.

7 When can they do so? They can do
8 it whenever they have suffered a legal wrong,
9 they can do it whenever there has been an
10 agency action.

11 So if the agency makes a decision,
12 that decision can be subject to a lawsuit by
13 any person.

14 Think about why are these lawsuits
15 filing a lawsuit. Sometimes they have got a
16 clear injury. Maybe there's an industry group
17 that's been affected by a decision and they're
18 going to suffer some economic injury so
19 they'll file a lawsuit.

20 Or maybe it's ideals and principles
21 that are stake. They disagree with the
22 premise that's been asserted by the agency.

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1 They disagree with the outcome. They want
2 something different.

3 Another big reason, though, the
4 groups sue, and while this is not really
5 relevant to the courts, is distrust and
6 strategy. Sometimes these lawsuits are being
7 filed because the groups simply don't trust
8 the government.

9 They believe for example that the
10 government has been captured by the very
11 entity that they are there to regulate, or
12 they have lost confidence in the particular
13 administration or the particular individual
14 who is engaged in the decision.

15 These things are realities and part
16 of why we deal with litigation under the
17 Endangered Species Act.

18 And another reason is strategic.
19 Sometimes groups are using these lawsuits
20 because they realize they can accomplish a
21 different objective.

22 Maybe they want to delay the

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1 implementation of an agency decision -- file a
2 lawsuit. Or maybe they really have some other
3 concern with their concern that they are
4 trying to address, and they use the litigation
5 as a tactic.

6 But at the end of the day, these
7 are all considerations that you need to
8 understand in how plaintiffs act and why they
9 act.

10 The next thing I want you to think
11 about is how does a judge look at this stuff?

12 So a lawsuit has been filed, and the judge
13 has to evaluate that lawsuit. What's the
14 judge going to look at? What factors are they
15 going to evaluate? How are they going to rule
16 on a particular case?

17 There are two important concepts
18 that the judiciary deals with. One really big
19 one is this notion of deference. The
20 judiciary is supposed to, to some degree,
21 defer to the executive branch.

22 And they look at things like: was

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1 it a reasonable construction of this, a
2 permissible construction of the statute in
3 question; are they reasonably accommodating
4 competing interests, is there a technical and
5 complex regulatory scheme.

6 So on the one hand, the judge is
7 saying, "I'm ready to defer to the executive
8 branch and willing to give the executive
9 branch the room it needs to make its
10 implementation decisions."

11 On the other hand, there's another
12 doctrine called hard look, and the courts are
13 programed to at least question the decisions.
14 They are going to ask questions, they are
15 going to look at the record that was developed
16 by the executive branch, and a judge is going
17 to look at that decision and say, "Why was
18 this decision made? Was it adequately
19 explained? Was all the evidence properly
20 considered? Were all the relevant factors
21 considered? Is there a rational connection
22 between the facts that were identified and the

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1 conclusion that was reached in the end?"

2 I would say this doctrine, the hard
3 look, is sort of in tension with this other
4 doctrine of deference. The courts want to
5 defer, but they want to look really tough.

6 In terms of the Endangered Species
7 Act itself, this is a very, very powerful
8 statute. It absolutely bans take of a listed
9 species, and then creates some exceptions.

10 But the first premise is you cannot
11 harass, harm, pursue, hunt, shoot, wound,
12 kill, trap, capture, or collect, or attempt to
13 do so, with any listed species.

14 This is prohibited. This gets you
15 in trouble. This is the criminal violation
16 right here, is take.

17 Now there is an exception, and it
18 is when you get incidental take authority.
19 Once a species is listed, you can only affect
20 a species if you have a biological opinion
21 that comes from the agency that says here's
22 your incidental take authorization, or you

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1 might be a private actor who gets a permit and
2 you have an incidental take permit.

3 And that says that the taking that
4 is being allowed is associated with some
5 otherwise lawful activity. You are not simply
6 harvesting the listed orchid for the sake of
7 putting it in your collection.

8 It's -- you were doing some other
9 activity that impacted that orchid, so you
10 can't go take. You can't go out and hunt a
11 polar bear just for the sake of hunting it,
12 you need to be -- the only time you can impact
13 a polar bear is if you were engaged in some
14 other legal activity, oil and gas drilling for
15 example, they'll have a biological opinion.

16 The other notion that is considered
17 really carefully once a species is listed is
18 this notion of jeopardy. What is jeopardy?
19 And jeopardy says you are not going to
20 jeopardize the continued existence of the
21 species.

22 So there are two types of analyses

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1 that take place with any listed species. One
2 of them is taking an individual animal or
3 plant, and the second one is jeopardizing the
4 entire species. Two different thresholds:
5 individual level; species level analysis.

6 And important language in the
7 jeopardy concept is you cannot reduce
8 appreciably the likelihood of survival and
9 recovery of the species by reducing
10 reproduction, numbers or distribution of that
11 species.

12 Increasingly, ESA litigation is
13 involving quantitative disputes, disputes over
14 the numbers or distribution of a species.

15 So this is where I want you to
16 think like the lawyer. Right? The plaintiff
17 has filed their lawsuit. The judge has their
18 standards. What does the lawyer want to do?
19 The lawyer wants to win. The lawyer is there
20 to represent their client and they are going
21 to find the weakness in the case. That's the
22 lawyer's job.

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1 We are back to that notion of
2 deference. We are back to that notion of a
3 hard look. What's the lawyer going to do?
4 The lawyer for the plaintiff is going to
5 argue, when they're attacking a government
6 decision, that the government's decision
7 doesn't draw a rational connection between the
8 facts found and the conclusion reached.

9 They are going to try to find some
10 little thread that they are going to say,
11 "This is what was wrong your honor," and then
12 once they identify that, that becomes the
13 basis for the litigation.

14 This has been going on since 1996
15 in the fisheries world in sea turtles. Right,
16 so in the Gulf there was this case, Center for
17 Marine Conservation v. Brown, it came down to
18 a giant dispute over how to how many
19 loggerhead turtles were going to be allowed to
20 be taken in the Gulf fishery.

21 So we have been dealing with this
22 dynamic for 15 years of fishery management, of

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1 lawsuits being filed questioning the federal
2 government's decisions over how many
3 individual animals can be taken, whether or
4 not there is a jeopardy decision.

5 All right. Here's an example of a
6 court looking at an agency's biological
7 opinion and rejecting it. And the court in
8 this case was dealing with an analysis of a
9 bird in the Everglades, and do I know this one
10 well.

11 But the agency didn't have numeric
12 data, and instead they used habitat and they
13 said, "Well, if you impact X amount of
14 habitat, then we're going to presume that
15 you've exceeded the amount of allowable take
16 of the species, and they drew this conclusion,
17 that says, "Here's how much habitat you have
18 to protect."

19 And the court didn't like that.
20 They didn't like the agency using water levels
21 in the Everglades. They didn't like the
22 agency looking at habitat, the amount of

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1 habitat potential, and they said, "Using
2 habitat markers when population data is
3 available, is like turning on the weather
4 channel to see if it's raining instead of
5 looking out a window."

6 The court was not very deferential
7 in this case. They took a really hard look at
8 the agency's analysis, and they didn't like
9 it.

10 The service's assertion in its
11 incidental take statement, "The birds are
12 difficult to detect, leaves us unpersuaded
13 that counting them is practical enough to
14 justify the use of habitat markers."

15 This is a classic example of hard
16 look analysis. That's where the -- and
17 notice, this is the 11th Circuit. This is not
18 a district court. This is the appellate court
19 at the U.S. court level.

20 Here's a different opinion. This
21 is one where the agency wins, which is Oceana
22 Inc. v. Gutierrez. A D.C. circuit opinion.

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1 And this one was involving the total number of
2 turtles that were being tracked.

3 And they looked at the agency's
4 analysis, and I don't even need to walk you
5 through it, but you can just look at the
6 screen, and see, numbers, numbers, numbers,
7 numbers, numbers, numbers, numbers.

8 This one, the agency got a lot of
9 deference. This one, the court, when it
10 engaged in the hard look, said, "Well, we see
11 the agency has drawn a rational connection
12 between the facts found and the conclusions
13 reached. So numbers were very helpful to the
14 agency in its defense of its decision.

15 So what does all this mean for a
16 fishery manager? Last point here is thinking
17 like fisheries managers. What do we do with
18 this information?

19 The first one is everyone needs to
20 understand that the decisions are going to get
21 second guessed. Somebody is going to
22 disagree. Any person can file suit over any

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1 agency action. That's just the litigation
2 reality of the Endangered Species Act, as I
3 said in the title of this presentation.

4 So, if you are a fishery manager,
5 you need to make sure that you've got good
6 data and you've got good analysis, and you
7 need to make sure that you know your
8 weaknesses.

9 You need to understand the amount
10 of uncertainty, and how are you going to
11 address the uncertainties that are involved,
12 please understand your vulnerability and the
13 trends in the projections that are being used.

14 And when you think about this
15 issue, it kind of comes down to three ways to
16 evaluate the problem and evaluate solutions.
17 One issue is legal.

18 You know, what do you do with the
19 law, okay? So we've got this Endangered
20 Species Act. It allows this. Is that good,
21 is that bad? Right? Do you want to have less
22 legislation? Do you want to force the courts

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1 to grant more deference?

2 There are options to evaluate -- to
3 change the law, but be careful. Whichever
4 option you pick, there's consequences.

5 If for example you make it harder
6 for a plaintiff to file a lawsuit, well, then
7 you have fewer watchdogs. You might have more
8 politics.

9 You tell the court to be more
10 deferential, you're losing some of the checks
11 and balances that the court provides, right?
12 So the question that we have posed to the
13 council is are you asking for changes in the
14 law?

15 Now, mind you, that's exactly
16 what's going on at the Congressional level
17 right now. Congressman Hastings, just this
18 week, put out his proposals for ESA reform.
19 He's been working on this for quite some time.

20 There have been quite a lot of hearings.

21 He laid out just this week five
22 objectives: focus on species recovery; reduce

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1 ESA litigation; ensure wise spending of
2 taxpayer dollars; base decisions on
3 independently improved, good science; make the
4 law work for species and people.

5 Some folks would disagree with the
6 specific ways the Congressman is suggesting.
7 Others will support it. I'm not presenting a
8 solution here. I'm simply presenting what's
9 happening in the dialogue and what's being
10 talked about.

11 All right, so that's -- one option
12 is legal reform. Another option is looking at
13 the facts. How can you, as fishery managers
14 and thinking about fishery management, how do
15 you improve your facts? How do you get better
16 science? Is there a way to get more raw data?
17 Is there more analysis that can be conducted?

18 And of course, either of those
19 options involve costs. They involve
20 consequences. They involve potential delay.
21 They involve new burdens. John is already
22 probably cringing at the notion of oh my gosh,

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1 I need to do even more analysis in order to
2 survive the litigation scrutiny, right?

3 Science is expensive, but maybe you
4 can come up with recommendations for specific
5 areas of science, and that I exactly what the
6 CCC letter suggests.

7 In the letter that we have been
8 copied on and that went to Dr. Lubchenco, one
9 of the points that Manny made in his letter,
10 was the CCC believes that there is a need for
11 better population abundance data for the
12 various species that we're managing.

13 They've identified the need for
14 better science and their theory is that if we
15 had, for example in the world of sea turtles,
16 better knowledge of exactly how many sea
17 turtles there were, maybe we'd be able to
18 reach better and more defensible conclusions
19 that would be more likely to withstand the
20 inevitable litigation scrutiny that comes.

21 And as the joke goes, if your
22 interactions with turtles are going up, well

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1 then it's because there's more turtles; if
2 your interactions are going down, it's because
3 your gear is more effective.

4 There are all sorts of ways to
5 reason your way through the facts that are put
6 before you, but the real need, in terms of
7 surviving litigation scrutiny, is to have
8 really quality science, to have good data, to
9 have good numbers. That increases your chance
10 of withstanding the litigation threat.

11 And the last issue is people. How
12 do you improve the trust? How do you change
13 the dynamics? This was also an issue that was
14 identified by the CCC. It was discussed quite
15 a bit earlier in May.

16 And the concern is, are the
17 councils engaged enough in the endangered
18 species process? Can they participate more in
19 the dialogue that takes place within NOAA?
20 Because what happens in ESA is there's a
21 group, the protected resources folks, that
22 have to analyze a council rule, they have to

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1 analyze the agency action, and they have to
2 consider, does it take too much, is it causing
3 jeopardy?

4 Can the protected resources staff
5 at NOAA engage more closely with the councils
6 to come up with better answers, or
7 alternatively, can they engage more with the
8 stakeholders to come up with better answers,
9 because the stakeholders sometimes are filing
10 lawsuits because they simply don't trust the
11 government. If they were more engaged in the
12 process, would they trust the government more?
13 Those are the kinds of questions being posed.

14 The councils jointly believe that
15 they should be more involved in the biological
16 opinion process, but again there are strengths
17 and weaknesses to every proposal.

18 If you're going to try to expand
19 the consensus, you may be able to get more
20 stakeholders on board, but you may still have
21 some outliers, and you end up having
22 litigation anyway, so was it worth the delay

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1 that you invested into trying to expand that
2 consensus?

3 Or do you start reaching out to
4 those outliers, but recognize that if you do,
5 what you're really doing is you're empowering
6 the groups that are causing you trouble, and
7 then you're giving an incentive for groups to
8 be even more aggressive in asserting
9 themselves because then they'll believe that
10 they'll be engaged even more in the
11 stakeholder process.

12 So I just wanted to lay out for
13 everybody, again, the litigation realities of
14 the Endangered Species Act, and trying to be
15 objective about it as best you can -- this is
16 a very hard subject to be objective about.

17 You know, this is something that
18 people believe very passionately in, on either
19 side of the issue, but I've been spending much
20 of my career really carefully analyzing this
21 issue. I publish a blog on it, I've got my
22 twitter feed on it, I mean this is what I do.

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1 Terry.

2 MEMBER ALEXANDER: So Alan had said
3 that, what was the other agency that just so
4 much money on it then they don't do any more -
5 -

6 MS. LOVETT: Fish and Wildlife
7 Service.

8 MEMBER ALEXANDER: Okay, so is that
9 even legal? Is that even legal that they can
10 say okay, we've spent all our budget on it?
11 And then would that slow down the people
12 trying to do win? Because you do have time
13 constraints --

14 CHAIR RIZZARDI: That issue kind of
15 goes back to the '90s and I think it's even
16 the '80s. There were so many petitions over
17 critical habitat determinations and the
18 government was constantly defending itself
19 against petitions to designate critical
20 habitat for species, and they were starting to
21 spend too much money on the issue.

22 So Congress started putting caps on

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1 how much money the agency was allowed to spend
2 on an annual basis. And then the agency was
3 going into court with what I was calling the
4 empty pockets defense. "I'm sorry your honor,
5 we have no more money. We can't do it because
6 Congress told us how money we had. We spent
7 it all and there's nothing left."

8 And at that point the judge's hands
9 were tied, because the judge can't force the
10 agency to do something that Congress
11 explicitly said not to do, right?

12 But what you really have there is
13 Congress legislating through appropriations
14 language, and really diving into how the
15 agency spends its money, and saying on topic X
16 or on topic Y or on topic Z, you will or will
17 not spend how much -- you know, a given amount
18 of money, and that's a lot of analysis and
19 that's a lot of action by Congress, and then
20 you're talking about it happening on an annual
21 -- annual basis.

22 MEMBER BRAME: But then they just

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1 pile up the lawsuits. They don't go away.
2 They go to the next budget cycle.

3 CHAIR RIZZARDI: Tony.

4 MEMBER CHATWIN: Keith, thanks for
5 that presentation. You emphasized how, under
6 the statute, any citizen can file the suit, as
7 if that was something unique to this statute.

8 And I just wanted to know, in the
9 U.S., under the judicial system, how many
10 statutes can a citizen file a lawsuit and --
11 yes.

12 CHAIR RIZZARDI: The notion of the
13 citizen suit is something that's primarily in
14 environmental litigation. The ESA is one of
15 the dozen or so of these kinds of statutes
16 that has this provision, that really clearly
17 says any citizen on any issue is entitled.

18 What's interesting about it is it
19 also has a fee shifting provision. It has a
20 provision that says if you file suit against
21 the government and you win, you get paid for
22 bringing the litigation against the

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1 government, and that's one of the unique
2 features in the ESA, and it does create a
3 little bit of a litigation incentive for a
4 group, and maybe impairs the ability to settle
5 in some cases because there is an incentive to
6 see an outcome where they get adjudicated as a
7 prevailing party, as opposed to settling a
8 case.

9 You know, most of them, there are -
10 - there's a standing issue that comes up.
11 Does an organization have an actual injury
12 that provides the basis for them to file the
13 lawsuit? That's a big question.

14 That threshold's a little easier to
15 pass when you have a statute like the ESA that
16 says any citizen can file suit over an agency
17 action, that they simply have to assert they
18 care about -- that they care passionately
19 about the species, or -- and they can file a
20 lawsuit.

21 Most of the time, there was a need
22 for more of an economic nexus, and this was a

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1 way to allow organizations who cared to
2 function sort of as citizen attorney generals,
3 and to be enforcers of the law and Congress
4 was intending to open the door to encourage
5 people to make sure that the Endangered
6 Species Act was honored, or the Clean Water
7 Act or the Clean Air Act or any of the other
8 statutes that have citizen supervision.

9 MEMBER HAMILTON: I'm going to show
10 my personality to the group a little bit. I
11 really like talking to both sides on an issue,
12 and seeing it from both sides.

13 So in that spirit, a lot of us
14 don't think we'd be fishing if it weren't for
15 the Endangered Species Act, on salmon.
16 There's many, many places and times where,
17 unfortunately it was the courtroom that got
18 the gains that we needed to enhance their
19 future survival.

20 And I think in America, we have a
21 great example of allowing some economics to
22 ignore the needs of some resources, and we've

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1 wiped them out -- the Atlantic salmon comes to
2 mind.

3 Anyway, so this is a double-edged
4 sword and as a citizen, I remain happy that
5 the law is there, and it sounds like there's
6 some fixes that could be out there, but it's
7 be careful when you open the Pandora's box
8 with what you're going to get out of it.

9 So anyway, that's more of a comment
10 than a question.

11 CHAIR RIZZARDI: Julie.

12 MR. McCULLUM: So, when the Gulf
13 Council was working on its most recent sea
14 turtle interaction issue with bottom longline
15 fishing, it was really frustrating because the
16 protected resources people were charged with
17 figuring out whether the management action we
18 were coming up with was going to create
19 jeopardy or not.

20 But there was really no -- they
21 couldn't tell us, as we developed our
22 management action, whether we were getting

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1 into jeopardy territory or not.

2 There was kind of a process wall
3 separating the development of the management
4 action from the jeopardy determination and it
5 wasn't until we were completely done with the
6 management action that we learned whether we
7 were above jeopardy or below jeopardy.

8 And that was really frustrating.
9 We kept kind of grilling the regional
10 administrator for hints, and he would use this
11 kind of code language, and you know, we would
12 try to, you know, ask him whether or not he
13 thought we were going to be in jeopardy or
14 not, and he would make strong suggestions on
15 where we needed to go in the management
16 action.

17 We felt like he knew what was going
18 on, but we couldn't know what was going on.
19 So just, I don't know why the process is that
20 way, if there's some legal or regulatory
21 practice that requires it to be that way.

22 But it would have been much cleaner

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1 if -- I mean it would have been less
2 frustrating to us, we would have felt less
3 manipulated, as management plan writers, if
4 we'd had some clear signal about, you've got a
5 -- jeopardy is going to be above this
6 threshold, jeopardy -- or I'm sorry, reverse.

7 This is the limit for jeopardy, and you need
8 your management action to accomplish this
9 reaction in sea turtle interactions.

10 CHAIR RIZZARDI: That was exactly
11 the kind of comment that was made at the CCC
12 meeting in Hawaii a few weeks ago, and one of
13 the ideas that's been put forth in this
14 letter, that CCC is asking us to be part of
15 the working group with them, is can there be
16 increased interaction and increased
17 cooperation between the Council and the NOAA
18 biological opinion-writing staff on these
19 issues, to improve that dialogue, and to
20 better shape the proposed agency action, to
21 reduce the risk of a jeopardy opinion, to
22 better protect the species?

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1 And I share your concern about --
2 the ESA is at the end of the day a very
3 effective tool at ensuring that we pay
4 attention to the needs of endangered species.

5 It works in that sense. It has its
6 flaws. It has its problems. It has its
7 consequences. And how do you work with that
8 and how do you improve the process?

9 And yes, one of the big issues
10 that's been put out there is can we speak up
11 and should we speak up on the idea of greater
12 coordination between the Councils and NOAA's
13 biological opinion-writing staff as they go
14 through the ESA process?

15 MEMBER RHEAULT: Just one thing
16 that people probably are not aware of, the ESA
17 is written differently for vertebrates and
18 invertebrates. You can list, say, a range of
19 seven salmon runs, but you don't have to list
20 the entire species.

21 If you list an invertebrate, you
22 have to list it throughout its entire range,

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1 wherever it occurs, and that's pretty
2 significant.

3 MR. STEIN: There's two sides to
4 that, obviously, trying to figure that out,
5 and the key phrase in ESA is "to be used
6 sparingly."

7 And when it comes down to defining
8 what we call ESUs, evolutionary significant
9 units, we're just trying to get at the point
10 of what is significant, and not getting down
11 into the weeds.

12 And that has worked and withstood
13 the course of time. And on the data side,
14 Keith, I just wanted to mention that there's
15 four things that we look at.

16 You look at abundance, you look at
17 productivity, you look at spatial structure,
18 and you look at diversity. If you look at
19 four of those, you don't get caught up in the,
20 at times the -- well, you only have X numbers
21 of critters. That X number of critters could
22 be just fine if they are highly productive,

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1 distributed across the landscape so they are
2 not at risk of a single catastrophic event,
3 and they have the diversity to respond to
4 things.

5 So, but you know, four is a key
6 point. And I think there's some lessons in
7 salmon about how you do that in consultation.

8 CHAIR RIZZARDI: John, on your
9 point, I also wanted to point out that Gina
10 Schultz, who is a NOAA employee in protected
11 resources, and she is one of the division
12 chiefs.

13 She has offered to come and to
14 speak to MAFAC about some of that history.
15 She is willing to engage us in this dialogue
16 and, with the idea that was thrown out there,
17 which was could MAFAC generate a report that
18 identified some history and showed, over time,
19 how is it -- how many -- for example, let's
20 say that we talked about sea turtles.

21 In the world of sea turtles, how
22 many biological opinions, and how many

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1 different fisheries are being affected by sea
2 turtles? Let's identify that.

3 All right, what is some of the case
4 history, and can we have somebody who comes in
5 and helps us understand what are the issues
6 that are winners and what are the issues that
7 are losers?

8 What's the science that is at stake
9 in that universe? And we could, if we chose
10 to, as MAFAC, generate a report that kind of
11 took that approach.

12 Okay, here's what -- here's what's
13 happening with biological opinions, here's
14 what's happening with the courts, here's
15 what's happening with the science, here's
16 what's happening with the people, and here are
17 some recommendations from MAFAC on this
18 subject.

19 And you could do it with salmon,
20 you could do it with turtles, you could be
21 more sweeping or you could be less sweeping,
22 and I'm just trying to lay the foundation for

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1 protected resources to have that dialogue.

2 Randy and then Tony.

3 MR. FISHER: I think that Julie's
4 question was a good question, and I was
5 curious because the same thing came up when we
6 met with NOAA and the state directors. We had
7 breakout groups and the state directors had
8 concerns about ESA and changes.

9 So is it law or is it policy that
10 says that protected resources are the people
11 who can comment on a jeopardy decision prior
12 to coming out with that decision? Does
13 anybody know?

14 MR. RISENHOOVER: You're talking
15 about a review of a draft biological opinion,
16 Randy? What --

17 MR. FISHER: Well somebody
18 determines jeopardy, basically. So is that
19 process, is it a process within the agency, or
20 is it based on how the law is written and
21 you're required to do it the way you do it? I
22 think that's the essence of the question.

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1 MR. RISENHOOVER: Right, and that's
2 something we're looking at, you know, based on
3 some of the CCC comments. Out here, we often
4 release draft biological weapons, take comment
5 on that, and then make the jeopardy
6 determination.

7 So we are looking at when, whether
8 and how we would do that in a broader scope.
9 And that's one of the things I think Keith's
10 going to -- we're looking at that internally,
11 Keith is looking at that maybe in the context
12 of sea turtles: how have those been done in
13 the past, is maybe a case study on how we
14 could do it in a broader range of things.

15 But I think, Randy, the answer,
16 it's a mix of statute and our own regulations
17 on how we conduct that. So you know, we
18 conduct some of these consultations
19 internally.

20 For things like Atlantic highly
21 migratory species, the consultations between
22 the division in the sustainable fisheries, and

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1 the protected resources division.

2 There's not even a council involved
3 there. So how do we look at that? And it
4 gets to that bottom right-hand square that
5 Keith had there, and you know, how do you
6 engage the stakeholders in building trust or
7 assurances that we are listening to these --

8
9 But that actually -- that actual
10 jeopardy determination is an agency decision.
11 But what is it based on? That's what we need
12 to look at.

13 MR. FISHER: Yes. I know in the
14 salmon world it was a big deal. I mean, a
15 huge deal, because a few of us way back when
16 thought we should probably go to the God
17 Squad.

18 Will was one of them when he was
19 the original manager and I was the director of
20 Oregon Fish and Wildlife, because we thought
21 we were in a box and there was no way out, and
22 the politics at the time looked like we'd be

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1 better off to almost go to the God squad and
2 get a determination so we could get out of the
3 mess we were in.

4 But it would be interesting to know
5 the determination on jeopardy in that case,
6 because I was almost convinced that we were at
7 jeopardy with where we were at the time with
8 salmon.

9 CHAIR RIZZARDI: John, you wanted
10 to jump in, and then Tony.

11 MR. STEIN: Well I just wanted to
12 say that I think that there's a little bit of
13 case law on the steller sea lion, where,
14 Alan's right, in a sense you have to have
15 separation between those proposing the action
16 and those evaluating the consequences of that
17 action. If you get that overlapped then the
18 hard look comes in.

19 CHAIR RIZZARDI: It goes to the
20 notion that the -- the judgement of protected
21 resources folks needs to be an independent
22 judgement that reaches their own conclusion.

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1 It can't just be, you know, rotely adopting
2 the conclusion.

3 MR. STEIN: Yes, but as Rick said,
4 that preconsultation component can happen,
5 where you can work with and say, well here's
6 what we do out here. Here's what I propose to
7 do, and then the biologist or the Regional
8 Office would say, well, I think that one's
9 going to be real tough if you bring that
10 forward. You're not telling them what to do,
11 but you're sort of given indictments that if
12 you want to go this way, that's going to mean
13 you need to take a real hard look at that.

14 MR. RISENHOOVER: If I can
15 interject. It seems like with a consultation
16 project, you think of, you know, building a
17 bridge, where somebody designs the bridge and
18 then they say what's the effect on passage of
19 salmon or whatever.

20 And Julie's point, when we were
21 working with the Council, it is really kind of
22 this back and forth of the Council doesn't

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1 want to put forward a fisheries management
2 action that creates jeopardy.

3 And so you have this kind of
4 iterative back and forth, and as you mentioned
5 Julie, using hand signals on whether it works
6 or not, and that's what we're trying to find a
7 way to improve on how does that work.

8 Because, I mean, obviously the
9 Council doesn't want to have a jeopardy
10 opinion. The protected species folks want to
11 have, that if there is a jeopardy, they have
12 their reasonable improvement alternatives that
13 then alleviate that jeopardy.

14 So it's really kind of a back and
15 forth, plus --

16 MR. McCULLUM: I think if it could
17 be kind of more iterative, if it could be
18 consciously and intentionally iterative that
19 would be better, instead of this kind of
20 hidden iterative-ness.

21 MEMBER CHATWIN: So did you explain
22 what the relationship is between the

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1 biological opinion and the recovery plan? And
2 if you could, in that last of things you
3 didn't mention recovery plan, so I just
4 wondered.

5 MR. McCULLUM: Tony, we can't hear
6 you down here.

7 MEMBER CHATWIN: I just asked what
8 the relationship between the biological
9 opinion and the recovery plan is, and whether
10 that should be in that list of issues.

11 CHAIR RIZZARDI: In theory the
12 Endangered Species Act is supposed to achieve
13 the survival and recovery of the species.
14 That's the analysis. Recovery plans
15 themselves, however, are really guidance.
16 They're not required to be followed at every
17 single line of the recovery plan. The agency
18 has discretion to deviate from the recovery
19 plan.

20 So in litigation, you know, the
21 agency can say, "Well, we looked at the
22 recovery plan. We evaluated it. But it's not

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1 necessarily every line in it needs to be
2 done."

3 So there's a little bit of a
4 disconnect between the biological opinion and
5 the recovery plan. It's a factor that's
6 considered, but that's the point: it's
7 considered.

8 MR. RISENHOOVER: The recovery plan
9 is kind of the strategic plan for recovering
10 the stock, you know, not having it killed,
11 having its habitat saved, breeding programs,
12 whatever, that's going to be the strategic
13 plan for it.

14 The biological opinion is specific
15 to an action that may affect that listed
16 species. So if somebody is going to, in the
17 case of salmon, put up a dam, well the
18 recovery plan says you need to have the
19 ability for that salmon to go up and down the
20 stream at certain times, migrating or back,
21 it's fine.

22 But the biological opinion is tied

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1 to a specific action, a federal action that an
2 agency has taken, or someone is taking it has
3 a federal permit associated with it.

4 MEMBER DOERR: Just as followup,
5 can you remind me if recovery plans are
6 required by the ESA?

7 CHAIR RIZZARDI: Yes.

8 MEMBER DOERR: They are?

9 CHAIR RIZZARDI: Yes.

10 MEMBER DOERR: Okay.

11 MR. DUENAS: I just want to comment
12 that when the councils have to do a plan for
13 recovery of a certain species, we are given 10
14 years. Recovery plans have no limits.

15 So there is no force on the agency
16 and normally, species of -- not concern, but
17 charismatic species get all the attention. So
18 you know, for example humpback whales get a
19 bunch of money, where you go -- evaluation of
20 green sea turtles, they don't -- because the
21 agency knows there are more out there, just
22 that it's listed, and there's no way to delist

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1 it, unless like in the case of Hawaii, they're
2 going to -- there's a petition to delist their
3 EPS, extinct population segment, because they
4 have been identified, they have been studied
5 for 30 years, by -- not the agency, but monies
6 from Senator Inouye, on that issue.

7 So the recovery is there, but it's
8 -- I mean, because they have taken the time to
9 measure the recovery, whereas in our section
10 of the words, there's no evaluation of green
11 sea turtles, so we're not going to be given
12 the opportunity to harvest like we used to.

13 It's a bit confused for me.

14 CHAIR RIZZARDI: All right. We're
15 over time at this point. I'm going to go
16 Randy, Heidi, Liz, and then we'll cut -- Julie
17 -- okay, Randy, Heidi, Liz and Julie and then
18 we'll call it quits.

19 MEMBER CATES: I think both
20 presentations are exposing a fundamental
21 problem that I've seen over the years, and
22 that's how you -- how the agency or the

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1 individual person doing the work makes certain
2 determinations -- jeopardy is one, whether to
3 do certain work is another.'

4 For example, the question I asked
5 about the threats, and there was no -- as you
6 say there was no criteria used to list the
7 threats. It was just opinions.

8 Now that is a hidden problem in
9 that those determinations and how that's done
10 has huge impact on commerce, has huge impact
11 on our fisheries, and for some of us, the
12 ability to have a job, potentially.

13 So I think that's something that
14 MAFAC needs to take up, is how this work is
15 done, and that there should be some criteria.

16 For example, I was stunned when you said that
17 the threat to corals, the highest threat was
18 global warming, sea level rise and also
19 acidification, when history has shown
20 sedimentation has been the biggest problem, at
21 least in my area, and there's not been those
22 other problems.

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1 And so how you come up with that is
2 a real problem and then they come out and say,
3 "Well, there's no criteria. It was just kind
4 of our opinion."

5 Well, that's the problem, that's
6 the fundamental problem we have. As Manny
7 stated, we have too many opinions on whether
8 to do certain things or not do certain things,
9 which affects, in our case, the fishery.

10 I think that's a real problem.
11 It's something that is at the Secretary of
12 Commerce's level because it affects commerce.
13 It affects jobs. It affects everybody in this
14 room, on whatever issue, you know, whether
15 you're going to -- are you going to manage
16 your fishery or be able to go after that
17 fishery?

18 MR. RISENHOOVER: So, the Act lays
19 out the general, broad guidelines, right?
20 Then the recovery -- there's a status review
21 team. You know, they're put on that team
22 based on their experiences.

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1 The status review report that we
2 released, I guess a month ago, you know, was
3 peer review. So again, it's not a singular
4 individual, but it is a group of individuals.
5 That group of individuals' work has been peer
6 reviewed by other experts and we have now
7 released it for this, you know, public
8 engagement period that Lance mentioned, to get
9 additional comments.

10 And so that's the type of comments
11 we're looking for Randy, is, you know -- and
12 again, the threats are looking across all the
13 corals, not just the ones perhaps in your
14 area.

15 So in your area, sedimentation may
16 be the biggest threat, but based on those
17 experts' opinion, looking across all those 82
18 species, and Lance showed the geographical
19 range of those, that's how they determined
20 what they thought the highest threats were.

21 CHAIR RIZZARDI: Heidi.

22 MS. LOVETT: I was just curious

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1 about where you -- your table there -- the
2 people side of it, and targeted negotiations,
3 why you felt that they would necessarily be an
4 incentive to litigate persons -- improve the
5 partnerships to help develop a plan or
6 strategy that would be a disincentive to
7 litigate.

8 CHAIR RIZZARDI: It's just basic
9 public policy. It's the squeaky wheel gets
10 the grease theory. And if you demonstrate a
11 process where the squeaky wheel continues to
12 get the grease, then more people become
13 squeaky wheels, and that's the basic premise.

14 Can it work? Absolutely. Is more
15 stakeholder engagement? Absolutely. It's
16 just, understand that everything has yin and
17 yang and there's strengths and weaknesses.

18 So that's the only point I was
19 making there. Liz?

20 MEMBER HAMILTON: I have a comment
21 and a question. My experience with the
22 Council that Micah might confirm is that

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1 NOAA's pretty good about being relatively
2 clear what incidental take levels are going to
3 be appropriate for that year.

4 I get the sense from working with
5 the state managers that we kind of know ahead
6 of time what we need to be aiming at, so I
7 think that looks pretty good, at least for
8 salmon.

9 My question that we could do
10 offline if it's too detailed, is does the
11 jeopardy standard get litigated in other
12 cases, because it's a big concern under some
13 of our salmon lawsuits. Okay, I was just
14 curious about that.

15 CHAIR RIZZARDI: And I think that
16 one of the things that MAFAC will have to
17 decide in trying to respond to the request
18 from the CCC is how does it want to generate a
19 report? What's the content of the report?
20 Does it want to focus on the sea turtles as a
21 case study? Do you want to be more sweeping?
22 Do you want to get into salmon issues? Do

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1 you want to look at multiple species?

2 And that's going to dictate your
3 proposed work plan of who does MAFAC ask to
4 come and talk to us, how do we engage Gina
5 Schultz and the protected resources folks to
6 come and speak with us, what do they prepare
7 for? I think those are open questions for the
8 subcommittee to chew on. Julie,

9 MEMBER BONNEY: So it seems to me
10 that --

11 MR. McCULLUM: Julie, we can't hear
12 you.

13 MEMBER BONNEY: It seems to me that
14 this says a lot about process, versus picking
15 off the ESA in terms of law, and it's how to
16 integrate the work that the agency does with
17 the Council, and we've had several experiences
18 in the last -- the steller sea lions that have
19 been less than pleasant because what's
20 happened is protected resources is making the
21 jeopardy finding, there's a lot of question
22 about the science, the stakeholders haven't

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1 been involved and then it goes under the table
2 and then everybody says that we don't believe
3 the science. It needs to be peer reviewed.

4 Then there's the Center for
5 Independent Experts, which is really an arm of
6 the agency and so the stakeholders believe
7 that it should be a different set of science
8 folks than the agency reviewing the agency.

9 So that's one part, is how does the
10 biological opinion get formulated, whether
11 there's a science -- whether there's a
12 jeopardy finding.

13 the next question is, is how do you
14 mitigate jeopardy if it's found, and that's
15 where there's a lot of dialogue in terms of
16 can we get there a better way, can we minimize
17 the impact to industry if it's a fishing
18 impact, and the agency is kind of, the PR's
19 gotten in front of you and say this is the way
20 the vision of the world should be, and we're
21 saying, hey, we can get to that vision through
22 some transparency that Julie is talking about,

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1 but we've got to have a realistic dialogue,
2 and we can't, you know, back up. So typically
3 it's a two- or three-year armed struggle to
4 get everybody back to a place that we can all
5 live with.

6 So I see this in the CCC. You
7 talked about sea turtles. There's other on
8 the -- the fall Chinook salmon that's in this.

9 So maybe we could take some case studies of
10 several different species, and look at those
11 and see how you could get better buy-in by the
12 public.

13 CHAIR RIZZARDI: And I think you're
14 exactly right. I think the -- and the easiest
15 thing for MAFAC to tackle is the process, you
16 know, if you look at the chart, the higher up
17 you go, the more difficult it gets.

18 The fixing the people issue is
19 probably easier, and fixing the facts and the
20 data is getting harder, and fixing the law is
21 really hard.

22 But it also may turn out that as

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1 you go through this analysis, and as you look
2 at specific issues, that you can have really
3 specific recommendations on the law or on the
4 data analysis, and if that's the case, great,
5 and if it's not, that's okay too.

6 We've been asked to engage. We've
7 been given some direction as to what the CCC
8 would like us to do. I would like to take
9 them up on it. I think it's a great
10 opportunity for MAFAC and our protected
11 resources committee to step up, to show what
12 we can do, to showcase all the talent that's
13 sitting at this table, and to generate
14 something.

15 MR. RISENHOOVER: Just one
16 clarifying point on the Center for Independent
17 Experts, those are not NMFS folks. That's a
18 separate contractual relationship we have,
19 that we refer to them, and then they go find
20 the experts.

21 So it's not one -- we do have peer
22 review, where it's one part of NMFS reviewing

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1 another -- but the Center for Independent
2 Experts is independent, and John can help with
3 that a little bit more if you need some more -
4 -

5 MR. STEIN: So the contract, yes we
6 have given them the money in the past. That's
7 all. And then the scientists, they will
8 select and you don't have any ability to say
9 yes or no. The individuals are assigned,
10 based on their expertise.

11 MEMBER BONNEY: But I guess one
12 thing, at least in the North Pacific, was the
13 terms of reference for the independent
14 experts, and so they really roped in what they
15 could do.

16 So I mean, there's some way this --
17 right -- stakeholders need to be involved in
18 the independent review process.

19 CHAIR RIZZARDI: All right. John,
20 you had one last thing.

21 MR. STEIN: Just on Randy's
22 comment. I mean, I think it's really

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1 important to separate the biological review
2 team and the status review from the final
3 listing decision or not.

4 And like Lance said, and you do
5 this very consciously, there's nothing in the
6 biological review report that says list or not
7 list. It's about risk of extinction, and
8 that's very, very, very deliberate, because
9 the science doesn't get to make that call.

10 So when it gets to the time to make
11 the decision, the agency can consider both the
12 science, social concerns and economic
13 considerations in making that decision. So
14 that's where the economic and the social
15 issues can come in. So it's just important to
16 keep those two things separate.

17 CHAIR RIZZARDI: I appreciate
18 everybody's attention to the issue and
19 engagement in this. I think it's a very
20 important subject. It's certainly one that
21 the various fishery management councils are
22 feeling very strong -- sharing very strong

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1 opinions about, and I think it's something
2 where MAFAC can help, and I hope we do.

3 So at this point, we are going to
4 take a break, we are going to reshuffle the
5 morning session just a little -- yes, Mark.

6 DR. HOLLIDAY: I just want to make
7 an announcement.

8 CHAIR RIZZARDI: Okay. So let's
9 take a break, and when we get back from break,
10 Mark is going to do a presentation on
11 reorganization and we'll have a good
12 conversation about reorganization and if we
13 end a little bit early for lunch, I am going
14 to ask the folks who are interested in being
15 on the team for Vision 2020 to just stick
16 around for a few extra minutes.

17 But Mark, you --

18 DR. HOLLIDAY: So, on your way out
19 for the break, if the subcommittee chairs
20 could come see me, we are planning the
21 afternoon subcommittee meeting rooms, just the
22 five of you come by just for a second so we

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1 can do some logistical planning.

2 CHAIR RIZZARDI: All right, and
3 we'll get back together --

4 MS. LOVETT: And Keith, I would
5 like to get a solid headcount on how many
6 people are going to be riding with us to the
7 Makah event tonight, so that I can arrange the
8 appropriately-sized bus.

9 CHAIR RIZZARDI: All right. Mark
10 will start his presentation at 10:50, so it's
11 10:30 now.

12 (Whereupon, the foregoing matter went off the
13 record at 10:29 a.m. and resumed at
14 10:53 a.m.)

15 CHAIR RIZZARDI: Okay, so the next
16 piece of the morning is Mark's going to talk
17 to us, and we had scheduled some extra time
18 for 2020. In light of the changes we have
19 made, Mark is going to cover two topics now
20 with the rest of our morning.

21 We are going to talk about the
22 potential for reorganization and some of the

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1 documents that have been floating out around
2 there, and we are hopefully have some time
3 left over to talk about the National Ocean
4 Policy. Mark had planned on doing that as a
5 subcommittee presentation but it's certainly
6 relevant for everybody and it would be good to
7 have that feedback be given to the body as a
8 whole.

9 So Mark, thank you for being on the
10 agenda again.

11 DR. HOLLIDAY: Thank you Keith.
12 Good morning again everybody, and I'd like to
13 provide you a brief status update about the
14 topic of reorganizations.

15 There's a number of different
16 activities that are ongoing in the
17 administration right now. I happen to be
18 involved as a point person for one of the
19 studies, and so I have some personal knowledge
20 about a study ongoing by the General
21 Accounting Office, but I will probably provide
22 you some context for other activities about

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1 reorganizations that you may have heard about,
2 and make sure that we are on the same page and
3 we don't have confusing different efforts and
4 answer different questions you might have.

5 And so I am going to run through
6 this -- I don't have a PowerPoint but I did
7 post on the MAFAC website a number of
8 documents describing the terms of reference
9 for this GAO study and I'm going to start off
10 by walking through that study and some of the
11 other activities that are ongoing for
12 potential reorganization.

13 You can tell that it is in sort of
14 an election year by the number of activities
15 and questions that have been asked about
16 reducing waste, duplication and improving
17 efficiency.

18 There always seems to be an added
19 incentive for people in the administration to
20 focus on saving the taxpayer's money and
21 reorganization is one of those tools that
22 people often talk about in advance of an

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1 election to get constituents excited about
2 election year politics.

3 This year seems no exception. I
4 guess I'll start at the biggest level first,
5 and in fact it preceded this GAO study, and
6 that is an announcement by President Obama at
7 a Small Business Administration press
8 conference where he asked Congress for
9 authority to reorganize cabinet-level
10 departments with Congressional -- by giving
11 authority by Congress, that previous
12 administrations had had dating back to perhaps
13 the Truman Administration or others.

14 This authority had lapsed several
15 years ago, and he had requested through this
16 press conference authority to have licence to
17 reorganize for and improve efficiency of the
18 federal executive branch.

19 And he cited as part of his
20 rationale the example of the Department of
21 Commerce, that he wished that he had this
22 authority in order to reorganize the

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1 Department to be more effective at delivering
2 services to promote economic activity and jobs
3 and provide a one-stop shop for businesses in
4 the United States to take advantage of federal
5 programs, whether they informational,
6 organizational, grant.

7 And he talked about how, if he had
8 this authority he would consolidate a number
9 of different functions from various bureaus,
10 various departments, into a new Department of
11 Commerce, whose job it was to promote
12 commerce, trade, and business efficiency.

13 And he gave, you know, an example
14 along the line about duplication of effort and
15 how many places you'd need to go to find
16 information about loans or small business or
17 business planning.

18 But he also made reference to NOAA
19 as part of that discussion that NOAA seemed to
20 be an odd fit for the Department of Commerce,
21 and almost as a footnote to that press
22 conference, he said as part of the Department

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1 of Commerce reorganization, under his
2 authority, NOAA would be taken out of the
3 proposed new Department of Commerce and moved
4 to Interior.

5 But the details of -- the specifics
6 and the details of what that would look like
7 were not part of his design. This was mostly
8 for demonstrating that he wanted to realign
9 the functions to be efficient.

10 And so there's been no, at least at
11 -- no shared information with the bureau of
12 NOAA about further discussions about how that
13 would proceed, and frankly it remains to be
14 seen whether Congress will actually give the
15 President the executive authority to make
16 these kinds of reorganizations.

17 And so that has gotten a lot of
18 people's attention, not the least of which
19 were members of the NOAA community about being
20 moved and what the implications were, and our
21 advice to our own staff has been, well, that's
22 all well and good, but there's a long time

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1 between the statement that the President
2 discussed about reorganization, and what the
3 goals and objectives would be, and specifics
4 about are you going to have to move, are you
5 going to have to start thinking about working
6 in another Department.

7 And so taking that, I think there
8 is very little other information about what
9 that intent was, other than as an example of
10 the President requesting authority to
11 reorganize the Department of Commerce.

12 It wasn't targeting NOAA per se.
13 It was basically a consequence of his
14 objective to improve DOC that NOAA would be
15 moved out of the Department, to the Department
16 of Interior, presumably.

17 But again, there are no plans that
18 have been shared with NOAA with respect to
19 what the White House or the Office of
20 Management and Budget has specifically in mind
21 under that press conference that the President
22 held.

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1 So that is in itself, sort of this
2 one compartment of reorganization that you may
3 have heard about, you may have seen the press
4 conference, you may have seen people blogging
5 about it, but that's one entity.

6 MEMBER CATES: Mark, can I ask a
7 question?

8 DR. HOLLIDAY: Yes sir.

9 MEMBER CATES: Prior to that
10 announcement have you ever heard of a
11 suggestion from GAO any other agencies
12 concluding such a thing?

13 DR. HOLLIDAY: Moving NOAA or
14 reorganizing the Department --

15 MEMBER CATES: Historically there
16 have been lots of discussions about how and
17 why NOAA exists where it does, and whether or
18 not it's been a good fit, bad fit in the
19 Department of Commerce.

20 But as far as an official study,
21 with a formal report and recommendation --

22 MR. RISENHOOVER: Yes. There's

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1 been discussions on this by many folks at
2 different times. But I think as Mark said,
3 this is the first official from the executive
4 branch.

5 DR. HOLLIDAY: So, I wanted to
6 shift gears then -- I'm trying to be mindful
7 of the time here as well -- because the one
8 real activity that we can sink our teeth into,
9 that is an existing study by the General
10 Accountability Office, came as result of a
11 request from the Senate Subcommittee on
12 Federal Financial Management and Government
13 Information, the Honorable Senator Scott Brown
14 from Massachusetts, sent a letter to the GAO
15 requesting that it conduct a study on the
16 feasibility of moving the National Marine
17 Fishery Service into the Fish and Wildlife
18 Service.

19 So the term of reference was not
20 moving NOAA into the Department of Interior,
21 or not moving other elements. It was very
22 specifically targeted at moving just the

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1 National Marine Fishery Service into the Fish
2 and Wildlife Service. It did not ask about
3 what to do with the rest of NOAA, or to the
4 Department of Interior or else, with two
5 objectives in mind: how would federal
6 fisheries and protected species management
7 potentially be affected by moving the National
8 Marine Fishery Service into the Fish and
9 Wildlife Service, and what factors should be
10 considered if Congress were to move the
11 National Marine Fishery Service into the Fish
12 and Wildlife Service, and what management
13 practices would or could facilitate such a
14 move, in other words, what actions could be
15 taken now to help facilitate such a move?

16 And so this would be a
17 Congressional action versus a Presidential
18 action as I first described from President
19 Obama's press conference, and it would be
20 limited to looking only at this very specific
21 question about NMFS into Fish and Wildlife
22 Service.

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1 Now, the GAO held a -- as most of
2 their studies do, there's a terms of reference
3 that they have created. They held an open
4 entrance exam with the Department of Interior
5 and NOAA leadership on how they plan to
6 conduct this work, and I participated in that
7 entrance exam, and they were very specific in
8 that they were not tasked to come up with a
9 reorganization plan. In other words, they
10 weren't asked to create boxes and talk about
11 an ideal configuration. What they were asked
12 for, what are the implications, what would you
13 need to consider, what would the factors be
14 appropriate to evaluate if one were to propose
15 moving this?

16 And so they pointed to a previous
17 study that they had conducted on the transfer
18 of the forest service into the Department of
19 Interior, and that's one of the documents that
20 we posted for you to peruse on the MAFAC
21 website.

22 Again, talking about implications:

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1 If you did this, what would the consequence
2 be? Would this be positive in terms of an
3 efficiency gained or a reduction in
4 duplication of effort, and so it was more of a
5 pro and con study as explained to us, versus
6 we are going to create a reorganization plan
7 of how to do this. That's not what they're
8 doing.

9 So I wanted to lay that out as a
10 sort of a first principle. The second element
11 that I thought was important for you to know
12 about is the time frame for this. It started
13 at the end of March. Their time frame for
14 developing a product and a deliverable back to
15 the Senate subcommittee is in the fall. So my
16 first question was, well, will it be available
17 before the election for Senator Brown or not,
18 and they said, "Well that really is immaterial
19 to the conduct of our research. We'll finish
20 it when it's done. And if he's not
21 reelected," -- he's up for reelection -- "it
22 will be available to the subcommittee and

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1 whoever chairs that in the future.

2 And so my second point, it is a
3 nonpartisan look at it. It's not part of some
4 retribution from Senator Brown for our work in
5 New England that he's suddenly taking it out
6 on reorganizing the agency by pushing us into
7 the Fish and Wildlife Service. It truly is
8 looking at an efficiency and improvement in
9 government, and so we are viewing that as the
10 intent and the purpose of the study from the
11 outset.

12 How are they going to conduct the
13 research? It does affect MAFAC, I think it's
14 important to know. And I'll go through some
15 more specifics.

16 But in general, their process is to
17 conduct research in the form of interviews,
18 where they go and talk to experts both within
19 the affected community, in both National
20 Marine Fishery Service and the Fish and
21 Wildlife Service, as well as conduct research
22 and interviews with people with whom we work:

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1 our stakeholders, our partners.

2 And so the list of people that
3 we've identified as potential -- we don't tell
4 them -- we don't determine who they talk to,
5 but we do offer them, in response to their
6 request, who are some of the stakeholders who
7 might have information that would be useful
8 for our study about how you conduct business
9 now, who do you do your work with, who would
10 be affected by those moves?

11 And so clearly from the fishery
12 service standpoint, one of the first groups
13 that came to mind were the Regional Councils,
14 our partners in the stewardship process.

15 And so we identified the executive
16 directors and the chairpersons of the various
17 councils as candidates for who they would be
18 getting valuable information from, but we also
19 then looked at a number of our other
20 stakeholders and partners. We identified the
21 interstate fisheries commissions, and so we
22 gave them Randy's name, and we gave them Vince

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1 and Larry's name as an entity to talk to.

2 And of course we said here's a
3 federal advisory committee that's been paneled
4 to advise national policy issues on living
5 marine resources. It's called MAFAC.

6 Here's the Chair, here's the
7 charter, here are the people involved, and the
8 membership. We think it would be worth your
9 time to speak to MAFAC.

10 And we would -- we go further down
11 our list of subject matter experts, and again,
12 partners, and collaborators, as well as people
13 who would be affected by the move --
14 constituency groups and others.

15 And so, during the course of the
16 summer, they will be reaching out to people.
17 They planned -- I should say that they are --
18 the GAO staff who are conducting this work are
19 headquartered here in Seattle and San
20 Francisco. And they are planning to do a
21 number of different interviews with Regional
22 Councils. They have indicated that they are

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1 interested in talking to additional NMFS
2 regional staff in science centers. They are
3 interested in talking.

4 So they are in charge of who they
5 are going to talk to and they -- we provided
6 the contact information. And so if you get a
7 call, and it's from you know, Jonathan Dent,
8 Steve Secrist from the General Accounting
9 Office, you know, they got your number through
10 me.

11 And you would be asked to, you
12 know, provide your -- it's an opinion. You
13 know, there's no requirement that you clear
14 whatever you say. You are being asked to
15 represent whatever your answers are to the GAO
16 study.

17 So there's no script that we are
18 telling you to follow, nor would we ever try
19 to do that. It's purely based on your
20 knowledge and experience about what the
21 implications would be relative to this move.

22 So I wanted to sort of lay that

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1 groundwork out there. But I wanted to spend a
2 few minutes talking about the trigger
3 questions that they gave to us, us being Fish
4 and Wildlife Service and National Marine
5 Fishery Service, because it triggered
6 questions about promoting a dialogue of things
7 they were looking at.

8 I thought that would be both
9 interesting and relevant to talk about that.
10 The first, sort of this preliminary question
11 about what are the potential benefits of
12 moving the fisheries service into the Fish and
13 Wildlife Service, it struck us as well, you
14 know, the benefits and the costs, it depends
15 on what your -- what your objective is. You
16 know, if there's a -- if something is broken
17 and you're trying to fix it, you can be more
18 readily helpful in providing examples of well,
19 we think something is wrong now with the way
20 we have this division of labor between Fish
21 and Wildlife Service and the National Marine
22 Fishery Service.

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1 There are certainly areas where we
2 share responsibility under the Endangered
3 Species Act, the biggest example. We have
4 certain species for which the fishery service
5 is responsible for it; the Fish and Wildlife
6 Service has seven species they are responsible
7 for.

8 Are there benefits and are the
9 costs associated with keeping the status quo
10 or moving it? So various opinions, various
11 ideas about how that should work or could work
12 better, and the idea of effectiveness.

13 The potential benefits really will
14 be derived though from what it is that you are
15 trying to achieve. I mean, if you have an
16 objective to have a smaller government, you
17 know, that's an overlying constraint. If you
18 have a -- are some apparent problems in how
19 both agencies are carrying out their statutory
20 mandates that could be fixed through
21 reorganization versus some other mechanism.

22 And so we provided information and

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1 we are preparing our own staff and the GAO has
2 already conducted about 10 interviews with
3 NOAA and National Marine Fishery Service
4 leadership, as well as Fish and Wildlife
5 Service leadership as the starting point for
6 their conversations.

7 And so in preparation for them, we
8 developed responses to these trigger
9 questions, and we started out by saying, well,
10 what are your starting assumptions about
11 what's broken and what's not, from the
12 Senator's initial terms of reference and
13 request, and I think that's -- and the advice
14 that I would give if you were contacted would
15 be, again, what's the context in which you are
16 being asked these questions.

17 So the statutory division of labor
18 under the Endangered Species Act is clearly
19 one of the areas that they are pursuing to see
20 if there are positive or negative implications
21 of the status quo.

22 Our experience, and others who have

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1 gone through different studies and
2 reorganizations, you know, there's certainly
3 opportunities to reduce, to some degree,
4 overhead.

5 I mean if you have two
6 organizations and they both have a personnel
7 department, they both have a procurement
8 department, they both have administrative and
9 overhead functions, there would be some
10 efficiencies of merging the two.

11 And so that could be a positive
12 implication, you know, savings. But would it
13 be sufficient to offset some of the negative
14 consequences either from having to move people
15 or having to reorganize, the process of losing
16 those surplus people costs money as well.

17 So it really is a financial
18 question or an accounting question about that
19 stream of costs and benefits over time and
20 making sure that, from an accounting
21 standpoint, it makes sense that costs
22 certainly are not higher than the benefits.

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1 I think some of the more
2 interesting questions that, you know, they
3 asked and some of the liabilities of making
4 this potential merger were some of the
5 drawbacks.

6 And so the first that came to our
7 mind, and again, this is just from an agency
8 perspective, extracting the fisheries service
9 from NOAA, and just moving the one element
10 into the Fish and Wildlife Service, does have
11 some potential drawbacks, and I'll just give a
12 couple of examples to help stimulate, perhaps
13 some discussion.

14 But in the area of science for
15 example, NOAA has a fleet of ships and
16 aircraft we use, we, the National Marine
17 Fishery Service use, for observations,
18 surveys, data collection for stock assessment
19 for protected resources and fisheries.

20 Those assets are not owned by the
21 National Marine Fishery Service, they are
22 corporate assets owned by NOAA.

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1 If we were to be moved into the
2 Fish and Wildlife Service, what would be the
3 implication be in trying to recover those days
4 at sea or aircraft hours that we would have to
5 contract for them back to the agency, would we
6 be given different access and different cost
7 structures as a different federal agency,
8 versus the prioritization of our requirements
9 within the NOAA family, as an example.

10 And so this concept of one NOAA,
11 you know, a lot of people have heard that term
12 in the past, that the different elements of
13 NOAA are integrated in a way that promotes a
14 larger and more powerful outcome.

15 From the National Ocean Service
16 functions of mapping, geodesy, and Coastal
17 Zone Management and ocean and coastal
18 resources research, those science elements
19 supporting the agencies within the parent
20 organization of NOAA, if we were to move
21 those, again, those assets would not be
22 accessible to us.

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1 Another example from a very
2 practical standpoint from the Councils. We
3 get general Council support, the attorneys.
4 There are some 60 attorneys around the country
5 providing advice to the Regional Councils as
6 well as the enforcement and litigation
7 attorneys, as well as the headquarter's
8 general counsel in Silver Spring. Those are
9 not National Marine Fishery Service employees.

10 Those are NOAA assets. They are NOAA
11 employees at the NOAA general counsel.

12 We moved to the Fish and Wildlife
13 Service, what's the division of labor, how do
14 we capture the capacity and the -- and those
15 people who are employed by NOAA but they are
16 not part of this transfer of responsibility.

17 So it's a capacity issue,
18 longstanding knowledge, institutional
19 knowledge from those attorneys, the cost of
20 that then becomes a liability, that's an
21 implication for the Fish and Wildlife Service.

22 So it's not as simple as just

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1 saying move the National Marine Fishery
2 Service, because we have these threads into
3 other parts of NOAA on which we depend, and
4 it's -- it could be problematic in terms of
5 how easy it is to extract that organ from the
6 body without killing the host or the element
7 itself.

8 So some of the drawbacks that we've
9 identified have to do with how we're organized
10 and what the implications would be for both
11 parties.

12 The third trigger question that
13 they've asked about, just going down my notes
14 here, has do to with some of the
15 organizational structures, so that the
16 Secretary of Commerce has been identified as
17 the lead for negotiations internationally,
18 representing us to regional fishery management
19 organizations, and so as you cascade down,
20 various regional administrators are
21 commissioners, various regional administrators
22 are leads for the tuna organizations or the

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1 halibut commissioners, and so there's a whole
2 cascade of delegations of authority that, in a
3 merger would have to be either renegotiated at
4 the international level -- the bottom line is
5 legislative and statutory and treaty changes
6 would result from this, because we have these
7 responsibilities in the chain of command
8 within the Department of Commerce, that have
9 been delegated to NOAA and the fishery
10 service, where would those responsibilities
11 wind up in the Department of Interior, and how
12 distant would the -- in other words, right
13 now, the regional administrator for Alaska is
14 our halibut commissioner. How would that
15 organization, how distant would that
16 responsibility be in a much larger Department
17 of Interior, as part of the Fish and Wildlife
18 Service, and what authority, what legal
19 changes would be required to make those
20 changes?

21 So I don't want to get too far in
22 the weeds, but I'm trying to give you a flavor

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1 of some of the questions that are on the table
2 that people are looking at.

3 Are there things or functions and
4 responsibilities that would be enhanced, in
5 other words it's not all bad news, obviously.
6 What are some of the opportunities for
7 improvements?

8 And some of the areas that we think
9 that -- while we do have close collaboration
10 with the Department of Interior and Fish and
11 Wildlife Service on areas of habitat and
12 looking at sort of the shared
13 responsibilities, the National Fish Habitat
14 Action Plan, where we jointly worked together,
15 not just with Interior, but with other federal
16 agencies.

17 There are programs that we run for
18 habitat restoration within the National Marine
19 Fishery Service, and Interior runs on habitat
20 restoration, for their neck of the woods if
21 you like, in other words this joint
22 intersection at the demarcation of the upland

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1 and the wetland and up into the coastal and
2 ocean areas, where there is an overlap in
3 responsibilities.

4 Fish and Wildlife Service and
5 Interior have some very big grant programs and
6 different statutory authorities for banking
7 lands and conserving lands that are important
8 habitat areas, that the National Marine
9 Fishery Service doesn't have access to because
10 we are in a different agency.

11 And so there's an opportunity there
12 to take advantage of some of the statutory
13 authority to get easements and to provide
14 greater conservation benefit for critical
15 habitat that might be important to juvenile
16 fish as breeding or nursery grounds, that we
17 don't have access to those funds and we don't
18 have access to those authorities that could
19 benefit both agencies as well as their
20 stakeholders if there was a merger.

21 Certainly there's a number of
22 different other angles that could be taken to

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1 promote this. And we have given examples of
2 where I think we are collaborating well, as
3 well as, you know, we have memorandums of
4 understanding, you know, between the two
5 agencies on, you know, Endangered Species Act
6 listing criteria, so that we try to have a
7 more -- a federal consistency approach to some
8 of these questions, where we both have shared
9 responsibilities under the Endangered Species
10 Act.

11 So the flavor I guess I'd like to
12 just give you, is that this ongoing study is
13 not seen by the agency as a threat. I think
14 it's more informational to try to put on the
15 table both the positive and the negative
16 implications of making these moves.

17 It's not straightforward. It
18 remains to be seen whether the effect of the
19 report from GAO will have any traction,
20 because any move is going to cost money.

21 If you look at the creation of the
22 Department of Homeland Security, which was one

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1 of the federal executive branch's major
2 mergers of multiple organizations over time.

3 Not only was it extremely costly to
4 make those transitions, but it disrupted the
5 function of the different bureaus, and
6 customs, and coast guard, for many years,
7 before they were able to recover and to right
8 themselves into an organization.

9 And if you looked at some of the
10 studies that have been done post-
11 reorganization, you will see that some of the
12 efficiencies that were anticipated have
13 actually not been realized in terms of the
14 streamlining, efficiency and effectiveness of
15 these organizations.

16 They continue to resemble
17 independent structures and activities that
18 existed prior to the reorganization, so the
19 question that gets asked is was it worth the
20 effort?

21 And that's a question that we are -
22 - is that money well spent in terms of the

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1 mission
2 of both and Fish and Wildlife Service and the
3 National Marine Fishery Service, is it better
4 spent on trying to do more -- do more science
5 or better science, than to spend it on
6 rearranging the deck chairs perhaps? That's
7 an editorial comment. But that's a question
8 that I think has to be put out there for
9 people to comment on.

10 So in summary, the study will
11 continue on through the summer. They're not
12 going to share -- they don't generally share
13 their drafts with the public for public
14 comment. I mean, they will share the draft
15 with the agency a few days before it's
16 publicly released. If we have any factual --
17 find any factual errors we'll have an
18 opportunity to try to correct them.

19 But they are reporting back to --
20 the task, to the Senate subcommittee and so we
21 are not the client in this case. We are the
22 subject study organization.

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1 So I wanted to just transition back
2 from the specific to the more general. There
3 are other organizational questions that are
4 out on the table besides this one specific
5 study, and you'll hear about, again, because
6 of the election year, well, let's take NOAA
7 out of commerce, and people are projecting
8 back to the President's press conference, what
9 about an independent NOAA? Should NOAA be an
10 independent, like the EPA, an administration
11 on its own not tied to a parent Department,
12 cabinet-level department?

13 Should NOAA be broken up into
14 component parts and should the Weather Service
15 go one place and should the Satellite Service
16 go someplace else, and so should Fisheries
17 continue as a stewardship mission, should
18 Fisheries join the National Ocean Service?

19 And so these different scenarios I
20 think are actually being talked about by
21 various entities but there are no formal
22 studies being conducted about these

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1 alternatives.

2 Yet, from a public standpoint,
3 those are equally valid options that ought to
4 be considered, and if there were an advisory
5 level function about strategy and long-term
6 vision, about the future of the stewardship
7 mission of the National Marine Fishery Service
8 and NOAA with respect to living marine
9 resources, that would be fair game for
10 offering opinion and direction, whether it's
11 part of 2020 or part of advice to a new
12 administration about what's working and what's
13 not, opportunities for improving the
14 effectiveness.

15 And so I'm not representing NMFS
16 and saying this is a task that we're putting
17 in front of you, that we are asking for
18 specific advice on reorganizing NOAA or NMFS,
19 but given the context in which I have
20 described both the President's effort and the
21 GAO effort, if this is an area that the
22 Committee wanted to further delve into, that

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1 we would be willing to provide staff support
2 to provide factual information about questions
3 you may raise during your deliberations.

4 So there are many scenarios out
5 there. I think the summary tag line is, "What
6 is it that you are hoping to accomplish
7 through a reorganization versus just
8 redesigning boxes.

9 I think that first principle is
10 what's the outcome that you're seeking that is
11 not available to you under the current
12 organization, and any recommendations that
13 would support improving that outcome would be
14 fair game.

15 So, Mr. Chairman, thank you for the
16 opportunity to give you that briefing and
17 happy to take questions or follow up on
18 anything you'd like.

19 Thank you Mark. Before I open it
20 to the floor, Alan, do you want to supplement
21 the comments in any way?

22 MR. RISENHOOVER: No.

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1 CHAIR RIZZARDI: Okay. Micah and
2 then Ed.

3 MEMBER McCARTY: Just an
4 observation, and I guess an interest to advise
5 the Secretary of Commerce on, I guess the cost
6 effectiveness of government, and you know, if
7 this executive order on the National Ocean
8 Policy is attempting to harmonize the existing
9 laws and regulations that currently govern
10 ocean uses, and then also, you know, in the
11 same breath, trying to deal with competing
12 jurisdictions within the federal family, I
13 wonder, how cost effective is the government
14 and is this reorganization just an attempt to
15 deal with something that is much more deeply
16 rooted within the federal family? And would
17 it make sense for us to look at, I guess,
18 budget priorities, in overall context, and how
19 can we become more efficient and responsible
20 with limited resources?

21 And from, I guess, a tribal
22 perspective, we've seen the pendulum shift so

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1 many different times, depending on who is in
2 Congress, who is in the White House, and the
3 reactionary politics and programs that happen,
4 how can we get ahead of the curve and be more
5 proactive in looking at sort of this, maybe
6 it's another non-partisan study that looks at
7 how do we trim the fat within the overall
8 budgets to cut out the programs that don't
9 really bring much to the table for people that
10 depend on the agencies and other things?

11 And I think in a lot of these
12 lawsuits, you know, I wonder, an analysis of
13 these lawsuits under ESA, you know, how much
14 is the agency spending on defending these
15 lawsuits, and how much energy is going into
16 that that is taking away from science that
17 could be done to mitigate or update the status
18 of particular situations?

19 I mean one example I can think of
20 is, you know, the NRDC lawsuit against NMFS on
21 the recovery plan for rockfish species and the
22 report I got that there was an age class of

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1 rockfish that were not found in the first
2 studies that were used in the original lawsuit
3 filing, but the judge wouldn't consider new
4 evidence, and you know, I just wonder, you
5 know, how much is being hemorrhaged from the
6 agency over these kind of issues, where the
7 best available science and you know, the
8 discussion on some of these options on
9 reaching out to some of these organizations
10 and saying, "Look NRDC," you know, "here's a
11 situation where we have a whole new data set
12 of a much larger age class and population that
13 we didn't see previous to this filing. Do you
14 still see the need to complete," I mean,
15 there's all these situations that I think we
16 can all bring to the table, but how do you
17 boil it down to a couple of key themes and
18 elements that we can use to measure from the
19 top down through the agency or the agencies,
20 to make it more cost effective?

21 MEMBER EBISUI: I would kind of,
22 like, elevate the plane --

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1 MR. McCULLUM: Ed, we can't hear
2 you down here.

3 MEMBER EBISUI: I'm sorry?

4 MR. McCULLUM: We can't hear you.

5 MEMBER EBISUI: I can't hear you,
6 either. No, I kind of wanted to fly just a
7 little bit higher and ask Dr. Holliday to
8 comment on the philosophical fit of moving
9 fishery service under Interior, versus
10 remaining under Commerce.

11 Each Department has their charge
12 and I'm assuming that they are different
13 charges, and fishery service has its charge,
14 how does it fit the Interior?

15 DR. HOLLIDAY: Well, policy and
16 philosophy are similar but they're not
17 identical so I'm going to look at it from a
18 policy standpoint rather than a personal
19 philosophy.

20 I liken it to this Venn diagram of
21 two circles, where there is an intersection in
22 both our mandate and our capacity to do

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1 stewardship, and I think it depends on
2 personal viewpoints about how much of an
3 intersection is there between these two
4 circles, and whether or not the quality and
5 the quantity of work that gets done in
6 accordance with those two responsibilities
7 would be improved or impaired by trying to
8 make it one circle.

9 And so if there's very little
10 intersection between those two circles, are
11 you going to invest a significant amount of
12 time and energy and disruption to try to make
13 marginal improvements in the capacity of the
14 two agencies to be successful, whereas if
15 there was a lot of intersection and we really
16 do have a significant amount of duplication in
17 mission, function and capacity, where we're
18 almost running into each other in trying to
19 save that last critter or making decisions
20 about habitat that affect both our responsible
21 species and others, I think that drives -- I
22 think that's the heart of this question, is

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1 you know, what is the return for that energy
2 that would be expended?

3 Philosophically, you know, there's
4 been -- I'm not going to wax philosophical --
5 but the land management and the ocean
6 management, there's been a major sort of
7 differentiation of these two efforts, and as
8 we know, the land and the sea meet at some
9 point.

10 And so are we better as one
11 Department of the Environment? Other
12 countries have taken different strategies and
13 merged those functions into one organizational
14 unit, and other countries do maintain separate
15 entities, and we have had recommendations, as
16 Alan mentioned earlier, from the bipartisan
17 commission on ocean policy, and the Pew
18 commission on ocean policy, that says the U.S.
19 federal government has over 100 agencies who
20 have responsibilities when it comes to the
21 ocean, yet our strategy -- well, I shouldn't
22 say yet -- they've made recommendations to try

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1 to consolidate that to improve the
2 effectiveness, but we have still not merged
3 one agency of those 100 into another to do
4 that.

5 So I'm not trying to avoid the
6 question. I mean, I have a personal view. I
7 think the agency's position is we are open to
8 suggestions about how to be more effective in
9 carrying out our mission, and we are mindful
10 of where our mission intersects with others;
11 the question of whether to move forward or to
12 move back really depends on how much of those
13 two circles intersect, and I think that's
14 where the discussion is now. What's the
15 relative merit of staying where we are and its
16 impact on our ability to be successful?

17 If it's a lot, you'll obviously
18 have more incentive to make some change, the
19 specific change between Fish and Wildlife
20 Service and NMFS.

21 If you were looking at the more
22 global perspective of managing the

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1 environment, there certainly are other studies
2 that have shown that there are economies of
3 scale and there are efficiencies in looking at
4 the entire ecosystem and not just in its
5 component parts of the National Marine Fishery
6 Service, the Fish and Wildlife Service, for
7 these two entities, but as well the Federal
8 Energy Regulatory Commission issuing permits
9 for dams on part of those watersheds, the EPA
10 dealing with water quality, I mean, we can go
11 down the list of how we parsed out that.

12 And that to me seems to be open for
13 further improvement.

14 MEMBER EBISUI: Let me rephrase the
15 question.

16 DR. HOLLIDAY: All right. I did my
17 best to dance this as best I could.

18 MEMBER EBISUI: That was good.
19 That was good. I could not pin you down. But
20 how large is the intersection and in terms of
21 the service itself, is it -- does it sit in
22 the middle of that intersection, is it closer

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1 to one side than the other?

2 DR. HOLLIDAY: I think there's a
3 first quarter moon intersection between the
4 two agencies. I mean I really do think we
5 have very distinct responsibilities. You look
6 at the land mass that the Fish and Wildlife
7 Service has to deal with across the country
8 and the number of species there, and their
9 authorities for managing refuges and wildlife
10 areas --

11 MEMBER EBISUI: And monuments.

12 DR. HOLLIDAY: It's -- it extends,
13 you know, they have a very, very broad mandate
14 and while we can say the earth is covered two-
15 thirds by water, I think that they are very,
16 pretty distinct in my mind, as to the reason
17 for why they exist the way they do.

18 I mean I can understand how they do
19 that, and the intersection to me is, where
20 there's potential for gains and improvement,
21 is not more than half. I think it's, in my
22 opinion, it's a smaller crescent, and it's

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1 that first quarter or less moon of
2 intersection.

3 And so NMFS is on one side, Fish
4 and Wildlife Service, and where we intersect
5 is that slice in the middle, that's, again, in
6 my view, not huge, not terribly ripe for
7 significant gains and improvements.

8 And where we do intersect, we have
9 made huge investments over the 20 years in
10 trying to delineate roles and
11 responsibilities, so we stay in our lanes, we
12 don't clash, and when we do things that affect
13 the public, that promotes consistency, that
14 you're not going to get wildly different
15 advice and outcomes from one agency versus the
16 other, under the same statute.

17 It's not perfect. It's not
18 perfect. But I think we've done a decent job
19 of trying to navigate that intersection.

20 MR. RISENHOOVER: Well, and you can
21 talk about the intersection in authorities,
22 and then the intersection in expertise.

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1 Right, so there's an intersection in
2 authorities, ESA and NMPA, we operate under
3 the same authorities, and there's others, the
4 Clean Water Act, the Fish and Wildlife
5 Coordination Act.

6 We operate under those but we have
7 invested in separate parts of those. We,
8 NMFS, have not invested in polar bear
9 researchers or polar bear management or
10 black-footed ferret management or water fowl
11 management or trout management in Nebraska.

12 We have invested elsewhere, and the
13 Fish and Wildlife Service similarly has not
14 invested in some of our species, you know.

15 So there's an intersection, a
16 definite intersection in authorities, less of
17 an intersection in capabilities in where we
18 have invested our personnel.

19 And then there is some overlap --
20 sea turtles, you know, that's a joint one. So
21 we've both invested, to a degree, in those.
22 And so that's kind of Mark's kind of -- the

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1 impressive part of that, you have the
2 intersection of authorities and then expertise
3 for agency investment in those authorities.

4 CHAIR RIZZARDI: I'm going to
5 interject a point and then I'll get to you,
6 Phil. I've actually published two blog
7 articles about this, and it's funny because
8 they both go to the very first two points
9 raised, Micah's point, and Ed, your point.

10 Micah, at the end of the day, I
11 think your point is the distinction between
12 efficiency versus effectiveness. You can be
13 cost efficient and save a whole lot of
14 dollars, perhaps, and maybe procedurally you
15 merge the agencies and there's procedural
16 benefits, but did you lose expertise and
17 thereby lose the effectiveness of the agency
18 to do what it was capable of doing?

19 MEMBER McCARTY: I just want to say
20 I think there's some nexus there.

21 CHAIR RIZZARDI: There is.

22 MEMBER McCARTY: And if the

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1 agencies are hamstrung in all these frivolous
2 lawsuits and reactionaries, you can't be
3 effective in what really matters to people
4 with the most at stake.

5 CHAIR RIZZARDI: And at the end of
6 the day, this discussion is going to go into
7 Tony's group, and we'll have time to vet this
8 issue, to talk about it and to think through
9 it. Right?

10 This is not a new debate. 1966,
11 when NOAA is created, this very debate is
12 taking place. Where does NOAA land? Is it
13 going to go into a Department of Natural
14 Resources? Is it going to go into Interior?
15 You know, at the end it was put into Commerce.

16 And what's interesting now, as we
17 come to current day, we are talking about
18 moving this unit, NMFS, into the Department of
19 Interior.

20 In 1989 the Department of Interior
21 published a book about itself calling itself
22 the Department of Everything Else. Right? I

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1 mean, that's their book, that's their self-
2 description, which goes back to the 1980s when
3 it was created.

4 And it was a large department that
5 had these diverse responsibilities and it gets
6 responsibility for Tribal Affairs and
7 indigenous people, and it gets lands
8 responsibility, and now we are debating,
9 because of some of the procedural overlap,
10 should we shift NOAA fisheries unit over into
11 Interior?

12 And I approach this issue with a
13 whole lot of caution. I'm not absolutely
14 clear in my end result. But I get nervous
15 about it, because one of the things that I see
16 is taking an oceans-oriented unit and moving
17 it into a land-oriented agency, and I worry
18 about the loss of expertise that could happen,
19 and whether the oceans mission gets lost in a
20 larger agency that is self-described as the
21 Department of Everything Else.

22 Whereas right now, it fits within

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1 the National Oceanic and Atmospheric
2 Administration within the Department of
3 Commerce, and I got some clarity as to its
4 mission where it fits in the entity.

5 So I think it's something we have
6 to be cautious about. I think it's something
7 that needs a lot of thought. I hope that the
8 GAO study does engage everybody and really
9 think through the issue and I'm looking to
10 hear the subcommittee discussion on it.

11 Phil, and then Julie, and then
12 Dick.

13 MEMBER DYSKOW: I just want to
14 approach this from a different perspective.
15 We've had a lot of esoterical discussion of the
16 merits of whether it should be Interior or
17 Commerce.

18 But I think we have to look at
19 another side of this, in that it's really a
20 political discussion at this point. There's
21 an election year. Elected officials are
22 highly responsive to public opinion and

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1 there's been some frustration recently over
2 what NMFS's decision has been in some areas,
3 so this has come forward.

4 Another issue is who are the people
5 that are going to be high on the list of the
6 decision-making process? You'd have to look
7 at the Senate Commerce Committee.

8 Senator Inouye is a ranking member
9 on the Democratic side. Many of those guys
10 are very conscious of protecting the power
11 that they wield.

12 And it's highly unlikely, they have
13 gone off the record at least, in saying
14 there's no way in H that this is going to
15 happen. And I think ultimately those
16 influential, ranking members that sit on the
17 Senate Commerce Committee are going to block
18 any transfer of power to somebody else.

19 So ultimately this is a different
20 kind of fight, and privately they will advance
21 an opinion not too dissimilar from what I just
22 articulated.

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1 So we think this is an esoteric
2 discussion of the merits between Interior and
3 Commerce. Ultimately it's going to be a power
4 struggle in the legislature, in the
5 legislative side of government.

6 MEMBER BONNEY: Well, that's kind
7 of where I was headed, too. But it seems to
8 me, in terms of MAFAC driving the discussion
9 where things should be, really maybe we should
10 just take a back seat and kind of see what the
11 politics is at the end of the day, and maybe
12 be reactive instead of proactive.

13 MEMBER DYSKOW: And you have a
14 member on the Committee as well, Mark Begich,
15 who has got an opinion not dissimilar to mine.

16 MEMBER BONNEY: I would agree.

17 CHAIR RIZZARDI: Dick and then
18 Julie.

19 MEMBER BRAME: Back when it was
20 formed in the '60s, what essentially happened
21 is the Bureau of Commercial Fisheries was
22 pulled out of Interior and put into Commerce.

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1 So the ontogeny of this agency is
2 the Bureau of Commercial Fisheries, and since
3 that time, recreational fisheries have grown
4 inside the agency, and have been largely
5 drowned out by the old Bureau of Commercial
6 Fisheries.

7 So another way to look at this is,
8 you know, I think a lot of recreational
9 fishermen would like this move, just for a
10 change of ethic, if nothing else, and perhaps
11 have recreational fisheries recognized, out of
12 frustration.

13 So I'm not advocating that you just
14 take recreational -- salt water recreational
15 fisheries and give them to Interior, but I
16 think it's something to consider.

17 CHAIR RIZZARDI: Julie Morris,
18 Tony.

19 MEMBER MORRIS: Four points.
20 First, this GAO Best Practices document that
21 you circulated, one of its main points is that
22 the top leadership has to drive the

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1 transformation and this really seems like it's
2 coming way outside the top leadership of the
3 agencies.

4 So there's a question of whether,
5 if Congress instructed, the top leadership
6 would really be engaged in driving the
7 transformation. It seems like it's a
8 potential problem.

9 You didn't talk about law
10 enforcement, Mark, but it seems like in
11 fisheries law enforcement, there's the
12 department of law enforcement in NMFS, but
13 there's also this relationship with the Coast
14 Guard which is now in Homeland Security, and
15 it seems like that's another dimension to look
16 at. I'm sure U.S. Fish and Wildlife has its
17 own law enforcement entity as well.

18 It seems like in NMFS we are really
19 managing living resources and public waters
20 and a lot of times, U.S. Fish and Wildlife is
21 managing living resources that are occurring
22 on private lands as well as public lands, and

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1 that's a real distinction, I think, in terms
2 of management approaches, that is different
3 for NOAA fisheries.

4 And then finally, we're just
5 getting really strong signals that marine
6 fisheries is very intertwined and affected by
7 oceans and atmosphere, and it seems like it
8 makes a lot of sense for fisheries to stay in
9 the oceans and atmospheres agency.

10 DR. HOLLIDAY: To your question, or
11 to your comment about law enforcement, one of
12 the issues that we pointed out to GAO is the
13 NMFS law enforcement arm provides enforcement
14 activity to other NOAA line offices,
15 enforcement of sanctuaries, for example.

16 And so these interconnections
17 between extracting that out and our joint
18 enforcement agreements with other -- for
19 states and state enforcement of natural
20 resource law, it's not a simple cut the cord
21 and you're home free. So thank you for the
22 observation.

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1 CHAIR RIZZARDI: Tony and then
2 Randy.

3 MEMBER CHATWIN: Okay, so I'm just
4 commenting on this idea of being reactive to
5 however the politics play out. I think in the
6 end, that's what's going to happen.

7 But I think we have an opportunity,
8 as representatives of marine interests, to try
9 to articulate what we think would be best, and
10 it's a perspective that jointly, I don't think
11 we could get from another body.

12 And so I think it -- I look forward
13 to the discussion within the subcommittee. I
14 think we don't have to restrict ourselves to
15 the narrow question that Senator Brown asked,
16 but have discussions about what would be best.

17 CHAIR RIZZARDI: Randy.

18 MEMBER CATES: I've gone through a
19 GAO report similar to this, I found it to be
20 thorough, a few years ago, but it was looking
21 at aquaculture.

22 I think that I look at this a

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1 little bit differently for this group. I
2 think it is going to be a political struggle
3 and a political issue that's separate from
4 what we're doing.

5 But I think the question comes,
6 what is -- and Phil pointed it out -- what has
7 created this and what's the driving force
8 behind this? And we should look at is NOAA
9 getting the message? That's one.

10 And two, how do we improve the
11 relationship between the constituents and
12 NOAA? That's the question, I think, that this
13 body could take on, because at least in my
14 mind it's pretty clear that there's some upset
15 people around the country, and NOAA, right or
16 wrong, is getting hammered.

17 I'm critical of a lot of NOAA
18 policy but I would hate to see NOAA get
19 shifted in any way, and I would rather work on
20 how to improve things. I think that's where
21 this group could actually be of some benefit.

22 What's going to happen is probably out of our

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1 control.

2 CHAIR RIZZARDI: Okay. So we've
3 had a pretty good initial discussion on this
4 one, and I'm seeing people are ready to move
5 that one to the subcommittee. So Tony, I
6 think you guys are going to have your hands
7 full, and look forward to hearing the
8 dialogue.

9 Mark, do we have enough time for
10 you to give a quick presentation on the status
11 of the NOP?

12 DR. HOLLIDAY: Yes.

13 CHAIR RIZZARDI: Okay.

14 DR. HOLLIDAY: So I'm going to use
15 as a crutch a PowerPoint that we prepared for
16 Sam Rauch to give at the Council Coordination
17 Committee meeting.

18 It's an update status. I'm not
19 going to go back into the history. We've had
20 many briefings in front of the Committee with
21 respect to origin and the purpose of the
22 National Ocean Policy.

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1 This is really just a sort of a
2 status report on recent events, as well as it
3 contains some information that might be
4 relevant to discussion by the subcommittee
5 this afternoon on Working Waterfront and some
6 ideas about how to make some connections here.

7 I'll take a second to bring this
8 up.

9 MEMBER CATES: Mark, is this
10 online?

11 DR. HOLLIDAY: This is online.
12 It's under the ecosystems subcommittee. I
13 think the title is CMSP. That's right.
14 Right.

15 All right. So the National Ocean
16 Policy, prior to the President's Executive
17 Order of 2010, we've gone through the nine
18 priority objectives within that.

19 And one of those nine objectives
20 was to look at a tool, Coastal and Marine
21 Spatial Planning. Many people equate the
22 entire policy just to CMSP but it's much more

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1 than that.

2 And it really has some undeserved
3 attention. I am trying to provide a larger
4 context for some of the discussions that might
5 be the most relevant to the Committee to take
6 up as part of its deliberation.

7 So we have commented as a group on
8 the strategy, the implementation strategy as
9 well as the original nine priority objectives.

10 We have provided feedback and input.

11 One of the most significant
12 omissions and areas of concern had to do with
13 how does the National Ocean Policy intersect
14 with the Regional Fishery Management Council
15 process.

16 And in the creation of and the
17 formation of regional planning bodies, this is
18 all supposed to be executed, this policy is
19 supposed to be executed at a regional level,
20 how does it work in terms of intersection with
21 the Councils, because the executive order
22 itself said, well the Councils are important

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1 but they are not actually going to be voting
2 members of these regional planning bodies.

3 And it wasn't as an affront or as
4 an attempt to insult the Councils. It had a
5 lot to do with the creation of federal
6 advisory committees and how do we incorporate
7 the entity of the Councils into this process
8 without violating any other federal laws.

9 After many debates and long
10 construction and legal evaluations of
11 alternatives, in January, the Council on
12 Environmental Quality and the Office of
13 Management and Budget and the White House got
14 together and they said we've found a solution
15 that allows regional fishery management
16 Councils -- a federal representative on a
17 Council would be a voting member on each of
18 the regional planning bodies for Coastal and
19 Marine Spatial Planning, or whatever entity
20 that was created.

21 So trying to fill that gap and that
22 concern about how do we take the principal

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1 organizational unit out there doing fisheries
2 management and make sure that the work that
3 they are doing is front and center on any
4 discussion about other ocean uses.

5 The only way to really ensure that
6 integration takes place is for them to be a
7 sitting, voting member of these bodies that
8 would be created in the future. Paul?

9 MEMBER CLAMPITT: So, by federal
10 representative, you mean an individual like
11 Jim Balsiger?

12 DR. HOLLIDAY: It actually has to
13 be a government representative, so it could be
14 a state, an appointed state employee, it could
15 be a local government employee. It doesn't
16 have to be a NOAA person. It could be
17 federal, state or local government. It has to
18 be a government employee as versus a non-
19 government employee.

20 MEMBER WALLACE: But don't they
21 have to be a member of the Council?

22 DR. HOLLIDAY: Well, that's what

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1 we're talking about. A regional -- a
2 representative of the Regional Council who is
3 a federal, state or local government employee,
4 who is a member of the Council, a Council
5 member.

6 MEMBER CLAMPITT: And that's
7 because there's some legal constraint?

8 DR. HOLLIDAY: That's correct.
9 Then the work around that, as the legal review
10 and the Justice Department review was,
11 Regional Council members who were government
12 employees could serve that function, to
13 represent the Council.

14 So, again, focusing on the status
15 of what's happening, we've begun -- we -- the
16 administration has begun to invite membership
17 on these nascent bodies, regional planning
18 bodies, so an invitation had gone out to the
19 New England Fishery Management Council to
20 identify someone from -- a Council member who
21 was a government employee to serve on the --
22 on NROC, the northeast regional planning body

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1 for New England, and as the different regional
2 planning body activities mature around the
3 country, the additional letters sent out to
4 the Mid-Atlantic Council and others, to again,
5 identify who would be their representative to
6 these different entities.

7 In terms of what's happened since
8 the last time MAFAC met in October of 2011,
9 the draft implementation plan, which was
10 taking, you know, these nine different
11 strategies, how are we going to move forward,
12 what are the activities, what are the
13 milestones, what sorts of actions would be
14 taken, has been sent out to the public, we've
15 commented on it as a MAFAC community.

16 And again, the final implementation
17 plan, actually the deadline for comments was
18 extended twice. They were still processing
19 all the different comments trying to get to a
20 final product that has not been publicly
21 released but it's imminent.

22 But there have been a couple of

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1 other opportunities to try to be true to the
2 intent which is to make this a local,
3 regionally-driven activity. It's not designed
4 to be a nationally-driven headquarters or
5 centrally-driven function.

6 So the conduct of regional
7 workshops, and getting different people from
8 industry, from different sectors together at
9 local, regional levels, to talk about how can
10 they take the principles of the National Ocean
11 Policy and apply them in their regions, to try
12 to advance the state of looking forward to the
13 integration of a strategy that takes these
14 competing ocean uses and tries to determine a
15 game plan that makes sense at their level.

16 So the purpose of this northeast
17 regional ocean planning workshop in March, and
18 one here out on the West Coast in April, was
19 again, not to dictate how to conduct business,
20 but to provide opportunities for people who
21 have these different views and different
22 constituencies, to start bringing them

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1 together with some of the existing regional
2 organizations, whether they are in the Gulf of
3 Mexico, or on the Pacific Coast, but these
4 entities that already have a track record of
5 trying to do planning and strategizing for
6 different regions, to bring them together with
7 these principles to try to make some progress.

8 And this slide that we put together
9 really was, again, I'm looking for
10 opportunities where there are these affinities
11 between what the Regional Councils are looking
12 to do in their strategies in moving forward in
13 their responsibilities for stewardship, and
14 what these planning bodies are being asked to
15 do.

16 And there's a real strong affinity,
17 a real strong intersection in the area of
18 ecosystems and ecosystems science. The
19 Councils are more and more focusing on the
20 larger context of the decisions and policies
21 they are making beyond single species, and how
22 they are affecting and are affected by changes

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1 in the ecosystem, looking at these important
2 science components from the oceanographic and
3 ecological processes, the same thing with
4 these planning bodies, these governance
5 organizations that are trying to look at the
6 bigger picture.

7 It's not energy development in
8 isolation. It's energy development in the
9 oceans and how that affects fisheries, how
10 that's affected by the ecosystem, how
11 oceanographic conditions are changing.

12 So, try to see that there is an
13 affinity between how Councils are looking at
14 the world and how these regional organizations
15 that have responsibilities of bringing others
16 to the table who have energy, who have
17 transportation, sand and gravel mining, cable
18 laying, all these interests have some common
19 thread here in using or non-using the
20 resources in the ocean for a particular
21 purpose, right?

22 It's an economic activity, it's a

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1 recreational activity, it's an ecological
2 function, goods and services, but ecosystems
3 is the common thread that binds this recipe
4 together.

5 There have been some changes in the
6 National Ocean Policy itself. There's a new
7 director who has been appointed to lead this.
8 There is also being drafted some additional
9 terms of reference about how to organize some
10 of these regional bodies that could carry out
11 the principles.

12 Again, it's advisory, it's not
13 prescriptive, it's not saying you have to do
14 it this way. It's guidance, not regulation.

15 There has been change in our NOAA
16 leadership, as Eric Schwaab went from
17 being the assistant administrator of the
18 fishery service up into the NOAA management.
19 He is now NOAA's representative to the
20 National Ocean Council Deputies Committee, so
21 we have somebody who has a track record with
22 fisheries a seat at the table, who is

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1 representing the Council and the fishery
2 services' interests at the highest level
3 planning at the National Ocean Policy level.

4 And there's been continued concern
5 about Coastal Marine Spatial Planning and the
6 National Ocean Policy is sucking up all the
7 money in the room and it's going to no good
8 end.

9 And so I wanted to focus just a few
10 moments about how is this affecting NOAA, and
11 out of NOAA's almost one billion dollar
12 budget, how much of that is being spent on
13 Coastal and Marine Spatial Planning?

14 It's not a whole lot, and it's not
15 in an upwards spiral or upward trajectory.
16 It's flat and declining. And so I think as I
17 looked at the -- let me go to the next slide
18 that talks a little bit about -- yes. I have
19 a question.

20 MEMBER DOERR: Really quick. The
21 new -- is Deerin a CEQ employee, the new
22 Oceans Council director?

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1 DR. HOLLIDAY: Is he employed -- is
2 he an employee of CEQ. I would suspect that
3 would be his office of record, yes. I assume
4 that's his office of record, yes, CEQ, yes.

5 And so the money that is within
6 NOAA that is really targeted, identified as
7 regional ocean council or regional ocean
8 policy or National Ocean Policy, has been a
9 line item with the National Ocean Service in
10 their ocean and coastal management line item.

11 And most of the money that was
12 available in fiscal year 2011 was \$7 million
13 and that went out the door, the majority of
14 that went out the door in grants, to different
15 -- there are eight different recipients of
16 grants, and this was all as part of supporting
17 an organization, how do these different
18 partnerships, these regional governance
19 agreements, the Gulf of Mexico Alliance, these
20 existing entities that were out there doing
21 this type of work, providing them seed money
22 to organize themselves to take on their

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1 additional responsibilities and the principles
2 of the National Ocean Policy.

3 So that's a \$7 million, under, less
4 than a \$7 million investment through these
5 nine grants that went out the door to support
6 these activities.

7 So the money was from fiscal year
8 '11. It was actually awarded during this
9 current fiscal year, which is fiscal year '12.

10 And there's the FY12 funding announcement of
11 an additional set of grants totaling \$3.5
12 million for this fiscal year.

13 So we have spent, as a bureau in
14 NOAA \$10 million over two years on National
15 Ocean Policy. So it has not been sucking up
16 huge amounts of our billion dollars that we
17 have in the NOAA budget for these activities.

18 It's money that is going out the door to
19 these regional associations who have
20 identified their willingness or their interest
21 in trying to promote activities that are
22 supporting directions that they were going in

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1 prior to the executive order.

2 I should note that for the FY13,
3 there's, in the President's request, there's a
4 request of \$500,000 more to bring that total
5 to a \$4 million grant program in FY13.

6 I want to just read to you what
7 these regional ocean partnership grants, "An
8 increase of \$511,000 in 2013, to expand
9 targeted, competitive grant programs" -- so
10 they are competitive grants -- "to advance
11 regional ocean management through support of
12 regional ocean partnerships, the science-
13 based, place-based planning for multiple uses
14 of coastal and ocean resources."

15 So that's the purpose of these
16 investments, and so it's not directing money
17 to some entity inside the Beltway in
18 Washington, D.C. for some bureaucracy. It's
19 going out to regional bodies who have an
20 interest in promoting planning that's science-
21 based and that's place-based at a level of
22 funding that's fairly modest compared to the

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1 NOAA budget investments for science and policy
2 and management elsewhere in the organization.

3 So I don't have -- I think there
4 may be one -- and so these were the recipients
5 of those FY11 and what they were planning to
6 do with that, these different entities.

7 Again, organizational, trying to
8 advance the work that was already under way,
9 and that's my superfast attempt to get through
10 it --

11 MEMBER DYSKOW: Could you go back
12 one slide please?

13 DR. HOLLIDAY: Just a second.
14 Phil, did you have a question or did you just
15 want to --

16 MEMBER DYSKOW: No, I just couldn't
17 read it as fast as --

18 DR. HOLLIDAY: As I clicked, sorry.
19 Paul?

20 MEMBER CLAMPITT: So, in Alaska,
21 there's a stakeholder group, can you be more
22 specific about that?

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1 DR. HOLLIDAY: I can if I look at
2 my computer. I don't have it memorized.

3 MEMBER McCARTY: I can say
4 something to that effect. The Governor
5 doesn't want to play ball. In Alaska. That's
6 what I've heard. Even though they have a
7 representative from the Governor's office on
8 the GCC, it's not a priority of the Governor.

9 Part of the development of these
10 regional planning bodies involves an agreement
11 to be signed by the Governor and that's not
12 happened in Florida or Alaska as far as I
13 know.

14 And the reason why the West Coast
15 isn't on there is because there is a huge
16 disparity in tribal representation and
17 capacity to represent, and the West Coast
18 Governors' agreement is turning into the West
19 Coast Governor's Alliance. That's kind of the
20 default mechanism that the White House is
21 identifying as their conduit to the West
22 Coast.

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1 The Treaty Tribes in Washington
2 state strongly disagree with that being the
3 only way to address the West Coast.

4 And we are actively trying to
5 massage that whole discussion in a way that
6 properly accounts for our treaty trust
7 responsibility to be at the table as regional
8 planning body members, but how do you develop
9 a formula for all of the coastal tribes of
10 California, to decide how they are going to
11 work with their Governor to get representation
12 on the regional planning body, and then you
13 have Oregon.

14 And so if you think about the
15 disparity of how tribes south of Washington
16 state don't have a policy profile like the
17 Treaty Tribes do, and you don't have a very
18 strong policy connection to the Governor's
19 office with the other tribes further south in
20 Washington state. So that's one of the holdups
21 on that.

22 MEMBER HAMILTON: Are you counting

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1 that in the Washington state discussions?

2 MEMBER McCARTY: Right now, we are
3 really more focused on the ocean, and there is
4 a segue that the Ocean Council will be looking
5 at upstream, but that will not --

6 CHAIR RIZZARDI: All right. I know
7 we are getting on lunch break here. Do folks
8 have remaining questions for Mark?

9 DR. HOLLIDAY: I just want to -- to
10 Paul's original question on Alaska, the Seward
11 Association for the Advancement of Marine
12 Science received \$760,000 to develop
13 stakeholder-driven visualization and decision
14 support tools for Alaska and the US Arctic.

15 So they are developing data tools
16 on -- I mean, we have got copies of the
17 proposals that we can send to you. This was a
18 competitive grant program. People proposed,
19 they were reviewed by independent peer review
20 panels and then this was the awardee that
21 received the funds.

22 And I should mention, before this

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1 there were nine, there are only eight there.
2 But there was \$264,000 that was awarded on the
3 West Coast to the Governor's Agreement on
4 Ocean Health to aid its work on regional
5 priority development, work towards better
6 regional data access and delivery.

7 So in many of these projects we are
8 looking at trying to assemble some of the
9 integrational data on different ocean uses and
10 provide tools to people to help them make
11 informed decisions about tradeoffs and --

12 MEMBER DYSKOW: So that was Seward
13 --

14 DR. HOLLIDAY: The group name was
15 the Seward Association for the Advancement of
16 Marine Science, representing the Alaska Ocean
17 Observing System, so I think it's a consortium
18 of people, with the Alaska observing system.

19 But I will get you the actual
20 proposal and you can see specifically what the
21 RFP, a little more of what the content was.

22 CHAIR RIZZARDI: More from Mark on

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1 the NOP?

2 MEMBER DYSKOW: I've got one
3 question. I'll make it short. There has been
4 a lot of talk on The Hill about certain states
5 or regions having some form of an exemption
6 from NOP. Do you know anything about that?

7 DR. HOLLIDAY: I do not -- I have
8 not heard that term.

9 MEMBER DYSKOW: Maybe exemption is
10 the wrong term. Well, but that's the term
11 they're using, an exemption permit. I'm not -
12 - I --

13 DR. HOLLIDAY: I've not heard of an
14 exemption. It doesn't -- I mean there's no
15 mandatory requirement that they should have to
16 participate. None of this is mandatory. None
17 of this is prescribed. None of it's in
18 regulation.

19 So if a state chooses not to
20 participate, that's their -- that's perfectly
21 legitimate and fine, but in terms of actually
22 receiving an exemption to me carries with it

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1 this idea that somebody officially grants
2 someone a special dispensation to opt out, but
3 that's not necessary because this is all a
4 voluntary program from the outset.

5 MEMBER HAMILTON: But it sounds
6 good on TV.

7 DR. HOLLIDAY: I'm sure it does.
8 Anyway, I wanted to try to -- this was in the
9 context of a question that came up earlier
10 about, there is a small grant program and part
11 of the idea of planning and development, where
12 we talked about Working Waterfronts earlier,
13 is really about planning for the future, and
14 we heard yesterday in the Sea Grant proposals
15 about what are the opportunities for people to
16 use on the land side to help do policymaking
17 and tradeoff analyses.

18 And so those could be -- Working
19 Waterfront-type grants could compete for this
20 pool of money in the future to help provide
21 for sustainable fishing communities as part of
22 a larger Working Waterfront integration

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1 effort, because that's ocean uses.

2 You know, ocean and coastal uses
3 and this integration would be one way to look
4 at funding that, because we've heard NOAA's
5 attempt to get a separate Working Waterfront
6 grant program funded by Congress didn't
7 succeed, and it's unlikely in this climate
8 that new money would be available.

9 So you have to go after existing
10 funds and try to establish your priorities if
11 you want Working Waterfront funds, to get them
12 from existing grant programs. That's one of
13 the reasons I felt it was important to give
14 this back to the Committee today.

15 CHAIR RIZZARDI: I've been working
16 with Mark and I was hoping this would make it
17 back on the agenda as well. But one of the
18 things I've recognized is that in the past,
19 MAFAC has spoken on an action, and then
20 sometimes there's not followup as to what
21 happened with our action.

22 And with the National Ocean Policy,

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1 our body submitted some very specific and very
2 pointed comments on the National Ocean Policy.
3 I thought it was important for people to get
4 the feedback.

5 And what I'd like to see us evolve
6 as a Committee is in the future, for us to
7 revisit the things that we've done in the
8 past, have that followup, see whether or not
9 our actions have had consequences and whether
10 we as a body want to take further action.

11 And Mark has been preparing tables
12 like he went through yesterday in his
13 presentation, here's the stuff MAFAC's done,
14 and here's what's being done about it.

15 And I encourage the subcommittees,
16 as we get ready to break into subcommittees,
17 to think that way as well. You know, think
18 about what we've done in the past, go back to
19 that table that Mark put out there, and help
20 project what our future agenda items should
21 be.

22 All right? As I've been saying all

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1 along, I see the subcommittees as the place
2 where MAFAC can maximize its effectiveness,
3 people can get together in groups of experts,
4 start fleshing out some ideas, and then come
5 back to the Committee as a whole with
6 something on paper that works as a strawman
7 for us to evaluate and then turn into an
8 action item.

9 So for this afternoon we are going
10 to be coming back and we've got the four
11 subcommittee meetings. Again, I encourage you
12 to work on coming up with either a specific
13 action item for the body, or alternatively, a
14 work plan.

15 Each of the subcommittees has some
16 items on their agenda. Maybe you're going to
17 decide we can't do something now. That's
18 fine. What's your plan to get forward to
19 whatever the output is going to be? What
20 items does the executive subcommittee need to
21 help you with? How do we need to get
22 speakers? Who should they be? What topics

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1 are you interested in? What kind of deadlines
2 can you establish along the way and some
3 benchmarks along the way?

4 I am looking forward to sitting in
5 on some of those discussions. I am going to
6 try to bounce around the various
7 subcommittees, and I really appreciate the
8 leadership the subcommittee chairs are
9 demonstrating.

10 So for the rest of this afternoon,
11 it's going to be the subcommittee sessions,
12 and then we'll come back into the plenary
13 session on Thursday, with the subcommittees
14 reporting back to the bodies.

15 I think it's roughly an hour for
16 each of the subcommittees to walk through
17 their items, and we'll have, you know, further
18 discussion then.

19 And I just want to encourage
20 everybody, you know. This is our chance to
21 prove what MAFAC can do. We're hearing the
22 budget discussion. We're hearing about the

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1 reorganization discussion.

2 And I'm sensitive to the fact that
3 this meeting is taxpayer dollars and this
4 meeting is being paid for by them, and I want
5 the taxpayers to know that they got a return
6 on their investment by us being here, and I'm
7 hopeful that we will continue to put out high
8 quality work product.

9 I know we need to get a couple of
10 last minute arrangements, like which groups
11 are in which rooms, so Mark and Heidi, if you
12 can help people out now while you've got us
13 all here in plenary, for this evening, and
14 where we're going to be going, that would be
15 great.

16 DR. HOLLIDAY: So for this
17 afternoon, the agenda calls us back into
18 session at 1:30, and we have two rooms -- the
19 Strategic Planning, Budget and Program
20 Management committee. The subcommittee will
21 meet in this room, the Ravenna Room.

22 And the Ecosystem Subcommittee will

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1 meet in the Kirkland room. The Kirkland room
2 is located outside this door. It's the third
3 door on the left as you go back towards the
4 bathrooms. It's the third door on the left.
5 It says Kirkland room on the outside. It's a
6 nice room. It has windows. It's a very
7 pleasant room.

8 Heidi will be the staff person
9 supporting that activity, and I'll stay in
10 this room supporting the Strategic Planning,
11 Budget and Program Management subcommittee.

12 Then at the second round of -- what
13 time do we do the second round?

14 MS. LOVETT: 3:30.

15 DR. HOLLIDAY: Thank you. The
16 joint meeting of the Commerce subcommittee and
17 the RecFish subcommittee will take place in
18 this room. And the Protected Resources
19 subcommittee will meet in the Kirkland room.

20 So Heidi will stay in the Kirkland
21 room supporting that second subcommittee
22 group. The joint, two subcommittees will meet

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1 in here, as they have some joint work to do,
2 and then they'll stay in this room and will be
3 at the far ends of the room when they will
4 break out into their separate sessions for
5 RecFish and the Commerce subcommittee meeting
6 in this room.

7 Logistics for this afternoon --
8 this evening's event, to make sure everybody
9 knows the time and place we are going to meet
10 for the bus, is --

11 MS. LOVETT: First of all -

12 DR. HOLLIDAY: No, not first of
13 all. First of all is answer my question.

14 MS. LOVETT: Downstairs, same
15 place. Bus will leave at 6 o'clock. That's
16 our target. That gives you about a half hour
17 after the committees break to return things to
18 your rooms and then come on down. Same
19 location, in the front, for those that weren't
20 there.

21 The bus will be on the main street
22 just outside the circular drive where the cars

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1 and taxis bring people to the hotel.

2 I was just going to suggest this
3 room can be -- we can lock it briefly. I've
4 figured out how to do it. Leave your
5 computers here until you come back from lunch
6 because I don't -- I can't lock the Kirkland
7 room so it will just be easier for staff to
8 monitor things in here. That's all I wanted
9 to add.

10 DR. HOLLIDAY: I wasn't trying to
11 prevent you. I just wanted you to answer the
12 question first.

13 MS. LOVETT: And then a few people
14 have asked me about tips for the bus driver.
15 We have had the same bus driver. I'm happy to
16 collect anything in addition. We have -- part
17 of the payment we've had with the buses does
18 provide a small tip for him already, but if
19 anybody is interested, because a few of you
20 have asked, you can offer something on your
21 own or I can collect some extra money and
22 he'll be -- it's the same driver that's been

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1 with us for the whole week, which has been --
2 he's been very good.

3 He also made a recommendation on
4 the way to the Makah event to stop by the
5 Fisherman's Memorial. If we have an interest
6 in doing that, he has a route planned that's
7 just for a few moments on the way out towards
8 Discovery Park.

9 MEMBER McCARTY: Yes, and then I've
10 got an announcement too that the Makah Tribe
11 is playing a host role at this and we're
12 bringing culture, and when we do that we don't
13 mix alcohol.

14 So it's, I think, to be discreet
15 about it and bring your own, is probably the
16 rule of thumb.

17 MS. LOVETT: Or abstain.

18 MEMBER McCARTY: Or abstain. And
19 then the other one too is depending on the
20 families' wishes, no recordings, and they may
21 give permission for pictures, but you know, as
22 a rule of thumb too, just, I wouldn't go there

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1 unless it was specifically broached.

2 I haven't had time to talk with
3 anybody about it. We almost pulled the plug
4 because a respected elder was close to dying.

5 And so it's something that the families said
6 go ahead and proceed because it was planned,
7 it's tribal business. So --

8 MEMBER YOICHEM: I have a question
9 about the event tonight. Is it outside or
10 inside or --

11 MEMBER McCARTY: It's inside. It
12 can be outside.

13 MEMBER YOICHEM: Okay.

14 MEMBER McCARTY: It's optional,
15 depending on weather.

16 MEMBER YOICHEM: Okay. Thank you.

17 MEMBER McCARTY: It's a pretty big
18 location or facility.

19 MEMBER YOICHEM: Okay, great.

20 VICE CHAIR FISHER: I'd like to
21 gather up the Vision team for just five
22 minutes before lunch, if we can please. I've

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1 just got a couple of things to say. Thanks.
2 We can meet over here in the corner.

3 CHAIR RIZZARDI: Thanks everybody.

4 (Whereupon, the proceedings went
5 off the record at 12:20 p.m.)
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