

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

MARINE FISHERIES ADVISORY COMMITTEE MEETING

Washington, D.C.

Wednesday, December 4, 2013

1 PARTICIPANTS:

2 Members:

3 KEITH RIZZARDI, Chair
4 Assistant Professor, St. Thomas University
5 School of Law

6 EDWARD (TED) AMES
7 Senior Advisor, Penobscot East Resource

8 JULIE BONNEY
9 Executive Director, Alaska Groundfish Data
10 Bank, Inc.

11 COLUMBUS H. BROWN
12 U.S. Fish and Wildlife Service, Retired

13 ANTHONY (TONY) CHATWIN
14 Director, Marine and Coastal Conservation,
15 National Fish and Wildlife Foundation

16 PAUL CLAMPITT
17 Owner, F/V Augustine

18 JOHN S. CORBIN
19 President, Aquaculture Planning and
20 Advocacy

21 MICHELE LONGO EDER
22 Attorney and Owner

KEN FRANKE
Sportfishing Association of California

JULIE MORRIS
Assistant Vice President for Academic
Affairs, New College of Florida

ROBERT RHEAULT
Executive Director, East Coast Shellfish
Growers Association

1 PARTICIPANTS (CONT'D):

2 DAVID C. WALLACE
Owner, Wallace & Associates

3 PAMELA YOCHER
4 Senior Research Scientist and Executive
Vice President Hubbs-Sea World Research
5 Institute

6 Designated Federal Officer:

7 MARK HOLLIDAY
Director, Office of Policy NOAA Fisheries
8 Office of the Assistant Administrator

9 Consultants:

10 BOB BEAL
Executive Director, Atlantic States Marine
11 Fisheries Commission

12 DAVID DONALDSON
Executive Director(Acting), Gulf States
13 Marine Fisheries Commission

14 RANDY FISHER
Executive Director, Pacific States Marine
15 Fisheries Commission

16 NOAA Staff:

17 PAUL DOREMUS

18 TOM GLEASON

19 ALEXIS GUTIERREZ

20 TIM HANSEN

21 LEANN HOGEN

22 HEIDI LOVETT

1 PARTICIPANTS (CONT'D):

2 EMILY MENASHES

3 KATE NAUGHTEN

4 DAVID O'BRIEN

5 SAMUEL D. RAUCH III

6 ALAN RISENHOOVER

7 STAN ROGERS

8 MARK SCHAEFER

9 GREG SCHNEIDER

10 JENNY THOMPSON

11 MICHELLE WALSH

12 Other Participants:

13 MR. DECESARE, Marine Stewardship Council

14 MS. DOERPINGHAUS, Ocean Conservancy

15 MR. GILMAN, Pacific States Marine
Fisheries Commission/AGDB

16 MR. FITZGERALD, Environmental Defense Fund

17 MR. MARKS ROMEA, Commercial Fishing
18 Industry

19 MR. MARTENS, World Wildlife Fund, US

20 MR. PSZYUSLAS, World Wildlife Fund, US

21 MS. SCONTRAS, Atlantic States Marine
22 Fisheries Commission/Blank Rome LLP

1 PARTICIPANTS (CONT'D):

2 MR. TOMPKIUS, Atlantic States Marine
3 Fisheries Commission

3

4

* * * * *

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

C O N T E N T S

AGENDA ITEM:	PAGE
ESA Section 7 Consultation Process Workgroup Report Out	8
Seafood Certification Workgroup Report Out	38
Public Comment Period	113
Subcommittee Meetings	147

* * * * *

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

2 (8:32 a.m.)

3 CHAIRMAN RIZZARDI: We'll take a break
4 when the green light goes on, but we'll get our
5 meeting started this morning.

6 Thanks, everybody, for being here on
7 time. It's always nice to stay on schedule.
8 Today we've got a day that's focused on two of the
9 white papers our committee has been working on,
10 and we're going to be tackling the Endangered
11 Species Act implementation and the report out from
12 the task force, and then we'll be turning to the
13 certification issue and the draft recommendations
14 that have been circulated and hopefully have a
15 robust discussion on that. I understand that
16 George Nardi is going to try to call in, but in
17 his absence, Bob is going to be playing chairman
18 for that discussion. And Julie was leading the
19 task force on Endangered Species Act
20 implementation, and she's got the first item on
21 the agenda today.

22

1 ESA Section 7 Consultation Process

2 Workgroup Report Out

3

4 MS. MORRIS: Good morning, everybody.

5 Yes, the ESA working group was formed last October
6 at our MAFAC meeting in the fall of 2012, and
7 we've been working throughout the year primarily
8 based on telephone conferences to grapple with
9 some issues that had to do with improving the
10 transparency and consistency and collaboration
11 between councils and Protected Resources when
12 there was a fishery management action that was
13 affected by Protected Resources. And so we have a
14 final report that we are presenting to MAFAC at
15 this point. Let me recognize the MAFAC members
16 who were part of the working group. And so that's
17 Pam Yochem and Columbus Brown and Paul Clampitt
18 and myself. And then also we have with us today
19 Stan Rogers from the Office of Protected
20 Resources, who played a key role in one of the
21 subgroups. And I want to invite Stan, if you can,
22 to come sit at the table during the conversation

1 and help us answer questions.

2 So I think we sent this out to all of
3 you maybe a week ago. Sorry about the short
4 timeframe on that. And Heidi distributed a
5 version this morning that just has some minor,
6 primarily editorial, edits that we can bring up as
7 well if you'd like to.

8 So there's really two things that we're
9 calling recommendations. One is on page three of
10 the report and it's a recommendation for improving
11 collaboration and communication among councils,
12 Sustainable Fisheries and Protected Resources
13 regarding fisheries management plans, and we're
14 recommending the National Marine Fisheries Service
15 formally recognize that the councils possess a
16 unique relationship with the Fishery Service as a
17 result of authorities and responsibilities created
18 under MSA and that a range of authorities exist
19 under section 7 of the ESA and NEPA and other laws
20 to better integrate council planning activities
21 with ESA section 7, Technical Assistance and
22 Consultation Processes.

1 These laws and authorities provide
2 opportunities for the councils to advise the
3 action agency--which is usually Sustainable
4 Fisheries within NOAA fisheries--throughout the
5 section 7 consultation process, and they can
6 assist Sustainable Fisheries in defining the
7 proposed action and feasible alternatives. They
8 can help identify best scientific information
9 available on fisheries management practices, and
10 potential effects of the proposed action on listed
11 species and critical habitat. They can assist in
12 the preparation of biological assessments,
13 biological evaluations, and other ESA section 7
14 consultation initiation documents, and assist with
15 the preparation and review of additional
16 information requested during consultation.

17 And then during the formal ESA section 7
18 consultation, they can review and comment on draft
19 biological opinion and that they can also comment
20 on draft reasonable and prudent alternative in the
21 case of a jeopardy opinion and draft reasonable
22 and prudent measures in incidental take

1 statements. And they would do these through
2 Sustainable Fisheries and Protected Resources.

3 We came up with an additional
4 recommendation that there be a memo to the
5 councils that the fishery service would develop
6 that would guide the councils who want to be
7 involved in these ESA section 7 consultations and
8 outline the process by which the councils could
9 request involvement in particular portions of the
10 consultation process. NMFS would have the ability
11 to deny those requests, but we would expect that
12 they would generally grant the council request for
13 involvement.

14 And then we have a draft memo that's in
15 the appendix that could be a starting point for
16 this memo that NMFS could write inviting better
17 clarity about the role that a council would like
18 to play in an ESA consultation in Appendix D.

19 So discussion on that part of the
20 recommendation. Discussion and comment.

21 MR. RISENHOOVER: Just real quick. I
22 apologize, I haven't read the report, but would

1 there be any kind of guidelines or rules of
2 engagement or is it just simply if the council
3 requests, the agency would allow him to review.
4 Just kind of what would the -- any rules of
5 engagement.

6 MR. ROGERS: Sure. The premise that we
7 worked under in the working group was better
8 defining what section 7 consultation is from the
9 beginning to end and not just focusing on
10 traditionally what has been done in the past which
11 is when a consultation is almost complete, there's
12 a draft, and the recommendations of the council
13 come forward to NOAA. At the last second there's
14 a consultation. What we were trying to focus on
15 was broaden that discussion to the beginning,
16 during the council planning activities prior to
17 submittal so that information can be gathered for
18 consultation purposes, whether that's informal
19 consultation or formal consultation up front. So
20 no special procedures per se working within the
21 normal guidelines of section 7, as working with
22 any action agency through Sustainable Fisheries as

1 the action agency. So when we talk about council
2 involvement, that would be at the discretion of
3 Sustainable Fisheries as the action agency and
4 requesting council support or technical advice
5 from the councils on a particular matter during
6 consultation, but trying to frontload that
7 requirement with Sustainable Fisheries earlier in
8 the process than normal. So that's what really
9 requires that earlier dialogue between Sustainable
10 Fisheries and the councils and Protected
11 Resources.

12 So that's the framework that we're
13 talking about. It doesn't change anything with
14 normal procedures of section 7 and roles and
15 responsibilities between Protected Resources and
16 the action agency in this case, Sustainable
17 Fisheries.

18 MR. RISENHOOVER: So if a council then
19 does review a draft opinion, would that be
20 considered a public draft opinion then, when the
21 council reviews it? Or would it need to be kind
22 of a subset of the council reviewing a draft where

1 they supply the comments back to the agency? Or
2 is there a public process involved, too?

3 MR. ROGERS: Sure. I think there's
4 still some questions there as to would the
5 transmittal of a draft biological opinion from
6 Sustainable Fisheries to a council for review
7 constitute a release or distribution that would
8 require or relinquish controls on that document as
9 a draft- delivered document. So I think there's
10 still some questions there that need to be
11 answered but generally, the scenario that we're
12 talking about is that throughout the consultation
13 process, Sustainable Fisheries will be seeking
14 advice from the councils and helping them to
15 prepare biological assessments to consult with and
16 then ultimately leading into the consultation and
17 biological opinion. The specific issue of
18 reviewing the draft biological opinions and
19 releasing data still would be at the discretion of
20 Sustainable Fisheries, whether they wanted to
21 provide that to the councils or not. Typically,
22 that's just provided between Protected Resources

1 and the action agency, but it would be at the
2 discretion of Sustainable Fisheries whether they
3 would want to then release that for a final look,
4 per se, from the councils prior to finalization.

5 MS. MORRIS: And we noted with interest
6 that in the Atlantic sturgeon draft biological
7 opinion that was, like, put up for public review
8 and comment. It was a very public process, and we
9 didn't really get the total background on why that
10 was, but it seemed like an example of the opening
11 up of the development of the biological opinion to
12 more public scrutiny. And I think it was a
13 positive thing in that instance.

14 MR. ROGERS: Yeah. There are only a few
15 examples that we have to work with where we -- we
16 being Protected Resources-- actually provided a
17 draft biological opinion for public input, and
18 it's usually through an action agency, like EPA,
19 or where they're providing it to applicants or
20 they have a requirement to bring in public
21 involvement in their process. So this is slightly
22 different in that it would be at the discretion of

1 Sustainable Fisheries as to whether they wanted to
2 release that draft biological opinion or not. So
3 what we're talking about is a request saying, you
4 know, involvement throughout the process and then
5 if there is a request to review that draft, then
6 the draft biological opinion, that would then be,
7 again, at the discretion of Sustainable Fisheries,
8 whether they wanted to provide that to the council
9 or not. And then there would be, of course, some
10 sort of plan to go along with that, whether it was
11 going to be released publicly or targeted review
12 and comment, that type of thing.

13 MS. MORRIS: And we, you know,
14 discovered as we learned about all the process
15 steps, that there are authorities and laws that
16 allow a lot more council involvement in the early
17 stages of the discussions as the councils are
18 developing their alternatives and their preferred
19 alternatives. And that there's expertise and
20 technical exchange and that everything is going to
21 be -- we're going to have a better outcome if all
22 of that early sharing of information and informal

1 consultation is stronger. So leading up to the
2 draft biological opinion, if there's just a lot
3 more communication going on, then these issues
4 about is it public or not and who can review it
5 are mitigated a bit.

6 MR. RISENHOOVER: Yeah. I think that
7 Stan has explained that to me in the past. It's
8 kind of that technical assistance phase, so it
9 sounds like it highlights that in particular.
10 Instead of reviewing the draft at the end, work on
11 something together up front to get the outline of
12 it.

13 All right. Thank you.

14 MS. MORRIS: Then if we work through
15 further in this section of the report, that's the
16 recommendation, but we also have five figures that
17 kind of show the process -- the council process
18 overlaid with the protected resource process and
19 suggests some possible points of consultation and
20 -- I'm sorry, informal interaction at critical
21 points leading up to the more formal part of the
22 consultation. So that's all just, hey, here's

1 some great opportunities for the councils and
2 Protected Resources and Sustainable Fisheries to
3 interact earlier in the process and have positive
4 outcomes.

5 And then we have in the document one of
6 the work products of the group, which I think you
7 already saw back in May when we did our
8 preliminary six month report. It's a matrix of
9 all of the options that we considered for
10 improving communication and it ranges from
11 something that is used, I think, pretty
12 effectively in the southeast region. They call it
13 interdisciplinary plan teams where council staff
14 and regional office, Protected Resources and
15 Sustainable Fisheries staff all work together on a
16 planning team as they're developing the draft EIS,
17 and that really helps inform the range of
18 alternatives that are identified, so that the
19 council is not walking down a path to arrive at a
20 preferred alternative that's going to really
21 create a lot of conflicts with Protected
22 Resources.

1 And then we had a lot of discussion.
2 The Western Pacific Council had been pushing the
3 idea that they would be the action agency instead
4 of Sustainable Fisheries being the action agency
5 in the Protected Resources deliberations, and so
6 we've analyzed that. We've analyzed being an
7 applicant. Councils as applicants. And we tried
8 to identify the pros and cons and additional
9 considerations with all of those. So those are in
10 the document, but in the end, we settled on this
11 idea of an invitation through a memo from National
12 Marine Fisheries Service to the councils to
13 request what level of involvement they would like
14 throughout the process when there is a situation
15 where there's a species-specific Fisheries
16 Management issue that needs to be addressed. And
17 so this is kind of background on how we arrived at
18 that recommendation that we just reviewed with you
19 a few minutes ago.

20 Any other comment or question about that
21 section of the report?

22 DR. HOLLIDAY: Thanks, Julie. First,

1 I'd like to commend you on the workgroup. They
2 did a fabulous job under some very difficult
3 circumstances of the challenges in front of the
4 group. And you mentioned earlier the members of
5 MAFAC who worked on this, but one of the unique
6 features of this was that it was a joint council
7 Fisheries Service and MAFAC endeavor. And I'm
8 wondering if you would be willing to characterize
9 sort of the council perspective or support of this
10 first recommendation and, you know, was there --
11 clearly they had particular ideas going in. If
12 you could just -- since they're not here to
13 represent their perspective, if there were any
14 characterizations you'd want to share about how
15 they felt about this particular recommendation,
16 without putting you on the spot to speak for them,
17 but it was a collaboration and that's something
18 that I think is important for the committee to
19 know about.

20 MS. MORRIS: Do you want -- what would
21 you like to say, Stan?

22 MR. ROGERS: I don't know if I could

1 characterize that so much.

2 MS. MORRIS: As you can see, later in
3 the document, two key members of the subgroup that
4 came up with this recommendation were Asuka
5 Ishizaki from the staff of the Western Pacific
6 Council and Jim Lynch, who is on the SSC from the
7 Western Pacific Council. And so I think they were
8 the most agreed council in these processes and
9 they had the most passion and juice to make sure
10 we got someplace that was more workable for them.
11 And I think that, you know, working closely with
12 Stan and Pamela Lawrence and Marian Macpherson
13 from -- I mean, the critical thing was getting
14 that kind of group that represented different
15 expertise and different interests to really --
16 they were the people who really ground out this
17 idea of, let's be flexible. Every council doesn't
18 want the same set of pathways to involvement that
19 other councils do, so the kind of flexible, let's
20 have mechanism for council to request involvement
21 and for National Marine Fisheries to decide what
22 level of involvement makes sense legally and in

1 the context that they work was something that I
2 think was very strongly supported by the people
3 from WESTPAC in that working group and then was
4 embraced by the other four council members of the
5 larger working group when we got to this place.

6 Did you want to say something?

7 MS. BONNEY: I want to ask a question
8 because you said two different things.

9 So NMFS sends a letter to the council
10 inviting them to be a part of a process and
11 develop an MOU? Or does the council make the
12 request to the agency? So which is it? Who makes
13 the initiation?

14 MS. MORRIS: So what we had envisioned
15 was that NMFS would write a memo to the council
16 saying if you want to talk with us about a
17 different kind of a role for this Fishery
18 Management action that is engaged with Protected
19 Species, send us a request. And then the council
20 responds to that by articulating a request about
21 what kind of involvement and what points of
22 involvement they think they would desire.

1 Do I have that correct?

2 MR. ROGERS: That's correct. And
3 without any special designation. So this is not
4 requesting applicant status or any special status;
5 it's just working through the action agency of
6 being Sustainable Fisheries to help assist with
7 the planning and the consultation. So help in the
8 preparation of biological assessments, provide
9 scientific information on the fisheries, whatever
10 it might be that may aid the action agency in that
11 consultation. So, better dialogue. And that can
12 result in a formal type of arrangement where
13 there's some type of agreement saying we're going
14 to form an IPT to discuss this specifically, or it
15 can be very informal of just regular communication
16 and dialogue, that type of thing.

17 MS. MORRIS: Anything else on that part
18 of the report?

19 Back in May, when we were talking about
20 our interim report -- our preliminary report, and
21 Sam was meeting with us, he said, you know, can
22 you come up with some models of interim actions or

1 quick actions that have taken place that, you
2 know, when you don't have time for the kind of
3 full plan amendment deliberative, step-by-step
4 process that we're really talking about in the
5 earlier part of the group. So this is an attempt
6 to address that request from Sam.

7 So we found two examples, again from the
8 southeast, in which something came up suddenly and
9 the Council and Protected Resources and
10 Sustainable Fisheries had to respond quickly to
11 something that they hadn't really anticipated.
12 And so we've included those in the report. One
13 has to do with a pot fishery in the South
14 Atlantic, the Black Sea bass, and suddenly there
15 was -- the rebuilding had been successful. The
16 ACL was going to increase. That was going to
17 allow the pots to be in the water during the same
18 time that the large whales were in the South
19 Atlantic waters and there was a strong potential
20 for entanglement if both -- if the whales and the
21 gear were in the water at the same time. And so
22 the normal re-initiation of consultation would

1 have taken a full year and the fishery would not
2 have been able to open and take advantage of the
3 additional ACL. And I think everybody worked
4 together and came up with a regulatory amendment
5 that allowed the fishery to open that year, but
6 just there was a seasonal closure during the time
7 that the large whales were on the fishing grounds.
8 And I think it took about six months to wrap that
9 all up and pass the regulatory amendments. So
10 that seemed like a good example.

11 The other is an example from the Gulf of
12 Mexico. It's a bit more complicated, but there
13 was a need to reinitiate consultation because new
14 data had come in from observer studies to the
15 Science Center that the incidental take statement
16 was being exceeded for sea turtles in the bottom
17 longline reel fish fishery in the Gulf of Mexico.
18 In that one, there were some interim actions,
19 temporary six- month long emergency rules were
20 adopted that applied some conservation measures
21 for the fishery that reduced the impacts we
22 believed to sea turtles, and that was -- so the

1 interim actions with greater conservation were in
2 effect while a full plan amendment was developed
3 with more durable sea turtle conservation measures
4 in place. And so that was, you know, we had the
5 interim actions in place over about a nine month
6 period, and then it took about 16 months to get
7 the full amendment passed.

8 So those are just kind of food for
9 thought. There's not a strong recommendation for
10 any particular action by NMFS or the councils on
11 that, but just some examples of the process
12 working more quickly than usual when something
13 comes up that was unanticipated.

14 Is there any question or comment about
15 that?

16 MR. RISENHOOVER: Just one thing. So it
17 sounds like you've included some examples here of
18 maybe best practices that, you know, perhaps the
19 process wasn't as broke as some thought it was in
20 some areas, and we could point to examples where
21 under current authorities or current guidelines or
22 current practice it was working. So I think that

1 will help the council as well.

2 And also the part about frontloading.

3 On more of the Magnuson/NEPA side, we've over the
4 years really tried to frontload that as well. So,
5 you know, we've talked about that as a regulatory
6 streamlining, but it had always been
7 Magnusson/NEPA. Now, maybe we've expanded that a
8 little bit to ESA, and I think it just highlights
9 the examples. If you look through them, I think
10 you can probably find is that early consultation,
11 early discussion, problem solving before you get
12 to that end of I've got a document and I can or
13 can't show you or can or can't tell you what's in
14 it. So I think having some of those examples will
15 help folks realize that, yeah, the solutions can
16 be had now; we just need to highlight those and
17 maybe integrated it in a little bit more of the
18 operational guidelines we use under Magnusson or
19 some of the regional operating plans that we're
20 trying to finalize with the councils now anyway.

21 MS. MORRIS: The other major focus of
22 our work had to do with improving the transparency

1 of data and the scientific basis for biological
2 opinions. If you're paging through the report,
3 that comes up, I don't know, your version page 16
4 or 17.

5 So, again, we have a recommendation.
6 And let me say as I introduce this, that Pam
7 Yochem was on the subgroup with Stan on developing
8 this one.

9 So the working group recommends that the
10 National Marine Fisheries Service develops a
11 national policy on the application of best
12 scientific information available standards to ESA
13 section 7 consultations. This would include
14 biological opinions and informal consultation to
15 further implement and clarify existing policy and
16 information standards under ESA. And so we
17 focused on the MSA specific consultations. It's
18 possible that this recommendation would apply to
19 all ESA section 7 consultations regardless of who
20 the actual agency is.

21 There are already various internal
22 procedures that pertain to best scientific

1 information available, such as ESA consultation
2 quality assurance reviews and information quality
3 act pre-dissemination reviews. And we're not
4 recommending any specific procedures at this time
5 but we think NMFS should consider whether standard
6 procedures are needed.

7 And so we think that a policy would lead
8 to more and more systematic discussion within
9 biological opinions about how the agency ensured
10 that the opinions used best scientific information
11 available. And an important goal of the policy is
12 not just ensuring the use of BSIA but also
13 increasing the transparency of the agency's
14 considerations of what it considers BSIA -- of
15 what constitutes BSIA, both in general and in
16 relation to specific issues.

17 The agency's recent rule regarding BSIA
18 in the context of National Standard 2 is a useful
19 starting point for this ESA policy development,
20 and then the group went on to identify some key
21 factors that could be used to rank the relative
22 strength of different sources of information and a

1 framework that the agency should carefully
2 consider incorporating into the policy.

3 So the major recommendation is that the
4 National Marine Fisheries Service develop a
5 national policy on how to apply best scientific
6 information available standards to its ESA
7 consultations.

8 And then, backing up the
9 recommendations, these are some things to think
10 about in that policy that the subgroup came up
11 with. And so the categories are about data, the
12 relevance of the data, the timeliness of the data,
13 the objectivity, the transparency, the
14 verification, the validation, the certainty, and
15 the source of the information.

16 So any questions or comments about that?

17 CHAIRMAN RIZZARDI: Julie, I was very
18 impressed by this portion of the report. I like
19 the way it combed through the different kinds of
20 data and made an effort to rank it, so I think you
21 did a great job on this.

22 As I was reading through it, it struck

1 me that many of the concepts overlap with the Data
2 Quality Act, and it looks a lot like the Data
3 Quality Act uses a lot of the same terminology.
4 So then I was digging through the NOAA Data
5 Quality Act policies, and they're only at the NOAA
6 level. I didn't see any drilled down to NOAA
7 Fisheries. So what struck me is that a way that
8 this could easily be implemented is for NOAA
9 Fisheries to have a DQA policy that was responsive
10 and that embraced these principles and these
11 points. It's just one way for this to be
12 implemented. I just wanted to point it out.

13 MS. MORRIS: Pam, would you like to make
14 any comment on this section?

15 DR. YOCHER: I think the similarities
16 are intentional. You know, try not to reinvent
17 the wheel with regard to what's already out there,
18 but also to incorporate this concept of somehow
19 ranking the quality of information as is done
20 with, you know, the place we started was with
21 biomedical information. And when drugs are being
22 decided for approval when the Federal Government

1 evaluates things like that, they evaluate the
2 evidence, they rank the evidence, and so that was
3 something that we felt could be incorporated in
4 other areas as well.

5 DR. HOLLIDAY: It's not a question, just
6 a point of information based on Keith's
7 intervention.

8 There is a Fisheries Service Data
9 Quality Act policy. So that would be the logical
10 place to amend or revise that to include this.
11 So.

12 MS. MORRIS: I guess I would invite Paul
13 and Columbus to make any comments they'd like to
14 make about the report at this point, if you have
15 anything you'd like to add. It's okay if you
16 don't.

17 MR. CLAMPITT: I really haven't -- other
18 than it was -- everybody that was involved in this
19 had the same goals, and it was a cooperative
20 effort, and it was well worth doing.

21 MS. MORRIS: So, Keith, at this point, I
22 think our CCC colleagues on the working group were

1 asking whether this report was going to go to CCC
2 and then to NMFS or whether MAFAC was the stopping
3 point. At this point it's a working group that
4 represents both people from the councils and the
5 agency and MAFAC that has developed a report
6 collaboratively that's being presented to MAFAC,
7 and we're a little -- if MAFAC endorses the report
8 in the next like half hour and says, yes, we think
9 this should go forward, we're not sure where it
10 goes forward to. So we're looking for some advice
11 about that.

12 CHAIRMAN RIZZARDI: My understanding is
13 that the working group was formally organized
14 under MAFAC's umbrella, and we got participation
15 and feedback from the councils, and it is ours to
16 now adopt and to refer to NOAA Fisheries. I'm
17 sure that in the subsequent implementation efforts
18 they would be advising the CCC along the way,
19 communicating with them, but that's for the NOAA
20 Fisheries folks to deal with. I think for our
21 purposes, we get to vote, discuss, and adopt or
22 not this recommendation, pass it on to NOAA

1 Fisheries, and let their staff tackle what to do
2 with the councils.

3 MS. MORRIS: So Mark, you look like you
4 were about to make a comment. Is that --

5 DR. HOLLIDAY: I was going to just say
6 basically the same thing with respect to the terms
7 of reference for the committee and who organized
8 and was reporting to the NOAA administrator.

9 MS. MORRIS: Well, if there are no more
10 comments or questions about the report, then I
11 would -- is it a motion to approve or what action
12 would you like to take at this point?

13 CHAIRMAN RIZZARDI: Sure.

14 MS. MORRIS: A motion?

15 CHAIRMAN RIZZARDI: Yes.

16 MS. MORRIS: So I would move that MAFAC
17 accept and approve the final report of the ESA
18 working group.

19 DR. YOCHER: Second.

20 CHAIRMAN RIZZARDI: Motion by Julie,
21 second by Pam.

22 Discussion on the report? None at all.

1 Okay. I'd like to commend the committee on an
2 exceptional effort. I think the report is
3 professional. I think the diagrams and the charts
4 are very helpful. I think it demonstrates a lot
5 of tremendous work. I think you all deserve a lot
6 of respect and kudos for all your hard work.

7 All those in favor?

8 (Motion passed)

9 CHAIRMAN RIZZARDI: Okay.

10 Congratulations, Committee. Thanks for your work.

11 Julie.

12 MS. BONNEY: So, I mean, we kind of sent
13 it into orbit, so to speak. Do we get some kind
14 of a feedback loop in terms of getting what NMFS
15 -- what happens at the CCC? What does NMFS do in
16 terms of the recommendations? I mean, is this
17 just -- is our work done or are we going to get
18 feedback, I guess?

19 CHAIRMAN RIZZARDI: Mark, would there be
20 an opportunity for us to present this to the CCC
21 down the road for Julie or I to go to one of those
22 meetings? And when would the next one be, and

1 would NOAA staff want that to happen?

2 DR. HOLLIDAY: Yeah. I'll beg off on
3 that question and try to address Julie's more
4 generic question first, which is the feedback one.
5 Generally, recommendations made by the Committee
6 to NOAA or to the Fisheries Service are
7 transmitted to Sam or to the assistant
8 administrator, who staffs out the recommendations
9 for analysis by the respective office, either
10 Sustainable Fisheries in this case -- well,
11 Sustainable Fisheries and Protected Resources.
12 And then the course of action is the
13 implementation and operation, there would be a
14 feedback, and we cover that as part of the action
15 items at future meetings and reports back through
16 the Protective Resources Subcommittee, because
17 there will be likely questions and, you know,
18 further discussion of the contents of the report
19 as it moves on.

20 With respect to presenting at the CCC
21 and how that implementation operationalizing of
22 the recommendations, that's certainly an option.

1 I'm not sure what the agency's perspective is on
2 the specific questions right now. I wouldn't want
3 to presume to speak on behalf of SF and PR without
4 them having even looked at it. So that's the
5 generally the process. The answer is yes, it
6 would be a feedback loop.

7 MR. RISENHOOVER: And I do think the
8 opportunity to hear from the CCC is out there.
9 And the next meeting is February, Emily?

10 MS. MENASHES: Yes. It's the middle of
11 February. It's the President's Day week. It's on
12 Wednesday, the first day back.

13 MR. RISENHOOVER: So middle of February
14 is the next CCC meeting. So as Mark said, we'll
15 take a look at the information you've transmitted
16 to us and see what the next step is. But again, I
17 think as a product this looks really, really good.
18 I want to go through, read it, and I'll talk to
19 Stan and the attorneys a little bit more about it
20 but I think the involvement you had with both the
21 agency and the councils probably resulted in a
22 pretty solid document. So, I don't see any

1 problems there.

2 CHAIRMAN RIZZARDI: All right. I see
3 that the green light on the coffee has finally
4 clicked on, so we'll take a 10-minute break and
5 then we'll get started with the Seafood
6 Certification discussion.

7 (Recess)

8 CHAIRMAN RIZZARDI: Okay. We're going
9 to get back in order, please.

10 Now that everybody's had a chance to
11 fill their coffee cups and pat each other on the
12 back for a job well done on the prior project,
13 we're going to move on to sustainability
14 certification and the MAFAC effort to make some
15 recommendations to NOAA.

16 Bob Rheault is filling in for George
17 Nardi, who is having a very busy week in his
18 aquaculture operations, so Bob, thank you for
19 stepping up today, and I'll turn it over to you.

20 Seafood Certification Workgroup Report Out

21 DR. RHEAULT: I'll try and see if I can
22 fill George's ample shoes.

1 So responding to a perceived need that
2 was identified -- wasn't on the MAFAC, but
3 apparently several years ago, since '06, this
4 group has been working on the desire to establish
5 a seafood sustainability certification process.

6 The idea is that we would certify a
7 product as being sustainability harvested and
8 follow that product through a chain of custody as
9 it passes through commerce. There's really no
10 intention to replace or displace the existing
11 certification schemes that have been popping up.
12 It certainly would not replace something as
13 well-established as the MSC standards, which are
14 intended more for international use and for the
15 larger fisheries that have already invested in
16 those programs. I would see no motivation for
17 them to want to jump ship and do this.

18 This program would be for domestically
19 harvested wild product in a federally managed
20 fishery initially, and primarily targeted at
21 domestic markets. The need has been identified
22 particularly by small producers, small fisheries,

1 and aquaculture producers in the U.S., that feel
2 that they are excluded from selling to some of the
3 major buyers who are rapidly adopting the
4 requirement for certified product, and they don't
5 feel -- these small producers don't feel they are
6 able to shoulder the costs of certification, and
7 so they feel they are being excluded from these
8 markets.

9 Traceability will be required. A chain
10 of custody will be required as it is with all the
11 other certification programs. It's going to be
12 one of the bars of entry. In addition, typical to
13 any certification process there will be a standard
14 setting process will be required. I don't believe
15 that all federally managed fisheries are going to
16 qualify, and if we attempt to do it that way, I
17 believe that a lot of the buyers are going to say
18 that this is an inadequate certification process.

19 So typical with the other certification
20 standards, there is a standard setting process,
21 which involves a multi-stakeholder involvement
22 where buyers, harvesters, NGOs, all are forced to

1 sit down and come up with a consensus on what the
2 standards should be accepted and what the bar for
3 sustainability would be.

4 As I said, we would start with federally
5 managed wild caught species, and eventually, we
6 anticipated incorporating state-managed fisheries
7 and aquaculture products. The cost-- there will
8 be some setup costs based on some of the work that
9 we asked staff to do. We anticipate that there
10 will be some setup costs. It looks like about
11 half a million dollars. We do project or we would
12 hope that there would be full-cost recovery from
13 the maintenance fees. In other words, once the
14 project program is established, the fees for
15 participation would cover the costs. There is
16 some question about legal cost estimates that
17 still remain to be resolved. Typically, in
18 discussing this with other groups, I participated
19 with World Wildlife on one of their projects.
20 There's three cost centers -- the standard setting
21 process, the auditing process, and then defending
22 and marketing the brand, if you will. In other

1 words, advertising and defending yourself in the
2 press when you get attacked. It's pretty much a
3 given that we will be attacked. Everyone else has
4 been, and so you need to be able to defend
5 yourself in the press and sometimes in the courts.

6 The benefits of this are domestic market
7 access for the small producers. The buyers -- and
8 we interviewed, Keith and I of the Boston Seafood
9 Show, interviewed, what, a couple dozen of the
10 larger buyers. They were overwhelmingly in favor
11 of this, with certain caveats, of course. Some of
12 them were, you know, well, I want to see what
13 you're talking about before I say I'm on board.
14 Some of them were, well, it depends on what you're
15 certifying. You can't say everything is
16 certifiable. Specifically, I recall a
17 conversation with the buyer for Samuel's Seafood
18 and was saying, you know, how can you say that
19 something that's overharvested and being
20 overfished can be sustainable? So there's going
21 to be discussions on certain aspects of this, but
22 as I say, overwhelmingly, the buyers thought this

1 was a good idea. The buyers like the
2 certification processes because it protects them
3 from a lot of legal concerns. You've all read
4 about horsemeat being sold as beef or pangasius
5 being sold as some high value fish product. When
6 you have chain of custody and traceability, it
7 pretty much eliminates that. It reduces fraud and
8 opportunity for product substitution and the
9 inherent bad press that always follows us when
10 those get discovered and exposed.

11 The UNFAO has cited that these programs,
12 especially the chain of custody programs, even
13 reduced illegal fishing. So the buyers, as I say,
14 are very supportive, and it appears based on the
15 cost analysis that staff have done that, you know,
16 since we're not asking for this to be a profit
17 center for NMFS, the costs are going to be greatly
18 reduced over what I've heard estimates of MSC
19 certification costs being in the range of \$10,000
20 to \$200,000. And just going over the cost
21 estimates that we've looked at, this might be in
22 the range of two to 10. So substantially less,

1 something much more affordable for our small
2 producers and harvesters. And largely because we
3 would be capitalizing on a lot of existing
4 resources within NMFS, FIS, and Fish Watch to do
5 the various aspects that I've described.

6 We went through and tried to answer many
7 of the most common questions that we encountered,
8 and those are in the back. I'd like to open it up
9 now and see if there's more questions that we can
10 address or answer better, or if there's concerns
11 that people have about how this might impact them.

12 Keith?

13 CHAIRMAN RIZZARDI: Thanks, Bob. I want
14 to supplement your comments with a couple of key
15 points.

16 First, this recommendation is not to
17 create a consumer-oriented certification program.
18 This is about business-to-business certification.
19 This is about empowering the buyers to know
20 whether or not the seafood product that they're
21 considering buy from a wholesaler is coming from a
22 sustainable source. One of the things we learned

1 through the process was the consumer-driven stuff
2 gets you into logos, it gets you into marketing,
3 and there was a lot of uncertainty as to the
4 benefit, and there were a lot of sellers in the
5 supermarkets and the ultimate end vendors saying
6 we are not even sure that the consumer cares. At
7 the end of the day, they see a logo and they will
8 often pick the cheapest fish anyway. So what we
9 heard overwhelmingly was they wanted some
10 mechanism that gave them assurances that the
11 seafood product was sustainable for their
12 purchases. They weren't as worried about what it
13 meant for the consumer. They said, "Leave that to
14 us. Our consumers trust us." So whether it was
15 the supermarkets we were talking to or a small
16 restaurant, our consumers trust us to make sure
17 that the fish we're buying is sustainable. What
18 we really want is for NOAA to help us and give us
19 a mechanism to know whether the fish that we're
20 buying is sustainable. So this recommendation
21 focuses on the business-to-business component.

22 It also relies on Magnuson. We have set

1 the global benchmark through that statute. We've
2 set the standard. We've got a law that is the
3 model of certification programs. The data that's
4 collected under Magnuson is what's being used by
5 the third-party certification programs when they
6 come to the United States to make decisions on
7 whether a fishery is sustainable. And we said,
8 "Why does a U.S. fishery that is operating
9 appropriately under Magnuson need a third-party
10 certification?" And the answer to that was often
11 because the buyers weren't quite sure where it
12 came from. They didn't know. They needed better
13 information, and they would resort to looking to
14 the third-party certifications as a quick and easy
15 tool for making sure that the seafood they were
16 purchasing was sustainable. What they were asking
17 repeatedly was for NOAA to give them an easy way.
18 Isn't there some way to take Fish Watch, they
19 would say, and make it a little bit more robust
20 and give us a way to know whether or not the
21 particular product is coming from the sustainable
22 source?

1 So that was the effort that we were
2 trying to solve here. Again, it's not intended to
3 replace the logo programs, and if companies decide
4 that they want to have a consumer-oriented seafood
5 certification, they can. They can choose to
6 participate with these third parties and
7 nonprofits, but from a business-to-business
8 standpoint, that was the problem we were trying to
9 solve.

10 MR. WALLACE: The other thing that I
11 would like to address is the notion that seafood
12 in the United States from the NGOs is getting a
13 bad name because there's a lot of substitution,
14 fraudulent substitution of inexpensive fish for
15 expensive fish. This system, at least for
16 domestically harvested product, would alleviate --
17 for those that are certified under it, would
18 alleviate that, and a lot of the businesses that
19 buy seafood are very concerned that they know what
20 they are buying, to take it out and have it
21 genetically tested to confirm the species of the
22 fish is, number one, very expensive, and number

1 two, very time consuming, where this traceability
2 from the catcher to the ultimate distributor or
3 retailer who is selling it, at least they know
4 where this certified fish has come from. It is
5 against the law -- the current law -- to
6 substitute one fish for another, and everybody
7 needs to understand that the enforcement component
8 of this is taken up through the inspection
9 services when imports come into the country, the
10 Fish and Wildlife Service, the National Marine
11 Fisheries Service, the FDA. So all we are doing
12 is providing a tool to protect the consumer and
13 the buyer from illegally marketed fish from any
14 other source. And so we really believe that this
15 will be an advantage to the citizens of the United
16 States. Thank you.

17 MR. RISENHOOVER: Thanks, Bob. And
18 again, I haven't had a chance to read this in
19 detail. But just a couple quick questions. In
20 going through, you mentioned that not all U.S.
21 harvested stocks or fisheries would qualify. So I
22 went to your criterion and was looking at that.

1 And so it says we have to know the status of the
2 stock. Right? Okay. So we have data on that
3 from a scientific basis. That's fairly easy. But
4 my question revolves then around ones that are
5 either subject to overfishing or are overfished.
6 If they have a rebuilding plan in place or some
7 sort of accountability mechanism to end that
8 overfishing, at what point would they be
9 certifiable or able to be registered? Is it just
10 -- if they're designated as one of those two
11 conditions --

12 DR. RHEAULT: Let me just -- if you turn
13 your mic off, I can turn mine on.

14 So there is going to have to be a
15 standard setting process, and it's a very ugly
16 process. You can't just assume that all fish are
17 going to qualify because that is going to be a
18 laughable program that no one is going to support.
19 But through a multi-stakeholder process, we are
20 going to have to reach a consensus about where to
21 draw the lines and what are the criteria that
22 determine it. And I do not anticipate that we're

1 going to do that here today, now, because I've
2 done this. It's not fun. It's very challenging.
3 But it's a key part of every single sustainability
4 certification program out there to determine where
5 you draw the line, what's acceptable and what's
6 not acceptable, and those arguments are going to
7 have to go on, and I expect NMFS to stand up and
8 defend, you know, the program that they've
9 established, and they will be attacked and
10 challenged, and there will be some very
11 interesting arguments, and I look forward to it.

12 But let us please not do that here
13 today. Keith? Julie?

14 CHAIRMAN RIZZARDI: Alan, I want to
15 point out that in the question and answers that
16 was probably the most common question that came
17 up, was what happens if you're in rebuilding. And
18 if there is a rebuilding program, and if the
19 criteria are being met under the rebuilding plan
20 and the accountability measures are being
21 implemented, and there's a certain amount of fish
22 that's been concluded to be acceptable, to be

1 allowed to be caught, we are saying that is
2 sustainable. That is still a certifiable product
3 as long as the fishery is staying within the
4 confines of that plan. Now, if subsequently
5 overfishing continues and we don't meet the terms
6 of the plan, then we probably have to have a
7 different situation where it may no longer be able
8 to be registered, certified, and be sold as
9 sustainable product. But, if you have
10 overfishing, if you have overfished, if you
11 implement a plan, if you implement accountability
12 measures, the fishery adheres to them, product
13 reaches the marketplace. That product is
14 sustainable. That's the whole point of Magnuson.
15 We are saying that while it's in rebuilding, a
16 certain amount of fish is allowed to be caught
17 because that portion is sustainable. It is
18 allowing the fishery to rebuild. It may take
19 time. We won't have as much of the product on the
20 market, but the amount that is available to the
21 marketplace should be certified as sustainable.
22 That's the whole point of Magnuson. We are saying

1 that while it's in rebuilding, a certain amount of
2 fish is allowed to be caught because that portion
3 is sustainable. It's allowing the fishery to
4 rebuild. It may take time. We won't have as much
5 of the product on the market, but the amount that
6 is available to the marketplace should be
7 certified as sustainable.

8 DR. RHEAULT: Let me just say again I
9 really hope that we don't try and resolve this
10 here today, because we will be here for the rest
11 of the month.

12 Julie?

13 MS. BONNEY: I guess I would refer
14 people to page of the document that's outlined,
15 which basically outlines exactly what Keith is
16 saying, which talks about overfishing and
17 overfished. So in other words, it's suggesting
18 that the Magnuson, as long as you're within
19 compliance with the Magnuson Act in terms of those
20 two criteria, then your fishery is considered
21 sustainable. So, I think we're covered there.

22 I guess I'm wondering process-wise, the

1 way that one is the cost structure. We had a cost
2 structure document that was sent out early on, and
3 based on this it suggests that we're talking about
4 \$2-\$2.5 million, and so it seems to me -- and
5 there is a holding cell in this that talks about
6 the fact that that item isn't understood now.
7 From an Alaska constituency base, I think there's
8 a concern that we're going to reprogram the NMFS
9 budget if we launch with this program. So I think
10 from my perspective, I want some insurances that
11 it's going to be a fee-based program that will
12 cover the cost of the program and that we're not,
13 you know, launching something that's going to kind
14 of move into the orbit in terms of overall costs.
15 So I don't know, you know, if we go ahead and move
16 forward with the process, when are we going to get
17 some security about costing structure for this
18 type of program? And I don't know if that's
19 something that the agency can answer or how the
20 process moves forward so we can understand that.

21 I guess my other comment, and this is
22 just a process issue, is if you look at our

1 schedule, we're supposed to talk about this before
2 lunch and then talk about it after lunch, and we
3 have a time period for the public to interact with
4 us. So I'm assuming that we're going to get
5 public comment before we make some kind of
6 recommendation. So hopefully that's -- I probably
7 threw too much out there, but one is I think the
8 definitions in terms of Magnuson, and how we move
9 forward with what's sustainable, is well described
10 in the document. Two is I want to make sure that
11 we hear from the public before we take action.
12 And three is I want to understand how much this
13 costs.

14 DR. RHEAULT: So let me just address one
15 and two and then Mark wants to address number
16 three, I think, and then Michele, and then
17 Columbus.

18 So, I believe that, you know, there's
19 going to have to be some flexibility and
20 discussions about what standards are acceptable.
21 I don't believe that we're just going to say
22 blanketly any federally managed fish stock is

1 going to be certifiable. There are going to be
2 discussions with buyers and they really -- if we
3 don't accommodate their desires, then we won't
4 have a program that works for our producers and
5 harvesters. So the buyers are going to really
6 drive this. If the buyers are happy with our
7 criteria, then that's great. But it's going to
8 have to be a negotiated process. The cost
9 estimates, as I look at them, there's setup costs
10 of around a half a million. The rest of the costs
11 appear to be costs that would be recovered through
12 a fee-based fee-for-service, but it does look like
13 there's a setup cost that would be a challenge to
14 recover through a fee-for-service, depending on
15 how many people sign up initially. There will be
16 a setup cost. I'm not going to be naïve. And
17 there is that block that we have identified that
18 we don't know what the cost is.

19 And then Mark, you wanted to make a
20 comment pertaining to the public?

21 DR. HOLLIDAY: So it was just a point of
22 information that all FACA committees are required

1 to afford an opportunity for public comment, but
2 that the process of getting consensus advice from
3 a FACA committee is not dependent on receiving a
4 public hearing process or receiving public
5 comments on it. I would point out that the
6 committee has used three or four different
7 opportunities to capture information to inform
8 itself from the public and from constituents and
9 stakeholders, you know, during the last year, from
10 the Boston Seafood Show, the survey process,
11 interview process. But advice from MAFAC is
12 advice from the members who were appointed by the
13 secretary of Commerce based on your expertise,
14 your knowledge, your experiences, which is
15 different than the public participatory process of
16 a council, for example, where the Administrative
17 Procedures Act requires certain time intervals
18 where the public has an opportunity to inform and
19 participate in promulgating a regulation.

20 So the clarification I think is relevant
21 here because we're not -- we put on the agenda
22 public comment as we do for all meetings. It

1 wasn't specifically to receive comment on this
2 recommendation prior to the committee taking a
3 vote. I hope that clarifies the difference.

4 MS. LONGO EDER: Thanks, Bob. First of
5 all, I want to say thanks to George and all of the
6 subcommittee members for really hard work and
7 discussions on this. It was a privilege to
8 participate in the Seafood Certification
9 Subcommittee. Thank you.

10 That being said, I am a dissenting voice
11 on the Seafood Certification Subcommittee in terms
12 of the recommendation that the subcommittee has
13 made to MAFAC. And I don't support the
14 recommendation that MAFAC recommend the seafood
15 certification process to be implemented by NOAA.
16 And I'd like to just address some of the reasons.

17 First of all, I think maybe the
18 committee might consider that this isn't yet ready
19 for prime time in terms of a recommendation to
20 NOAA. Just in the five minutes or so we've been
21 discussing it, I've heard two conflicting messages
22 from two members of the committee -- Bob Rheault

1 and our chairman, Keith Rizzardi, in regard to two
2 issues. One, Bob Rheault was talking about a
3 standard setting process for these fisheries; that
4 there's going to have to be some kind of
5 discussion and coalition and getting together
6 about whether or not a fishery could be certified.
7 Keith has referenced the fact that in the proposed
8 plan that even if a fishery is designated as
9 overfished, if it's under a rebuilding plan, we
10 anticipate -- the committee anticipates that that
11 would be, in and of itself would be included in a
12 fishery that could be certified. And I think the
13 committee may also recall that the original intent
14 was that if it was a federally managed fishery and
15 it wasn't overfished, it should be certified. So
16 there's one area where the committee really isn't
17 still clear on the issue it brings forward before
18 the full committee.

19 The second one is a discussion by Bob
20 that this has to do -- this is for the small
21 producers, as opposed to Keith identifying it as
22 this is a business-to-business recommendation,

1 that this is for the buyer and a wholesaler, that
2 somehow this is a certification that doesn't
3 involve the consumer. There's an implication it
4 doesn't involve the fisherman, but it's somewhere
5 in this mid-chain line. And I think that again is
6 an issue that has not yet been resolved in the
7 committee. And that's not because the committee
8 hasn't worked hard at it; it's because these are
9 -- the certification process, this discussion has
10 been a very complex issue. So those are just a
11 couple of general concerns that I have just even
12 within the first five minutes of this discussion.

13 I think as a -- to give some context
14 about where I'm coming from in my perspective and
15 who I think I represent, commercial fishing, a
16 small business that participates in both
17 state-managed and federally-managed fisheries,
18 just a few crews participate in several fisheries
19 on the West Coast.

20 The first thing I want to say is that I
21 think that FishWatch is excellent, and my driving
22 message to the committee is that FishWatch is

1 where our efforts should be directed. Making sure
2 that's fully funded. Giving that communication
3 opportunity to the public, whether it be to the
4 end-consumer or to the business, that FishWatch is
5 a vehicle by which we can promote U.S.
6 Federally-managed, under-Magnuson-Act fisheries.
7 It's a relatively recent program in the last
8 couple of years I believe that the site has been
9 launched. I think it has tremendous potential,
10 and I think that the technology available, whether
11 it's Smartphones or whatever, that the potential
12 for any business or any consumer to access
13 information about whether or not the seafood it's
14 buying has been sustainably harvested by a U.S.
15 Fishery that's federally managed, that that
16 information is accessible.

17 There is development of other technology
18 that is coming forth, such as a technology called
19 Fish Tracks. You'll see it in different forms,
20 but basically it is identifying a fish with those
21 lines and you're able to actually scan a fish with
22 a tag while you're sitting at dinner and be able

1 to identify what fishery, who caught that fish,
2 and on what boat. So there are ways to
3 communicate to the consumer how fisheries are
4 managed.

5 The second -- but not just the consumer
6 but also has Keith has raised, to the businesses.
7 Can we tell, is this a federally-managed,
8 sustainable fishery? And you can.

9 The next issue is, for me, NOAA
10 resources. I think the point has been made by
11 others, and earlier, and we heard it from Mr.
12 Doremus in terms of the budget set, in terms of
13 constraints, in terms of cost reductions, and the
14 uncertainty of sequestration, whether it will
15 continue, whether it will continue as a straight
16 cut-across, or whether there will be some
17 flexibility. Regardless of that, the agency is
18 going to continue to take cuts.

19 I think our budget message as a
20 committee has been to emphasize science. I
21 support and recall Dave Wallace's comment that our
22 budget message to the agency was fund science.

1 This isn't funding science, and I don't think this
2 is a core mission of the agency or what we should
3 support. Science, again, is the mission.

4 As I talk about what does it mean to an
5 individual commercial fishing business, a
6 certification program and the cost, the cost
7 estimates that MAFAC has gotten so far have just
8 been, you know, taking a decent shot at it. We
9 really have no idea at this point what the costs
10 are going to be of this program, and I think that
11 before the subcommittee makes any recommendation
12 to the full committee, we're not there yet. There
13 is discussion about we don't want this to cost
14 more out of NOAA's budget. Well, I can tell you
15 as a fisherman, I don't want to pay for this
16 program.

17 Let me tell you the kind of costs that I
18 pay for when our product comes across the dock.
19 We deliver fish. We pay for federally-managed
20 fish. We pay a state landing fee. A state tax
21 comes off the top. We pay what are called buyback
22 fees, fleet reduction fees. We pay observer

1 costs. There is some subsidy. It's decreased.
2 It's going to go away. Next year, off the top
3 we're going to be paying a 3 percent recovery fee
4 for our federally-managed fishery. There's four
5 costs that are significant that exceed -- that are
6 at least 10 percent of what our gross revenue is
7 before bait, fuel, ice, insurance, other fixed
8 costs, crew.

9 The commercial industry, I don't think
10 you can say as a whole, is coming to NOAA and
11 asking that this program be pursued. I can tell
12 you that -- or let me say this. As a small
13 producer, please, don't do me any favors. I
14 participate in some fisheries that are certified
15 by MSC. I participate in other fisheries that are
16 not certified by MSC. And I don't -- I already
17 paid those costs. I simply don't want the federal
18 government to help me anymore.

19 I don't agree with the concept that-- I
20 don't think that the surveying that this is
21 something that industry wants has been sufficient
22 to justify a MAFAC recommendation to NOAA. I

1 appreciate the efforts at Boston Seafood that
2 committee members have made talking to major
3 buyers of seafood, as well as small producers,
4 perhaps. I recognize that there are differences
5 in regional needs throughout the country -- that
6 one region may need something a little bit
7 different than another region, but I fail to see
8 that there is any real --that we really have
9 reliable data on which to make this recommendation
10 to a federal agency to enact a new program, that
11 this is something that buyers, fishermen, middle
12 men actually want. We do not have -- we don't
13 have good data, and that's just how I feel in
14 terms of making this recommendation to a federal
15 agency to spend taxpayer money.

16 I appreciate the time right now that the
17 committee has allowed me to speak. I have more to
18 say. I assume you're probably not surprised by
19 that, but I'm going to stop at this point just to
20 give you some -- a framework of where I'm coming
21 from on this issue and hope that as I've listened
22 to other comments -- I have more to add, but I

1 will hold any further comments for further
2 discussion because I think I've probably had
3 enough indulgence from this committee at this
4 point. Thank you.

5 DR. RHEAULT: Thanks, Michele. Keith,
6 I've got Columbus on deck, but if you've got
7 comments, please.

8 CHAIRMAN RIZZARDI: Just a few quick
9 things. I appreciate Michele's passionate and
10 heartfelt position. And I think on some few
11 things, she's right. We are still in subcommittee
12 discussion on this. This is not done. And one of
13 the reasons we're having this dialogue is to
14 continue to enhance this document and to get the
15 feedback that we need to make this a better
16 document. I totally agree that FishWatch needs to
17 be continued to be invested in and is a major part
18 of the solution and outreach. And I think for
19 fishermen like Michele, they don't need this
20 program. That's probably true. If you already
21 have a certification program that's working for
22 you, if you participate in a third-party process

1 and you're able to get your product to market, you
2 don't need this. And there are lots of businesses
3 out there that won't participate in this program.
4 That's a true statement. But I think what's been
5 missed in this dialogue is there are lots of
6 businesses that are struggling with barriers to
7 entry to the marketplace, and the reason that we
8 were suggesting this approach is because those
9 businesses are the ones saying we need a way to
10 communicate to the buyers that we're trying to
11 sell to that our product is sustainable, and we
12 don't want to have to participate in expensive
13 third-party branded logo programs. We're looking
14 for some less expensive way to do it, and that
15 again was the problem we were trying to solve.
16 We're not trying to create an expensive program
17 for NOAA, and if this is too costly, I, too, would
18 not be endorsing it. I'm very conscious of NOAA's
19 budgetary needs, and I think we should be all
20 striving for something that is affordable, both
21 for the fishermen and for NOAA. This is supposed
22 to be a low- cost item. We've gotten cost

1 estimates from Mr. Hansen. Our intent is to build
2 on the existing resources of NOAA and to have the
3 fishermen be in a fee-for-service kind of
4 arrangement where they are paying for it so that
5 it's not going to be especially costly for NOAA.

6 So I wanted to make it clear that that's
7 the perspective of the subcommittee. We recognize
8 many of the concerns that Michele has raised. I
9 don't think this is done yet, but I'm looking
10 forward to continuing this dialogue, and I'm
11 hoping that by the end of the day, we can have
12 this document in better shape so that it can be
13 ready for prime time.

14 DR. RHEAULT: Columbus?

15 MR. BROWN: I regret that I didn't get
16 my comments to the subcommittee earlier. I was
17 distracted by some of the other comments that came
18 in from other places, and I didn't have a chance
19 to fully evaluate them before the meeting.

20 There are four things I want to speak to
21 that I think would enhance the report. And one of
22 them is to sort of, you know, address what is the

1 percentage of wild fish caught in the EEZ compared
2 to the state or the jurisdiction of Fisheries'
3 waters, to give ourselves a real feel for the
4 scope of the problem and the scope of what kind of
5 problems may be solved through this process
6 initially and later.

7 Two, I think that the Lacey Act needs to
8 be specifically mentioned and its role in the
9 process of helping keeping things straight
10 because, you know, it's illegal to pass one fish
11 for another, and I know the enforcement group at
12 NOAA and Fish and Wildlife Service have solved
13 some really important cases, especially involving
14 imported fish that were masqueraded as
15 domestically caught.

16 Third, I think that we need to clarify
17 examples of where the chain of custody breaks down
18 and what needs to be fixed in that process because
19 as I looked at the report, it sort of says it but
20 it doesn't really give you a feel for what, you
21 know, how bad the problem is, you know, what's
22 really broken.

1 And the fourth thing, I think the report
2 needs to really lay out is who benefits and who
3 loses because as we heard earlier, you know, there
4 are some small wholesalers, small fishermen that
5 may not benefit as much as others and I think it
6 should be clear as to who the beneficiaries are in
7 this process. Thank you.

8 DR. RHEAULT: Thank you, Columbus. Go
9 ahead, Tim.

10 MR. HANSEN: Thank you. Just listening
11 to all this, the fact that this has apparently
12 evolved into a B to B sort of arrangements, that's
13 where really the need is here I think really
14 simplifies matters quite a bit.

15 Just to point out, we, at the Seafood
16 Inspection Program, issue about 40,000 IUU catch
17 certificates to the European Union per year. And
18 what do we attest to? That the product in this
19 consignment is harvested from a Magnuson-Stevens
20 managed fishery. It seems to me that an
21 instrument like that for domestic purposes, if
22 that would be helpful, it's probably something we

1 could do quite easily. I don't know how helpful
2 that will be, but just to throw that out there
3 that that's a possibility and won't cause NOAA a
4 dime. Thank you.

5 DR. RHEAULT: Julie?

6 MS. MORRIS: Thank you, Bob. The thing
7 I like most about this is the traceability
8 aspects. I think that that is going to make the
9 most difference and is really positive. But it
10 also seems like it's kind of a paperwork
11 bureaucracy intrusion into the way fish move from
12 harvester to market. And so, sure, you talked
13 about the kind of tradeoffs and the costs and
14 benefits of that, but it doesn't -- you talk about
15 how it's going to be a fee-for-service thing so
16 it's not a new cost that has to be borne by the
17 government, but still, it seems like there's other
18 aspects of it that could be better discussed in
19 the recommendation.

20 I know you don't want us to talk about
21 the overfishing and overfish stuff, but when you
22 get to the point of determining those standards,

1 in my experience, once the council receives
2 determination that something is overfished or
3 undergoing overfishing, the data is already like a
4 couple years old, the fishery has been in that
5 state for a while, and then it often takes the
6 council a couple years to come up with new
7 management measures to address that and get it
8 into rebuilding. So there can be a three or four
9 year gap between when the fishery is actually
10 undergoing overfishing or is depleted or
11 overfished and when the rebuilding starts. And so
12 that's going to be a juicy thing to talk about in
13 the standard setting.

14 There's a suggestion here that there
15 would be a sort of priority sequencing starting
16 with the EEZ, and then moving to aquaculture in
17 the EEZ, and then moving to state fisheries. And
18 we heard yesterday from Bob and others that the
19 states are concerned about, you know, so the
20 federal fisheries are going to get the seal of
21 certification and what about us? We don't have an
22 opportunity to participate in that. So I'm not --

1 you know, the sequence maybe should be EEZ then
2 state programs and then aquaculture in either --
3 because they're definitely anxious about it and I
4 can see the risk that they're perceiving.

5 And then a final comment I wanted to
6 make was, is this considered kind of a pilot that
7 would be evaluated and adapted after an initial
8 period, or is it something that we would roll out
9 and see? I mean, what if people don't sign up
10 immediately, because they want to see whether it's
11 going to go or not? You know, there's kind of a
12 tipping point that it seems like you'll reach.
13 Have you thought about that sort of staging of a
14 rollout and how to decide whether it's going to be
15 successful and whether to go full bore? Those
16 kinds of things I would enjoy hearing some
17 comments about.

18 DR. RHEAULT: Thanks, Julie. Yeah, we
19 have -- I'll try and remember all of your points
20 -- but we've discussed the chain of custody issue,
21 the traceability quite a bit. Every single
22 certification program has a requirement for that,

1 and there are, that I'm aware of, 11 different
2 operations that provide some form of traceability.
3 And they've been evaluated. I can give you the
4 document where somebody very carefully went over
5 it. We would have to, in the standard setting
6 process, decide which of those would meet our
7 criteria. But in any case, traceability and chain
8 of custody is going to have to be an element of
9 this, as it is with all the other certification
10 programs, and that's a cost that is picked up by
11 the producer.

12 You went on to discuss the phasing, and
13 we understood that there are going to be
14 challenges in harmonizing with the state-managed
15 fisheries. And so we thought that we should see
16 if we could make it work on the federal level
17 first because that was pretty straightforward.
18 There are going to be challenges in harmonizing
19 with the state fisheries and aquaculture, no
20 doubt, but we thought we should address those at a
21 later date rather than trying to make this bar
22 incredibly high right off the bat.

1 I would anticipate this would be a
2 living document, a process of reevaluation based
3 on how it's working or not working. Getting it
4 right out of the gate is highly unlikely, but, you
5 know, I would anticipate that we would, you know,
6 reevaluate what we've come up with and see how
7 it's working on a regular basis every five or 10
8 years or something like that, depending on how
9 it's being perceived by the industry.

10 And I'm not sure if I remember your
11 other points but hopefully --

12 Anyone else? Discussion? Questions?
13 Please.

14 DR. HOLLIDAY: Just following up on
15 Columbus's question about catch in U.S. waters and
16 the EEZ versus the territorial sea. Just a quick
17 look-up: in 2012, 65 percent of the U.S. total
18 catch was taken three to 200 miles, 50 percent by
19 value, 65 percent by volume.

20 DR. RHEAULT: Thank you for that, Mark.
21 Please, Bob.

22 MR. BEAL: I think I pretty clearly

1 showed my cards yesterday as to where the states
2 are on this, so I want to jump into all the
3 criteria. No, I'm just kidding.

4 (Laughter)

5 MR. BEAL: I mean, I think if there are
6 criteria that are set that aren't directly linked
7 to national standards, you know, the states may
8 have an opportunity to evaluate their state
9 fisheries and interstate-managed fisheries with
10 the same criteria. There may be an opportunity
11 there for these criteria to apply across all
12 fisheries. But I don't know if NOAA would want to
13 be the judge and jury, or if the states would want
14 NOAA to be the judge and jury, at the end of the
15 day: whether, you know, American lobster, Atlantic
16 striped bass, Chesapeake Bay blue crab, whatever
17 it is, you know, if those should or should not be
18 certified. I don't know if that's the ideal
19 arrangement for either party. And I'm not sure
20 what the best arrangement would be. Is there some
21 review panel that's set up like a stock assessment
22 review panel that gets together once a year and

1 says, okay, here's, you know, we've got 15 stocks,
2 some are states, some are federal. They're up for
3 certification. What do you guys think? The
4 states are still thinking through this notion but
5 they just don't, you know, which I clearly, you
6 know, as Julie reiterated, the states just don't
7 want to be disadvantaged. They don't want a new
8 barrier to a market created by this. East Coast
9 is in a bit of a unique spot since we have the
10 ASMFC and their management authority that they
11 have, and then you have the lobster fisheries.
12 Kind of the prime example for us is it's obviously
13 a high value fishery, half a billion dollars a
14 year. And they're struggling with prices as it
15 is, and if they're having more trouble getting
16 into markets and they can't compete with federally
17 managed species, I think that's obviously a big
18 concern for the states.

19 The traceability is, I think, a good
20 thing to do if there's a way to do it efficiently.
21 I think there's a lot of other good ideas in this
22 paper. It's a lot of good work and a lot of good

1 thought into this. And the ESA paper from earlier
2 this morning. But I just think, you know, I think
3 the dialogue, it's a work in progress and I think
4 there's -- hopefully there's a way to incorporate
5 all the different fisheries and not disadvantage
6 the states or anyone.

7 The incremental approach, I think that
8 makes a lot of sense. I just worry about the
9 timing of that. If there's a federal process, to
10 get a federal certification plan in place, I can
11 envision that taking a couple years. And then if
12 aquaculture or states is next, whatever that is,
13 you know, if that takes a couple years or if
14 there's sort of less enthusiasm by the councils on
15 working on that or by NOAA because it's a state
16 issue, it could take a lot of time, and I think
17 that's a concern the states have.

18 DR. RHEAULT: I guarantee you it's going
19 to take a lot of time no matter what. To think
20 that this is a simple process, I think it would be
21 naïve.

22 Keith?

1 CHAIRMAN RIZZARDI: Yeah. I want to
2 follow up with Bob's point and Julie's point, and
3 I know you don't want to go here. All right? I
4 get it. But I mean, let's face it. We're a
5 stakeholder group. We're supposed to vet the hard
6 issues. That's what we're doing. And we've been
7 wrestling with this issue of what happens when you
8 have a fishery that is overfished and you don't
9 yet have a plan. Now, if there's a plan in place,
10 then you know that the catch -- what the catch on
11 it is. You stable the catch limit. You have a
12 good argument as to why that's sustainable. If
13 you're not overfished, there's no overfishing,
14 you've got a good argument why it's not
15 sustainable. That gap period is tough. Julie and
16 I had this conversation yesterday, you're raising
17 it now. It's the issue that Bob is trying to shy
18 away from again, but I'd like some feedback on
19 that. I'd like to know what people think about
20 that interim period. Can you certify the product?
21 Because one argument is once you identify that the
22 overfishing or the overfished status exists,

1 that's going to be dealt with when the plan gets
2 developed. So you can make the case that it's
3 still sustainable because it's going to be
4 embedded into the subsequent plan, and as long as
5 you adhere to the plan down the road, you can
6 still say the product is sustainable and you can
7 register it. Other voices would dissent on that
8 and say, no, not until there's a plan in place
9 should that product get a registration number and
10 should you be able to market it as sustainable.
11 And I'm particularly interested in hearing from
12 our advisors with the state commissions as to what
13 you think on that point.

14 MR. RAUCH: So not taking a position,
15 but let me just clarify what the delays in the
16 situation between overfishing and overfished is.

17 When we determine based on the science
18 that something is subject to overfishing now, not
19 historically, we will notify the councils in a
20 letter. The councils already have accountability
21 measures, that will automatically kick in to
22 prevent that overfishing from occurring, that will

1 address that. That's part of the most recent
2 Magnuson Act, was this preset reaction. So
3 overfishing is theoretically a temporary thing.
4 You find out about it, there's not supposed to be
5 a delay, but those measures kick in. That
6 overfishing label though may stay on the fishery
7 until the next stock assessment when we can verify
8 it. So it may well be that a fishery is
9 technically subject to overfishing, even though
10 the management regime has reacted automatically
11 and those measures are in place.

12 Overfished is a little different. If
13 you are overfished, we notify the council. They
14 have two years to put in a rebuilding plan to
15 rebuild that fishery. So there is a theoretic --
16 and there are no preset measures that go into
17 place if you're overfished. So there is
18 theoretically a gap between a determination of
19 overfished and the start of a rebuilding plan, and
20 that rebuilding plan can take a while before it's
21 rebuilt. So there is a transitional phase there.

22 However, if we are good at what we do

1 with overfishing, less stocks will ever get to
2 that overfished state now. But that's sort of the
3 situation we're in now. With overfishing, there
4 really is not a regulatory gap, although there
5 will be a labeling gap. With overfished, there
6 may be a regulatory gap before the regulations are
7 in place. So with that you can go back to your
8 (inaudible) in the break.

9 DR. RHEAULT: So let me just try and nip
10 this in the bud one more time.

11 (Laughter)

12 DR. RHEAULT: In our interviews with the
13 buyers, we encountered this question numerous
14 times and in many different forms and iterations.
15 If we create a program that doesn't work for the
16 buyers, we've done our fishermen and suppliers no
17 service. So this decision, and there's plenty of
18 other good, complicated gray areas that we can
19 argue for hours, and if this goes forward we will
20 argue for hours over what do you do about data
21 poor stocks? What do you do about habitat
22 impacts? What do you do about fishmeal being fed

1 to salmon that are being reared in Alaskan
2 hatcheries? What do you do about, you know? So
3 we can argue about each one of these little things
4 today, or we can sit down with the buyers who are
5 looking forward to having this program so that
6 they can cover their own ass and satisfy their
7 markets, but if we create something that's just a
8 blanket, you know, hopefully we create something
9 that encompasses the vast majority of our
10 fisheries and satisfies a need for the buyers and
11 for the harvesters and producers. But if we don't
12 achieve that then we haven't achieved our goal.
13 But I really am reluctant to continue going down
14 this.

15 But Keith has got a question for our
16 consultants.

17 MR. FISHER: Well, if the question is
18 related to what the states will be looking at,
19 when I think about it, I think about our fisheries
20 on the West Coast. Probably the one that's the
21 biggest fishery in terms of money is Dungeness
22 crab, which is not managed by the feds; it's

1 managed by the states. And I guess the concern, I
2 would agree with what Bob's saying. I mean, when
3 you think about this in the long run, you've got
4 to think about what process you're going to handle
5 this stuff through. And I think the states would
6 be very reluctant to look to the feds to say,
7 well, should we open the Dungeness crab fishery
8 because X, Y, and Z, they wouldn't be happy about
9 that. So whatever the process is, we need to
10 think about this approval. Who does it? And I
11 think that's really an important question.

12 MR. DONALDSON: I would just reiterate
13 what Randy said, that we need to be careful -- not
14 careful, we need to consider who has that approval
15 process and who's saying yea or nay. I know our
16 states would be similar to the West Coast. I
17 don't know that they would be particularly happy
18 if National Marine Fisheries Service was the ones
19 that were given that authority.

20 CHAIRMAN RIZZARDI: Bob?

21 MR. BEAL: Yes. One more point. I have
22 come across as kind of negative on this and I

1 didn't mean to be. I think there's a lot of work
2 to be done.

3 The ASMFC actually passed a motion in I
4 think it was May of this year that said they
5 support moving forward with the federal
6 certification process during this round of
7 Magnuson reauthorization. So there's support
8 among the Atlantic Coast states. They're just
9 worried about sort of the devils in the details on
10 this and they don't want to be left out. So they
11 are more than willing to work with this group or
12 whatever group it is that you have to sort through
13 this, but as Bob has mentioned, there's a lot of
14 details where the devils can be hiding and we can
15 get hung up on those for hours or days or months
16 or as much meeting time as we can be given.

17 Hopefully, I mean, I guess on the
18 surface of it, it makes a lot of sense. There's
19 got to be an easier way to certify fish than what
20 we've been going through right now, or what the
21 individual fisheries have been going through and
22 the expense that they've been paying. You know,

1 Maryland tried to get Atlantic striped bass
2 through the MSC certification for, I think, five
3 years, and they spent, I think, a couple hundred
4 thousand dollars on it. And towards the end of
5 it, they just gave up. They said, it's just not
6 worth it. We're not getting through. It's a
7 fully rebuilt stock. There's very little
8 environmental impacts but there's a series of
9 externalities and forage issues, and all sorts of
10 things that they couldn't control, and they just
11 couldn't get it through.

12 SIRI: Sorry, I didn't get that.

13 (Laughter)

14 MR. BEAL: Siri doesn't even like it.
15 So maybe we just ask Siri and we'll get out of
16 this whole mess and we'll be in business.

17 I think the notion of a simpler way to
18 provide business-to-business support for fisheries
19 being sustainable is something we need to work
20 toward. I just don't want to get hung up in the
21 details.

22 MR. FISHER: One other thing. This has

1 been a real ugly fight up in the state of Alaska,
2 and I think it's been really ugly in some other
3 areas also. So I guess I'm wondering, from what
4 Bob is suggesting, if I'm understanding him
5 correctly, is that we need to do more work with
6 the buyers to figure out really what they want.
7 Is that sort of what you're suggesting? I mean,
8 as something?

9 DR. RHEAULT: Well, from the get-go,
10 I've maintained that if we create something that
11 the buyers don't want, we haven't done our job.
12 And so I really wanted to, you know, go out there
13 and ask the buyers, and so we did these interviews
14 and we found a lot of support for this. It wasn't
15 unqualified support. As you say, the devil is in
16 the details, and they wanted to know the details.
17 And I am not able to produce something out of
18 whole cloth. I can tell you what I think we
19 should do, but that's really not what's important.
20 I think the buyers and the fishermen need to be at
21 the table, along with the NGOs, and we need to
22 hammer out a consensus. And it's not going to be

1 a pretty process. Believe me, I've done it, and
2 it's not fun but you get to a point where you
3 create a useful product.

4 But as I said, if we create something
5 the buyers aren't buying into, we've really not
6 done anybody a favor. So they have to be at the
7 table and we have to satisfy their needs and we
8 have to attempt to reach a consensus with as many
9 stakeholders as possible. I would be shocked if
10 we ended up with a situation where we said all
11 fish harvested under Magnuson are going to be
12 meeting this, but I've been wrong before many,
13 many times. So this process needs to take its own
14 course. These discussions need to happen with a
15 larger group than we have here. And so I would
16 just urge us to try and get past that and decide
17 whether the concept is worth exploring further.

18 Yeah, Mark.

19 DR. HOLLIDAY: Thanks, Bob. I wanted to
20 just remind people to go back to the terms of
21 reference because I think it helps manage the
22 expectations about what the committee is being

1 asked to recommend. So I think the operative
2 statement here is that the subcommittee was to
3 flush out a framework for a NOAA program rather
4 than get to the dotting of the I's and the T's. I
5 don't think there was any expectation that based
6 on your expertise and your capacity and knowledge
7 of program management that there would be a fully
8 flushed-out program, but as a policy advisory
9 group, the strength of the group would be to
10 identify the principles and the direction and
11 indeed a framework of what would be the
12 appropriate role for NOAA to take in developing a
13 seafood certification program rather than the last
14 details.

15 And so I think the experience has kind
16 of proven that; that when the committee tried to
17 get into the details of specifying exact benefits
18 and costs, it was beyond the capacity of the
19 committee to specify those details in sufficient
20 quantity that didn't allow a real thorough vetting
21 of the cost. And so I don't want you to be too
22 hard on yourself in terms of, you know, you have

1 to answer all of these questions in great detail.
2 I think the advice NOAA was looking for, according
3 to the terms of reference, was development of this
4 framework, including some of the core principles
5 -- what it would cover, what it would not cover,
6 what directions it would take, what would be the
7 focus, who would be involved, but the actual
8 design or the operationalization of that would
9 have to take place after that. So I think there
10 will be many unanswered questions. I think that's
11 what Bob is trying to avoid, trying to get into
12 the details of flushing out things that over the
13 course of the year you realize were not feasible,
14 you know, given the capacity and the charge to the
15 committee.

16 And then another point of fact, you
17 know, in looking at the proposed letter in front
18 of you with respect to the states, there's no
19 requirement for the states to participate. I
20 think the way it's worded now talks about should a
21 state wish to participate in this and that the
22 principle is that states have standards for

1 management of their programs and the federal
2 government has management for their programs, if a
3 state was interested in comparing the principles
4 of management and wanted to look at that in
5 collaboration with the Fishery Service, then this
6 would take place. So I didn't read it or
7 interpret it in any way of somehow ceding
8 authority to the federal government over existing
9 state programs or existing state principles. It
10 was one of, do you want to opt into a
11 collaboration that is subject to the state's
12 participation. I believe it's in the Frequently
13 Asked Question section, the "What about states?"
14 question. So.

15 DR. RHEAULT: I think you are right on.
16 Ted?

17 MR. AMES: Thank you, Bob. I just
18 wanted to share my concerns about this. State of
19 Maine and Maine Lobster Fishermen coughed up
20 collectively, between dealers and fishermen,
21 somewhere in the vicinity of a million dollars to
22 get MSC certification. We had to do it because

1 we're competing for market and a large portion of
2 our catch goes to European markets. By the same
3 token, our shrimp fishery, our miniscule halibut
4 fishery, and what's left of our ground fish
5 fishery are all local markets, and feed into local
6 markets quite comfortably.

7 I share in Michele's concerns about cost
8 being foisted upon owner-operator size,
9 small-scale fishermen. By the same token, I can
10 see the real potential for smaller scale fishermen
11 being excluded from the marketplace without some
12 sort of certification process. So I've ended up
13 feeling that, yeah, this is something that we
14 really need to examine, but we need to approach
15 very carefully because it's of little value if
16 you're going to put literally thousands of smaller
17 scale owner-operators out of the system. We need
18 those local markets, and for those that catch
19 enough to go into interstate commerce, you need
20 that certification to compete with the
21 competition. If it's an equitably shared fee
22 between the "industry," the fishermen involved in

1 that species with the dealers, then perhaps it's
2 equitable. In either case, we really need to
3 examine it.

4 DR. RHEAULT: Yeah, I don't think
5 anybody's suggesting we just rush headlong into
6 this without doing some serious work. And I don't
7 think that the establishment of a program such as
8 this would disadvantage the folks, as I said, who
9 have already invested heavily in MSC for overseas
10 markets. I would be kind of surprised if this
11 certification satisfied buyers in Europe and
12 Japan. But it's not out of the question. It
13 might. Who knows? That remains to be seen.
14 That's not the intent of what we're trying to
15 establish. What we're trying to establish is to
16 get access to local markets, which are shrinking
17 as more and more buyers are adopting certification
18 requirements. And that's growing on a regular
19 basis. I hear it all the time.

20 Other comments? Please. Keith?

21 CHAIRMAN RIZZARDI: Just a point of
22 clarification for Ted. We were focused on

1 fee-for-service. If you don't need the service,
2 you don't have to pay. The kicker here has been
3 that some fisheries already have access to market.
4 Some fisheries already have third-party
5 certifications that are working for them. Those
6 fisheries may never need to go down this path.
7 They may not need a registration number and don't
8 have to pay for it. But what we're learning is
9 there are plenty of businesses that are saying we
10 want a better way. We don't want to have to only
11 look to MSC certification as the way that we
12 decide what product to buy. We want a way to know
13 which fish are safe to buy and there are other
14 businesses. And we need people to sell our fish,
15 and we want a less expensive method than going to
16 go through the MSC process. They don't want to
17 pay the fees to go through the process. They
18 don't want to pay the recurring fees that will
19 happen on an annual basis. They're looking for a
20 less expensive mechanism. And what our effort
21 came to the conclusion of was the MSA already
22 works. And if we can find a simple way to say

1 this product is in conformance with the
2 Magnuson-Stevens Act that would be the low cost
3 way. But if you don't need to participate in it,
4 if you don't have the barriers to entry and
5 barriers to market, then you don't.

6 MR. AMES: I'm with you because not only
7 do you have well established local markets and
8 regional distribution systems with
9 well-established markets, but the catch is, as
10 certification comes into play these markets
11 shrink. And if an alternative certification
12 system can be put in place that isn't too
13 disruptive to the fishing community itself, this
14 is great. When you've got to extract a million
15 bucks for MSC certification to compete, that was
16 fine for a large industry. But if you're a small
17 one, then you're going to be shot down. And
18 fishermen who are participating in several
19 fisheries rather than one gets a catch-22. So the
20 blanket shot I think is good. I'm just -- it's
21 one of those things that you approach really
22 carefully.

1 DR. RHEAULT: Michele?

2 MS. LONGO EDER: One of the assertions
3 that I hear back and forth is that a government
4 certification program is going to be less
5 expensive than third-party certification. And I
6 think that all of us have anecdotal information or
7 have heard anecdotal information. Some of us
8 actually have cost information where you've
9 actually contributed to the cost of a fishery
10 being certified by a third party. So we bring a
11 range of experience to this table. But I just
12 want to question some basic discussion that's
13 going on here that a NOAA certification process
14 would be less expensive than third-party
15 certification. I don't think that that's an
16 assumption that this group can make.

17 I think another issue I'd like to raise
18 is I guess a question of metrics, if that's the
19 appropriate word. I don't know that we've really
20 defined completely what is it we're trying to do
21 with this certification. Are we trying to
22 increase consumption of seafood by the American

1 consumer of federally-managed fish? Is that the
2 question? I mean, what is it that we're trying to
3 do? Are we trying, you know, and how are we going
4 to measure that success?

5 We haven't had those discussions yet,
6 really. What is the purpose? What is it we're
7 seeking to do? Are we looking to add value? And
8 how do we measure that? Increase consumption?
9 Are there health benefits? I mean, what is it
10 that this certification is purported to do other
11 than address potentially some people's concerns
12 about the cost of third-party certification and
13 being irked by it?

14 There is also -- it's interesting. I
15 don't know the sense of other commercial fishing
16 representatives on this committee, but there is --
17 I think we kind of have to address the elephant in
18 the room that there is a very strong component
19 that support this that come from aquaculture. And
20 is that the drive really behind this? Because you
21 have a letter that was circulated to you from
22 producers of really half the landings of the

1 seafood in the United States. They're not
2 interested in doing it. And you can discount it
3 and say, well, that's just the big guys. That's
4 just the cost guys. Well, I can tell you,
5 individual producers, small boats on the West
6 Coast, aren't going to be interested, as I've
7 mentioned before, in paying additional fees. So
8 is this coming from the wild caught industry as
9 requesting this? And if, in fact, and I think
10 that this is a legitimate issue to raise -- if
11 aquaculture is interested in having a
12 certification program through the feds, then let's
13 get that out on the table and perhaps do that
14 separately because I think that that's a
15 discussion to have.

16 The MAFAC recommendations, or the
17 recommendations in this report to MAFAC that say,
18 well, first we do the wild, then we do
19 aquaculture, then we address the states, that
20 really doesn't -- I mean, to me, if you're going
21 to do it, doesn't make sense. It seems to me
22 you'd address all wild capture fisheries. And

1 again, there isn't -- I question whether there's
2 really a drive from the commercial industry or
3 from the independent vessel owner to do this. And
4 I think that we have to recognize that this is not
5 a national message from the commercial industry to
6 NOAA. This is not a mandate from the industry.
7 Different regions have different perspectives, and
8 I would hesitate to say that MAFAC could move
9 forward with a real united or unified message to
10 the agency.

11 The state issue, the comments that have
12 been made by the representatives of the multistate
13 commissions, I agree with. I have to tell you, as
14 a producer participating in state-managed
15 fisheries, whether it's cold water pink shrimp off
16 the West Coast or Dungeness crab, state-managed
17 fishery is extremely valuable to Oregon,
18 Washington, California. I don't want to be in a
19 marketplace where Dungeness crab, state-managed,
20 is trying to compete with a federally managed crab
21 and one of those has a federal certification and
22 is eligible for it and the other isn't. That puts

1 -- that just pits the states, the state-managed
2 fisheries with federally managed fisheries against
3 each other and that's bad for the marketplace.
4 That's not good for the consumer.

5 The same thing with cold water pink
6 shrimp managed by the states. Both those
7 fisheries have international markets. And again,
8 pitting resources because of a construct of
9 whether they're state or federally managed,
10 pitting those to some extent against each other in
11 the marketplace when the consumer goes in to the
12 store and is looking for is this federally
13 certified, if they buy into it at all, they might
14 say, "I want that federally certified product" as
15 opposed to a product that has no certification
16 whatsoever.

17 So again, it's complicated. I recognize
18 that there are interests in commercial fisheries
19 where, particularly in the Northeast and on the
20 Atlantic, where they've either had difficulties in
21 fisheries management over the last 10 years and
22 they need some help from the feds, that they have

1 some special needs, but I don't see this as a
2 national policy mandate from the commercial
3 industry.

4 The third -- another thing that hasn't
5 been really addressed -- poor Bob is sighing next
6 to me.

7 DR. RHEAULT: No, I'm just trying to
8 keep track of all your points. It's fine.

9 MS. LONGO EDERMS. LONGO EDER: Okay, one
10 more. Maybe if I just handed you my sheet.

11 The other thing is the credibility of
12 third-party certification versus federal
13 government certification. I think anytime -- you
14 know, we still have to address this issue of
15 credibility. I'm not saying that the federal
16 government isn't credible. I'm saying what's the
17 marketplace going to do if you've got
18 self-certifying programs? The feds regulate it.
19 The feds say it's good. That's not sufficient in
20 the world marketplace, and we compete in a world
21 marketplace. There's simply no doubt that you
22 cannot get into many international markets, if not

1 all, without an independent certification. Like
2 it or not, that's -- we can't define the market's
3 demands by saying we're going to federally
4 certify. Self-certification fundamentally does
5 not sell in an international marketplace, and we
6 are in an international marketplace with our
7 seafood.

8 Thank you.

9 DR. RHEAULT: I'm just going to respond
10 quickly to a few of your points and then I think
11 Dave had his hand up.

12 So the first point you were making is
13 what are we trying to achieve here? And it's
14 very, very clear that we're just trying to
15 preserve market access for those producers who are
16 not able to participate in third-party
17 certification because of the cost barriers. And
18 we are seeing that marketplaces are, especially
19 the larger buyers, are demanding on a regular
20 basis, more and more of them are demanding some
21 sort of certification. And we have heard from
22 those buyers that they are willing to accept

1 something like this. So we think that we've got a
2 potential solution to a problem that is growing.

3 In terms of whether aqua culturists are
4 driving this, I think that if that were true, we'd
5 be clamoring to be first on the list. I think we
6 happened to be on the Commerce Committee and took
7 this up because it was an important issue that we
8 felt we could address. I personally think that
9 certifying aquaculture is going to be relatively
10 much more simple than the state-managed fisheries,
11 but that will all shake out when we try and do it.
12 And maybe I'm being naïve there. It won't be the
13 first time.

14 I do believe that what we've proposed
15 with the Fisheries Inspection Service does satisfy
16 the third-party criteria, and it certainly does --
17 in the international marketplace, what they're
18 doing now to certify fisheries' products are not
19 IUU. We've had a lot of back and forth on that.
20 Keith has, I think, done a good job of answering
21 that and I agree.

22 There are going to be people that

1 disagree. We have USDA-certified grade A beef and
2 that seems to work for the marketplace. For some
3 reason, and I'm not a social scientist so I'm not
4 going to speculate as to why fisheries'
5 credibility was thrown under the bus so that the
6 third-party certification became necessary, but
7 it's where we are now. I believe that this is a
8 credible product, and inasmuch as everyone here
9 has sung the praises of FishWatch, we've got a
10 credible Magnuson-Stevens Act. We've got a
11 credible FishWatch program, and I think that this
12 would just bolster those and add credibility to
13 both of the above mentioned.

14 In terms of the cost estimates, I do
15 think we've taken a reasonable first shot with the
16 resources that we have available, and based on the
17 cost estimates that I've seen it looks like we are
18 going to be much more affordable on a
19 cost-per-service basis. Again, I may be wrong
20 when we finally put this out, but based on our
21 first cut, it looks like we're an order of
22 magnitude more affordable.

1 Dave?

2 MR. WALLACE: Thank you very much.

3 First, there's a clarification. MSC does not
4 certify aquaculture. They refuse to do it. So,
5 you know, there's another certification agency
6 that has been created, an international one to do
7 that.

8 Second of all, you know, as hopefully
9 all of you members read my e-mail where I sent you
10 a link to the Icelandic certification program, the
11 preamble of it, this certification model is a
12 robust, common sense, practical, and
13 cost-efficient approach to allow Icelandic
14 fisheries to meet the FAO criteria for credibility
15 certification. That is exactly what we are also
16 trying to do. This went into effect on October 1,
17 2008. For all of you who don't know anything
18 about fisheries in Iceland, their whole GDP
19 depends on exporting fish to other countries,
20 mostly Europe and Asia, and without a
21 certification program, they couldn't do it.
22 They're still exporting fish under their own

1 certification program, so it has credibility.

2 The Magnuson-Stevens Act is more severe
3 than the FAO recommendations for managing domestic
4 fisheries, and so we are a step above that.

5 Iceland is only suggesting that they use FAO's
6 standards for managing their fisheries and they
7 are far more liberal than we are as far as how
8 they define overfish and overfishing. And so, you
9 know, I think that there's a really good example
10 of why we must do this. Thank you.

11 DR. RHEAULT: John?

12 MR. CORBIN: I came late to this issue
13 and all the work was done, but just to offer a
14 couple of comments.

15 My experience is as aquaculture moves
16 offshore and into federal waters, I think
17 companies would welcome a certification process
18 given the marketplace and the issues raised. In
19 terms of aquaculture driving a process, I don't
20 think we have the critical mass to drive much of
21 anything. Nationally, aquaculture is 5,000 or
22 6,000 farms, and we're small business, and I think

1 a small business would welcome an affordable way
2 to get into the certification and the shore market
3 access.

4 Regarding aquaculture being postponed
5 until a later time, I'm quite comfortable with
6 that. I think working out a process for
7 federally-managed fisheries is going to be
8 complicated enough, and if we can see that path,
9 then it'll be easier to look at aquaculture third
10 or second and state-managed fisheries and
11 aquaculture, it'll be clear as to how to proceed.

12 And lastly, you know, I've had some
13 conversations with some of the major fisheries
14 players in Hawaii and they really support a NOAA
15 certification process. They like the idea. They
16 think it can help the fishery in the marketplace.
17 Thank you.

18 DR. RHEAULT: Keith?

19 CHAIRMAN RIZZARDI: Bob, can I suggest
20 that it's a good time for us to take a break?

21 DR. RHEAULT: I like that suggestion.

22 So moved.

1 CHAIRMAN RIZZARDI: Fifteen minutes?

2 (Recess)

3 CHAIRMAN RIZZARDI: Okay. Thank you,
4 everybody for getting back in order and coming on
5 back timely.

6 I'd like to do a couple of procedural
7 things if I could real quick. First, could I get
8 a show of hands of people who might be interested
9 in public comments on this? I know we've got some
10 people in the room.

11 Okay. That's helpful. Thank you. Next
12 on our schedule today we have the Seafood
13 Certification Workgroup reconvening after lunch,
14 after the public comment period. What I'd like to
15 do is I'd like to switch that with the
16 subcommittee meetings. So I'll still keep the
17 public comment as originally scheduled on the
18 agenda just in case other people come, but I'd
19 like to move the subcommittee meetings to right
20 after lunch and after the public comment, that way
21 we can have some time to modify the recommendation
22 document on seafood certification in light of the

1 robust discussion that's taking place. You know,
2 I think the critiques are helpful, the voices of
3 support are helpful, too. You know, give me some
4 direction on things so that we can embed them into
5 this report, and I will take some of that time
6 hopefully to make modifications to the report and
7 have it reflect the public comment and the comment
8 of the MAFAC members here at the table and try to
9 accurately reflect the discussion.

10 So the bottom line is after the public
11 comment period, which is scheduled for 1:45, we'll
12 go into subcommittees and then we'll reconvene for
13 the Seafood Certification Workgroup at 4:00 today.

14 For now what I'd like to do is give Sam
15 an opportunity to address some of the issues that
16 have come up on cost and on independence. We've
17 heard these things repeatedly throughout the
18 discussion of this as a workgroup, but I think
19 it's important for the MAFAC members to understand
20 how we've evaluated the cost and independence
21 issues.

22 Sam?

1 MR. RAUCH: Right. So the question --
2 so I've been asked to look at those two questions
3 or to say something about those two questions.

4 We did provide through Tim and others
5 our initial estimates on how much we thought this
6 might cost, depending on what we understood to be
7 the situation at the time. It's obviously fluid
8 based on what you actually decide to do, how much
9 it cost, and we would need to vet all those
10 numbers through some more formal process. But
11 that was sort of a back-of-the-envelope kind of
12 assessment.

13 I think it is clear that depending on
14 what you do, it is not terribly dissimilar from
15 some of the kinds of things seafood inspection
16 does now. And so it can fall within that. It is
17 also clear that avoiding excess costs would be one
18 of the goals. And so if we could not decide it
19 had a reasonable cost, then you might want to
20 decide whether you wanted to do that or not.
21 That's still a work in progress.

22 I do want to stress though that there is

1 -- there will be startup costs under any of these
2 circumstances. It might be modest or larger
3 depending on what you wanted to do. If you wanted
4 to say that the Magnuson Act fisheries are by
5 their very definition sustainable, that's a
6 relatively low cost thing to do. If you wanted to
7 create a process that said, well, that's not true,
8 but there are these standards that first we have
9 to identify what the standards are, that might be
10 different than the Magnuson Act, and then evaluate
11 each one of the Magnuson Act fisheries and perhaps
12 state fisheries as well, or other kind of
13 fisheries, then that cost may rise. So it
14 somewhat depends.

15 But after that startup phase is done, I
16 think Tim is very good at designing programs that
17 match industry needs and expectations, and it may
18 well be that we can do the traceability
19 requirement or the auditing requirement at a
20 relatively low cost even if it is fee-for-service.
21 So I wanted to address that.

22 The other thing that I was asked to do

1 is to talk about the role of seafood inspection
2 within the Fishery Service and their independence.
3 So Seafood Inspection is within the Fisheries
4 Service, but it is not part of our regulatory
5 approach. It is -- it operates under a completely
6 different system. It answers to a different
7 deputy. They make their determinations based on
8 whatever standards you give them. And often right
9 now they're viewing it on FDA-based standards, but
10 not always. They will hire the expertise and make
11 sure that they credibly can go in and evaluate
12 your products to those standards. So they don't
13 set the standards, but they will determine -- and
14 this is the service that they charge for --
15 whether you have met those standards, whatever
16 they are. Right now it is mostly in terms of
17 seafood quality, although they do the IUU
18 certification, so it's not limited to that.

19 But within the Fishery Service, they are
20 an independent body. They are not answerable to
21 the councils or to anybody else. They make that
22 determination, not as the regulators but as

1 basically the oversight inspectors. So I did want
2 to say that.

3 Let me ask Tim if I got any of that
4 right, or do you want to add anything to any of
5 that?

6 MR. HANSEN: Actually, we do have some
7 of our own standards but they're not widely used.
8 They're grade standards and so forth. But
9 generally, you're right, that we reply other
10 agencies and then industry B to B standards, such
11 as Wal-Mart specifications, that sort of thing.
12 Otherwise, it sounds good.

13 DR. RHEAULT: So, Keith, I just wanted
14 to clarify when you wanted to take public comment,
15 before lunch? And I didn't see behind me if there
16 were people who wanted to speak.

17 CHAIRMAN RIZZARDI: So recognizing that
18 our agenda has been posted and that the agenda
19 does say that we're taking public comment at 1:15,
20 I still want to allow that opportunity for people
21 who come to choose at 1:15, but I also recognize
22 there are people in the room now, and if we can

1 engage them and give them the opportunity now to
2 do some public comment, or at least before the
3 lunch break, I think that would be helpful, too.
4 And I only saw three hands go up. So I think at
5 some point before lunch it would be appropriate to
6 give each of those folks five minutes.

7 DR. RHEAULT: So it's almost 11:30 now.
8 Should we do it now or do you want to continue the
9 MAFAC discussion?

10 CHAIRMAN RIZZARDI: Are there other
11 committee members who have a pressing need to say
12 something in response to Sam's comments?

13 I'd say let's do some public comment.

14 Public Comment Period

15 DR. RHEAULT: So I welcome people to
16 come up and have a seat next to a mic and identify
17 yourself and, you know, within reason, try and
18 keep your comments to say five or 20 minutes.

19 MR. MARKS: Thank you. Can I sit here
20 next to -- sit here next to Julie?

21 My name is Rick Marks. I know many of
22 you. I represent a lot of fishing interests,

1 fishermen, processors, fish houses and
2 associations almost in every region. And a lot of
3 my folks were involved and actually asking for
4 some of this, and I want to just address Michele's
5 points quickly.

6 We've got four regional councils that
7 have adopted motions in support of this kind of
8 concept, and you don't see that kind of support
9 just happen in a vacuum and out of the blue. So
10 obviously, stakeholders have felt it important
11 enough to go to their councils and engage them in
12 four different regions to ask for some help. So I
13 think that goes to some of Bob's lead-in and some
14 of Keith's points that some folks have asked for
15 this. And I'll tell you that a lot of the impetus
16 for this has been that a lot of domestic product
17 we feel they feel is being disadvantaged by some
18 of the eco-labels that are in some of the markets
19 now. And it's affecting market share. It's
20 preventing us from being able to protect market
21 share or gain any potentially limiting some of our
22 overseas export opportunities. And because the

1 buyers are using those eco-labels, then perhaps
2 our domestic product from some of these small to
3 medium size fisheries might not be getting to the
4 restaurants and some of the markets that we think
5 we could actually compete with. There's no reason
6 why domestic squid should have a warning label on
7 it, but Chinese tilapia gets a gold star at a
8 market. And that's a real issue for a lot of the
9 small folks. And Ted mentioned that we've got
10 some of the small- to medium-size folks that we're
11 trying to help.

12 So I just want to be clear that there is
13 support for this in various parts of the country.
14 I've got clients that are asking Sam regularly for
15 help to recognize that their fisheries are
16 sustainable so they can go to buyers and say,
17 "Look, the federal government says we're doing the
18 right thing."

19 The other thing I want to point out is
20 that this is an opportunity for the industry to
21 demonstrate its success under Magnuson and also
22 the agency as well. And I think that's an

1 important point because we're all working very
2 hard in these places to be successful, and we
3 should stand up and say, you know, we're doing the
4 job, and use that to our advantage.

5 I think there is a big difference
6 between a major MSC-style certification by the
7 federal government and some concrete recognition
8 under the Magnuson Act that we're being
9 sustainable. So somewhere within that framework
10 I'm hopeful that we can come up with something
11 that works. It's been said a bunch of times this
12 morning, and I want to reiterate it, if it's not
13 simple, if it's not intrusive, and if it's cost
14 effective, and it's timely, I'm not so sure you're
15 going to get the industry -- I'm not sure you're
16 going to get the support, and we're not going to
17 help the medium to small people if it's too
18 expensive, if it's too complicated, if it takes
19 two years. So please, be mindful of where the
20 need is coming from and what we're trying to
21 address as quickly as we can.

22 Another point, and I think Keith made an

1 excellent point this morning, and that is we're
2 not trying to target the consumers. It's right.
3 They're usually going to go on cost. But the
4 2,000 buyers in this country, those are the people
5 who are putting the product out there and they're
6 the ones that we're trying to get. And I know
7 that Bob indicated it's important to get their
8 buy-in. Think about this for a second. A lot of
9 those buyers are using eco-labels now that have no
10 standards whatsoever except what gear type you're
11 using. And that's disadvantaging us.

12 So I know we have to have standards
13 attached to this, but let's be mindful about how
14 complicated we make them because the buyers have
15 told us, told my guys that all they need is
16 basically cover to make sure that they can express
17 to their customers that they're being supportable
18 of good stewardship. So that's what we're trying
19 to provide in this process.

20 Quite frankly, the simplest thing for my
21 folks would probably be to put a wonderful NOAA
22 label on the box that says Sustainable Fisheries,

1 and I know that's a great oversimplification, but
2 that would go a long way kind of moving towards
3 what we're trying to achieve.

4 Sam indicated potentially a
5 fee-for-service. You know, some of that does make
6 sense. We don't want to pull money from science.
7 We don't have enough as it is now. But if we go
8 fee-for-service, I'm afraid not everybody in the
9 industry is going to have the access to that, and
10 we don't want small folks to slip through the
11 cracks at some of these small fisheries.

12 We could probably go around the table
13 and name three or four fisheries in every single
14 region that could benefit from some sort of
15 support of sustainable label under Magnuson. The
16 last time I spoke to you folks was after the MONF
17 3 conference, and I actually had two clients with
18 me -- one of them from the Gulf of Mexico, and one
19 of them from the Mid-Atlantic. Both of them on
20 their own wanted to come and talk with you about
21 the fact that this would help them with their
22 market access, like spiny lobster, like flounder

1 in the mid-Atlantic, scup, squid, all different
2 fisheries could benefit from this.

3 So I think maybe the bottom line is it's
4 got to be simple. I know this is complicated, and
5 I really appreciate the substantive discussion.
6 But as simple as we can make it, timely, and
7 efficient, I think we have a chance to help folks
8 and spread a very good message. So I really
9 appreciate the time, Mr. Chairman, to talk today,
10 and I hope you all have a good holiday.

11 DR. RHEAULT: Thank you very much for
12 the comments.

13 Julie?

14 MS. MORRIS: Can I ask a question?

15 DR. RHEAULT: Sure.

16 MS. MORRIS: Do you think the
17 traceability stuff is going to be viewed as
18 intrusive or really intrusive?

19 MR. MARKS: Julie, it depends on how
20 duplicative it may be of existing law. I think
21 that's important to keep that in mind. Some of
22 you may know that there's traceability legislation

1 now in the House and the Senate that has been a
2 great target of conservation for the industry
3 because of its perceived intrusiveness, because
4 that legislation is literally encompassed --
5 inspection, safety, IUU, the fish list,
6 everything. But I think if it was simple and it
7 made sense, I think that people would be
8 comfortable with it. It just depends on the
9 details.

10 MR. RISENHOOVER: So, Rick, you know,
11 we've talked a lot about this before, and one of
12 the discussions a long time ago in MAFAC had to do
13 with whether or not the NOAA label could be used
14 on a box, for instance.

15 So it seems like to me we're somewhere
16 between a NOAA label on a box and a list under
17 FishWatch that can be used by the industry to say
18 we're certifiable.

19 I guess one question I have to Sam is
20 whether or not that creates any legal problems or
21 can you just say I'm now the god of fisheries and
22 as a result of that I'm certifying this as good?

1 MR. RAUCH: I don't know how to even
2 answer that question.

3 MR. RISENHOOVER: There was a lot of
4 discussion about what your legal authority was by
5 being able to use the label. And that was a
6 concern. And so I think you guys were going to
7 look into that. And the question to Rick is
8 whether or not -- is there something in between
9 that? You issue a letter now to somebody that
10 says, you know, you're certifiable. So if you're
11 going to be cheap, then just say -- if you're on
12 the list of FishWatch, you're fine. I mean,
13 that's kind of where we are I think or something.

14 MR. RAUCH: So the only thing I would
15 say about legal authority is we know we have the
16 authority to issue the letters that we do now.
17 And the new FishWatch. There is some question,
18 depending on what you recommend, whether we would
19 have the full legal authority to carry it out.
20 But congress is looking at the Magnuson Act and
21 other kinds of things. If, indeed, there is a gap
22 between what you request or what the

1 administration wants to do in legal authority,
2 there's an opportunity to go to Congress and get
3 that authority potentially and have it brought up
4 for public debate.

5 So what I would encourage you to do is
6 to discuss the issues without regard to whether we
7 currently have legal authority. Give us the
8 advice on what you think the right rule for the
9 government is -- the federal government is here --
10 and we will figure out whether we have the
11 authority to do that now or whether we need to go
12 and seek to get it.

13 DR. RHEAULT: I'm just going to step in
14 here for a second and clarify. I don't believe
15 that we are recommending a consumer mark label
16 that goes on a box. I mean, that might be a way
17 to refer to this in shorthand, but what we have
18 heard time and time again from the buyers that we
19 interviewed is that they don't want another label
20 on their product. They want to have their label
21 on the product; that by and large American
22 consumers are confused by a plethora of labels.

1 Fewer than 3 percent, studies say, of American
2 consumers know what sustainable seafood is. They
3 want to trust their store to buy sustainable
4 seafood. They want to know they're not going to
5 get boycotted or picketed or dragged through the
6 mud for selling something that was illegally
7 caught or mislabeled. They want to know what
8 they're getting, and they want a very clear
9 transaction, and then they want to put their label
10 on it in the refrigerator and have the consumer
11 trust.

12 So we're not talking here about a
13 consumer mark; we're talking about a B to B
14 service. And I just want to make that clear.
15 That's another step that we might want to pursue,
16 but at this time we're talking about a B to B
17 service.

18 Did you want to comment on that?

19 MR. MARKS: No, not unless there are any
20 other questions. I appreciate the time.

21 DR. RHEAULT: Julie?

22 MS. BONNEY: I have a question. So when

1 you're talking about the folks that you represent,
2 are they -- these fisheries, are they federal
3 fisheries or are they state fisheries?

4 MR. MARKS: Most of them are federal,
5 but there are a few state fisheries as well, and
6 it would be useful, and I think Bob made the point
7 that we don't want to leave the states out in the
8 dark. If there would be some way to work them
9 into this process at some point, I think that
10 would be helpful. But most of the folks that have
11 asked for this have asked for it for federal
12 fisheries under the Magnuson Act.

13 MS. BONNEY: So if we move forward on
14 this then that first step, the simple step is the
15 federal wild caught fish. Is that acceptable as a
16 starting point?

17 MR. MARKS: I think that would be
18 acceptable, and at some point we would want to get
19 to the states, but I think that that was the
20 simplest approach because of the success we have
21 with Magnuson that everybody can agree to.

22 DR. RHEAULT: I agree. And I would hope

1 we would, you know, harmonize with the states as
2 soon as possible. I just was unable to envision
3 that and I felt it was overly complicating the
4 process. So I suggested we walk before we fly and
5 try and simplify the first step out of the gate.

6 So any more questions? Then we're going
7 to have another commenter. Welcome to the
8 microphone.

9 MR. MARTENS: Should I just go and use
10 that one?

11 DR. RHEAULT: Please. And introduce
12 yourself.

13 MR. MARTENS: Good morning. Oleg
14 Martens with WWF. I've got a prepared statement
15 here.

16 WWF believes that certification is a
17 means to drive conservation and sustainability.
18 Indeed, we helped create the Forest Stewardship
19 Council, the Marine Stewardship Council, and more
20 recently, the Aquaculture Stewardship Council, the
21 latter one of which resulted in sometimes eight
22 years of roundtable consultations between

1 different stakeholders, predominantly from the
2 industry.

3 Our theory of change is that
4 certification highlights fisheries with good
5 practices and gives them market leverage, which in
6 turn attracts other fisheries needing improvement
7 to work to become certified. In 2012, we
8 commissioned an independent study to benchmark the
9 prevalent fishery certification schemes against
10 WWF's fishery sustainability criteria for
11 certification schemes. While the MSC did not
12 receive a perfect score, it still scored 93
13 percent, while the next best scheme only scored
14 around 50 percent.

15 Poor scores can be explained by a number
16 of reasons, including the fact that some schemes
17 were not designed to meet FAO guidelines for
18 ecolabels; do not specifically assess outcomes;
19 are not transparent; do not provide for adequate
20 stakeholder input; and/or do not meet ICO
21 standards for certification schemes.

22 Unfortunately, beyond that, many recent schemes

1 seem to have been created to be merely expedient,
2 and as a result they lack credibility.

3 WWF commends NOAA on its implementation
4 of the Magnuson-Stevens Fishery Conservation and
5 Management Act. It's an excellent fishery
6 management program, possibly one of the best in
7 the world, which has substantially reduced
8 overfishing and established credible recovery
9 programs for those that had become overfished.

10 U.S. fishermen, seafood businesses, and consumers
11 enjoy a great benefit as a result of it. However,
12 Magnuson-Stevens alone is not a certification
13 scheme, and it would not be a simple or
14 inexpensive task to make it into a credible one.

15 The MSC remains the only credible
16 fishery certification scheme, and one should not
17 let negative propaganda from competing schemes
18 distract us from the facts. WWF would be happy to
19 work with NOAA and U.S. Fisheries that wish to
20 become MSC certified. Indeed, we're already
21 working with a number of them. We are always
22 looking for new ways to facilitate certification,

1 especially for smaller fisheries, and we have a
2 significant amount of knowledge to share on
3 fishery improvement projects.

4 Finally, WWF endorses the fact sheet
5 prepared by the MSC which was released back in
6 October and which we'll attach to this statement.
7 It addresses a lot of the myths and inaccuracies
8 commonly associated with the MSC certification
9 scheme.

10 Thank you.

11 DR. RHEAULT: Keith?

12 CHAIRMAN RIZZARDI: Could you please
13 reread the criteria that you listed --
14 transparency standards, public participation?

15 MR. MARTENS: These are just a list of
16 some that are not respected right now, but yes.

17 Some of the certification schemes are
18 not designed to meet FAO guidelines for eco label.
19 They do not specifically assess outcomes; they are
20 not transparent; they do not provide for adequate
21 stakeholder input; and they do not meet ICO
22 standards for certification schemes.

1 CHAIRMAN RIZZARDI: So recognizing that
2 MSA does meet all of those criteria, why doesn't
3 MSA work in WWF's perspective?

4 MR. MARTENS: WWF doesn't say MSA
5 doesn't work. We're just saying it's not a
6 certification scheme. And if you want MSA to
7 become a certification scheme, it's going to
8 require quite a bit more. And we dispute the fact
9 that it's going to be inexpensive and/or easy to
10 do. It's taken quite a bit of time to create the
11 current schemes and a lot of money and effort.

12 CHAIRMAN RIZZARDI: So I have great
13 respect for the MSC program. I think what it has
14 done in our international fisheries is incredible.
15 And it serves a tremendous purpose in those places
16 that don't have a Magnuson-Stevens Act. But after
17 digging into this issue for the last two years, I
18 find myself asking why do we need an MSC overlay
19 for a fishery where we already have the MSA, when
20 MSC is simply coming in and using the same data
21 that's being generated under the Magnuson program,
22 and then they're using the data that NOAA provides

1 to reach the conclusion that the fishery is
2 sustainable. So there seems to be a redundancy
3 when you apply MSC on top of well-managed federal
4 waters. I'm not talking about the ones where we
5 have respectful disagreement over rebuilding and
6 things, but it does seem like we've got an \$800
7 million agency that is managing an incredible
8 statutory scheme that makes the U.S. Fisheries
9 the best in the world. And I'm not understanding
10 why we continue to say, well, we have to have MSC.

11 MR. MARTENS: So there's a number of
12 reasons for that. The first one, which is the
13 most obvious, is that you wouldn't have
14 third-party oversight. You'd essentially have an
15 agency that's going to be setting the rules and
16 then be the jury for that.

17 CHAIRMAN RIZZARDI: Isn't MSC serving
18 that same exact role when they're the ones setting
19 the standards and then they're the ones that are
20 evaluating whether you meet them?

21 MR. MARTENS: But it's done by a
22 third-party certifier. It's done by a certifying

1 assessment body and then it's submitted to public
2 hearing and third-party hearings. So essentially,
3 when the CAB has submitted its report, it's open
4 for public comment and all organizations can come
5 and comment on it. It's not the MSC that does the
6 certification itself. And the MSC, as I've heard
7 it today, a lot of people are talking
8 business-to-business, you have to differentiate
9 the fact that MSC is primarily
10 business-to-business to start with. The label
11 you're seeing on products in store is only if the
12 store wants to have chain of custody. A lot of
13 our partners are basically sourcing from MSC
14 fisheries without having chain of custody and
15 therefore, don't have to worry about the label.

16 Beyond that, there's also the fact that
17 Magnuson- Stevens is not going to be -- it's only
18 going to apply to U.S. waters, whereas MSC is a
19 global tool, and we don't want to dilute that
20 effort to push for more sustainable fisheries
21 globally. There's also going to be a question
22 around the fisheries that are caught within U.S.

1 waters but that are being processed abroad, and
2 how difficult it's going to be to get chain of
3 custody around that. I'm thinking predominately
4 if everything is being exported and processed in
5 China and then reimported into the U.S.

6 And then finally, Magnuson doesn't, as
7 we understand it, does not look into ecosystem
8 impacts right now, which the MSC does.

9 DR. RHEAULT: Julie?

10 MS. MORRIS: I don't know what the ICO
11 standards are. Could you explain those?

12 MR. MARTENS: Good question on that one,
13 and I'm not an expert on ICO either, so.

14 MS. MORRIS: Okay.

15 MR. MARTENS: But I can certainly get
16 that to you.

17 MS. MORRIS: I'll look it up.

18 DR. RHEAULT: Questions? We had one
19 more commenter, I believe.

20 MR. FITZGERALD: My name is Tim
21 Fitzgerald. I'm the director of the Sustainable
22 Seafood Program at Environmental Defense Fund

1 based here in D.C. I don't have a prepared
2 statement. I just wanted to comment on a few of
3 the discussions that I heard during the morning.

4 First of all, I think it was really
5 great to hear from the committee that they wanted
6 to continue to develop and hear all sides of this
7 issue. I think also the statement about wanting
8 to work with the NGO community was very welcome,
9 so I appreciate that. Also, I think there was
10 some discussion about traceability, and I think
11 getting more traceability in the U.S. seafood
12 supply chain is always a good thing.

13 Just to give you a little background, in
14 our fisheries work, we work with fishermen in five
15 of the eight council regions in the U.S. In the
16 past and currently, we've worked with a number of
17 parts of the seafood supply chain, both retail
18 food service, restaurants, also middle of the
19 supply chain distributors as well.

20 I did want to focus my comments just on
21 the market access portion of what was discussed
22 today, and I think a lot of the discussion was

1 kind of about whether this can or should compete
2 with, say, the MSC in terms of guaranteeing or
3 getting better market access for U.S. fisheries.
4 I think a lot of that depends on where U.S.
5 seafood is intended to go. I think if we're
6 talking about fish that's destined for Europe
7 anyway, I think a NOAA eco label probably doesn't
8 do nearly as much as I think people would hope. I
9 think the requirement for MSC there is so much
10 greater and is going to be much harder for, say, a
11 NOAA program to make inroads.

12 Here in the U.S., again, just based on
13 our experience working with the supply chain, I
14 think there are actually very few large seafood
15 buyers in the U.S. that have, say, an MSC-only
16 sourcing requirement or, for example, a Seafood
17 Watch-only sourcing requirement. Almost every
18 buyer that we work with or our partners have
19 worked with have a variety of ways that they
20 source seafood. And so they are not setting, say,
21 a MSC-only bar for entry for fish to be in their
22 seafood case in some form or fashion.

1 And as was mentioned before, a number of
2 companies that do use, say, the MSC program are
3 not putting the logo on the case. So a
4 consumer-facing label should probably be lower on
5 the priority list of things to develop for this
6 committee or this effort.

7 I did want to use the case of a fishery
8 that we worked very closely with as something that
9 might be instructive for this committee to think
10 about. In the Gulf of Mexico, the red snapper
11 fishery, one that we've worked with very closely,
12 that was a fishery that was interested in MSC
13 certification, decided not to pursue it, but has
14 had a track record of increasing and improving
15 their sustainability over the last couple of
16 years. To take the case of another seafood rating
17 program that had assessed them, the Seafood Watch
18 Program, they were on the red list for -- probably
19 since there was a red list. But through the
20 improvements in the last couple of years, that
21 fishery has actually improved and gotten a greater
22 sustainability assessment on that fishery, and

1 now, even though it's only been a few months, I
2 believe that that change and that improvement has
3 actually already improved the market access for
4 that fishery. And so, for example, if there were
5 a retailer that were not sourcing red snapper
6 because it was on a red list, they have
7 acknowledged that change and are now just in
8 anecdotal conversations with fishermen and buyers
9 and fish houses, they are now getting calls and
10 inquiries about sourcing that product because they
11 have recognized the changes that have improved
12 sustainability considerations in that fishery.

13 The last thing I'd like to say is that
14 again, just given this variety of market
15 experience, it would be tremendously helpful if
16 the subcommittee could provide a little bit more
17 information, either in an appendix or an addendum
18 to that report about the types of conversations
19 that they've had with the buyers. I think, again,
20 if the NGO community is going to be consulted on
21 this issue going forward, hearing that experience
22 on what the committee has gotten from the buyers

1 versus the experience that the NGO community has,
2 I'll point out that something like 12 or 15 of the
3 top 20 retailers in the U.S. by sales and by
4 volume have NGO partnerships when it comes to
5 sustainable seafood. So I think the NGO community
6 can be a very valuable resource in terms of not
7 only having worked with the retailer and seafood
8 buyer community for a long time, but being able to
9 ground truth what the committee has heard and
10 making sure if the committee does decide to go
11 forward that it's in line with the 10 or so years
12 of experience that the sustainable seafood
13 community has already built up with those buyers.

14 So again, those are just some thoughts.
15 I would really urge the committee to focus on
16 getting as much information about and from the
17 market access side of this issue as they possibly
18 can, because that is ultimately where this is
19 going to test out in terms of its success or
20 failure going forward.

21 Thank you for the time.

22 DR. RHEAULT: Thanks, Tim. Bonney?

1 Julie?

2 MS. BONNEY: I was wondering if you
3 could give a little more information on the red
4 snapper fishery. So was it an overfished stock
5 that was rebuilt? And was it down listed from a
6 red list to a different list which allowed better
7 access?

8 MR. FITZGERALD: So the red snapper
9 fishery--I'm not sure the year that it was
10 declared overfished. I think it was quite some
11 time ago. It is scheduled to be rebuilt by 2032.
12 So it is still designated as overfished. The
13 overfishing designated ended, I believe, this year
14 or last year. I can't remember exactly. So there
15 has been a rebuilding of that population. The
16 overfished designation will probably be there for
17 some time, but the population is increasing and
18 that was one of the things recognized in that
19 upgrade off of the red list was that the
20 population had improved, it had expanded, and also
21 by catch and discards and other things had
22 improved in that fishery as well.

1 MS. BONNEY: So in terms of some of the
2 discussion that we've had in terms of the criteria
3 that was outlined where they're talking about wild
4 caught fishery products must be legally caught by
5 U.S. fishermen and landed in the U.S. ports in
6 accordance with federal fishery management
7 regulations and environmental laws, including that
8 the particular fishery stock status is known, and
9 that if it's overfished that it's under a
10 rebuilding plan, what would be -- I guess I'm
11 asking your views on what's laid out in the
12 document and then your example of the red snapper
13 in terms of overfished and being under a
14 rebuilding program.

15 MR. FITZGERALD: So I just picked this
16 up about 15 minutes ago so I haven't really had a
17 chance to go through it, so if it's okay, I'd like
18 to get back to you on that.

19 MS. BONNEY: Okay.

20 MR. FITZGERALD: But I think the reason
21 that I gave that example was that that fishery has
22 had a track record of improvement and one that has

1 been recognized by other programs as well. So I
2 think in terms of, say, a red-listed fishery, if a
3 fishery is red-listed or turned down for
4 certification or something like that, even if it
5 had a NOAA eco-label or a NOAA Magnuson
6 designation, I think buyers who have a sustainable
7 seafood policy in some way would still -- there
8 would still be some issues on whether they could
9 source that fishery or not. Because, as I said,
10 most of them are already partnered with an NGO or
11 some kind of other seafood assessment program to
12 begin with. So I just wanted to point out that
13 example of a place where some more study might be
14 warranted.

15 DR. RHEAULT: John.

16 MR. CORBIN: Can you comment on the
17 perceived notion of competing seafood
18 certification programs and where that situation
19 might be going in general?

20 MR. FITZGERALD: Could you maybe be a
21 little more specific?

22 MR. CORBIN: I mean, there seems to be a

1 lot of certification, or at least several
2 certification programs, and the perception in the
3 community seems to be that they're competing for
4 participants. And if that's incorrect, I'd like
5 to hear your interpretation.

6 MR. FITZGERALD: I can give an example.
7 Do you mean within the seafood buying community or
8 within the fishing community?

9 DR. RHEAULT: Let me just try -- I guess
10 what I'm thinking John is pushing towards, is
11 there any move amongst the NGOs to harmonize so
12 that we have a harmony operation of criteria and
13 standards?

14 MR. FITZGERALD: Well, I can -- again, I
15 can only speak from the perspective of my
16 organization. We, as I said, we work with
17 fisheries in five of the eight council regions.
18 Some of those fisheries are MSC certified, some of
19 them are seeking MSC certification, some are not
20 interested just because of the nature of their
21 market. And for the fisheries that would like
22 help getting into MSC, we tell them who to talk

1 to, and for the ones that don't, we don't really
2 push them into it. So that's their decision. I
3 can say just speaking from the experience of one
4 buyer that we work with, kind of a medium-size
5 retail chain, they have -- off the top of my head,
6 they probably use seven or eight or nine different
7 seafood assessment programs -- they're not all
8 certifications -- to guide how they buy fish. And
9 so it's, like I said before, it's not MSC only,
10 it's not Seafood Watch only, it's not U.S. only.
11 There's a number that would, say, satisfy what
12 they consider to be sustainable or acceptable fish
13 to source. And some of those are domestic sources
14 and a lot of those are imported sources.

15 So again, just based on the companies
16 that we worked with, they are very happy to use a
17 variety of guidance by which they can source fish.
18 And it's not necessarily a MSC or nothing
19 proposition.

20 DR. RHEAULT: So let me just clarify the
21 question. Is there a move that you're aware of
22 amongst the NGO community to attempt to harmonize

1 the standards so that producers who want to sell
2 to buyer A, who requires certification X and he
3 has to get a different certification to satisfy
4 the needs of buyer 1. So this is one of the major
5 concerns that we are responding to from our -- the
6 people that we've heard from, that they're being
7 forced to get different certifications at great
8 cost. And the plea that we have from our
9 community that might alleviate the need to create
10 this standard would be if there was a
11 harmonization effort, which we're not seeing in
12 the NGO community.

13 MR. FITZGERALD: So there is a coalition
14 called the Conservation Alliance for Seafood
15 Solutions, which is a group of about 20 NGOs that
16 work with seafood buyers across North America, and
17 we have something called the common vision, which
18 is a series of six steps that we are asking of our
19 seafood corporate partners to do in implementing
20 their sustainable seafood programs. Nowhere in
21 the common vision does it say you need to use
22 program X or program Y. And as you can imagine,

1 with 20 groups, we are not all going to have the
2 same approach to sustainable seafood, nor should
3 we. I think that the variety is good. But I
4 think we are harmonized in terms of what we are
5 asking from the seafood- buying community in terms
6 of committing to sustainable seafood and having a
7 policy, tracking data, becoming more traceable.
8 So I'd be happy to forward that information to
9 whoever is the relevant person on the committee so
10 you can see the alignment that there is within
11 that NGO community. And again, that's about 20
12 groups from across the U.S. And Canada. And I
13 believe my colleague had a comment if that's
14 acceptable in the back. Maybe he can better
15 answer the question.

16 MR. MARTENS: Do you mind if I answer
17 the question?

18 DR. RHEAULT: Do you want to step up to
19 the mic?

20 MR. MARTENS: Or I can speak loudly.

21 THE REPORTER: The mic, please.

22 MR. MARTENS: Thanks. So two quick

1 points on this.

2 First off, if you want to see how the
3 different certification systems compare, again, we
4 have the Accenture report which we published last
5 year. I'm happy to make it available to this
6 committee, and actually, it'll be an attachment to
7 our comments. And you can see a side-by-side
8 comparison.

9 Secondly, there is an effort called GSSI
10 right now that is attempting to benchmark the
11 different certification programs, and basically
12 give buyers a sense of basically how good they are
13 and how far they go.

14 And lastly, I fully support the point
15 made by EDF that, you know, we are not aware of
16 any partner right now that is forcing any of their
17 suppliers to have any certification. We're
18 working with all of our partners who are telling
19 us, okay, here is our current supply. How can we
20 work to improve it across the board? And we have
21 a slew of solutions that we're applying to bring
22 about improvements. Certification is only one of

1 them, as the one by which we benchmark progress.

2 That's all I want to say.

3 DR. HOLLIDAY: So the question that you
4 were asking, Bob, was partially answered, but I
5 just refer back to last October's meeting here in
6 this building when John Connolly --we had others
7 presenting -- we discussed and had a briefing on
8 the Global Seafood Sustainability Initiative. You
9 can go back to the presentations on the MAFAC
10 website for the basic description of that, as well
11 as links to that effort.

12 DR. RHEAULT: So we're up against the
13 noon hour. It seems like an appropriate place for
14 a break, unless somebody has a pressing issue that
15 needs immediate attention.

16 Mr. Chair, when would you like us to
17 reconvene?

18 CHAIRMAN RIZZARDI: Just making sure
19 there is no further public comment.

20 So we were scheduled to come back at
21 1:15 when there was another public comment period
22 elicit. We'll see if anybody else who hasn't had

1 an opportunity to speak shows up then. And if
2 not, we'll break out into our subcommittees at
3 that time. So see everybody at 1:15.

4 (Recess)

5 Subcommittee Meetings

6 CHAIRMAN RIZZARDI: Good afternoon,
7 everybody. I hope everybody had a good lunch.
8 Thanks for getting back.

9 I want to just do some procedural things
10 if I could, please. But let me double-check. I
11 kind of informally polled -- is there anybody here
12 for the public comments?

13 Okay. So what we're shooting to do in
14 the next few hours is break out into our
15 subcommittees, and then after the subcommittees,
16 to reconvene to talk about sustainable fisheries
17 certification again. Rather than reconvening at 4
18 o'clock, I'm going to just shoot for 3:30 to give
19 us a full 90 minutes to talk about the
20 sustainability issue and certification issue,
21 which means that we've got two hours to divide up
22 for our committees to go back into their effort to

1 do some planning for the 2014 calendar.

2 I know that Ecosystems, Dave, and
3 Strategic Planning, Tony, you both needed some
4 additional time to work through issues; correct?

5 About how much time would you anticipate
6 needing for your subcommittee?

7 DR. CHATWIN: So it's a binary thing.
8 We can either meet for a very brief amount of time
9 and focus on the workplan or we can meet for
10 longer and start to get into some of the issues.
11 So if we have a short amount of time, which I'll
12 defer to the subcommittee members, but we can get
13 our next steps mapped out and that would be
14 sufficient. But I would, again, defer to
15 subcommittee members on that.

16 CHAIRMAN RIZZARDI: Okay. Dave, any
17 estimate of how much time you would need?

18 MR. WALLACE: All that I'm allowed.

19 CHAIRMAN RIZZARDI: Okay. Julie?

20 MS. BONNEY: I think we could make
21 progress in an hour.

22 CHAIRMAN RIZZARDI: In an hour? Bob,

1 does Commerce need to reconvene?

2 DR. RHEAULT: For a work plan? I think
3 we've already identified the subject matter. Do
4 we want to define it more?

5 MR. CORBIN: How much detail are you
6 looking for?

7 CHAIRMAN RIZZARDI: Well, understand
8 that one of the things that I was hoping to do
9 with the time is go back, and I'm going to go to
10 the Marriot Courtyard and try to embed as much of
11 the comments and the notes from the discussion
12 we've had, into the fisheries certification
13 discussion in our document, and I know that a few
14 of you on Commerce have been participants in that
15 dialogue, so I would welcome, you know, the
16 working group to convene as well. So my instinct
17 was that maybe Commerce didn't need to meet as a
18 committee, and then the folks from Commerce who
19 are involved in the working group could help out.

20 DR. RHEAULT: I'm good with that.

21 CHAIRMAN RIZZARDI: Which means I've got
22 three committees in two hours, and I know that

1 Ecosystems and Protected Resources overlap. So
2 Dave, would an hour each work for you?

3 MR. WALLACE: We can make it work.

4 CHAIRMAN RIZZARDI: Julie, will that
5 work?

6 MS. BONNEY: Sure.

7 CHAIRMAN RIZZARDI: And then Tony, will
8 the first hour work for you, and if you need more,
9 you take it?

10 DR. CHATWIN: That's fine. I think
11 we'll be --

12 MR. WALLACE: That's ample time for us.

13 DR. CHATWIN: So just on the seafood
14 thing, I know that I missed this morning's
15 discussion, but I'm really keen to see the next
16 draft that you're working on. What is the process
17 that you envision for that?

18 CHAIRMAN RIZZARDI: I've been busily
19 taking notes and trying to amend the document and
20 incorporate as much of the feedback as we're
21 getting. I want to come back with a new version
22 of the document at 3 o'clock, get copies made for

1 everybody, and give people time to read it over
2 and then to discuss it.

3 All right. So it's 1:30. We do not
4 have two rooms. We are going to have to meet with
5 our subcommittees here, so we'll be dividing up.
6 We'll be turning off the microphones for the
7 subcommittee meetings. So let me suggest that
8 Strategic Planning meet on one side and Ecosystems
9 meet on the other, and then the next hour -- so
10 that's 1:30 to 2:30, and then at 2:30, Protected
11 Resources can meet. And in the meanwhile, I will
12 be taking whoever wants to participate in the
13 working group effort over to the Marriot Courtyard
14 lobby. We'll work from there. Is that --

15 MS. MORRIS: What time do you want
16 everybody to reconvene?

17 CHAIRMAN RIZZARDI: Reconvene here at
18 3:30.

19 MS. MORRIS: 3:30.

20 CHAIRMAN RIZZARDI: Does that work?

21 Okay. Thank you, everybody.

22 (Recess)

1 CHAIRMAN RIZZARDI: Thank you,
2 everybody, for taking some time to review the
3 latest draft document. I want to talk about for a
4 moment what this document is and what it isn't.

5 First, I think Mark did a good job
6 talking about, you know, the terms of reference
7 and how we got involved in this project to begin
8 with. We have not been asked to give NOAA a
9 complete recommendation of exactly how to operate
10 a certification program or a registration program
11 down the road. We've been asked to figure out, is
12 there another way that we would agree on. I also
13 recognize that we're not going to have unanimous
14 consensus. I prefer that. I always think it's
15 better when our group can get there. I fully
16 anticipate Michele, you are still going to have
17 dissent, and I respect that. And there may be
18 others amongst you who dissent as well, and that's
19 fine. The question is can we achieve a
20 substantial majority of support for this concept,
21 and does it accurately capture the concerns and
22 thoughts? I have tried to amend the document to

1 include many of the things that we discussed over
2 the last couple hours. I've tried to adapt to
3 some of the commentary that we received from the
4 public. I hope it comes closer to the mark of
5 what we were all hoping to achieve through this
6 process. And with that said, I'm looking forward
7 to getting some feedback from all of you as to
8 what you think of it and where we are and how much
9 more we've got to do.

10 DR. CHATWIN: Given that I missed the
11 morning I thought I'd start the discussion going.

12 First, I'd like to acknowledge all the
13 hard work that everybody has put into this effort.
14 I think it's a complex issue. It's something that
15 the subcommittee and the committee as a whole has
16 been looking at over quite a long time. We have
17 had opportunity to review a couple of drafts now,
18 this being the third, if I'm not mistaken. And I
19 would also like to preface my comments by saying
20 that I do believe that the U.S. Fisheries
21 Management System is one of the most robust in the
22 world. However, it is a fishing management

1 system, not a fishing sustainability system. And
2 the fundamental premise in this document, although
3 there have been some changes, is that U.S.
4 Fisheries, for being well managed, are
5 sustainable, independent of their performance. I
6 have said this before, and I don't see it
7 acknowledged here, that our recommendation of any
8 sort of sustainability certification should be
9 tied to performance, and achieving performance
10 benchmarks.

11 So, you know, as it is stated, any U.S.
12 Fishery in federal waters that is subject to a
13 fishery management plan, and now an improvement,
14 whose stock status is known, is deemed
15 sustainable. And in fact, it goes beyond that and
16 it says -- on the last page it says, "If there is
17 -- for an overfished fishery that does not yet
18 have a fishing management plan, NOAA can determine
19 to consider it sustainable after getting
20 additional stakeholder feedback. And I just think
21 if we are trying to recommend that NOAA engage in
22 a sustainable certification of its fisheries, it

1 should be tied to performance. And if there is no
2 management plan and there is an option here to
3 deem even that fishery sustainable, I don't think
4 we're doing ourselves service or the agency
5 service.

6 So I know that here we talk about that
7 we're not recommending a certification program to
8 compete with other certifications, but I think the
9 practical implications of creating a number, a
10 traceable number, a number that identifies it as
11 sustainable U.S. seafood, is going to be used to
12 compete with other certification systems. I also
13 think it is part of our responsibility, if that's
14 what we want to recommend as a body, that we do
15 give guidance on how that relates to other
16 certification systems that are out there. And
17 here, I don't think it's acceptable for us to move
18 this forward and say we don't have an opinion on
19 how this relates to others, because this document
20 still cites the multitude of certification systems
21 out there as one of the reasons that we should
22 clarify to businesses what the certified U.S.

1 fishery is about. And I've said this before and
2 I'll say it again, 85 percent of the seafood
3 consumed in this country comes from abroad. So
4 it's not enough to be able to say any managed U.S.
5 source is sustainable and leave it at that. I
6 think we need to go further, or simply recommend
7 to NOAA that they go through a deliberative
8 process and a consultative process to gather
9 information and determine whether or not they can
10 afford to develop such a program and whether such
11 a program is actually needed.

12 And I will yield in just a second. I
13 think it would also be good to describe what is
14 meant by a business-to-business certification.
15 You know, I know we've talked about a number, a
16 registry, but where is the need for this? That's
17 not well articulated here, and I think it behooves
18 us to do so.

19 And then just for the record, I don't
20 think that a fishery that is overfished or has
21 overfishing occurring and is under a fishing
22 management plan should be deemed sustainable. I'm

1 happy for it to be called the well-managed
2 fishery, but I think sustainability has to be tied
3 to performance and meeting performance benchmarks.
4 So if it manages to achieve the status where
5 overfishing is not occurring and it's not
6 overfished, that would be a point at which it
7 could be deemed to be sustainable. But I don't
8 think that because it's being found to have issues
9 and now steps are being taken to address it, that
10 it should automatically be considered sustainable
11 because it doesn't distinguish those fisheries
12 from the other fisheries that have met those
13 performance standards. And I think that's an
14 important distinction. Thank you.

15 CHAIRMAN RIZZARDI: Tony, can I ask you
16 a couple questions?

17 DR. CHATWIN: Sure.

18 CHAIRMAN RIZZARDI: On page 8, I see the
19 reference that you made to the last sentence in
20 the first paragraph is the one that I think left
21 open-ended whether or not overfished fisheries
22 that do not yet have an FMP can be registered as

1 sustainable. I think I understood you as saying
2 they should not be considered sustainable.

3 DR. CHATWIN: Yeah.

4 CHAIRMAN RIZZARDI: For overfishing
5 where there is an FMP and where the catch is below
6 the limit that's set in the FMP, would you
7 consider that to be meeting the performance
8 metrics and still to be sustainable? Or would you
9 disagree with the characterization of that as
10 sustainable?

11 DR. CHATWIN: Could you repeat that,
12 please?

13 CHAIRMAN RIZZARDI: If you have a
14 fishery where there's overfishing, you have an FMP
15 in place, the FMP is being met, you're below the
16 limits that are being set, do you think that's
17 sustainable?

18 DR. CHATWIN: I think it should be
19 deemed sustainable only once overfishing is no
20 longer occurring.

21 MR. WALLACE: I guess I'll jump in here.
22 It is too bad that Tony wasn't here this morning

1 because we surely had a robust discussion about
2 all of these topics. The notion that a
3 NOAA-driven certification system is designed to
4 compete with other systems from my perspective is
5 incorrect. I am sure that there are lots and lots
6 of fisheries in the United States that cannot
7 afford the very high cost to comply with the kind
8 of certification programs in the MSC. And
9 therefore, these fisheries find themselves in a
10 situation where they are discriminated against by
11 retailers or food service distributors because
12 they are not certified. It is obvious that when a
13 fishery is going to be certified by MSC in the
14 United States that the first place the
15 certification officer goes is to the Fisheries
16 Management Plan and the stock assessments and then
17 makes a determination -- this is not overfished,
18 overfishing is not occurring, therefore, it's
19 sustainable. And they use the National Marine
20 Fisheries Service data to confirm that.

21 Now, if the NGOs want to punish small
22 fishermen and fisheries because they cannot afford

1 hundreds of thousands of dollars to become
2 certified, then they need to say that. If you
3 remember at our meeting here in Washington in the
4 Managing of Fisheries III, a person from MSC as
5 there. She was asked what it cost and she said
6 \$20,000, and we said, "Fine. What fishery was
7 that?" And she never answered the question.

8 But Bob just said that Maryland spent
9 \$200,000, the state of Maryland, for striped bass,
10 which is a rebuilt fishery, et cetera, and they
11 just kept adding layers and layers and layers, and
12 finally, the state of Maryland now -- the state of
13 Maryland has five million people and a budget of
14 billions, and got too rich for them and they quit.
15 So Ted said the lobster industry spent a million
16 dollars to get certified. Now, let me suggest to
17 you that we need to get real and protect
18 sustainable small U.S. fisheries from being
19 discriminated against on purpose by NGOs who want
20 to set a whole series of standards, many of which
21 have nothing to do with sustainability whatsoever,
22 but are all their social and other requirements

1 that they change, that they have, and then they
2 continuously change. They keep moving the goal
3 post every year. You have to get recertified
4 every year. They have new -- every fishery has
5 new things that they have to meet, including the
6 salmon guys up in Alaska gave up because they kept
7 changing the rules on them. So I think that we
8 need to understand that this is a perfectly
9 reasonable idea. Thank you.

10 CHAIRMAN RIZZARDI: Julie?

11 MS. BONNEY: I wanted to ask some
12 clarification questions in terms of what's in the
13 document compared to what the original draft was,
14 so, and maybe you can walk me through if I miss
15 some of them. I think probably the key components
16 to me were the costing element that's on page six.
17 So can you kind of walk through where the numbers
18 came from so we can kind of understand?

19 CHAIRMAN RIZZARDI: Absolutely. Happy
20 to do it. For starters, I would have liked to
21 have given underline strike through but it got to
22 the point where after cutting and pasting a bunch

1 of paragraphs around it was all underline strike
2 through, so it doesn't make a whole lot of sense.
3 So thank you for taking the time to read through
4 the document. It does reflect a lot of moving
5 things around. Of course, there are now headings
6 in here which is part of why there was a lot of
7 organization that changed.

8 MS. BONNEY: Before you answer my
9 question, I appreciated the heading changes and
10 the clarity. I think you've added some clarity,
11 especially with the section that deals with the
12 criteria. So thank you for that.

13 CHAIRMAN RIZZARDI: Good. Thank you.
14 So on the biggest changes, page five, there's a
15 whole new paragraph on Fish Watch, the second
16 paragraph of the Fish Watch discussion is new.
17 The traceability discussion is inserted. The
18 revoking of registration numbers includes a
19 reference to the Lacey Act. The issue of whether
20 or not an overfished fishery can still be
21 considered sustainable is flagged. I have not
22 resolved that in this document one way or the

1 other.

2 MS. BONNEY: So when you say that's
3 flagged, that was in reference to Tony's comment
4 on page eight?

5 CHAIRMAN RIZZARDI: Tony's comment, that
6 issue exists twice in this document. It exists
7 here on the revoking registration as well. It is
8 possible that NOAA could conclude that no fishery
9 that is overfished should be considered
10 sustainable. We've left that open-ended. Now, if
11 MAFAC has a strong opinion and wants to weigh in
12 saying absolutely not, an overfished fishery
13 should never be labeled as sustainable, that's
14 fair and I'm open to the committee's feedback. I
15 simply left it open for NOAA to make that
16 determination based on its own evaluation. And it
17 goes to the issue that Bob laid out before, which
18 is we could probably debate this issue ad nauseam
19 for a long time and get into issues of what
20 standards should be applied, and I was trying to
21 avoid that to the extent we could. But that
22 second paragraph under revoking registration

1 numbers is new.

2 On the economics, the economic analysis
3 paragraph reflects the data that we gathered over
4 time and it shows the range. What I did is I've
5 shown that the data we got on startup ranged from
6 \$100,000 to half a million dollars, and the
7 highest estimate we got for annual program
8 operations was about 1.2 million, but we received
9 additional evidence suggesting it would cost less
10 than \$1,000 per year per product to do the desk
11 audit that was anticipated.

12 So those are the numbers that we got
13 during our investigation. So it's not like we
14 haven't gotten any cost data; we have. But at the
15 end of the day, the last sentence there says, "We
16 encourage NOAA fisheries to perform the more
17 detailed cost analysis." We fully recognize that
18 this is not the end of the process. In fact, at
19 the very end of this document I point that out.
20 This is meant to be the beginning of a discussion
21 where NOAA is going to have to reach out to the
22 stakeholder community, to the NGOs, to the

1 business entities, to do the viability analysis,
2 to do the economic analysis. We've been asked to
3 give a suggestion to NOAA as to whether they
4 should go down this path at all. And thus far,
5 what I've heard from the committee is generally, a
6 consensus that yes, they should. And I'm trying
7 as best I can to capture the committee's sentiment
8 on that.

9 After the economics paragraph, the legal
10 authority paragraph has some additional language,
11 talking about the need to clarify what would
12 happen for state waters and aquaculture waters.
13 Again, we're not solving that problem here. We're
14 suggesting a phased approach that starts with the
15 federal waters where we have some clarity. Down
16 the road there would probably be a need to address
17 the needs of the states, to address the needs of
18 aquaculture, and I think that's a question to be
19 answered in the future. The phased implementation
20 paragraph that follows includes a reference to
21 Julie's suggestion about considering a pilot
22 program. For example, launching it in some states.

1 And the bottom line paragraph is simply moved from
2 an earlier version of the document.

3 Turning to the frequently asked
4 questions, these are shorter. I deleted some of
5 the information from the prior versions where I
6 thought it was redundant with the information
7 above. The aquaculture and state management piece
8 is largely the same, tweaked a little bit. The
9 overfished and overfishing piece on page eight has
10 that last sentence at the end that I've already
11 discussed with Tony. The paragraph on how could
12 NOAA fisheries declare the fisheries it manages to
13 be sustainable is new, and it's responsive to the
14 issue that has been bantered about in some of the
15 correspondence and that was raised in the public
16 comment. And the "but what about" is also new.

17 MS. BONNEY: So just to follow up with
18 what you just put on the table.

19 CHAIRMAN RIZZARDI: Yes, please.

20 MS. BONNEY: I guess I never turned my
21 mic off. Sorry about that.

22 Some things to me seem like they're

1 policy decisions that maybe we, as MAFAC, really
2 aren't in a place to decide. So, for instance,
3 overfished and overfishing may be more of a -- we
4 could get some policy guidance or NOAA could have
5 some internal discussions in terms of policy
6 guidance for those issues versus getting into a
7 debate here about whether, you know, how you tease
8 out whether or not it's sustainable or not.

9 The other issue to me is I think we've
10 been pretty clear on the cost issue. I have a
11 strong feeling on the cost issue, which is we're
12 not going to trade one mission under NOAA for this
13 mission. And so while the information in here
14 suggests that it should be a low cost program with
15 no cost to the agency, with the bookmark on there
16 that they're going to do a detailed cost analysis,
17 I don't know that we need to add some text to
18 basically say that; that this should be a
19 fee-based program and not a program that is going
20 to cost their budget and trade off other elements.

21 CHAIRMAN RIZZARDI: That's a good
22 comment, and I've heard that repeatedly from the

1 committee members. I'd point out that the
2 paragraph on economics does say "taxpayers should
3 not shoulder the long-term program costs."

4 MS. BONNEY: Okay.

5 CHAIRMAN RIZZARDI: It has been very
6 explicit in saying that we think that this should
7 be fee-for-service and that NOAA should not be
8 spending the taxpayer money on this. If this
9 program can't be done at a reasonable price and as
10 a fee-for-service, then what I've heard thus far,
11 I think people would agree with you, is we
12 shouldn't do it.

13 MS. BONNEY: And maybe the way to fix
14 that is to make that the very first statement up
15 top so it's clear.

16 And there's one other policy implication
17 in here but I've forgotten what it was. So those
18 are the two -- oh, I know what it was -- is the
19 issue of how to deal with aquaculture and states.
20 To me, that is a can of worms in itself to decide
21 how to determine sustainability for state
22 jurisdictional fisheries. And there is some

1 comment in here that NOAA would, what, hold up
2 Magnuson style policies where the state fisheries
3 would have to be considered in compliance to that.
4 I don't know if that's something that we should be
5 deciding now or that should be decided sometime in
6 the future. So I'll just flag that one, too.

7 CHAIRMAN RIZZARDI: Julie, you made a
8 comment that you're not sure that we should be
9 offering policy.

10 MS. BONNEY: For state jurisdiction.
11 That's all.

12 CHAIRMAN RIZZARDI: I think you also
13 made it in the context of overfishing versus
14 overfished. And I'd suggest, we're the
15 stakeholder body. You know, we represent the
16 diverse opinions of the fishery community. That's
17 the point of having a FACA committee. And if we
18 can achieve consensus on a policy point, I think
19 that's when we're most helpful to NOAA.

20 Now, I would agree that we shouldn't be
21 giving legal advice, and if it becomes a legal
22 nuance of legal fishing or overfished, that gets a

1 lot harder. If you had a strong opinion, as Tony
2 does on NOAA should never call an overfished
3 fishery as being sustainable, I respect that. If
4 that's where the committee is, I think that's what
5 we should reflect in the document.

6 MS. BONNEY: To weigh in on that then, I
7 basically -- whoops, he hates that -- when you
8 look at page four, which you detail the four
9 criteria -- A, B, C, and D -- I actually sent that
10 on to the North Pacific Council, to the deputy
11 director to get his take on that; whether A, it
12 would work for the North Pacific; and B, whether
13 he felt that that would work more for the
14 definitions of sustainability in terms of the
15 Magnuson, because obviously, when you're working
16 through overfished or overfishing, you have
17 certain criteria that kick into the Magnuson to
18 bring those fisheries into compliance. So I think
19 that those meet the definition of sustainability,
20 because you're requiring certain things from those
21 particular elements.

22 The only issue I struggle with somewhat

1 is what Julie Morris put on the table, which is
2 this gap construct and what you should do with
3 something like that. So that's -- since you're
4 asking for an opinion, that's mine.

5 CHAIRMAN RIZZARDI: And I would point
6 out that the gap issue is exactly what's
7 identified in that last sentence of the paragraph
8 at the top of page eight. That is what I tried to
9 capture in that sentence. For overfished
10 fisheries that do not yet have a fishery
11 management plan, NOAA will need to figure out what
12 to do.

13 MR. RAUCH: So I think what you mean to
14 say is not the fishery management plan, because
15 they all should have a fishery management plan,
16 but what you mean to say is a rebuilding plan
17 under the Magnuson Act, because that gets to that
18 gap. I mentioned that for rebuilding fisheries
19 there may be a gap between the identification of
20 them as overfished and the council's adoption and
21 our approval of a rebuilding plan. But they
22 should all have a fishery management plan.

1 CHAIRMAN RIZZARDI: Tony?

2 DR. CHATWIN: So a clarification on this
3 issue. Let's say you have a fishery that's
4 overfished and has a rebuilding plan put in in
5 year one, and in year two, it's not meeting its
6 rebuilding requirement. It still has a rebuilding
7 plan in effect and it's not meeting it. So it's
8 not moving towards the benchmarks that I am
9 suggesting would deem a fishery sustainable. It
10 remains -- under this framework, that fishery
11 continues to be a sustainable fishery in the U.S.
12 And can be marked as such. Is that right?

13 CHAIRMAN RIZZARDI: I don't think that's
14 accurate. I just don't think we've answered that
15 question. I think if we wanted to say that if
16 they're not meeting the terms after year two, then
17 NOAA should revoke, then that's open. I think
18 we've left this question open in the document as
19 drafted.

20 DR. CHATWIN: In my opinion, you have
21 not. You have said the criteria are, it needs a
22 rebuilding plan and independent of the status of

1 that fishery, if it has that rebuilding plan and
2 its status is known, it's sustainable and should
3 be certified as such. So in my opinion, you
4 haven't left it open. You have decided it, and
5 you're recommending that NOAA adopt it.

6 CHAIRMAN RIZZARDI: In the criteria on
7 page four, they have to be acting in accordance
8 with the conditions. If they're not acting in
9 accordance with the conditions, then I'm not sure
10 that we've spoken to whether or not it's
11 sustainable.

12 MS. MORRIS: On this particular issue, I
13 think it's fraught and we may not be able to --
14 maybe we should just say in the document that
15 fisheries that are under overfished status and in
16 a rebuilding plan are going to take further
17 discussion to figure out whether they're
18 sustainable or not.

19 And, you know, we have the red snapper
20 fishery in the Gulf of Mexico that's in a
21 rebuilding plan. It's not going to be rebuilt
22 until 2032, but I think the harvests that are

1 going on now on the commercial side are completely
2 consistent with rebuilding and the bycatch has
3 been reduced and so, you know, I think it's
4 debatable whether that should be certified as a
5 sustainable fishery or not. I think it's worth
6 talking about.

7 So, you know, I'm sympathetic to Tony's
8 concerns. I'm also sympathetic to what's going on
9 with the Gulf red snapper. So maybe we just say
10 this whole topic of if it's overfished, whether
11 it's sustainable or not, needs more discussion,
12 and we don't really have a MAFAC recommendation
13 about that. So that's specifically on that.

14 I wanted to respond to something that
15 Dave said about social and environmental
16 considerations, and I really think if you look at
17 what -- when people talk about sustainability,
18 they're not just talking about maximum sustainable
19 yield. They're not talking about whether the
20 level of harvest is sustainable over the long
21 time. There are social and environmental
22 dimensions to sustainability that some of the

1 other certification programs really look at. And
2 I think i-SEAL that the World Wildlife Fund guy
3 was talking about when I looked it up after he was
4 done, I mean, they really are focused on the
5 social and environmental aspects. Somebody today
6 said that there's product harvested in the EEZ
7 under Magnuson and it meets all the Magnuson
8 standards and then it's sent to China for
9 processing. Who knows whether that part of the
10 chain is sustainable in terms of social and
11 environmental factors? And it's brought back to
12 the U.S. for sale. So I think that there is this
13 social and environmental aspect of sustainability
14 that won't be addressed in the system; that we're
15 not trying to address in the system, but we need
16 to own up to that we're not addressing that part
17 of the whole sustainability focus in this system.

18 And then I have -- I'm just confused
19 about something, and I hope that you guys can help
20 me figure it out. It looks like if we look at the
21 fishery and if there's no -- if it's not
22 overfished and it's under Magnuson and it's all

1 legal, we say that that fishery is sustainable
2 under Magnuson. But then we say that a domestic
3 producer can have the option on a fee-for-service
4 basis to get a registration number identifying
5 their product as sustainable domestic seafood.
6 And then they can package that as sustainable U.S.
7 seafood if they're registered, and the seller has
8 to be audited and they pay the fee to have it be
9 audited.

10 But it's really unclear to me who pays
11 for the traceability. Later on it says at the
12 bottom of page four, "the traceability is paid for
13 by the industry." So is that the seller or is
14 that some industry group or is that the buyer?
15 This is where I start to get really confused. Is
16 it the seller or the buyer that's paying for
17 traceability? And I can see that Bob wants to
18 answer my question, which is great.

19 But then, you know, further on it gets
20 kind of confusing again, and I'm losing my other
21 notes on this. But then it says under the top of
22 page six, it says that the annual expenses for

1 program participants is less than \$1,000 a year.
2 So is that the annual expense for the seller or
3 for the people who are paying for the
4 traceability, for the industry? I just get lost
5 in these different categories of who is paying for
6 what.

7 DR. RHEAULT: So to clarify,
8 traceability has to be a component of this, and it
9 is for any of the certification schemes, and it is
10 paid for by the producer and subsequently, through
11 the value chain, through the chain of custody. If
12 the chain of custody is broken, that product can
13 no longer be marketed as a sustainable product
14 because the chain of custody has been broken. So
15 everyone along the way makes a certain investment
16 in the technology tools required to maintain chain
17 of custody. And there is an investment that's
18 involved that's not represented here because it's
19 a common theme for any certification is the need
20 for traceability and that investment they're in.
21 I do want to point out that we're being a little
22 deceptive in that language they're labeling; what

1 they're packaging as sustainable I think would be
2 problematic. I think what we would be doing is
3 saying we're authorizing them to market their
4 product as certified. Once you put the label on
5 the package, it becomes hard to take the label
6 off. If the chain of custody is broken, that
7 product is no longer certifiable. So the chain of
8 custody is an integral part of this, and it must
9 be maintained throughout the lifetime of the
10 product in order for it to be sold as certified
11 once the chain of custody and the traceability is
12 broken. So, you know, in the case where we're
13 shipping it to China to be processed, they would
14 have to make the same investments in the
15 sustainability in the trace back software and
16 hardware necessary to maintain that.

17 There's a whole section of UNFAO
18 requirements and ISO suggestions as to how those
19 are done. It's a whole field of work and I
20 encourage you to go look at it because I'm not an
21 expert at it, but I know just enough to get me in
22 trouble. And similarly, in the next line, right

1 under the criteria, I hesitate to use the word "to
2 qualify as U.S. sustainable." I would say "to
3 receive certification as sustainably harvested
4 seafood" I would suggest is better terminology
5 because I think that a lot of people would
6 maintain that their product is sustainably
7 harvested in the U.S. and it's sustainable USA
8 seafood even if they don't get the certification.
9 But what we are talking about here is to receive
10 certification under this program would be my
11 suggestion for an alternative wording.

12 Does that help you at all, Julie?

13 MS. MORRIS: Can I ask a follow-up
14 question?

15 DR. RHEAULT: Sure.

16 MS. MORRIS: So it's the producer who is
17 paying for their production to be audited as
18 coming from a -- I'm all good with MSA fishery?

19 DR. RHEAULT: Obeying the law and all of
20 that.

21 MS. MORRIS: So the audit is just
22 looking at are you really participating in this

1 MSA fishery and are you not doing anything
2 criminal. That's what the audit's doing?

3 DR. RHEAULT: And you have a chain of
4 custody traceability program in place.

5 MS. MORRIS: But only that first step of
6 the traceability for the seller; right?

7 DR. RHEAULT: Correct.

8 MS. MORRIS: And so the \$1,000 estimate
9 cost is for the producer?

10 DR. RHEAULT: The audit. For the
11 initial producer.

12 MS. MORRIS: Yeah. And then the
13 traceability is paid for. Everybody in the chain
14 pays a little bit for the traceability?

15 DR. RHEAULT: (Nodding)

16 MS. MORRIS: Okay, thanks.

17 CHAIRMAN RIZZARDI: Paul, and then Ted.

18 MR. CLAMPITT: Thank you, Mr. Chairman.

19 My question just is reminded about the third-party
20 review and that this may lack that. And I haven't
21 been -- reading the document and listening here, I
22 haven't heard anybody address, you know, the fact

1 that there may not be an independent audit
2 involved in this process. You have basically the
3 manager auditing the manager.

4 CHAIRMAN RIZZARDI: That's addressed in
5 the second to last paragraph of the document.

6 MR. CLAMPITT: Second to last paragraph?

7 CHAIRMAN RIZZARDI: How can NOAA
8 fisheries declare the fisheries it manages to be
9 sustainable. And it discusses the issue of
10 independence.

11 MR. CLAMPITT: Right. Well, my question
12 is -- that's an interesting paragraph but you're
13 going to go through this and is it going to be
14 respected?

15 CHAIRMAN RIZZARDI: I mean, at the end
16 of the day this is the judgment call we have to
17 make, as to do we think that the seafood safety
18 inspection service is adequately independent?
19 They're certainly not aligned with the regulators
20 at NOAA Fishery. They are a distinct entity that
21 adheres to auditing standards. You know, Tim has
22 spoken to us at length on that point.

1 MR. CLAMPITT: Well, we're not talking
2 about seafood safety necessarily; we're talking
3 about sustainability.

4 CHAIRMAN RIZZARDI: Right. The issue
5 here is that the auditing is being done by the
6 seafood safety inspection service, who will come
7 in and look at the documents and verify that the
8 party is getting its seafood from the right
9 fishery; that their traceability mechanisms are in
10 place; that they're complying with all the laws.
11 Right? So there is an independent component to
12 this.

13 Is that adequate? That's the judgment
14 call. And one of the other critiques that's
15 levied is many of the certification entities that
16 are out there exist entirely based on the revenues
17 that they're deriving from the certification
18 process. So are they independent? Right? So
19 those who live in glass houses shouldn't be
20 casting the stones, right? I would suggest that
21 an \$800 million agency like NOAA has tremendous
22 credibility in independence, and I'm pretty

1 comfortable relying on NOAA's determinations that
2 comply with federal law as stating that yes,
3 Congress said these are the standards for
4 sustainability, and if we're meeting them, that's
5 good.

6 Maybe I could step back for a second and
7 ask a question. Putting aside the overfished and
8 overfishing issue, if we've got a fishery where
9 the stock is known, it's not overfished, there's
10 no overfishing, is there any disagreement that
11 that's a sustainable fishery? It's well managed.
12 You've got a known stock. There's no overfishing,
13 not overfished, no rebuilding issues. Is that a
14 sustainable fishery? Is there any dissent on that
15 point?

16 Julie.

17 MS. MORRIS: Well, just the point I
18 already made, that if you're just talking about
19 the fish and how they're harvested, yes. But
20 that's a limited definition of sustainability.
21 Sustainability usually encompasses aspects of
22 environmental and social dimensions of how the

1 harvest is executed and all of those ripples
2 around it.

3 CHAIRMAN RIZZARDI: Ted?

4 MR. AMES: Yeah, thank you. This has
5 been a great discussion. I think you guys did a
6 great job on preparing this. And the issues
7 raised are very much on point.

8 I have just one minor problem. Being
9 from Maine, we have just an enormous amount of
10 seafood going both directions across the border to
11 Canada, and I noticed on page seven, the last
12 three sentences of who can be certified is the
13 seller of registered, sustainable seafood.
14 Seafood businesses may source products from a
15 variety of domestic and international sources;
16 therefore, it is up to the seller to choose if
17 some or all of their products sold by their
18 company are certified.

19 Here's my dilemma. If company X buys
20 5,000 pounds of codfish, has orders for 100,000
21 pounds of codfish, it makes up to 95,000 pounds of
22 fish from Canada. It could be any other point on

1 the compass today. He's certified for selling the
2 5,000 pounds. What about the rest of the tonnage
3 that comes from another country? How can we
4 accommodate that differentiation without
5 certifying another country's seafood that's not
6 accommodating our criteria?

7 CHAIRMAN RIZZARDI: Bob, do you want to
8 --

9 DR. RHEULT: That's typically addressed
10 through the chain of custody. So whether it's
11 Trace Register or one of the other firms, it
12 follows the fish through the process. You can't
13 have fish born in your freezer. They've figured
14 out how to handle that exact issue and that's why
15 these mechanisms are required and used to avoid
16 exactly what you're saying.

17 MR. AMES: I can see that for the 5,000
18 pounds. You certify a company to sell cod fish.
19 He's got credible documents saying that he's
20 received and processed 5,000 pounds. He may
21 distribute a great many more. And because it can
22 come from domestic and international sources, how

1 do you screen out the other 45? And if you do
2 that, are you eliminating Americans from that
3 market? I don't quite see how we resolve the
4 conundrum.

5 CHAIRMAN RIZZARDI: Ted, if I may. I
6 think the portion of the seafood that came from
7 the U.S. waters would be able to be qualified
8 under the registration program as sustainable.
9 The portion that comes from the foreign fishery
10 wouldn't be under this program. And if they're
11 going to box it up and sell it, they shouldn't be
12 declaring it part of the sustainable seafood that
13 they're selling. If they do, then when they go
14 through the audit process, the audit is going to
15 say you only had 5,000 pounds landed from the U.S.
16 fishery but you sold 50,000. Where did the other
17 45 come from? And suddenly, you're dealing with
18 whether or not that company committed fraud in its
19 labeling and in its branding, and it's going to
20 have its registration number revoked. And that's
21 what Dr. Hansen will be running around figuring
22 out for us.

1 MR. AMES: So the criteria for adhering
2 to the chain of custody, it would need an annual
3 or a periodic review?

4 MR. HANSEN: Yes.

5 MR. AMES: That's great. Thank you.

6 DR. CHATWIN: Your statement -- I was
7 going to make a different one, but your statement
8 made me think what if the 45 -- I think that was
9 it -- tons is it? Whatever it is -- 45 whatever
10 -- or the other fish, you mentioned the foreign
11 fish, is MSC certified? You said that they would
12 commit fraud if they labeled that as sustainable.

13 CHAIRMAN RIZZARDI: No, I said if they
14 called it sustainable USA seafood.

15 DR. CHATWIN: No, you did not. You said
16 sustainable. And I think that's an issue that we
17 need to be careful of because you are not defining
18 sustainability in this document. You're silent.
19 We are silent on other sustainability measures.
20 So some packages will be sustainable U.S. seafood
21 and some packages will be sustainable seafood.

22 CHAIRMAN RIZZARDI: The label that we

1 suggested in this document was sustainable USA
2 seafood.

3 DR. CHATWIN: So another label. Okay.

4 CHAIRMAN RIZZARDI: Cleveland, did you
5 have something to say?

6 DR. CHATWIN: No. If you're still
7 getting comments --

8 MR. BROWN: I think that we've come a
9 long way today in terms of what's on the paper.
10 As I move towards the end of the paper is where I
11 have my greatest problems. I think things in the
12 last two paragraphs especially just kind of fall
13 apart. But I think that an overfished stock
14 should not be labeled as sustainable. And I think
15 the determination of sustainability for any fish
16 in the U.S. Would be based on science. And --

17 CHAIRMAN RIZZARDI: On that point could
18 I just interrupt?

19 MR. BROWN: Yes.

20 CHAIRMAN RIZZARDI: We're hearing that
21 comment from a lot of the membership. I'd like to
22 see if maybe we have consensus on saying if it's

1 overfished it should not be considered
2 sustainable.

3 Julie can't go that far. You want to
4 leave it open-ended?

5 Anybody else?

6 DR. RHEAULT: Can I make a comment?

7 CHAIRMAN RIZZARDI: Please.

8 DR. RHEAULT: I think that this needs to
9 be resolved by the buyers. We need to satisfy the
10 buyers' needs with this program or we've failed.
11 And that needs to be resolved by a process that
12 takes stakeholder comment and determines what the
13 needs of the buyers are. This is the -- the whole
14 reason we're here today discussing this is so that
15 we maintain access to markets for harvesters and
16 processors. And if we fail in that, then we
17 haven't achieved our goal. So I don't think we
18 want to attempt to answer this question. I think
19 this question needs to be handled like Congress
20 does. Kick it down the road and ask them to get
21 some comments from the people who need to be
22 making this decision.

1 I've said it like eight times today, so
2 I'll shut up now.

3 MR. BROWN: Okay. I'll continue. That
4 being the case, I think that we really need to
5 make sure we understand what unintended
6 consequences might arise from this situation
7 before we just spring into a recommendation to the
8 secretary.

9 Now, when I read the part on
10 aquaculture, I really went through a different
11 thought process. Earlier in the day we said,
12 well, priority should be sustainable fisheries and
13 EEZ. Then, aquaculture. But we don't have
14 aquaculture yet in the EEZ. And then states.
15 And/or state aquaculture.

16 Well, since we don't have aquaculture
17 and EEZ, if we have a definition of sustainability
18 that is science-based, then we can just scratch
19 the word aquaculture, you know, from that in my
20 mind and let that be dealt with as it comes into
21 play. But somewhere haunting me in the back of my
22 mind, what the public is concerned about and the

1 consumer is concerned about is things like
2 genetically modified foods, and those kinds of
3 things start creeping into the discussion with
4 aquaculture. And I've gotten lots of questions
5 and heard lots of commentaries on it. It's one of
6 the hot issues in the food market these days. So
7 I would recommend that we, on the last page, sort
8 of -- well, wait a minute.

9 CHAIRMAN RIZZARDI: The second to last
10 page?

11 MR. BROWN: Well, I think on the second
12 item on the last page, it's really too defensive,
13 the whole verbiage there. And if, you know, I
14 think we need to take to heart what we're hearing
15 and either say there's no agreement or there is
16 agreement. If we want to go further and make a
17 recommendation, do that. But I don't think we
18 need to beat up on the person who is critiquing
19 the comments that we provided so far.

20 And one other thing. I go back a page
21 to the -- what about, let's see. Go back. Go
22 back onto page five, under revoking registration

1 numbers. I think it would be good to add under
2 the first paragraph, next to last line, fraudulent
3 misrepresentation of species under the Magnuson
4 and/or Lacey Act, because sometimes they work in
5 tandem and sometimes they work independently. And
6 I think that would be very helpful in that
7 section.

8 CHAIRMAN RIZZARDI: Magnuson and Lacey
9 are both referred to in the sentence prior to
10 that.

11 MR. BROWN: Yes, but I think that, you
12 know, Lacey really gets at commerce and things
13 that are traded across state lines, across
14 international lines. It's, you know, violations
15 of the Lacey Act are -- go hand-in-hand with other
16 acts but I think it's something that needs a
17 little more presence.

18 Thank you.

19 MR. CORBIN: If I can respond. If I
20 understood the comment, they want to leave
21 aquaculture out of this document, if that's
22 correct. And I think that's not forward looking

1 and I think this document needs to be forward
2 looking. We have incipient aquaculture for
3 federal waters. There's a process that could
4 allow it to occur in the relatively near future.
5 Right now there are research projects for
6 aquaculture in federal waters going on off Hawaii
7 and there are numerous aquaculture projects in
8 state waters that might wish to participate in
9 something like this. So I would really suggest
10 that aquaculture needs to be part of this
11 document, certainly not in the immediate
12 implementation, but later on it needs to be
13 considered.

14 MR. BROWN: My comment was, if we were
15 saying that we don't have it yet, then I think the
16 next priority would be state waters because this
17 sort of puts that in front of -- something that
18 hasn't been done in front of something that is
19 currently being done. And if we go with
20 aquaculture, you know, my generic thought about
21 aquaculture is, you know, if you can do it and
22 it's a successful business, then it's sustainable.

1 However, there are some other factors that are
2 creeping in to the aquaculture arena that people
3 are very concerned about, some practices that may
4 have to be addressed.

5 CHAIRMAN RIZZARDI: John?

6 MR. CORBIN: So as I understand it,
7 you're objecting to aquaculture being second in
8 the list of things to analyze?

9 MR. BROWN: (Nodding)

10 MR. CORBIN: I don't have a problem with
11 that comment then. Sorry.

12 CHAIRMAN RIZZARDI: Yeah. In fact, I
13 noticed there's probably a sentence I need to
14 tweak because in the discussion that took place in
15 between, there was a recognition that the state
16 waters should probably be second in line and
17 aquaculture thereafter.

18 Michele?

19 MS. LONGO EDER: I don't want my silence
20 to be construed as agreement with this document.
21 I think I identified thoroughly for the most part
22 my concerns this morning and would, for the

1 record, reference those and again incorporate
2 those comments.

3 One of the concerns I now have is with
4 this process I will say. I think it's tough when
5 the chairman is also an advocate. I don't think
6 that the report legitimately represents in its
7 language the concerns that have been raised. I
8 think that Columbus identified only one paragraph
9 in this report where it references -- the second
10 paragraph where it says "while some critiques of
11 MAFAC's recommendation have questioned NOAA's
12 ability to be independent, this critique is
13 baseless."

14 I think that MAFAC as a committee
15 doesn't want to engage in that type of
16 characterization or recommendation, and I find
17 that to be true throughout this document. I find
18 there to be examples of hyperbole, dismissive of
19 concerns, legitimate concerns that have been
20 raised.

21 Costs. I think the feds have done the
22 best job they can in giving some ballpark ideas

1 about costs here, but I think that anybody that
2 thinks a program is going to be run on a \$500,000
3 budget that involves people, which is really what
4 we're talking about and the cost to the user, this
5 kind of wild estimate, I think it would be a much
6 better document, although I'm still not going to
7 agree with it, if you just recognize the fact that
8 the costs have not been credibly estimated at this
9 point, whether it be for the applicant, whether it
10 be for the subsequent certification of
11 traceability, but the costs here are purely
12 speculative, and I think that this document should
13 identify that and recognize that as accurate.

14 I think that what we've heard in the
15 testimony today is that there are wild variations,
16 if you will, region to region, in terms of what
17 domestic producers want. And the question is,
18 again, you see variations. I can tell you from
19 experience that looking at the potential costs
20 involved in this program, for a domestic producer
21 on a fee-for-service basis to obtain a unique
22 registration number in order to be able to do what

1 I can already do, which is market my seafood as
2 sustainable and managed by U.S. Fisheries,
3 already pay a permit fee for the privilege of
4 catching fish under a federal limited-entry
5 program that's managed, already pay program fees
6 for other privileges under federal management. To
7 say to a producer that in order to compete in the
8 marketplace the government is now saying -- this
9 is now not a choice to go out and engage with a
10 private provider; this is, now you're being given
11 a choice by the government to engage in a
12 certification program. I think that that
13 potentially places undue burdens on private
14 enterprise.

15 I think also the idea that you then have
16 to be audited for the privilege of something that
17 I'm already doing, lawfully landing a fish that is
18 sustainably managed and legally permitted, is a
19 burden to a small business: that when this goes
20 out for discussion, since that seems to be the
21 sense of the committee, or if it goes out for
22 discussion, that there is going to be significant

1 pushback from individual members of industry on a
2 widespread basis. Fishing businesses, if you're
3 talking about the small fishing business that
4 might be delivering 500 pounds and wants to market
5 it or wants to sell it to a wholesaler to have it
6 smoked or canned and get it into Whole Foods or
7 get it into its local market, it's not going to be
8 able to compete and pay these costs that people
9 are talking about here and be associated with this
10 program. So please don't talk to me, or the
11 people I represent, about helping the small
12 fisherman, because this program simply adds
13 regulatory and costs burdens for no discernable
14 benefits.

15 That gets back to an earlier comment I
16 made this morning. I don't think we've identified
17 again what is it we're trying to do. What
18 effectiveness? Are we trying to promote
19 consumption of seafood? If so, to me it seems
20 that the costs are very high without measurable
21 benefit.

22 I want to emphasize that I think the

1 agency's efforts should be in regard to FishWatch,
2 promoting that site, promoting the use throughout
3 the industry to sellers. I think that that is the
4 best use of a regulatory agency supporting the
5 actual industry.

6 Again, comments are numerous. Some of
7 the questions have helped clarify some of the
8 issues. The document itself, again, does not
9 simply raise issues to be discussed, but is an
10 advocacy document with language that I don't think
11 in many circumstances is supportable. I don't
12 think we have evidence to support a lot of the
13 assertions made in this document, and I don't find
14 it credible in terms of framing issues for
15 discussion.

16 Thank you, Mr. Chairman.

17 CHAIRMAN RIZZARDI: Dave?

18 MR. WALLACE: Well, I guess I'll repeat
19 myself. I hate to do that.

20 This -- what is proposed is a voluntary
21 program. No one is told that they must
22 participate if they think that it's too expensive

1 for whatever reason, you know, because there are
2 probably some people who think that it should be
3 free. I think that the vast majority of MAFAC
4 members don't think it should be free, because the
5 benefits will go to those people who decide that
6 they are willing to pay a reasonable fee to have
7 their company's name posted on FishWatch as being
8 -- handling sustainable seafood -- sustainable
9 domestic caught seafood.

10 So, you know, I guess everyone in this
11 room has an opinion, or 100, and so that's mine.
12 I would like to move the process. I'd like to
13 make a motion. I'd like to make a motion that
14 takes into consideration the comments that have
15 been put forth in the last hour and a half or
16 however long it is, I would like to have the
17 question called to support the recommendations as
18 defined in the paper that was handed out this
19 afternoon.

20 DR. RHEAULT: I'll second it.

21 DR. CHATWIN: So are we now having
22 discussion on the motion?

1 CHAIRMAN RIZZARDI: Sure.

2 DR. CHATWIN: All right. Well, I'd like
3 to thank Michele for the comments that you made.
4 The last -- the one in particular that actually
5 helps me see very clearly what was bothering me so
6 much is the one where you say that this document
7 does not merely raise issues for us to consider as
8 a body, but actually tries to resolve them. And
9 my understanding, from what you described the
10 charge was just shortly--I know that Mark
11 described it when I wasn't here-- but you sort of
12 summarized it as the charge to us was to see
13 whether we want to go down this path at all and
14 begin a discussion. And I think that this
15 document takes us way down the line, too far
16 actually, and I think that's why I don't -- from
17 where I sit, I don't see a lot of convergence on
18 this. And in fact, you know, I think we have a
19 motion on the table and we can take a vote on
20 that.

21 I would actually make a motion to
22 substitute, which is that MAFAC recommend that

1 NOAA embark on a consultative process to identify
2 issues regarding its ability and the desire of its
3 constituents to pursue a certification process.
4 Period.

5 MS. LONGO EDER: Mr. Chairman, I second
6 the substitutive motion if that's correct
7 procedure.

8 SPEAKER: Somebody has to.

9 CHAIRMAN RIZZARDI: I'd like to see if I
10 can avoid the procedural Robert's Rule battle that
11 I think is coming. And I would like to take a
12 shot at working with the members of the committee
13 and ask everybody to table this to see if I can
14 receive additional feedback from people, tweak the
15 document and come up with something that perhaps
16 we can discuss first thing in the morning. I
17 think there may be some things that we can achieve
18 consensus on. I'm accepting all the criticisms
19 that are here. I'm trying to come up with a
20 document that represents committee consensus. To
21 the extent I'm being an advocate, it's an advocate
22 for putting out a paper. That's my objective, is

1 to have us accomplish something. I want it to be
2 as big a consensus as possible. I'd rather not
3 divide the body if I can, and I'd ask all of you
4 to give me your independent feedback and let's see
5 if we can wrap this up in the morning.

6 DR. CHATWIN: As the maker of the
7 motion, can I comment on that?

8 CHAIRMAN RIZZARDI: Please.

9 DR. CHATWIN: I'm usually somebody who
10 wants to explore options to get to consensus, but
11 I have seen this document appear. I have made
12 successive comments on it. I have heard others
13 make comments on it. I have heard external
14 stakeholders make comments of concern about it.
15 And yet I see the document, although it's being
16 tweaked, the fundamental message in it continues
17 the same. And I don't see how my opinion is going
18 to change overnight over the fundamental message
19 in this document. And the fact that we are trying
20 to recommend eight pages -- we're making eight
21 pages worth of recommendations on issues that
22 require a lot more discussion and debate, not just

1 tweaking until tomorrow.

2 So I would like to stick with my motion
3 to substitute, and if it dies a death by vote, so
4 be it, but I'd like to give that a shot.

5 CHAIRMAN RIZZARDI: Would you please
6 restate it?

7 DR. CHATWIN: That NOAA engage in a
8 consultative process to seek feedback from
9 stakeholders and do a thorough cost assessment on
10 whether it should pursue a certification program.
11 Period.

12 MR. RAUCH: So let me comment on that
13 particular motion.

14 First of all, let me say I'm not sure
15 where MAFAC is going to ultimately come out on any
16 of this. I think that the process has been very
17 good. It has aired a lot of things. But on that
18 particular motion, I would posit my opinion that
19 asking MAFAC, a stakeholder-led body to come up
20 with policy recommendations on what the goal of
21 this was, was the consultative process that you
22 just are now asking me to do again. I'm not clear

1 on what we would get or who would do a different
2 consultative process if MAFAC can't do it. So I
3 very much value your ultimate opinions on whether
4 to do this or not, and trust me, I don't have a
5 preconceived notion of what the right answer is.
6 But I don't have a vote here, but I would strongly
7 urge you not to ask me to do a separate
8 consultative process than the one that MAFAC is
9 currently engaged in.

10 CHAIRMAN RIZZARDI: Other discussion on
11 the motion that's on the table?

12 MS. BONNEY: Mr. Chairman? Just so I
13 can understand the clear path here since we are
14 doing a procedural vote, I guess.

15 We've had three options discussed. One
16 is to basically have NOAA redo the consultation
17 that they went through with stakeholders and the
18 Boston seafood show and what not, and see if they
19 can get better definition compared to where we are
20 at right now. That's one option.

21 The other option was to go with Dave's
22 motion, which is to basically move forward the

1 document that's before us right now. Yet, it is
2 unclear to me how some of the tweaks and
3 discussion would be incorporated in that document,
4 so both bridges to me seem problematic.

5 So if we wanted to table the document
6 and have a new draft available for us, then how
7 would we get there from here?

8 CHAIRMAN RIZZARDI: We need to vote on
9 the substitute motion, which is for NOAA to engage
10 in a consultative process to seek feedback from
11 stakeholders and engage in a cost estimate process
12 on whether and how NOAA should create a
13 certification program. After we vote on that
14 motion, should it fail, we would then go to the
15 original motion, which was to vote on the document
16 as is. And I would probably ask Dave again to
17 table that motion to allow us an opportunity to
18 try to embed additional feedback.

19 DR. CHATWIN: Procedural question. If
20 my motion carries, are we need another vote to see
21 if we're going to send that one forward?

22 CHAIRMAN RIZZARDI: That's correct.

1 DR. CHATWIN: The motion. The motion on
2 the table is to substitute this one for that one.

3 MS. BONNEY: Right.

4 DR. CHATWIN: Once that decision is
5 made, another motion is needed on whether to
6 submit it as a recommendation to NOAA. And then
7 you might want to hear Sam's opinion on that.

8 CHAIRMAN RIZZARDI: Any further
9 discussion on the substitutive motion?

10 Seeing no discussion, all in favor of
11 the substitutive motion?

12 MS. LONGO EDER: Aye.

13 DR. CHATWIN: Aye.

14 CHAIRMAN RIZZARDI: All opposed?

15 (Chorus of nays)

16 CHAIRMAN RIZZARDI: The nays have it.
17 Okay. So we revert to the original motion, which
18 is Dave's, which was to vote on the document. And
19 I'd ask again if you want the opportunity for
20 everybody here to continue to provide feedback on
21 the document, see if we can come up with something
22 that better reflects consensus, and take a shot at

1 it in the morning.

2 MR. WALLACE: I agree to table the
3 motion until noon tomorrow so that the document
4 can be -- further reflect members' ideas to make
5 it more palatable to hopefully all the members
6 present at this meeting.

7 DR. RHEAULT: The seconder is okay with
8 that.

9 CHAIRMAN RIZZARDI: Thank you,
10 gentlemen. Julie?

11 MS. BONNEY: Just a clarification then.
12 So how do we give input? I don't know what time
13 it is here. It's 5:07, so we're pretty much out
14 of time. We've raised issues with the overfishing
15 policy, you know, to basically make that a
16 stakeholder process to resolve how to address that
17 issue. And then there's some, what, verbiage
18 changes that were suggested, one of which was to
19 put up in front that this is not going to cost
20 other programs within the agency. What else on
21 your tickler list do you have? And if we have
22 other comments, how best would we approach that?

1 CHAIRMAN RIZZARDI: My hope is to
2 distribute an underline strike through version of
3 the document in the morning. Then we would be
4 able to vote on the amended document.

5 MS. MORRIS: How do we let you know
6 between now and when you issue your underline and
7 strike through, things that we would like you to
8 change about the document?

9 CHAIRMAN RIZZARDI: I'll stay right here
10 until there's nobody left.

11 DR. CHATWIN: So it seems that the
12 comment that we have responsibility to address the
13 issue of how this certification scheme relates to
14 other certification schemes got dropped off your
15 list, and this is the sort of issue that I'm
16 concerned about. You know, we made comments here
17 and they're not going to get redlined unless we
18 make them again somehow to you and in time for
19 tomorrow morning.

20 CHAIRMAN RIZZARDI: What would you
21 propose?

22 DR. CHATWIN: I've proposed what I was

1 going to propose, and that didn't go very far.
2 But, so what you're saying is that we now have to
3 send you again all the comments that we are
4 interested in seeing put in here, reflecting
5 comments already made, and that you will then put
6 them into the document. Is that what you're
7 saying? Or is there going to be -- how are you
8 going to decide which comments to incorporate and
9 which not?

10 CHAIRMAN RIZZARDI: When those comments
11 were received the last time it was at the working
12 group level. The working group did not agree with
13 the suggestion to engage in an evaluation of other
14 certification programs. So the version of the
15 document that came out of the working group simply
16 said MAFAC offers no specific opinion on any other
17 third-party certification program. That's the
18 language that's reflected in the version that we
19 have now. If there is consensus in this room to
20 be more robust and to say something beyond that on
21 all the other certification programs, I'd love to
22 hear that. But right now I've heard that from

1 you, Tony. I haven't heard it elsewhere. And in
2 the absence of hearing it from a strong consensus,
3 which is what this document is supposed to
4 reflect, I'm not sure what else I'm supposed to
5 do.

6 MS. LONGO EDER: Mr. Chairman?

7 CHAIRMAN RIZZARDI: Yes, ma'am.

8 MS. LONGO EDER: Thank you. When we
9 adjourned earlier to subcommittees and the chair
10 adjourned to revise the document, my expectation
11 was that the document was going to come back
12 reflecting the original document but also the
13 comments made from around the table. And I think
14 that that's why my reaction to this document is
15 pretty strong, because it fails to address and/or
16 even list, credibly, issues that I have raised.
17 Instead, it simply shut them all down. And that
18 is, you know, these are legitimate issues I've
19 raised. The issues relative to states, I don't
20 think you can just discount in this document, and
21 that's what, as a participant in this committee,
22 that's what it feels like has been done. I do

1 agree with Tony as to, that's a legitimate
2 question that should be raised in this document as
3 an issue. The issue of state-managed fisheries
4 and fish products that are now going to be
5 positioned to have to compete with federal managed
6 fisheries in the same marketplace but without the
7 eligible -- being eligible at the same time for
8 certification. That's a legitimate consumer
9 marketplace issue.

10 The issues of cost have really not been
11 taken seriously in this document. That is a
12 legitimate concern to every small business in the
13 United States. I could go on, but I already said
14 them this morning and I thought that that was what
15 was going to be reflected, perhaps not with the
16 tone and advocacy that I have suggested at times,
17 but certainly with recognizing the legitimacy of
18 those concerns. You're getting pushback from a
19 couple of folks because that's not what happened.
20 This is not a collaborative document. It is an
21 advocacy document that does not reflect legitimate
22 concerns. And whether -- I think we've all heard

1 them but, again, I just don't think that they're
2 reflected in this document. I don't think that
3 you're going to get movement until there are. And
4 even then I'm not sure.

5 So I'm really glad the question was
6 asked, you know, how are these concerns going to
7 be incorporated into this document? And so I have
8 a list of them. Whether I e-mail them to you so
9 that you can incorporate them and we have a
10 timeframe tomorrow morning that you can do it,
11 that would work for me. I don't know about for
12 the other members. Those are my thoughts. Thank
13 you.

14 CHAIRMAN RIZZARDI: I think my charge is
15 to try to generate a substantial consensus
16 document. I'm doing the best I can to try to
17 codify that. If there's need for a minority
18 opinion report, that's fine. I think that's
19 appropriate, and I think your comments can be
20 reflected there. And Tony, if you want to put
21 additional comments to a minority report, I think
22 that's appropriate. If there is substantial

1 consensus on any of those positions, then they
2 should be embedded in this document. But I
3 haven't heard a substantial consensus on Michele's
4 dissenting viewpoints. If there is, I'd be happy
5 to have it reflected in the document.

6 MR. WALLACE: I'm sympathetic to the
7 views of the people who are opposed to this. I'm
8 not sure that I completely understand why they are
9 opposed. It is clear that they have made points
10 that are difficult. And I will use the example of
11 Michele's point that she may catch crabs on the
12 inside three miles. Oregon does not have a
13 certification program. Someone may catch them in
14 the federal zone and have them certified, and that
15 is a possible problem in the short term. But in
16 reality, most of the problems that face
17 independent fishermen, mostly I can only really
18 speak for the East Coast because while I've spent
19 a lot of time on the West Coast, I do not put
20 myself up as an expert on West Coast fisheries.
21 There are a lot of people in fisheries on the East
22 Coast and the Gulf Coast that would be greatly

1 helped by a certification program that is not so
2 expensive that they cannot participate. Thank
3 you.

4 DR. CHATWIN: So Mr. Chairman, I'm
5 intrigued by this issue of whether you've heard
6 consensus, because in a number -- I haven't heard
7 support for a number of statements made. I think
8 it's in the document so it's supposed to reflect
9 consensus, but I have raised issues which had
10 support on the conference call -- I know we're
11 going back a while -- that any certification
12 scheme that we recommend to MAFAC be one that is
13 performance-based, and there was support for that
14 on the phone, but that's nowhere to be found, not
15 even a mention.

16 So I think your suggestion of a minority
17 opinion is a fair one, and is what's going to
18 happen if you continue to push this document. I
19 think that another option is that in certain cases
20 there are some pretty strong feelings, I think
21 strong enough to warrant maybe breaking down the
22 decision-making process on this document from one

1 major motion for the entire document to having
2 motions that are issue specific.

3 I think Michele raises this issue of
4 cost from the industry. Here is an industry
5 member telling us that there are significant
6 issues about the cost estimates here, and we
7 haven't heard from other members here. We have
8 heard from one who says that the cost that the
9 entities that actually do certification currently
10 are exorbitant, so these that may or may not be
11 accurate will be better. But I haven't heard
12 other members of the industry voice an opinion
13 about that particular issue. That is one that we
14 should discuss it as a motion because it's obvious
15 that it's not going to be a consensus document.

16 There are others. I would like the
17 performance-based one to be an issue that we
18 consider. So there is a motion that is being
19 tabled and will resurface before we can make other
20 motions on this document. In fact, well, that's a
21 whole other issue. But a minority opinion may be
22 in the works. I would rather us have a document

1 that reflected our recommendations and that
2 strengthened the hand of NOAA, but if we have to
3 do a minority opinion there will be one.

4 MR. AMES: I have to say as an industry
5 rep from the northeast, the in-shore fleet, I have
6 a little bit of concern about both issues raised
7 -- the cost to fishermen and whether we should be
8 certifying an overfished and being overfished
9 fishery without a management plan as being okay.
10 I think Tony has raised an important issue there
11 because as we pursue this overfishing process down
12 the road, we're simply putting fishermen out of
13 business in the long term.

14 It would be great if you could work
15 these into the plan so that we could all feel
16 comfortable in voting on the entire document.

17 DR. RHEAULT: I'd just briefly like to
18 address the issue of cost. Perhaps some of the
19 members of the MAFAC have not seen the supporting
20 documents that the subcommittee requested. And
21 quite a bit of work went into assembling those
22 cost estimates. We didn't make them up out of

1 whole cloth. Now, are we certain? Perhaps not as
2 certain as we would like to be, but the cost
3 estimates that were provided to us were arrived at
4 by people who made a legitimate stab at it, and I
5 don't think we need to diminish that. If you
6 haven't seen the spreadsheet that was provided to
7 the subcommittee, I apologize for that and I'd be
8 happy to share it with you. But the cost
9 estimates that we provided are a legitimate stab
10 at what we think it's going to cost. And I'll
11 just leave it there.

12 CHAIRMAN RIZZARDI: Dave?

13 MR. WALLACE: I move we adjourn.

14 CHAIRMAN RIZZARDI: That's where I was
15 headed.

16 MS. BONNEY: I'll second that motion.

17 CHAIRMAN RIZZARDI: All in favor?

18 (Chorus of ayes)

19 CHAIRMAN RIZZARDI: To be continued
20 tomorrow at 8:30 a.m.

21 (Whereupon, at 5:21 p.m., the
22 PROCEEDINGS were adjourned.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

* * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE OF NOTARY PUBLIC

STATE OF MARYLAND

I, Mark Mahoney, notary public in and for the State of Maryland, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

Notary Public, in and for the State of Maryland

My Commission Expires: November 1, 2014