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FISHERIES MANAGEMENT

Core Principles and a Strategic Approach Would Enhance Stakeholder Participation in Developing Quota-Based Programs





Highlights of [GAO-06-289](#), a report to congressional requesters

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Why GAO Did This Study

Dedicated access privilege (DAP) programs are one tool the National Marine Fisheries Service (NMFS) uses to help end overfishing and promote conservation. Under a DAP program, NMFS sets an allowable catch in a fishery and allocates the privilege to harvest a portion of the total to eligible entities, such as fishermen. Because DAP programs can have significant impacts on fishermen and their communities, many believe that effective participation by fishermen and other stakeholders in the development of these programs is critical. GAO was asked to determine (1) the extent to which the regional fishery management councils are using a framework for effective participation and (2) the methods stakeholders and participation experts suggest for enhancing stakeholder participation in developing DAP programs.

What GAO Recommends

GAO recommends that NMFS establish a formal policy for stakeholder participation, including adopting a set of core principles; provide guidance and training to the councils and others on developing and using a strategic approach to stakeholder participation; and ensure that the councils develop and implement a framework for effective stakeholder participation.

NOAA reviewed a draft of this report and the agency generally agreed with the findings and recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-289.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Anu K. Mittal at (202) 512-9846 or mittala@gao.gov.

What GAO Found

The fishery management councils that GAO reviewed lack key elements of an effective stakeholder participation framework and therefore may be missing opportunities for all stakeholders to participate in the DAP program development process. Based on GAO's review of the literature and the experience of leading federal agencies in stakeholder participation, such a framework should include a strategic implementation approach that embodies a set of core principles, such as making key information readily available and understandable and fostering responsive, interactive communication between stakeholders and decision makers. However, fisheries stakeholders identified several areas where council practices do not fully adhere to the core principles GAO identified. For example, while the councils make DAP-related information available to stakeholders, this information is not always presented in an easily understandable way. Also, while stakeholders can testify at council meetings, according to participation experts, this one-way communication is not an effective way to share information because it does not lead to a dialogue between stakeholders and decision makers. Unlike other federal agencies, NMFS has neither developed a formal stakeholder participation policy nor provided the councils with guidance or training on how to develop and use a strategic approach to enhance stakeholder participation. While not legally required to do so, if NMFS adopted such an approach it could help ensure, among other things, that all relevant stakeholders are identified, specific participation goals are defined, and participation plans are implemented by the councils developing DAP programs.

Methods suggested by stakeholders and participation experts that could enhance stakeholder participation in the DAP program development process principally fall into five categories: (1) providing education and outreach; (2) holding meetings using different times, locations, and formats; (3) streamlining the DAP program development process; (4) diversifying interests represented in the council process; and (5) sharing decision-making authority. While using these methods can result in more effective participation, particularly when they are employed as part of a participation plan, these methods can also have certain disadvantages, such as increased costs. For example, the Marine Resource Education Project (MREP), which is sponsored by a group of universities in New England, offers several examples of promising practices. MREP provides stakeholders with training on fisheries management and science to help them better understand the council process and DAP issues, teaches the importance of being involved early and throughout the process, and provides diverse stakeholders with the opportunity to exchange information in informal settings. However, such training can be costly and may reach relatively few stakeholders.

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Abbreviations

CDQ	community development quota
DAP	dedicated access privilege
DOE	Department of Energy
EPA	Environmental Protection Agency
IFQ	individual fishing quota
MREP	Marine Resource Education Project
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration

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United States Government Accountability Office
Washington, D.C. 20548

February 23, 2006

The Honorable Olympia J. Snowe
Chairman
The Honorable Maria Cantwell
Ranking Minority Member
Subcommittee on Fisheries and the Coast Guard
Committee on Commerce, Science, and Transportation
United States Senate
The Honorable John F. Kerry
United States Senate

Overfishing is a problem with far-reaching environmental and economic consequences. When a fishery—one or more stocks of fish within a geographic area—cannot be sustained because of overfishing, the marine ecosystem in which those stocks live can be harmed, and fishermen and their communities can experience economic hardship. The National Marine Fisheries Service (NMFS), a component of the Department of Commerce’s National Oceanic and Atmospheric Administration (NOAA), has several management tools available to help end overfishing and promote conservation, including dedicated access privilege (DAP) programs. Under a DAP program, NMFS sets a total allowable catch in a particular fishery and then allocates quota—the privilege to harvest a specified portion of the total catch allowed for the fishery—to eligible entities, such as fishermen, communities, and fishery cooperatives. DAP programs have achieved several desired benefits, such as helping to stabilize fisheries. However, these programs have also raised concerns about such issues as the equity of quota allocation decisions. Moreover, because of the potential for DAP programs to have significant impacts on fishermen, fishing communities, and the environment, among other things, many believe that effective participation by fishermen and other stakeholders in the development of these programs is critical.¹ Yet, some believe that effective participation may not be occurring.

¹In this report, the term “stakeholders” means individuals or representatives of groups that are affected by or interested in a particular DAP program, including the states, vessel owners, captains, crew members, processors, fishing communities, environmentalists, consumers, and members of the public.

In 1976, the Magnuson-Stevens Fishery Conservation and Management Act established the process for managing marine fisheries in the United States.² Under the act, eight regional fishery management councils are responsible for developing fishery management plans, including DAP programs and other plans for managing fisheries in federal waters. The councils are composed primarily of federal and state fishery management officials and individuals selected by the Secretary of Commerce from lists submitted by the governors of the states in the councils' regions. The Secretary is required, to the extent practicable, to select council members in such a way as to ensure a fair and balanced representation of the active participants in the commercial and recreational fisheries under the jurisdiction of the councils. Each council establishes advisory committees to provide information and recommendations to the council on the development of DAP programs and other fishery management plans, amendments, and regulations.

To provide for stakeholder participation in developing fishery management plans, such as DAP programs, each council must hold open meetings that are widely publicized; make available council-generated information, such as detailed minutes of council and committee meetings; and allow interested individuals and groups to provide oral or written comments regarding agenda items. Once a council prepares a DAP plan and drafts regulations to implement the plan, the council submits the plan and regulations to the Secretary of Commerce for approval. The Secretary reviews the plan and proposed regulations for consistency with national standards and applicable law, and immediately publishes notice of the plan's availability for comment. The Secretary also publishes the regulations for public comment after reviewing them for consistency with the plan and applicable law. Once the comment period closes, the Secretary may then approve the plan and promulgate final regulations, disapprove the plan, or partially approve the plan; recommended changes are provided to the council if the plan is not approved. Both NMFS and the councils have responsibility for implementing and monitoring approved DAP programs and proposing any changes. According to participation experts, effective stakeholder participation may require agencies to go beyond the legal requirements for formalized participation and use a more open, responsive, informal, and collaborative approach to participation. Based on our review of the literature and the experience of leading federal agencies in stakeholder participation, adopting a participation framework is an

²Pub. L. No. 94-265 (1976) (codified as amended at 16 U.S.C. §§ 1801-1883).

effective way to guide the development and implementation of this type of approach. Such a framework includes core principles that provide a foundation for an agency's stakeholder participation efforts and a strategic approach to implementing them.

This is the fourth in a series of requested reports on individual fishing quota (IFQ) and other DAP programs. In December 2002, we reported on the extent of consolidation of quota holdings, the extent of foreign holdings of quota, and the economic effect of IFQ programs on seafood processors.³ In February 2004, we reported on methods available for protecting the economic viability of fishing communities and facilitating new entry into IFQ fisheries, key issues facing fishery managers in protecting communities and facilitating new entry, and the comparative advantages and disadvantages of the IFQ system and the fishery cooperative approach.⁴ In March 2005, we reported on the costs of managing IFQ programs and how these costs differ from pre-IFQ management costs, the IFQ management costs being recovered by NMFS, and ways to share the costs of IFQ programs between government and industry.⁵ For this report, you asked us to determine (1) the extent to which the regional fishery management councils are using a framework for effective stakeholder participation and (2) the methods stakeholders and participation experts suggest for enhancing stakeholder participation in the development of DAP programs.

To conduct this review, we reviewed the activities and attended meetings of four regional fishery management councils: the Gulf of Mexico, New England, North Pacific, and Pacific councils. We selected these councils to obtain broad geographic coverage of councils where DAP programs were being developed. At the council meetings and elsewhere, we interviewed DAP program stakeholders, including commercial vessel owners, captains, and crew; recreational fishermen; fish dealers and processors; environmentalists; fishing community representatives; and state and federal fishery managers. In addition, we surveyed the members of the four

³GAO, *Individual Fishing Quotas: Better Information Could Improve Program Management*, [GAO-03-159](#) (Washington, D.C.: Dec. 11, 2002).

⁴GAO, *Individual Fishing Quotas: Methods for Community Protection and New Entry Require Periodic Evaluation*, [GAO-04-277](#) (Washington, D.C.: Feb. 24, 2004).

⁵GAO, *Individual Fishing Quotas: Management Costs Varied and Were Not Recovered as Required*, [GAO-05-241](#) (Washington, D.C.: Mar. 11, 2005).

fishery management councils whose meetings we attended to obtain their views regarding stakeholder participation, including both obstacles and potential methods for enhancing participation. We also interviewed participation experts and federal agency officials on public participation theory and practice. See appendix I for additional details on our scope and methodology and appendix II for the fishery management council survey results. We conducted our review from March through November 2005 in accordance with generally accepted government auditing standards.

Results in Brief

The regional fishery management councils we reviewed lack key elements of a framework for ensuring effective stakeholder participation in the development of DAP programs. Specifically, council practices do not fully adhere to the core principles we identified for effective stakeholder participation, nor are they based on a strategic approach. Our review of the participation literature and policies from leading federal agencies in stakeholder participation identified seven core principles for effective stakeholder participation. Examples of such principles include making key information readily available and understandable, and fostering responsive interactive communication between stakeholders and decision makers. Fisheries stakeholders with whom we spoke identified several areas where current council practices do not fully adhere to these core principles. For example, while the councils make information on DAP program development available to stakeholders, this complex and technical information is not always presented to stakeholders in an easily understandable way. Also, while stakeholders can testify at council meetings, according to participation experts, this one-way communication is not an effective way to share information because it does not lead to a dialogue between stakeholders and decision makers. In addition, according to participation experts, effectively implementing these core principles requires a strategic approach through which all key stakeholders are identified, specific participation goals are defined, and participation plans are created. While not legally required to do so, NMFS has neither developed a formal stakeholder participation policy that includes a set of core principles, nor provided the councils with guidance or training on how to use a strategic approach to improve stakeholder participation. Because the councils are not using a strategic approach, they may be missing opportunities to enhance stakeholder participation in the DAP program development process.

Stakeholders and participation experts suggested a number of possible methods that, depending on the situation, could enhance stakeholder

participation in the DAP program development process and they generally fall into five categories. First, according to stakeholders and participation experts, the councils could provide more education and outreach by implementing formal training programs on fishery management and science, conducting outreach activities in locations likely to be affected by DAP programs, and making DAP program documents more easily understandable to non-experts. Second, councils could hold meetings in different ways by using different times and locations that might be more convenient for some stakeholders, broadcasting meetings to reach those who cannot attend meetings in person, and using facilitators to run meetings. Third, NMFS could streamline the often costly and lengthy DAP program development process by adopting administrative procedures that integrate the multiple statutory requirements that govern the process, and the Congress could incorporate elements of the National Environmental Policy Act (NEPA) into the Magnuson-Stevens Act and then exempt the act from NEPA. Fourth, the Congress could diversify the interests represented in the DAP program development process by diversifying representation on the councils, and NMFS and the councils could help ensure that stakeholders have organized representation so they can participate more effectively. Finally, stakeholders said the councils could share decision-making authority by putting DAP proposals to a vote in a referendum and participation experts suggested using collaborative or consensus-based decision making that allows stakeholders to fully explore issues together. While employing these methods can result in more effective participation, particularly when they are used as part of a participation plan, these methods can also have disadvantages, such as increased costs.

To enhance stakeholder participation in the development of DAP programs, we are recommending that NMFS (1) establish a formal policy for stakeholder participation, including adopting a set of core principles; (2) provide guidance and training on developing and using a strategic approach to stakeholder participation; and (3) ensure that the councils develop and implement a framework for stakeholder participation that includes core principles and a strategic approach.

In commenting on a draft of this report, NOAA said the agency acknowledged that more could be done to improve stakeholder participation and agreed with our recommendations. NMFS agreed to form a working group to develop a stakeholder participation policy, including core principles, to guide stakeholder participation activities. NMFS also agreed to provide training to the councils and others on the stakeholder participation policy. Finally, NMFS agreed to work with council members

and staff to implement a participation framework that includes jointly-developed core principles. NOAA's comments appear in appendix IV.

Background

Public participation in federal agency decision making has evolved over the past 60 years. The Administrative Procedure Act, enacted in 1946, created a legal basis for public participation by requiring agencies to hold public comment periods for proposed rules. In 1969, the enactment of NEPA provided the public with an opportunity to comment on the environmental impacts of certain proposed federal actions. NEPA requires federal agencies to prepare a detailed environmental impact statement for any major federal action significantly affecting the quality of the human environment, as well as an analysis of alternatives to the proposed action. The agency must take this information to the public and provide opportunities for the public to comment before a decision is reached. In 1993, Executive Order 12866 was issued to reform the regulatory process by, among other things, making the process more accessible and open to the public. Specifically, the order directs federal agencies to seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation before issuing a notice of proposed rulemaking, and to give the public an opportunity to comment on any proposed regulation.

In 1976 the Magnuson-Stevens Act institutionalized regional decision making in which stakeholders play a key role. Specifically, the act established eight regional councils responsible for developing DAP and other fishery management plans: the New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean, Pacific, North Pacific, and Western Pacific councils. One of the purposes of the Magnuson-Stevens Act is to ensure that the councils prepare, monitor, and revise these plans under circumstances that will enable the states, the fishing industry, consumer and environmental organizations, and other interested parties to participate in and advise on the establishment and administration of the plans. To this end, the act provides many opportunities for stakeholder participation in developing fishery management plans. Stakeholders can attend open meetings, provide oral and written comments regarding DAP issues before the council, and serve (or be represented) on the councils or advisory committees that make recommendations to the councils. Programs developed under the Magnuson-Stevens Act must also meet the requirements of the Administrative Procedure Act, NEPA, and other laws governing fisheries management. NMFS prepares operational guidelines to assist the councils in developing practices and procedures, consistent with

these laws, for developing, reviewing, and implementing fishery management plans.

There are several different types of DAPs:

- IFQs allow eligible entities, such as vessel owners or fishermen, to catch a specified portion of the total catch allowed. When the assigned portions can be sold or transferred, they are called individual transferable quotas.
- Community quotas grant a specified portion of the total catch allowed to a community. The community then decides how to allocate the catch.⁶
- Fishing cooperatives divide all or part of the available quota among fishing and/or processing entities by means of contractual agreements.
- Area-based quotas give an individual or group dedicated access to the fish within a specific area of the ocean.

At the time of our review, NMFS had implemented nine DAP programs for fisheries under the management authority of the regional councils: the Mid-Atlantic surfclam/ocean quahog IFQ program in 1990, the South Atlantic wreckfish (snapper-grouper complex) IFQ program in 1992, the Western Alaska Community Development Quota Program in 1992, the Alaskan halibut and sablefish (black cod) IFQ program in 1995, the Whiting Conservation Cooperative in 1997, the Bering Sea pollock cooperative authorized by the American Fisheries Act in 1998, the Pacific sablefish permit stacking program in 2002, the Georges Bank cod hook sector allocation program in 2004, and the Bering Sea and Aleutian Islands crab rationalization program authorized by Congress in 2004. See appendix III for descriptions of these programs. In addition, NMFS had implemented a tenth DAP program for the Atlantic bluefin tuna purse seine fishery, which the Secretary of Commerce established and now manages. Finally, at the time of our review, DAP programs were being developed for the following fisheries: Bering Sea and Aleutian Islands non-pollock groundfish (trawl catcher-processor), Gulf of Alaska groundfish, Gulf of Alaska rockfish, Gulf of Mexico red snapper, Mid-Atlantic tilefish, Georges Bank cod (gillnet), and Pacific groundfish (trawl).

⁶IFQs and community quotas are the only types of DAPs currently authorized under the Magnuson-Stevens Act, and community quotas are limited to two geographic areas.

Councils Lack Key Elements of a Framework for Ensuring Effective Stakeholder Participation during the DAP Program Development Process

An effective stakeholder participation framework encompasses a set of core principles and a strategic implementation approach. However, the current practices of the fishery management councils we reviewed do not fully reflect such core principles or include an implementation strategy. While the DAP program development process provides many opportunities for stakeholder participation, stakeholders identified several areas where the councils have not addressed obstacles to participation faced by some stakeholders, particularly crew members.

Current Stakeholder Participation Practices Do Not Fully Adhere to Core Participation Principles

Our review of the participation literature and policies from leading federal agencies in stakeholder participation identified the following core principles for effective stakeholder participation, some of which may overlap when put into practice:

- using an open and clearly defined decision-making process;
- making key information readily available and understandable;
- actively conducting outreach and soliciting stakeholder input;
- involving stakeholders early and throughout the decision-making process;
- fostering responsive, interactive communication between stakeholders and decision makers;
- using formal and informal participation methods; and
- including all stakeholder interests.

While the DAP program development process used by the fishery management councils provides many opportunities for stakeholder participation, stakeholders with whom we spoke and council members who responded to our survey identified several areas where current practices do not fully adhere to the core principles for effective participation.

-
- *Using an open and clearly defined decision-making process.* Adhering to this principle means that an organization makes program development processes open and accessible to all interested stakeholders, and that the organization has informed stakeholders about what roles they can play and how the organization uses stakeholder input, such as oral statements provided at council meetings, in decision making. Using a transparent process gives stakeholders clear expectations about how decisions will be made, enhancing understanding and trust in the organization's decisions. While the councils we reviewed use an open decision-making process and inform stakeholders how they can participate, they do not always make clear how they use stakeholder input in decision making. Specifically, the councils hold open meetings where any stakeholder can provide oral or written statements on DAP agenda items. Also, each council has prepared a Statement of Organization, Practices, and Procedures that provides information on council operations and how stakeholders can participate in developing fishery management plans, such as DAP programs. Further, the councils we reviewed make information available at council meetings on how to participate. In addition, the Pacific Council has prepared a guide on how to get involved in the council process, which is available on its Web site, as well as at council meetings. Nonetheless, stakeholders told us that it takes time to understand the process. As a result, some stakeholders, particularly those who are new to the process or who are not members of a stakeholder organization, do not understand which meetings to attend and the appropriate times to submit information on DAP proposals. Finally, while all council members who responded to our survey said that they use stakeholder input in making decisions, they do not always provide explanations of how stakeholder input was used. For example, stakeholders told us that when a council votes immediately after public comment, it is not always clear that their input was considered, particularly when the council's decision does not reflect the views expressed in public comment. In addition, council meeting minutes do not always address issues raised by stakeholders or explain how their input was used in making decisions.
 - *Making key information readily available and understandable.* This core principle helps ensure that stakeholders have access to information, such as analyses of DAP proposals, and that the information is understandable to them so that they can participate in a meaningful way during the program development process. While all the councils we reviewed make key information on DAP program

development readily available to stakeholders, this technical information is not always presented in an easily understandable way. Specifically, the councils make program documents, such as draft DAP planning documents and analyses, available on their Web sites and at council meetings. The councils also send these documents to those who request them. However, stakeholders told us that the documents often use technical language to present complex issues, making them difficult to understand. Stakeholders also told us that documents can be lengthy and repetitive, making them time-consuming to read. For example, the environmental impact statement for the Bering Sea and Aleutian Islands crab rationalization program, required under NEPA, was more than 2,300 pages long.⁷ When key information is difficult to understand and time-consuming to read, some stakeholders said that they have difficulty becoming knowledgeable about the issues, which, according to participation experts, can limit stakeholders' ability to participate in a meaningful way.

- *Actively conducting outreach and soliciting stakeholder input.* Adhering to this principle means that decision makers seek out those potentially affected by a decision and request input, paying particular attention to stakeholder groups that have traditionally been less involved. The councils we reviewed conduct some outreach and solicit stakeholder input. For example, the councils we reviewed place notices in the *Federal Register* and distribute notices to the media to announce public meetings as required by law, maintain mailing lists of people interested in receiving council-generated information, prepare and distribute newsletters to people on their mailing lists, and send representatives to fishing conferences, expositions, and forums. In addition to conducting outreach, the councils also solicit stakeholder input on the potential effects of specific DAP program alternatives by holding meetings at various locations where stakeholders can submit oral and written statements. However, at the four councils we reviewed, we found only limited efforts by the councils to provide targeted outreach to, or seek input from, stakeholders who do not typically participate in the council process, such as crew members. This may explain, in part, why stakeholders told us that some stakeholders, such as crew members and others who may be affected by DAP decisions, do not participate or participate too late in the process to provide meaningful input. Over 60 percent of the council members who

⁷The environmental impact statement included appended regulatory analyses.

responded to our survey believe that expanding public outreach activities would be effective in improving stakeholder participation in developing DAP programs. Some council members noted, however, that stakeholders also have a responsibility to seek out information about DAP issues and use the available opportunities to participate in the development process.

- *Involving stakeholders early and throughout the decision-making process.* According to participation experts and our prior work, involving stakeholders early and throughout the decision-making process can help ensure that stakeholders provide input early enough for the input to be useful and often enough so that stakeholders are involved in the smaller decisions that lead to a final decision.⁸ Although the councils follow the stakeholder participation requirements provided by law, the length of the DAP program development process and the costs of attending meetings make it difficult for some stakeholders to be involved early and throughout the process. Specifically, stakeholders can participate in the process by providing oral and written input to the council and its advisory committees on DAP agenda items at public hearings and meetings, and by serving on the council or advisory committees that make recommendations to the council. However, many stakeholders told us that the length of the process, which can take several years, was a significant obstacle to participation. In addition to the length of the process, the costs associated with travel and time away from work make it difficult for some stakeholders to attend meetings and stay involved. Stakeholders told us that this situation is particularly problematic for those who are not members of organizations or do not have representatives to attend meetings, gather information, and provide input on their behalf.
- *Fostering responsive, interactive communication between stakeholders and decision makers.* This core principle promotes understanding between stakeholders and decision makers. While the councils communicate with stakeholders, they do not always do so in a responsive, interactive way. Stakeholders can provide input to the councils by testifying at council meetings (see fig. 1) and by submitting written comments. At the councils we visited, testimony is given at designated times during the council meetings, with one speaker

⁸See GAO, *Executive Guide: Effectively Implementing the Government Performance and Results Act*, GAO/GGD-96-118 (Washington, D.C.: June 1996).

following another. Council members may ask clarifying questions at the completion of each statement, but they do not always do so. According to participation experts, serial testimony is not an effective way to communicate, because it does not lead to a dialogue between stakeholders and decision makers. Further, some stakeholders told us that they find it intimidating to deliver public testimony before the council, which may require speaking before as many as 21 council members and 200 people in the audience.

Figure 1: Public Testimony before the Pacific Fishery Management Council



Source: Pacific Fishery Management Council.

In addition, stakeholders told us that when they submit written comments, which become part of the official record, councils do not consistently respond to these comments. When a council does not respond to oral or written comments, it loses an opportunity to foster interactive communication and stakeholders question how their input was used.

- *Using formal and informal participation methods.* Formal information exchanges—such as written council responses to stakeholder input on proposed DAP plans—help ensure that information (e.g. the rationale for DAP decisions) is available to all, regardless of one’s ability to attend meetings. Informal methods, such as open houses where agency officials can share information and hear stakeholder concerns, can give stakeholders and decision makers the opportunity to interact and share views on DAP issues. While the councils we reviewed provide stakeholders with formal opportunities to

participate in developing DAP programs, they offer few informal opportunities that are open to all stakeholders. Specifically, while all stakeholders can formally participate in developing DAP programs by attending meetings and submitting oral and written comments, according to participation experts, these formal participation methods are not always conducive to interactive communication between stakeholders and decision makers. Moreover, stakeholders told us that they would like more opportunities for informal interactions. All four of the councils we reviewed provide contact information for council members and staff on their Web sites, and stakeholders told us that council staff are available and helpful to people who contact them. However, our review of council practices showed that the councils provide few organized opportunities for all stakeholders to informally discuss issues.

- *Including all stakeholder interests.* Including all stakeholder interests helps ensure that all viewpoints are considered in developing DAP programs and is crucial to perceptions of fairness. One of the purposes of the Magnuson-Stevens Act is to ensure that councils prepare plans in ways that enable stakeholders to participate, but some stakeholder groups may not be adequately represented. For example, 60 percent of the council members who responded to our survey believed that crew members were poorly represented or not represented at all in the DAP program development process. Further, while stakeholders serve on the council or on advisory committees that make recommendations regarding DAP proposals to the council, some stakeholders are concerned that not all stakeholder interests are adequately represented on the councils and their advisory committees. Regarding representation on the councils, the Secretary of Commerce is required to select council members in such a way as to ensure a fair and balanced representation of the active participants in the commercial and recreational fisheries under the council's jurisdiction. However, among the commercial representatives on the Pacific Fishery Management Council, there are no active commercial fishermen; similarly, there are no active crew members on the four councils we reviewed. Moreover, the Secretary is not required to balance any other stakeholder interests, such as environmentalist or consumer interests, and many stakeholders (including some council members we surveyed) believe that the councils are not representative of all interests. In addition, some stakeholders told us that they believe the composition of the advisory committees, whose members are selected by the councils, is not always adequately representative. Finally, when stakeholders bypass the

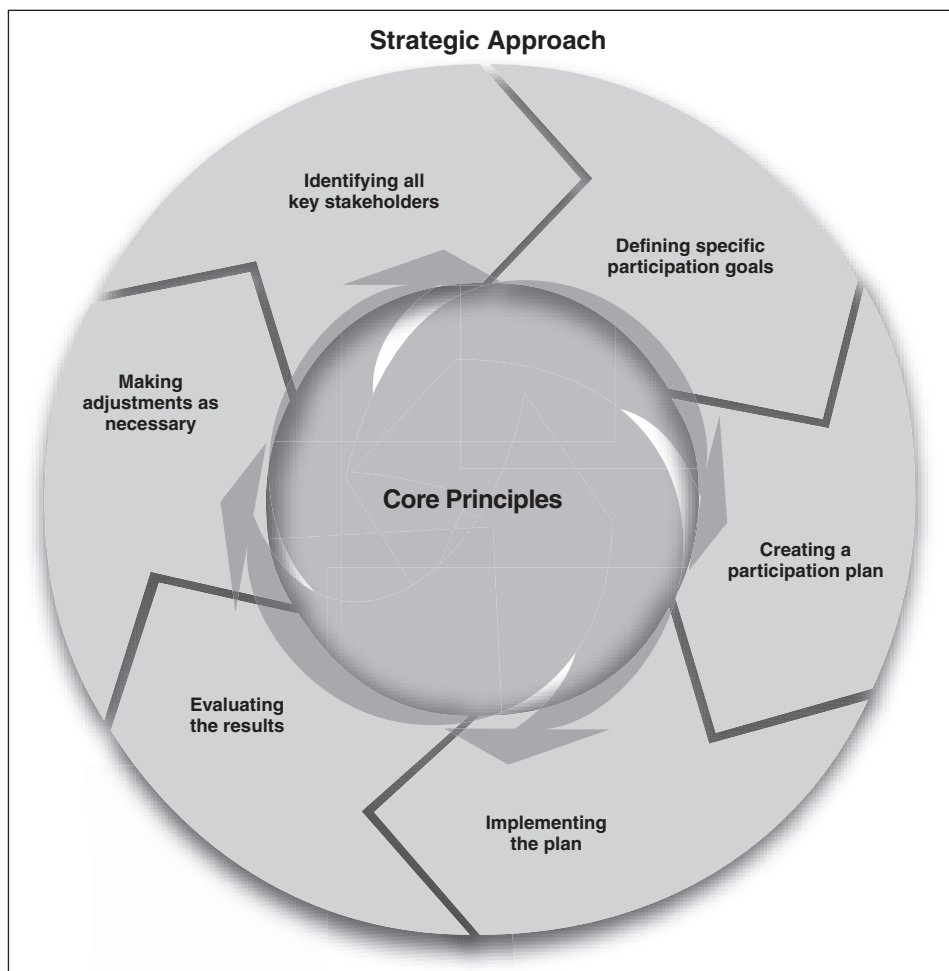
council process to get a DAP program approved, all interests may not be included. For example, in some cases, stakeholders have taken DAP proposals directly to the Congress for legislative approval rather than using the council process.⁹ While some stakeholders expressed concern that involving more people will increase the amount of time and effort needed to make decisions, others noted that including all stakeholders' interests can help agencies avoid controversy once decisions are made.

Current Stakeholder Participation Practices Are Not Based on a Strategic Approach

According to participation experts and government officials, using a strategic approach to participation that is based on core principles is the second key element of an effective participation framework. Although the specifics of a strategic approach to stakeholder participation should be tailored to each situation, it should generally include identifying all key stakeholders, defining specific participation goals, creating a participation plan, implementing the plan, evaluating the results, and making adjustments as necessary. (See fig. 2.)

⁹The Congress, through the 1998 American Fisheries Act, provided the framework for developing the Pollock Conservation Cooperative. Also, the Congress mandated the Bering Sea and Aleutian Islands crab rationalization program for NMFS approval in 2005. See appendix III for descriptions of these two DAP programs.

Figure 2: Steps in Using a Strategic Approach to Stakeholder Participation



Source: GAO.

Identifying stakeholders involves systematically considering which internal and external parties may be affected by or interested in a decision. In the case of DAP decisions, for example, stakeholders may include a wide range of interests, such as vessel owners, captains, and crew members; processors; fishing-dependent communities; recreational fishermen; environmentalists; federal and state fishery managers; consumers; and members of the public. Once managers identify stakeholders, they should then define specific goals for involving those stakeholders, such as having stakeholders help design a solution to a particular problem or gaining their

support for agency decisions. The next step—creating a participation plan—outlines the methods managers will use to involve stakeholders. Once a plan is implemented, evaluating the results can help agencies determine what is working—and what is not—and make adjustments as necessary to improve participation. To increase the chances of success, participation experts suggest that managers involve stakeholders in these participation planning, execution, and evaluation efforts.

Adhering to a set of core principles and using a strategic implementation approach can enhance participation, which can benefit agencies and stakeholders by increasing stakeholders' perceptions of fairness, helping diffuse potentially controversial issues, minimizing overall costs and delays in developing programs, and generally developing better decisions. However, if participation efforts are not executed well, they can undermine stakeholders' trust in the process and decrease the credibility of decisions. To minimize this risk, participation experts told us that agency commitment is key. This commitment can be exemplified by adopting a formal stakeholder participation policy that expresses core principles, and providing guidance and training on how to develop and use a strategic approach to stakeholder participation. Such policies, guidance, and training can help managers better understand what is expected of them regarding stakeholder participation and help them strategically plan and execute participation efforts.

NMFS is not legally required to develop a formal policy on stakeholder participation or provide the councils with guidance and training on how to develop and implement a participation framework, and it has not done so. Moreover, the councils themselves have not developed strategic approaches that define their specific participation goals or include participation plans, and therefore may be missing opportunities to make stakeholder participation in the DAP process more effective. However, without NMFS's leadership and commitment, it may be difficult for the councils to enhance stakeholder participation in developing DAP programs.

Two federal government agencies—the Environmental Protection Agency (EPA) and the Department of Energy (DOE)—are recognized by participation experts as leaders in establishing effective stakeholder participation frameworks. Both agencies have (1) established policies that define their core participation principles, such as fostering openness between the agencies and their stakeholders, and (2) provided guidance to program managers on using a strategic approach to stakeholder

participation. EPA's public involvement policy articulates participation principles, such as ensuring that the public has timely, accessible, and accurate information about EPA programs so that stakeholders have the knowledge they need to participate. For example, EPA provides information on its Web site for planning and conducting public involvement activities. EPA also provides a participation strategy that directs agency officials to take specific steps, such as planning and budgeting for public involvement activities, systematically identifying stakeholders, and evaluating public participation activities. Further, EPA provides guidance, training, and resources to implement its policy. Similarly, DOE has established participation principles, such as using open, ongoing, formal and informal two-way communication between DOE and its stakeholders, and provides guidance to managers on how to plan and implement effective participation efforts. DOE also publishes evaluations of past efforts, which managers can learn from as they devise strategies appropriate for their specific situation.

Stakeholders and Participation Experts Suggested a Variety of Methods for Enhancing Stakeholder Participation

According to stakeholders and participation experts, a variety of methods are available that, depending on the situation, could enhance stakeholder participation in developing DAP programs. These methods generally fall into five categories: (1) providing education and outreach, (2) holding meetings in different ways, (3) streamlining the DAP program development process, (4) diversifying interests represented in the council process, and (5) sharing decision-making authority. While strategic use of these methods can result in more effective participation, they can also have disadvantages, such as increased costs.

Providing education and outreach. Stakeholders and participation experts suggested several ways to conduct education and outreach activities that encourage stakeholders to participate in the DAP program development process and help give stakeholders the substantive and procedural information they need to participate effectively. These approaches include implementing formal training programs, conducting outreach activities in locations likely to be affected by DAP programs, expanding council mailing lists to include more stakeholders, making DAP program documents more easily understandable to non-experts, and making greater use of technology.

- *Implement formal training programs.* Stakeholders said that they would like more training on fishery management and science. NMFS currently offers two days of training to new council members on the

fishery management process and hopes to expand its efforts by providing ongoing training on other fishery management issues. Stakeholders identified the Marine Resource Education Project (MREP), which is sponsored by a group of universities in New England, as an example of a good training program. MREP provides stakeholders with intensive training on fisheries management and science to help them better understand the council process and DAP issues, teaches the importance of being involved early and throughout the process, and provides diverse stakeholders with the opportunity to exchange information in informal settings. However, such training can be costly and may reach relatively few stakeholders.

- *Conduct outreach activities in locations likely to be affected by DAP programs.* Stakeholders said that they would like council members or staff to meet with them in their communities, such as port towns or communities likely to be affected by DAP programs, instead of making participants travel to council meetings. While this method could increase stakeholder understanding of complex issues (such as DAP programs), bring more stakeholders into the process, and foster interactive communication between stakeholders and decision makers, it may also require a high level of council resources.
- *Expand council mailing lists to include more stakeholders.* Councils could proactively expand their mailing lists, which currently are largely composed of stakeholders who have attended meetings or who have contacted the council and requested that their name be added. For example, when people apply for fishing permits, permitting agencies could request to add their contact information to the appropriate council mailing list. While this method would make council-generated information, including information on DAP program development, available to more stakeholders, councils may still have difficulty obtaining contact information for some stakeholders.
- *Make DAP program documents more understandable.* Stakeholders suggested that councils simplify their documents or provide additional documents for those with less technical backgrounds. One way to simplify documents is to make them shorter. For example, the regulations governing the creation of environmental impact statements state that the text of even unusually complex documents should normally be less than 300 pages. NMFS has recently issued draft guidelines that encourage councils to create clear and concise documentation that stakeholders can easily understand. Additionally,

councils could create short summary documents that explain key issues in plain language. For example, the Pacific Council issues short fact sheets on a variety of fishery management issues. Simplifying documents would make information easier to understand; however, it could require additional council resources.

- *Make greater use of technology.* Stakeholders have suggested making greater use of technology, such as e-mail and Web sites, in providing education and outreach on DAP issues. For example, EPA's Web site for hazardous waste cleanup activities offers easy access to a range of material, from introductory information explaining key issues to non-experts, to technical information for people with high levels of expertise. Participation experts say that using such technology can enhance communication of important information, give stakeholders a more immediate sense of connection to the process, and reach more people at a lower cost. However, some stakeholders may not use or have access to the technology being used.

Holding meetings in different ways. To increase meeting attendance and allow for more informal, deliberative interaction, stakeholders suggested holding meetings at different times or locations, broadcasting meetings, holding informal discussions with stakeholders on DAP issues, and using facilitators to run meetings.

- *Hold meetings at different times or locations.* Some stakeholders requested that council meetings take place at more convenient times or in locations that were easier to reach. For example, one advisory committee member in the Gulf Council said that the committee successfully increased attendance by scheduling meetings in ports at times convenient to fishermen. While holding meetings at different times or places would allow for additional input from those who might not otherwise be able to attend, it may increase convenience for only some stakeholders, while inconveniencing others.
- *Broadcast meetings.* Stakeholders and experts said that broadcasting meetings using technology, such as the telephone, television, or the Internet, could be one way to increase meeting attendance. For example, during public hearings on developing the halibut and sablefish IFQ program, the North Pacific Council used conference calls to broadcast meetings, giving stakeholders in remote locations the opportunity to learn about and provide input on IFQ program options. While broadcasting meetings could increase meeting attendance, it may

not entirely replace the value of direct contact through face-to-face meetings.

- *Hold informal discussions with stakeholders on DAP issues.* Stakeholders with whom we spoke requested opportunities for informal discussions. Participation experts noted that this type of communication is often key to ensuring stakeholder satisfaction with involvement efforts, because such interactions can help break down barriers between people and allow stakeholders to learn from one another. There are several options for conducting such discussions. For example, in 2003, NMFS held eight regional “constituent sessions” to gather the views of marine resources stakeholders on issues facing each region’s fisheries. While these sessions were not directly related to DAP program development, NMFS officials said that they were valuable because they provided the agency with a general sense of stakeholders’ concerns. Another option is to sponsor informal interactions, such as roundtable meetings, where agency officials and stakeholders can meet and talk about issues of interest. A DOE official said that seating officials among stakeholders in a roundtable setting has helped her agency break down barriers between these two groups. Further, the Pacific Council’s state representatives hold open and informal meetings with their constituents on days when the council is in session. Through these meetings, council members make information readily available to stakeholders and foster responsive, interactive communication. One disadvantage of these meetings, though, is that they are accessible only to people who are able to attend the council meeting.
- *Use facilitators to run meetings.* Participation experts and some stakeholders suggested using neutral facilitators to run meetings. According to participation experts, neutral facilitators can ensure that issues are thoroughly explored and increase perceptions of fairness. For example, EPA’s National Environmental Justice Advisory Council published a model plan for public participation in which providing a skilled facilitator is a critical element. However, hiring a facilitator may require additional expense.

Streamlining the DAP program development process. Many laws govern the fishery management process. Yet, according to stakeholders, how these laws are applied often results in a costly and lengthy fishery management process. To decrease the time and effort required to develop DAP programs and other fishery management plans, NMFS has proposed adopting administrative procedures to streamline the regulatory process, and some

stakeholders have suggested amending the Magnuson-Stevens Act to incorporate elements of NEPA and then exempt the Magnuson-Stevens Act from NEPA.

- *Adopt administrative procedures to streamline the regulatory process.* Stakeholders have suggested that NMFS streamline the process for developing fishery management plans, such as DAP programs. This effort is underway. NMFS issued revised draft guidelines in August 2005 for developing fishery management plans that, among other things, integrate the many statutory requirements, such as NEPA, that govern fisheries management. NMFS expects that these new guidelines will increase the quality of their decisions, improve their ability to successfully defend lawsuits, and decrease the overall time and effort required to create a fishery management plan, such as a DAP program. However, officials recognize that the new process will create additional work for councils in the early stages of plan development.
- *Amend the Magnuson-Stevens Act to incorporate NEPA requirements.* Some stakeholders have suggested that the Magnuson-Stevens Act be amended to include elements of NEPA and then exempt the Magnuson-Stevens Act from NEPA. While we recognize that the councils do not have the authority to make these decisions, some stakeholders believe that this option would remove duplicative effort and decrease the time needed to develop DAP programs. However, others say that NEPA requirements can benefit the decision-making process by providing key analyses and participation opportunities not required by the Magnuson-Stevens Act, such as the requirements to use an early and open process for determining the scope of issues to be addressed and to assess different DAP program options before making a decision.

Diversifying interests represented in the council process. Stakeholders and participation experts suggested two methods for more fully including all interests in the DAP program development process: diversifying interests represented on the councils and their advisory committees, and helping ensure that stakeholders have organized representation.

- *Diversify interests represented on the councils and their advisory committees.* Stakeholders suggested that the councils and their advisory committees should have more diverse membership. Methods for diversifying the councils could include amending the Magnuson-Stevens Act to require balanced representation from a wider set of stakeholders beyond commercial and recreational fishery participants, and

nominating a wider array of stakeholders from each state to serve on the councils. While we recognize that the councils do not have the authority to make these decisions, stakeholders believed that diversifying interests represented on the councils was important. Regarding representation on advisory committees, stakeholders requested a more participatory process for selecting committee members. For example, a council could determine the interests it wishes to have represented and then allow people representing those interests to select their own committee representatives. While stakeholders may perceive this option as being fairer, it may be difficult for groups to coordinate among themselves to select a representative. Also, depending on the fishery, it may be difficult to find people willing to serve on the advisory committees. While diversifying interests can enhance participation, such a change could increase the length of the decision-making process and make it more difficult for councils to reach decisions.

- *Help ensure that stakeholders have organized representation in the DAP program development process.* Stakeholders have noted that those who are organized and have a designated representative who follows the process and provides input to the council on their behalf are able to participate more effectively in the DAP program development process. Intensive training programs such as MREP may help stakeholders organize. For example, a fisherman who attended MREP training said that he used information he learned at MREP to form an organization to represent his fishing gear type at New England Council proceedings. While organizing can enhance participation, it may not be the role of the councils or NMFS to help stakeholders organize.

Sharing decision-making authority. To help respond to stakeholders' requests for more input into decision making, stakeholders suggested holding a referendum and participation experts suggested using collaborative or consensus-based decision making.

- *Hold a referendum.* A referendum is a means of submitting proposed rules or laws to a direct vote. In the fishery management context, holding a referendum allows a specified group of stakeholders to vote on whether to develop a DAP program or whether to adopt a specific DAP plan. For example, the Congress required NMFS to hold two referenda among red snapper fishing license holders. In the first referendum, a majority decided that the council should develop an IFQ program for red snapper, and the second referendum will decide whether to submit the IFQ plan to the Secretary of Commerce. NMFS

was required to identify and notify license holders, decide how to weight votes among eligible participants, and then conduct the referendum. While holding a referendum can provide some stakeholders with direct decision-making power, it excludes those who are deemed ineligible to vote. Further, decisions regarding the weight of each vote can create controversy among eligible stakeholders. Also, a referendum can be time-consuming to administer and may be useful only if stakeholders are sufficiently informed about the issues.

- *Use collaborative or consensus-based decision making.* Participation experts suggested the use of collaborative or consensus-based approaches. These approaches allow stakeholders to fully explore issues together, often with the help of a facilitator, by working toward consensus rather than making majority-based decisions. EPA has used this process with local government, industry, community, and environmental interests to help develop new strategies for achieving environmental protection. While participation experts say that collaborative decision making can more fully uphold the core participation principles we identified and help participants find solutions to seemingly intractable problems, it can be resource-intensive and does not guarantee agreement.

Conclusions

A wide range of stakeholders, such as council members, vessel owners, crew members, and processors, have indicated that some stakeholders face obstacles to effective participation under the current DAP program development process. While the current council practices involve stakeholders in ways that are prescribed by law, opportunities exist for more strategic and effective stakeholder involvement that could lead to a more inclusive decision-making process on what are frequently controversial issues. Federal agencies have developed elements of effective stakeholder participation frameworks that could serve as models for NMFS and the councils, and could be adapted to the fisheries management context. Based on this experience, we believe that commitment and leadership by NMFS and the regional fishery management councils, demonstrated by adopting core participation principles, and providing guidance and training on how to strategically implement stakeholder participation approaches, will be critical to enhancing stakeholder participation in the development of DAP programs.

Recommendations for Executive Action

To enhance stakeholder participation in the development of DAP programs, we are recommending that the Secretary of Commerce direct the Administrator of NOAA to direct the Director of NMFS to:

- establish a formal policy for stakeholder participation, including adopting a set of core principles to guide stakeholder participation activities;
- provide guidance to the councils and train NMFS staff, council members, and council staff on developing and using a strategic approach to stakeholder participation; and
- ensure that the councils develop and implement a framework for stakeholder participation that includes core principles and a strategic approach.

Agency Comments and Our Evaluation

We provided a draft copy of this report to the Department of Commerce for review and comment. We received a written response from the Deputy Secretary of Commerce that includes comments from NOAA on behalf of NMFS. Overall, NMFS acknowledged that more can be done to improve stakeholder participation and agreed with our recommendations.

The agency agreed with our first recommendation, to establish a formal policy for stakeholder participation. NOAA said that the agency will form an internal working group to develop a draft policy for stakeholder participation and refine the core principles listed in our report for application within the context of council operations. NOAA also said that this policy will form an integral part of a broader agency outreach and education policy currently being developed.

The agency also agreed with our second recommendation, to provide guidance to the councils and train NMFS staff, council members, and council staff on developing and using a strategic approach to stakeholder participation. While the agency plans to add the stakeholder participation policy to its training curriculum, our recommendation also included providing guidance to the councils on how to develop and use a strategic approach to stakeholder participation. In our report, we noted that federal agencies such as DOE and EPA have created guidance to help staff design, implement, and evaluate participation efforts. We believe NMFS could benefit from a similar approach.

The agency also agreed in substance with our third recommendation, to ensure that the councils develop and implement a framework for stakeholder participation that includes core principles and a strategic approach. While we are encouraged that the agency is planning to work with council members and staff to implement a participation framework that includes jointly-developed core principles, it is important that the framework also includes a strategic approach that NMFS and the councils can use to effectively implement the core principles in specific situations.

NOAA also provided technical comments that we have incorporated into the report as appropriate. NOAA's comments and our detailed responses are presented in appendix IV of this report.

We are sending copies of this report to interested congressional committees, the Secretary of Commerce, the Administrator of the National Oceanic and Atmospheric Administration, and the Director of the National Marine Fisheries Service. We will also provide copies to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or mittala@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.



Anu K. Mittal
Director, Natural Resources
and Environment

Objectives, Scope, and Methodology

This is the fourth in a series of reports on individual fishing quota (IFQ) and other dedicated access privilege (DAP) programs requested by the Chairman and Ranking Minority Member of the former Subcommittee on Oceans, Atmosphere, and Fisheries, Senate Committee on Commerce, Science, and Transportation. For this report, we reviewed the development of domestic DAP programs to determine (1) the extent to which the regional fishery management councils are using a framework for effective stakeholder participation and (2) the methods stakeholders and participation experts suggest for enhancing stakeholder participation in the development of DAP programs.

To determine the extent to which the regional fishery management councils are using a framework for effective stakeholder participation, we reviewed the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, the Administrative Procedure Act, and Executive Order 12866, which together set out many of the stakeholder participation requirements for developing fishery management plans, including DAP programs and other plans for managing fisheries in federal waters. We also reviewed National Marine Fisheries Service (NMFS) guidance to the regional fishery management councils regarding the requirements for preparing and reviewing DAP programs, and council statements of organization, practices, and procedures. In addition, we reviewed the academic literature on public participation theory and practice, our prior work, and federal agency and international organization public participation guides, policies, and guidance. Finally, we interviewed and obtained the views of participation experts and federal agency officials on core principles for effective stakeholder participation, strategies for implementing the principles, and leading government models for establishing an effective participation framework.

To determine the methods stakeholders and participation experts suggest for enhancing stakeholder participation in the development of DAP programs, we interviewed DAP program stakeholders, participation experts, and officials at federal agencies with public involvement programs. We reviewed participation policies from the Environmental Protection Agency (EPA) and the Department of Energy (DOE) and public participation guidance from EPA, DOE, the Bureau of Land Management, the Army Corps of Engineers, the National Research Council, the U.S. Institute for Environmental Conflict Resolution, and the World Bank.

For both objectives, we reviewed the activities of four regional fishery management councils—the Gulf of Mexico, New England, North Pacific,

and Pacific councils. We selected these councils to obtain broad geographic coverage of councils where DAP programs were being developed. We attended council and advisory committee meetings in Fort Myers Beach, Florida; Portland, Maine; Girdwood, Alaska; Foster City, California; and Portland, Oregon. At these meetings and elsewhere, we interviewed DAP program stakeholders and their representatives, including commercial vessel owners, captains, and crew; recreational fishermen; fish dealers and processors; environmentalists; fishing communities; and state and federal fishery managers. We obtained their views on obstacles to participation and potential methods for enhancing participation.

We also surveyed the members of the four fishery management councils whose meetings we attended. Specifically, we prepared and distributed a Web-based survey to voting and nonvoting members of these councils to obtain their views on opportunities for stakeholder participation in the development of DAP programs, obstacles to stakeholder participation, and potential methods for enhancing participation. With the assistance of council staff, we identified council members who had attended at least one council meeting between August 2004 and August 2005, and we included all of the 74 council members that met this criterion in our sampling frame.

The practical difficulties of conducting any survey may introduce nonsampling error. For example, differences in how a particular question is interpreted, the sources of information available to respondents, or the types of people who do not respond can introduce unwanted variability into the survey results. We included steps in both the data collection and data analysis stages for the purpose of minimizing such nonsampling errors. For example, we pre-tested the survey with a council member from each of the four councils and used their feedback to refine the survey. Also, to reduce survey non-response, we sent e-mail reminders and conducted follow-up telephone calls with nonrespondents. Overall, 78 percent of the council members in our sampling frame responded to our survey, and all but the Gulf Council had response rates of 78 percent or higher.

We notified participants of the survey's availability on August 29, 2005, the day that Hurricane Katrina struck the Central Gulf of Mexico Coast. Because of the devastation caused by the hurricane, we were not able to contact two members of the Gulf of Mexico Council. Additionally, we did not conduct follow-up telephone calls with Gulf Council members who received, but did not complete, the survey, although they were sent e-mail reminders. Given that we received responses from only 57 percent of the

Gulf Council members, we do not know if their responses differ materially from the 43 percent who did not complete the survey. However, we do not report information by council, and the survey data are reported as illustrative data in support of other information collected in the course of our review. Table 1, below, provides information on participation in our council member survey.

Table 1: Participation in Council Member Survey

Council	Number of members meeting survey criteria^a	Number of non-contacts^b	Number of respondents^c	Response rate (percent)
Gulf of Mexico	21	2	12	57.1
New England	20	0	18	90.0
North Pacific	14	0	13	92.9
Pacific	19	0	15	78.9
Total	74	0	58	78.4

Source: GAO.

^aWhen an agency official had one or more designees who represented him or her on the council, we selected the person who had attended the most meetings between August 2004 and August 2005.

^bWe were unable to contact two members of the Gulf of Mexico Council because of Hurricane Katrina.

^cBecause of Hurricane Katrina, we did not follow up to obtain responses from the seven Gulf of Mexico Council members who did not initially complete our survey.

We conducted our review from April through November 2005 in accordance with generally accepted government auditing standards.

Summary of Responses to GAO's Survey of Fishery Management Council Members

This appendix contains a summary of responses to the Web-based survey we administered to the Gulf of Mexico, New England, North Pacific, and Pacific fishery management councils. In that survey, we asked council members for their views on obstacles to participation and potential methods for enhancing participation in the development of DAP programs. We surveyed 74 council members and received 58 responses. In the tables below, totals may not equal 58 due to non-responses.

Survey Questions and Responses

Q1. Have you attended at least one council meeting in the past year (since August 2004)?

Response	Number
Yes	58
No	0

Q2. How useful are the following sources of stakeholder input in helping you make DAP program decisions in your region?

Source	Category						Total
	Very useful	Moderately useful	Slightly useful	Not at all useful	Do not use	No answer	
Scoping documents	26	20	11	0	0	1	58
Written comments submitted for council meetings	25	24	8	0	0	0	57
Public testimony at council meetings	34	18	6	0	0	0	58
Advisory committee recommendations	42	12	4	0	0	0	58
Informal interactions with stakeholders	29	19	10	0	0	0	58
Other	12	0	0	0	2	4	18

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Q3. To what extent do opportunities exist for stakeholder participation in the development of DAP programs in your region?

Category	Number
Great many opportunities	24
Many opportunities	23
Some opportunities	10
Little to no opportunities	1
No answer	0
Total	58

Q4. How well are the interests of the following stakeholder groups represented in the development of DAP programs in your region?

Stakeholder group	Category						Total
	Very well represented	Well represented	Moderately well represented	Poorly represented	Not represented	No answer	
Vessel owners	23	24	9	2	0	0	58
Skippers/Captains	7	21	22	7	0	1	58
Crew	3	2	18	30	5	0	58
Recreational fishermen	7	16	17	13	3	2	58
Fishing communities	9	11	19	13	2	1	55
Processors/Dealers	24	15	8	9	1	1	58
Environmentalists	19	21	13	4	1	0	58
Consumers	1	2	5	28	21	1	58
Members of the public	3	4	16	23	10	1	57
Other	0	0	0	2	0	15	17

Q5. The following items have been suggested as possible obstacles to stakeholder participation in the development of DAP programs. To what extent does each item hinder participation for the following stakeholder groups in your region?

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Q5a. Difficulty understanding the council process

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	1	5	12	18	21	1	58
Skippers/Captains	4	5	18	18	11	2	58
Crew	7	23	12	9	3	2	56
Recreational fishermen	2	13	18	9	10	6	58
Fishing communities	7	12	13	13	9	4	58
Processors/Dealers	1	4	9	14	28	2	58
Environmentalists	1	0	6	13	36	1	57

Q5b. Complexity of DAP programs

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	2	8	15	18	13	1	57
Skippers/Captains	4	13	17	15	7	1	57
Crew	11	23	9	8	4	1	56
Recreational fishermen	2	18	14	8	7	8	57
Fishing communities	6	16	12	13	7	3	57
Processors/Dealers	1	6	13	16	20	1	57
Environmentalists	1	3	10	20	21	1	56

Q5c. Difficulty understanding DAP documents

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	3	5	16	15	16	2	57
Skippers/Captains	4	16	10	14	11	2	57
Crew	17	15	11	5	5	3	56
Recreational fishermen	5	14	11	11	8	8	57
Fishing communities	8	12	12	12	8	5	57
Processors/Dealers	2	4	10	15	22	4	57
Environmentalists	1	3	7	19	24	2	56

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Q5d. Lack of awareness of council meeting times/dates

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	0	1	6	14	35	1	57
Skippers/Captains	0	6	5	11	33	2	57
Crew	4	7	11	14	18	3	57
Recreational fishermen	1	2	12	14	22	5	56
Fishing communities	3	5	7	12	24	6	57
Processors/Dealers	0	2	4	9	39	3	57
Environmentalists	2	1	1	9	43	1	57

Q5e. Cost of travel to attend council meetings

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	1	9	9	19	17	2	57
Skippers/Captains	3	15	17	11	9	2	57
Crew	18	20	9	4	4	2	57
Recreational fishermen	6	12	13	11	9	6	57
Fishing communities	4	15	13	8	10	7	57
Processors/Dealers	1	3	3	17	32	1	57
Environmentalists	1	2	5	9	39	1	57

Q5f. Time away from work to attend council meetings

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	5	14	15	10	11	2	57
Skippers/Captains	13	18	16	6	2	2	57
Crew	23	17	8	5	1	3	57
Recreational fishermen	4	14	15	8	9	7	57
Fishing communities	5	8	18	10	9	7	57
Processors/Dealers	3	6	12	17	18	1	57
Environmentalists	1	2	5	11	36	2	57

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Q5g. Length of DAP program development process

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	4	14	21	12	6	1	58
Skippers/Captains	5	19	19	11	3	1	58
Crew	8	22	14	7	4	3	58
Recreational fishermen	5	18	16	7	6	5	57
Fishing communities	4	18	16	11	5	4	58
Processors/Dealers	4	11	13	15	13	1	57
Environmentalists	2	9	14	8	24	1	58

Q5h. Belief that one's input will not make a difference

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	4	7	10	18	17	2	58
Skippers/Captains	8	10	14	11	13	2	58
Crew	14	23	6	8	4	3	58
Recreational fishermen	4	9	19	8	11	7	58
Fishing communities	7	10	12	11	12	6	58
Processors/Dealers	4	6	4	18	25	1	58
Environmentalists	2	3	7	16	29	1	58

Q5i. Discomfort in speaking at council meetings

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	2	6	14	16	19	1	58
Skippers/Captains	4	12	18	12	11	1	58
Crew	13	20	15	4	6	0	58
Recreational fishermen	2	8	19	10	15	4	58
Fishing communities	1	7	18	11	17	4	58
Processors/Dealers	1	2	8	17	30	0	58
Environmentalists	0	0	2	11	45	0	58

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Q5j. Lack of representation on advisory committees

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	0	2	3	12	39	2	58
Skippers/Captains	0	6	7	16	25	3	57
Crew	14	11	8	11	12	2	58
Recreational fishermen	4	4	9	15	23	3	58
Fishing communities	4	9	6	16	17	6	58
Processors/Dealers	0	4	4	12	35	3	58
Environmentalists	1	1	7	17	31	1	58

Q5k. Lack of representation on the council

Stakeholder group	Category						Total
	Severely hinders	Substantially hinders	Moderately hinders	Slightly hinders	Does not hinder	No answer	
Vessel owners	2	2	8	11	34	1	58
Skippers/Captains	2	7	12	11	23	3	58
Crew	15	10	10	6	15	2	58
Recreational fishermen	3	4	8	13	28	2	58
Fishing communities	6	7	10	13	17	4	57
Processors/Dealers	1	3	3	13	36	2	58
Environmentalists	2	5	7	14	27	3	58

Q6. Have stakeholders used or attempted to use the legislative process rather than the council process to get a DAP program approved in your region?

Response	Number
Yes	36
No	22
Total	58

Appendix II
Summary of Responses to GAO's Survey of
Fishery Management Council Members

Q7. How much of a reason are each of the following for why stakeholders have used or attempted to use the legislative process rather than the council process to get a DAP program approved?

Reason given	Category				Total
	Major reason	Minor reason	Not a reason	No answer	
The program could not be authorized under the Magnuson-Stevens Act.	14	6	10	5	35
The council process was taking too long.	16	14	5	0	35
Stakeholders wanted to ensure that they got their way.	28	4	4	0	36

Q8. To what extent would the following activities improve the effectiveness of stakeholder participation in the development of DAP programs?

Activity	Category					Total
	Greatly improve	Moderately improve	Slightly improve	Would not improve	No answer	
Being a member of a stakeholder organization	27	24	7	0	0	58
Being informed about DAP issues	32	17	7	1	1	58
Getting involved early in the development of a DAP program	33	20	4	1	0	58
Staying involved throughout the development of a DAP program	37	19	1	1	0	58
Hiring a third party representative	18	17	13	8	2	58
Getting to know council members and staff	16	17	22	2	1	58

Appendix II
Summary of Responses to GAO's Survey of
Fishery Management Council Members

Q9. Some of the following actions have been suggested to improve stakeholder participation. How effective do you think each of these actions would be in improving stakeholder participation in the development of DAP programs?

Action	Category						Total
	Very effective	Moderately effective	As effective as ineffective	Moderately ineffective	Very ineffective	No answer	
Reconciling the statutes governing fisheries management to streamline the DAP plan development process	16	29	6	1	1	4	57
Expanding public outreach activities	8	28	20	2	0	0	58
Diversifying the interests represented on fishery council advisory committees	8	19	22	3	1	3	56
Diversifying the interests represented on fishery management councils	10	16	23	3	2	4	58
Holding a referendum for fishermen on whether to develop a DAP program	5	18	11	8	16	0	58
Holding a referendum for fishermen on whether to adopt a specific DAP program prior to council approval	9	12	9	9	18	1	58
Providing training to newly appointed council members on fisheries science and management to enhance decision-making	19	30	4	2	1	2	58
Providing training to interested members of the public on fisheries science and management to help them understand the issues	17	14	16	7	2	2	58

Descriptions of Dedicated Access Privilege Programs in the United States

This appendix describes the nine DAP programs that have been implemented in the United States for fisheries under the management authority of the regional fishery management councils. The term “IFQ” as used in this appendix includes individual transferable quota.

Mid-Atlantic Surfclam/Ocean Quahog IFQ Program (1990)

Surfclams and ocean quahogs are mollusks found along the East Coast, primarily from Maine to Virginia, with commercial concentrations off the Mid-Atlantic Coast. While ocean quahogs are found farther offshore than surfclams, the same vessels are largely used in each fishery. These vessels tow hydraulic clam dredges that extract clams from the ocean floor. The catch is emptied into metal cages holding roughly 32 bushels each, off-loaded at one of a small number of landing sites, and sold to processing facilities. Surfclams are used in strip form for fried clams and in chopped or ground form for soups and chowders. Ocean quahogs are used in soups, chowders, and white sauces. The fishery consists of a few large firms that both catch and process, small processors, and independent fishermen.

The surfclam fishery developed after World War II. When the surfclam fishery declined in the mid-1970s, the ocean quahog fishery arose as a substitute. Disease and overfishing led the Mid-Atlantic Fishery Management Council to develop a management plan for surfclams and oceans quahogs—the first such plan in the United States. Between 1977 and 1990, the council and NMFS used a variety of controls to limit the harvest to sustainable levels, such as restrictions on fishing times, areas fished, clam sizes, gear, vessels, who fished, and how fishing occurred. An IFQ program was established for the surfclam/ocean quahog fishery in 1990—the first DAP program approved under the Magnuson-Stevens Act. The program was designed to help stabilize the fishery, reduce excessive investment in fishing capacity, and simplify the regulatory requirements of the fishery to minimize the government and industry cost of administering and complying with program requirements. Program rules allow quota holders to sell or lease their quota, but they provide no specific and measurable limits on how much quota an individual can accumulate.

South Atlantic Wreckfish IFQ Program (1992)

Wreckfish are found in deep waters far off the South Atlantic coast, primarily from Florida to South Carolina. They were first discovered in the southern Atlantic in the 1980s by a fisherman recovering lost gear. Wreckfish are fished by vessels over 50 feet in length using specialized gear. These vessels are used primarily in other fisheries. Wreckfish are sold fresh or frozen as a market substitute for snapper and grouper.

Within 3 years of the discovery of wreckfish, wreckfish landings increased to more than 3 million pounds a year, and the number of vessels used for catching wreckfish increased from 2 to 40. Because of concerns that the resource could not support unlimited expansion, the South Atlantic Fishery Management Council added wreckfish to the snapper-grouper fishery management plan and set the catch limit at 2 million pounds per year. The council developed an IFQ program for wreckfish in 1991. After the IFQ program was implemented in 1992, wreckfish landings declined rapidly, partly because quota holders started participating in easier, less costly fisheries with higher market values. Today, the wreckfish fishing fleet is small, with only 3 vessels reporting wreckfish landings in 2004.

**Western Alaska Community
Development Quota
Program (1992)**

The Bering Sea, bounded to the south by Alaska's Aleutian Islands, is one of the most highly productive marine systems in the world and supports some of the largest and most valuable commercial fisheries in U.S. waters. Historically, most of the wealth generated by these fisheries did not flow to Alaska Natives because they generally did not have the capital needed to participate. The Western Alaska Community Development Quota (CDQ) Program was created by the North Pacific Fishery Management Council in 1992 to provide western Alaska coastal communities the opportunity to participate in the Bering Sea Aleutian Islands fisheries that had been closed to them. The program is designed to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy in western Alaska. To accomplish this goal, the program allocates a percentage of all Bering Sea and Aleutian Islands catch quotas for groundfish, prohibited species, halibut, and crab to the six CDQ groups that represent eligible CDQ communities. CDQ groups then partner with one or more fishing and processing companies, who pay royalties for the right to catch and process their share of the allocation. The CDQ groups primarily use these royalty payments to fund community development projects that are tied directly to fishery-related activities or to support education. The program is jointly managed by the state of Alaska and NMFS. The state is primarily responsible for the day-to-day administration and oversight of the economic development aspects of the program, and NMFS and the North Pacific Council are primarily responsible for managing the groundfish and halibut CDQ fisheries and for general program oversight.

Alaskan Halibut and
Sablefish IFQ Program
(1995)

Pacific halibut and sablefish (black cod) are found off the coast of Alaska, among other areas. The fishing fleets are primarily composed of owner-operated vessels of various lengths that use hook-and-line gear for halibut and hook-and-line or pot (fish trap) gear for sablefish. Some vessels catch both halibut and sablefish. The International Pacific Halibut Commission manages the halibut fishery under a treaty between the United States and Canada. The Halibut Commission adopts conservation regulations, such as season dates and area catch limits. NMFS, in consultation with the North Pacific Fishery Management Council, has the authority to develop other regulations that do not conflict with the Halibut Commission's regulations.

Historically, there was no limit on the number of people who could participate in the halibut and sablefish fisheries, and, starting in the mid-1970s, the number of boats in these fisheries began to increase rapidly. By the late 1980s, overcapitalization of the halibut and sablefish fleets led to seasons that lasted less than 2 days in some areas and a race for fish that put boats and fishermen at risk and resulted in gear loss, excessive bycatch of species other than halibut, and poor product quality, among other things. In response to these conditions, the North Pacific Council developed an IFQ program that was implemented by NMFS in 1995. The program was designed, in part, to help improve safety for fishermen, enhance efficiency, reduce excessive investment in fishing capacity, and protect the owner-operator character of the fleet. The program set caps on the amount of quota that any one person may hold, limited transfers to bona fide fishermen, issued quota in four vessel categories, and prohibited quota transfers across vessel categories. The program was amended in 2004 to allow 42 Gulf of Alaska coastal communities to form nonprofit entities to purchase and hold quota.

Whiting Conservation
Cooperative (1997)

The Pacific whiting fishery, located off the coast of Washington, Oregon, and California, is under the jurisdiction of the Pacific Fishery Management Council. Whiting is harvested using mid-water trawl nets (cone-shaped nets towed behind a vessel) and primarily processed into surimi. The council has divided the Pacific whiting total allowable catch among three sectors—vessels that deliver to onshore processors, vessels that deliver to processing vessels, and vessels that catch and also process.

In the 1990s, the fishery was overcapitalized and fishing companies were engaged in a race for fish. In 1997, four companies operating the 10 catcher-processor vessels in the fishery voluntarily formed the Whiting

Conservation Cooperative, which is organized as a nonprofit corporation under the laws of the state of Washington. The overall purposes of the cooperative are to (1) promote the intelligent and orderly harvest of whiting, (2) reduce waste and improve resource utilization, and (3) reduce incidental catch of species other than whiting. The cooperative is not involved in matters relating to pricing or marketing of whiting products.

The cooperative's contract allocates the total allowable catch of Pacific whiting for the catcher-processor sector among the cooperative's members, who agree to limit their individual harvests to a specific percentage of the catch allowed. Once individual allocations are made, the contract allows for quota transfers among member companies. To monitor the catch, the contract requires the members to maintain full-time federal observers on their vessels. Member companies bear the cost of the observer coverage. The contract also requires members to report catches to a private centralized monitoring service. To ensure compliance, the contract contains substantial financial penalties for members exceeding their share of the quota.

Pollock Conservation
Cooperative (1998)

The pollock fishery off the coast of Alaska is the largest U.S. fishery by volume. The fishery is under the jurisdiction of the North Pacific Fishery Management Council, which sets the total allowable catch each year. About 5 percent of the allowed catch is held in reserve to allow for the incidental taking of pollock by other fisheries, 10 percent is allocated to Alaska's community development quota program, and the remainder (called the "directed fishing allowance") is allocated to the pollock fishery. Pollock is harvested using mid-water trawl nets. Pollock swim in large, tightly packed schools and do not co-mingle with other fish species. Pollock are primarily processed into surimi and fillets. In the 1990s, the Bering Sea pollock fishery was severely overcapitalized, producing a race for fish. As a result, the fishing season was reduced from 12 months in 1990 to 3 months in 1998.

The fishery is composed of three sectors—inshore, offshore catcher-processor, and offshore mothership (large processing vessel).¹ The American Fisheries Act² statutorily allocated the pollock fishery total allowable catch among these three sectors and specified the eligible participants in each sector. The nine companies that operated the 20 qualified catcher-processor vessels formed the Pollock Conservation Cooperative in December 1998 to end the race for fish.³ Under the cooperative's agreement, members limit their individual catches to a specific percentage of the total allowable catch allocated to their sector. Once the catch is allocated, members can freely transfer their quota to other members. Member vessels carry two federal observers at all times and a private sector firm also tracks daily catch and incidental catch data to ensure that each member stays within its agreed upon harvest limits. To ensure compliance, the contract contains substantial financial penalties for members exceeding their share of the quota. The cooperative is not involved in matters relating to pricing or marketing of pollock products. In addition to operating under the terms of the cooperative's contract, members of the cooperative must conduct fishing activities in compliance with certain NMFS and council requirements regarding the fishing season, area restrictions, and incidental catch limits.

Pacific Sablefish Permit Stacking Program (2002)

Pacific Coast groundfish fisheries off Washington, Oregon, and California are managed under the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan. Sablefish (black cod) is a desirable groundfish species because of its high value per pound. Sablefish are harvested using trawl and nontrawl gear. In 1987, the Pacific Council established a sablefish allocation between trawl and nontrawl sectors. In 1994, the council created a limited entry program for most of the trawl and nontrawl sablefish harvest and continued to divide the allocation between the two sectors.

¹The inshore sector is comprised of catcher vessels harvesting pollock for processing plants located on or near the shore. The offshore catcher-processor sector is comprised of catcher-processor vessels (vessels that both catch and process pollock) and catcher vessels catching pollock for processing by catcher-processors. The offshore mothership sector consists of catcher vessels harvesting pollock for processing by motherships (large vessels that process but do not catch fish).

²Pub. L. No. 105-277, Division C, tit. II (1998).

³The offshore catcher-processor sector received 40 percent of the directed fishing allowance of the pollock fishery.

For many years, the sablefish fixed-gear (longline and fishpots or “traps”) sector has been separated into a small, year-round daily trip limit fishery and a primary season fishery that typically harvested about 85 percent of the allocation. The council managed the primary season fishery by setting the season short enough to ensure that the fishery would not exceed its quota. By 1996, however, increases in vessel capacity and competition for fish and decreases in the amount of fish available led to a 5-day season in the primary season fishery and a race for fish. In 1997, the council developed a sablefish endorsement program that limited participation in the primary season fishery to those permit holders with historical participation in the sablefish fishery. In 1998, the council created a three-tier program that placed fixed gear fishermen with sablefish-endorsed permits in one of three tiers based on their catch history. Each tier receives a certain number of pounds to fish annually, with the first tier receiving the greatest allotment of fish and the third tier receiving the lowest. Permit holders in the same tier receive the same allotment of fish. While the fishing pace slowed somewhat under the three-tier program, the primary season was still less than 10 days long. To address issues of safety, efficiency, and equity, among others, the council created a permit stacking program that was implemented in 2002. Under this program, a vessel owner may register up to 3 sablefish-endorsed permits on his vessel. The permits can come from different tiers. This process, known as “permit stacking”, is designed to reduce the number of vessels fishing, and the fishing season was eventually extended to several months.

Georges Bank Cod Hook
Sector Allocation Program
(2004)

The Northeast multispecies fishery, under the jurisdiction of the New England Fishery Management Council, consists of 15 groundfish species from Maine to Cape Hatteras, North Carolina. Historically, the council and NMFS had managed the fishery through restrictions on the number of days fished, closed areas, trip limits, minimum fish sizes, limited access, and gear restrictions. Nonetheless, many stocks were overfished or approaching an overfished condition, including stocks in the Georges Bank area—once a particularly productive area at the southernmost part of a chain of huge shoals that extend from Newfoundland to southern New England, on the edge of the North American continental shelf. In response to a lawsuit filed against NMFS alleging that the stock rebuilding plans implemented by NMFS did not comply with the Magnuson-Stevens Act, a federal court judge ordered that measures be taken by August 2003 to end overfishing in the fishery.

The New England Council developed Amendment 13 to the Northeast multispecies fishery management plan to bring the plan into conformance with the Magnuson-Stevens Act, including ending overfishing and rebuilding overfished stocks. Among other things, the amendment authorized the Georges Bank Cod Hook Sector, established the sector area, and specified a formula for allocating up to 20 percent of the total catch allowed for Georges Bank cod to the sector. The sector submitted a sector allocation proposal consisting of an operations plan for the sector, a contract signed by all sector participants indicating their agreement to abide by the operations plan, and an environmental analysis to comply with National Environmental Policy Act requirements. NMFS approved the proposal and allocated quota to the sector. Sector members can, in turn, allocate the fish among themselves in any way they choose. About 60 fishermen participated in the program in 2004.

**Bering Sea and Aleutian
Islands Crab Rationalization
Program (2005)**

The Bering Sea and Aleutian Islands area contains eight large crab fisheries, the largest of which are the Bristol Bay red king crab, the Bering Sea snow crab, and the Bering Sea Tanner crab fisheries.⁴ These fisheries are subject to joint federal and state management with certain elements of oversight, including monitoring, in-season management, and observer coverage, deferred to the state of Alaska. Historically, the fisheries had been managed using a guideline harvest level that set target catch limits. By 2002, six of the eight crab fisheries had experienced stock declines, which resulted in a race for fish or, in some cases, closed fisheries. The race for fish put pressure on participants to fish in unsafe weather conditions and work for long periods without rest, resulting in a proportionately higher number of fatalities than in other Alaskan commercial fisheries.

To alleviate overcapacity and safety issues associated with the race for fish, the Congress mandated that the North Pacific Fishery Management Council analyze several different approaches to rationalization. The council selected its preferred alternative, a “three-pie voluntary cooperative program,” and presented its analysis to the Congress in August 2002. The program was subsequently mandated by the Consolidated Appropriations Act of 2004 for NMFS approval by January 2005, and was effective as of April 1, 2005. The program provides for allocations of harvesting shares to

⁴The other five fisheries are the Western Aleutian Islands golden king crab, Eastern Aleutian Islands golden king crab, Western Aleutian Islands red king crab, Pribilof blue and red king crab, and St. Matthew blue king crab.

Appendix III
Descriptions of Dedicated Access Privilege
Programs in the United States

harvesters, communities, and captains; processing shares to processors; and landings and processing activity to designated regions to preserve their historic interests in the fishery. The program also permits harvesters to form voluntary cooperatives associated with one or more processors holding processing shares. Because of the program's novelty, the council included several safeguards in it, such as binding arbitration to resolve price disputes, and extensive data collection and review to assess the success of the rationalization program.

Comments from the Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



THE DEPUTY SECRETARY OF COMMERCE
Washington, D.C. 20230

February 3, 2006

Ms. Anu K. Mittal
Director, Natural Resources and
Environment
Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Ms. Mittal:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report *Fisheries Management: Core Principles and a Strategic Approach Would Enhance Stakeholder Participation in Developing Quota-Based Programs* (GAO-06-289). I enclose the Department of Commerce's comments on this draft report.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Sampson".

David A. Sampson

Enclosure

NOAA Comments on the Draft GAO Report Entitled
“Fisheries Management: Core Principles and a Strategic Approach Would Enhance
Stakeholder Participation in Developing Quota-Based Programs”
(GAO-06-289/February 2006)

General Comments

The processes for the development and revision of federal Fishery Management Plans (FMP) are deliberative, often lengthy, and always open to the public, subject to certain limitations. Stakeholders may observe and participate in any phase of the proceedings. The processes for developing quota-based management schemes are no different. The Regional Fishery Management Councils (Councils) and the National Marine Fisheries Service (NMFS) conduct meetings and hearings, which are open to public attendance and participation, and they develop reports, alternatives analyses, and regulatory documents, all of which are subject to public review and comment. Indeed, along with scientific considerations and statutory obligations, stakeholder input forms the basis of the process for developing and revising fishery management plans.

Core Principles of Stakeholder Participation

The report acknowledges the Councils’ and NMFS’s compliance with the statutes that govern their regulatory development; however, one of the key findings of the report is that the Councils and NMFS do not fully adhere to certain core principles of participation. NMFS acknowledges that more can be done to improve stakeholder participation. While stakeholder participation has always been a key part of the Council process, it has not always been optimal. We agree that NMFS and the Councils should examine these principles of participation in light of the statutory mandates, the deadlines imposed upon NMFS and the Councils, and resource constraints.

Methods for Enhancing Stakeholder Participation

The GAO report lists five suggested methods for enhancing stakeholder participation. Some of the more specific tasks listed under each suggestion have already been in practice around the country. However, several of the suggested methods will require congressional involvement and action, or are beyond the scope of authority of NMFS and the Councils. For example:

- Under “Streamlining the dedicated access privilege (DAP) program development process,” (*page 24*) GAO recommends the adoption of administrative measures to streamline the regulatory process and amendment of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) to incorporate National Environmental Policy Act (NEPA) requirements. The former is underway and new procedural efficiencies are constantly sought by Council and NMFS leadership and staff alike. The latter will require the involvement of Congress. The MSFCMA is currently under consideration for reauthorization and amendment by Congress and the pending bills contain provisions relating to NEPA.
- Likewise, “Diversifying interests represented in the council process,” (*page 25*) will require the involvement of Congress. The report states that stakeholders felt the Councils and advisory committees should have more diverse membership. While the Secretary of Commerce has limited discretion in the selection of nominees, the basic representative make-up of the Councils is determined by Congress in Section 302(b) of the MSFCMA. The membership of advisory committees is determined by Councils to fulfill specific tasks. While representation is important, of primary concern to the Councils and NMFS is the committees have the necessary expertise to perform their missions and that they are of appropriate size to be productive.

See comment 1.

See comment 1.

See comment 2.

Appendix IV
Comments from the Department of
Commerce

See comment 1.

- Another task under “Diversifying interests represented in the council process,” is to “Help ensure that stakeholders have organized representation,” (page 26). NMFS and Councils cannot support this activity. The GAO report correctly notes that this activity “may not be the role of the Councils or NMFS.” Stakeholder interests in these processes are very diverse. It is not the role of NMFS and Councils to determine with whom any individual would have sufficient shared interests.
- Under the final suggested method for enhancing stakeholder participation, “Sharing decision-making authority” (pages 26-27), the report offers the ideas of referenda and consensus-based decision making. The MSFCMA expressly requires that all “decisions of any Council shall be by majority vote of the voting members present and voting.” After the Councils take final action on their FMPs, the fishery management action is transmitted to the Secretary of Commerce who possesses the ultimate authority to approve, disapprove, or partially approve Council FMPs. There may be a place for consensus-based processes in the development of management alternatives or when brainstorming to identify potential solutions to problems; however, decision making by voting is the responsibility of the Council. Because any process other than majority vote would violate the MSFCMA, any changes to this decision-making scheme would require an amendment to the Act.

In fact, Congress is considering amendments to the MSFCMA that would provide for referenda in the development of DAPs in certain regions of the country. Congress, NMFS, and the Councils will have to weigh the benefits of greater stakeholder involvement through such referenda against the need for procedural efficiencies.

NOAA Response to GAO Recommendations

The draft GAO report states, “To enhance stakeholder participation in the development of DAP programs, we are recommending that the Secretary of Commerce direct the Director of NMFS to:

Recommendation 1: Establish a formal policy for stakeholder participation, including adopting a set of core principles to guide stakeholder participation activities.

NOAA Response: NMFS agrees with this recommendation. The core principles of participation noted by GAO are embodied in the various statutes governing Council and NMFS proceedings. But nowhere are principles of participation for the Agency articulated in a single, concise format. Therefore, the Assistant Administrator for NMFS will form an internal working group of outreach professionals from the NMFS headquarters and regional offices and the Councils to develop a draft policy for stakeholder participation. The working group will refine the core principles listed in this report for application within the context of Council operations, and will draft the policy and describe the NMFS and Council-specific activities that may be necessary to put the policy into practice. This stakeholder participation policy will form an integral part of a larger, broader Agency outreach and education policy currently in development.

Recommendation 2: Provide guidance to the Councils and train NMFS staff, Council members, and Council staff on developing and using a strategic approach to stakeholder participation.

NOAA Response: NMFS agrees with this recommendation. The draft report emphasizes training as a means of obtaining greater involvement of the stakeholders. NMFS is committed to providing additional training on a wider variety of subjects and will add the policy on stakeholder participation to the syllabus.

Appendix IV
Comments from the Department of
Commerce

Additionally, Congress, recognizing the importance of training, has included a provision in the bill to reauthorize the MSFCMA to require training for Council members on the public processes for the development of fishery management plans.

Recommendation 3: Direct the Councils to develop and implement a framework for stakeholder participation that includes core principles and a strategic approach.

NOAA Response: Stakeholder participation is the shared concern of NMFS and the Councils. NMFS will collaborate with Council staffs and members to implement a framework for stakeholder participation that includes the jointly developed core principles. The national working group that will develop the stakeholder participation policy will be the first opportunity for outreach professionals from the NMFS regions and Councils to collaborate on this effort, to explore outreach and participation ideas, and to set priorities for future activities to enhance stakeholder participation.

**NOAA Technical and Editorial Comments on the Draft GAO Report Entitled
“Fisheries Management: Core Principles and a Strategic Approach Would Enhance
Stakeholder Participation in Developing Quota-Based Programs”
(GAO-06-289/February 2006)**

Recommended Changes for Factual/Technical Information

Page 3, first paragraph, second sentence:

The National Marine Fisheries Service is a component of the National Oceanic and Atmospheric Administration (NOAA), which in turn is a part of the Department of Commerce. This distinction should be made throughout the draft report. For example, the recommendation on page 28 should read, “. . . the Secretary of Commerce direct the Administrator of NOAA to . . .”

Page 9, third paragraph:

At the time of the review by GAO, NMFS had implemented ten dedicated access privilege programs, not eight as indicated in the draft report. In addition to the eight programs listed, NMFS manages a Sablefish permit stacking quota-based fishery through the Pacific Fishery Management Council. Also, a quota-based management program is in place for the small fleet of Atlantic bluefin tuna purse seiners. The tuna Individual Transferable Quota (ITQ) program is not implemented through a fishery management council, and so the report’s findings would not be applicable to it.

Passim:

The report refers many times to the opinions of “participation experts.” NMFS’s activities sparked by this report would benefit from access to the same expertise. We request that GAO provide contact information for its panel of participation experts and/or a list of the publications on the subject that were consulted.

Editorial Comments

None.

See comment 3.

See comment 4.

See comment 5.

The following are GAO's comments on NOAA's written comments provided by the Deputy Secretary of Commerce in a letter dated February 3, 2006.

GAO Comments

1. We revised the text to make it clear that our report summarizes the methods for enhancing stakeholder participation suggested by stakeholders and participation experts; our report makes no recommendations regarding these methods.
2. We revised the text to make it clear that NMFS has efforts underway to streamline the process for developing fishery management plans.
3. We revised the text to make it clear that NMFS is a component of NOAA.
4. We revised the text to reflect that NMFS had implemented ten DAP programs, including nine programs for fisheries under the management authority of the regional fishery management councils and one program for a fishery under the management authority of the Secretary of Commerce. We also added a description of the Pacific Council's sablefish permit stacking program in appendix III.
5. We agreed to provide NOAA with information on the participation experts and literature we consulted in preparing our report.

GAO Contact and Staff Acknowledgments

GAO Contact

Anu K. Mittal, (202) 512-3841

**Staff
Acknowledgments**

In addition to those named above, Stephen D. Secrist, Assistant Director; Candace M. Carpenter; Allen T. Chan; Nancy L. Crothers; Susan J. Malone; Gregory A. Marchand; and Rebecca Shea made key contributions to this report.

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