

PROPOSED AGENDA
Enforcement Consultants
Pacific Fishery Management Council
DoubleTree Guest Suites
Conference Suite #1202
16500 Southcenter Parkway
Seattle, WA 98188
(206) 575-8220
September 8 - 11, 2003

TUESDAY, SEPTEMBER 8, 2003 - 5:30 P.M. (or Immediately Following the Tuesday Council Session)

A. Call to Order

Mike Cenci

1. Introductions
2. Review and Adopt Agenda

B. Council Agenda Items for Possible Comment

- C. Groundfish Management
4. Status of Groundfish Fisheries and Inseason Adjustments
 5. Final Criteria for Exempted Fishing Permits (EFPs) and Consideration of Proposals for the 2004 Season
 6. Groundfish Management Measures for 2004
 7. Proposed Monitoring Program for the Shore-based Pacific Whiting Fishery
- G. Pacific Halibut Management
3. Proposed Changes to the Catch Sharing Plan and Annual Regulations

Other issues on the Council agenda may be addressed if concerns with enforcement implications arise during the week.

C. Other Topics

1. Council Chairs Request for the Addition of Criminal Penalties to the Magnuson-Stevens Fishery Conservation and Management Act
2. Open Access Sablefish Trip Limit Loop Holes
3. Other (Not for Final Action)

D. Public Comment

WEDNESDAY, SEPTEMBER 9, 2003 THROUGH FRIDAY SEPTEMBER 11, 2003 (As Necessary)

ADJOURN
PFMC
08/25/03

Ancillary H
Attachment 1
September 2003

U. S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
CARIBBEAN FISHERY MANAGEMENT COUNCIL
258 Ave. Muñoz Rivera Suite 1106 - San Juan, PR 00918-2577
Tels: FTS (787) 766-5926 FAX (787) 766-6239 e-mail: CAP.BE.FIS@SUPP1.OPR.DOD.EOU

July 2, 2003

RECEIVED

JUL 14 2003

Honorable Donald L. Evans, Secretary
U. S. Department of Commerce
14th & Constitution Ave NW, Room 5516
Washington DC 20230

PFMC

Re: Criminal Violations of the Magnuson- Stevens Fisheries Conservation and Management Act

Dear Mr. Secretary:

The Chairs of the eight Management Councils (Chairs) recently considered the fact that the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA) provides for only civil penalties for the majority of marine, fishery-related violations. These civil penalties are limited to monetary fines, permit sanctions, and the forfeiture of vessels (in extreme cases). The criminal sanctions available under the M-SFCMA are limited in scope to falsification of documents, resisting arrest with violence, and certain, very limited instances wherein the Lacey Act is utilized for the imposition of criminal penalties. In short, it is rare that a violator is charged with a crime for violation of the M-SFCMA.

The Chairs noted that most violations of state marine fishery laws and regulations carry criminal convictions, either misdemeanor or felony (in the case of severe repeat violations) and there are numerous violations that carry criminal convictions under the U.S. Fish and Wildlife Service laws and regulations. The Chairs felt that the potential imposition of criminal penalties would add a significant deterrent to potential violators and voted unanimously to recommend the inclusion of criminal penalties for M-SFCMA violations.

At the Chairs meeting held on May 27-29, 2003, an attorney with the Department of Justice was available to discuss criminalization of selected M-SFCMA violations, and the issues were thoroughly discussed during our meeting. The Council Chairs, Vice Chairs, and Executive Directors also unanimously supported changes to allow criminalization of M-SFCMA offenses.

A partial list of the reasons to add criminal penalties for M-SFCMA violations that were developed from the aforementioned discussions includes:

1. Federal marine fishery violations are equally, if not more serious than similar violations in state waters and violations of federal wildlife laws. Two examples include shrimping in closed areas off south Florida can earn a violator thousands of dollars in a given night and potentially cause irreparable harm to coral resources with only the potential for civil fines and other potential sanctions. Also, a commercial red snapper fisherman may pay over \$40,000

Secretary Donald L. Evans

July 2, 2003

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for a permit to fish on a limited quota, whereas a nonpermitted violator can harvest from this quota without such an investment and only be subject to civil penalties

2. Notices of Violations and Assessment (NOVAs) are issued to the captain and owner of a vessel for most fishery related M-SFCMA violations. Frequently captains are incapable of paying the civil assessment and move to another area or work for another owner leaving the owner to pay the fine and in reality, the actual violator receives absolutely no penalty. Even serious repeat violators of the M-SFCMA who are not permit owners or vessel owners are in actual fact unpunished. If criminal penalties are available under M-SFCMA, then the captain and crew members could receive appropriate criminal sanctions
3. Violators who have a prior criminal record (fishery or otherwise) would be appropriately punished if criminal convictions of M-SFCMA violations are allowed.
4. Criminal sanctions could include probation, or potential incarceration, which, would discourage some repeat violators
5. Criminal sanctions are appropriate for importers/smugglers of marine resources and criminalization of these activities under the M-SFCMA will simplify the prosecution of cases involving smuggling and importation.
6. Criminal penalties provide a significant enforcement tool and serve as a deterrent to potential violators.
7. Because potential gains from violating some M-SFCMA regulations are so substantial, they far outweigh the potential penalties under civil prosecution. Some fishers view it as the "cost of doing business."

Marine fisheries represent multi-million dollar industries, and these stocks are the property of all U.S. citizens and resident legal aliens. The M-SFCMA also requires that these stocks be managed to produce optimum and sustainable yields. Illegal harvesting can jeopardize the health of these stocks, prolong or prohibit their recovery, and it is tantamount to stealing from the people of the U.S. Certainly, such an act should be criminalized.

For your review, I have enclosed a copy of the criminal penalties that can be imposed for wildlife violations. For the reasons stated herein, the Council Chairs believe that similar penalties for fishery violations of the M-SFCMA are fitting.

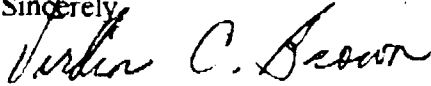
Secretary Donald L. Evans
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Page 3

With this letter, the Chairs respectfully request your endorsement of our proposal to impose criminal penalties for violations of the M-SFCMA. If you have any questions or if we may provide additional information, please do not hesitate to contact us.

We further respectfully request that appropriate amendments to the M-SFCMA be recommended to Congress to legislate the aforementioned criminal penalties in the Act.

Thank you for your consideration.

Sincerely,



Council Chairs

Enclosure: Department of Interior Criminal Penalties

c: William Hogarth

TAB **J** NO **666**



U.S. Fish & Wildlife Service

**SOUTHEAST REGION
LAW ENFORCEMENT**



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It's the Law!

Enforcing Wildlife Laws

African Elephant Conservation Act - (16 USC 4201-4245). The purpose of the Act is to provide additional protection for the African elephant. The Act establishes an assistance program to elephant producing countries of Africa and provides for the establishment of an African Elephant Conservation Fund. In addition, the Act places a moratorium on the importation of raw or worked ivory from African elephant producing countries that do not meet certain criteria found in the Act.

Maximum Penalties:	
Criminal:	1 year of imprisonment \$100,000 fine per individual \$200,000 fine per organization
Civil:	\$5000

Airborne Hunting Act - (16 USC 742j - 742j2; 50 CFR 19). Section 13 of the Fish and Wildlife Act of 1956 is commonly referred to as the Airborne Hunting Act, or Shooting from Aircraft Act, and prohibits taking or harassing wildlife from aircraft, except when protecting wildlife, livestock, and human health or safety, as authorized by a Federal or State-issued license or permit.

Maximum Penalties:	
Criminal:	1 year of imprisonment \$100,000 fine per individual \$200,000 fine per organization
Civil:	none

Antarctic Conservation Act - (16 USC 2401). The purpose of the Act is to provide for the conservation and protection of the fauna and flora of Antarctica and of the ecosystem upon which such fauna and flora depend. The primary prohibitions of the Act make it unlawful for any United States citizen to take any native bird or mammal in Antarctica or to collect any native plant for any specially protected area within Antarctica. In addition, the Act makes it unlawful for any United States citizen or any foreign person in the United States to possess, sell, offer for sale, deliver, receive, carry, transport, import, export, or attempt to import or export from the United States any native mammal or bird taken in Antarctica or any plant collected in any specially protected area

Maximum Penalties:	
Criminal:	1 year of imprisonment \$10,000 fine per individual
Civil:	\$5,000 for each violation (\$10,000 if knowingly)

Archaeological Resources Protection Act - (16 USC 470aa). The purpose of the Act is to protect archaeological resources and sites which are on public lands and Indian lands, and to foster increased exchange and cooperation of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained October 31, 1979. The primary prohibitions of the Act make it illegal for any person to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public or Indian lands without a permit issued under the Act. In addition, the Act makes it illegal for any person to sell, purchase, exchange, transport, receive, or offer to sell, purchase or exchange any archaeological resource taken from public or Indian lands in violation of Federal, State, or local law.

Maximum Penalties:

Felony:	2 years imprisonment \$250,000 fine per individual \$500,000 fine per organization
Misdemeanor:	1 year imprisonment \$100,000 fine per individual \$200,000 fine per organization
Civil:	fine based on archeological value and cost of restoration

Eagle Protection Act - (16 USC 668a - 668c; 50 CFR 22). This Act makes it illegal to take, possess, sell, purchase, barter, offer for sale, transport, export, or import any Bald or Golden eagle, alive or dead, (including products made from them) or any part, nests, or eggs thereof without a valid permit to do so.

Maximum Penalties:

Felony:	2 years imprisonment \$250,000 fine per individual \$500,000 fine per organization
Civil:	\$5000

Endangered Species Act - (16 USC 1531-1543; 50 CFR 14-Import/Export; 50 CFR 17-threatened/endangered Fish and Wildlife List; 50 CFR 23-Threatened/endangered Plant List). This Act prohibits the importation, exportation, taking, and commercialization in interstate or foreign commerce of fish and wildlife, and plants that are listed as threatened or endangered species. The Act also implements the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Maximum Penalties:

Criminal:	1 year imprisonment \$100,000 fine per individual \$200,000 fine per organization
Civil:	\$500 (Any who violates) (\$10,000 if knowingly)

Lacey Act - (18 USC 42; 16 USC 3371-3378 - Lacey Act Amendments; 18 USC 42 - Injurious Species; 50 CFR 14 - Marking Regulations; 50 CFR 16 - Injurious Species).

This Act provides authority to the Secretary of the Interior to designate injurious wildlife and ensure the humane treatment of wildlife shipped to the United States. Further, it prohibits the importation, exportation, transportation, sale, or purchase of fish and wildlife taken or possessed in violation of State,

Maximum Penalties:

Felony:	5 years imprisonment \$250,000 fine per individual \$500,000 fine per organization
	1 year imprisonment

Federal, Indian tribal, and foreign laws. The Amendments strengthen and improve the enforcement of Federal wildlife laws and improve Federal assistance to the States and foreign governments in the enforcement of their wildlife laws. Also, the act provides an important tool in the effort to gain control of smuggling and trade in illegally taken fish and wildlife.

Misdemeanor:	\$100,000 fine per individual \$200,000 fine per organization
Civil:	\$10,000 or maximum of predicate law \$250 for marking violation

Marine Mammal Protection Act - (16 USC 1361-1407; 50 CFR 18; 50 CFR 216). This Act establishes a moratorium on the taking, importing, transporting, purchasing, selling, offering to purchase or sell, any marine mammals, including parts and products, and defines Federal responsibility for conservation of marine mammals, with management authority vested in the Department of the Interior for the sea otter, walrus, polar bear, dugong, and manatee.

Maximum Penalties:	
Criminal:	1 year of imprisonment \$100,000 fine per individual \$200,000 fine per organization
Civil:	\$10,000 \$25,000 (Vessels taking on the high seas)

Migratory Bird Treaty Act - (16 USC 703-712 ; 50 CFR 10-General provisions and list of migratory birds; 50 CFR 20 Migratory bird hunting; 50 CFR 21-Migratory bird permits)
Except as allowed by implementing regulations, this Act makes it unlawful to pursue, hunt, kill, capture, possess, buy, sell, purchase, or barter any migratory bird, including the feathers or other parts, nests, eggs, or products made thereof.

Maximum Penalties:	
Felony:	2 years imprisonment: \$250,000 fine per individual \$500,000 fine per organization
Misdemeanor:	6 mos. imprisonment \$15,000 fine per individual \$30,000 fine per organization
Civil:	none

(Note: 1 year imprisonment and \$100,000 fine for placement of bait
Migratory Bird Treaty Reform Act)

Migratory Waterfowl Hunting and Conservation Stamp Act (16 USC 718-718h). This Act dictates that no person who has attained the age of 16 shall take any migratory waterfowl unless as the time of such taking they carry on their person an unexpired Federal Migratory Bird Hunting and Conservation Stamp, validated by his signature written by himself in ink across the face of the Stamp prior to such taking. The Act further prohibits the lending or transferring of validated stamps. Counterfeiting (including imitation or counterfeiting of die, plate, or engraving or possession of such), altering, imitating, or mutilating stamps is strictly prohibited.

Maximum Penalties:	
Criminal:	6 mos. imprisonment \$5000 fine per individual \$10,000 fine per organization
Civil:	none

<p>National Conservation Recreation Area Act - (16 USC 460k et seq.). This Act gives the Secretary of the Interior authorization to administer National Wildlife Refuges, fish hatcheries, and other conservation areas used for fish and wildlife purposes, as an appropriate incidental or secondary use, for public recreation. Such public recreation shall be permitted only to the extent that is practicable and not inconsistent with other previously authorized Federal operations or with the primary objectives for which each particular area is established. Recreational use will be secondary and not interfere with the primary purposes for which the areas were established, and recreational development will only be permitted if funds are available.</p>	<table border="1"> <tr> <td colspan="2">Maximum Penalties:</td> </tr> <tr> <td>Criminal:</td> <td>6 mos. imprisonment \$5000 fine per individual</td> </tr> <tr> <td>Civil:</td> <td>none</td> </tr> </table>	Maximum Penalties:		Criminal:	6 mos. imprisonment \$5000 fine per individual	Civil:	none		
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<p>National Wildlife Refuge System Act - (16 USC 668dd-668ee; 50 CFR 10; 50 CFR 25-33). This Act constitutes an "Organic Act" for the National Wildlife Refuge System by providing guidelines and directives for administration and management of all areas in the system including "wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas."</p>	<table border="1"> <tr> <td colspan="2">Maximum Penalties:</td> </tr> <tr> <td>Criminal:</td> <td>1 year of imprisonment \$100,000 fine per individual \$200,000 fine per organization</td> </tr> <tr> <td>Civil:</td> <td>none</td> </tr> </table>	Maximum Penalties:		Criminal:	1 year of imprisonment \$100,000 fine per individual \$200,000 fine per organization	Civil:	none		
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<p>Rhinoceros and Tiger Conservation Act - (16 U.S.C. 5301-5306). The 1998 reauthorization of this Act prohibits the import, export, or sale of any product, item, or substance containing, or labeled or advertised as containing, any substance derived from tiger or rhinoceros.</p>	<table border="1"> <tr> <td colspan="2">Maximum Penalties:</td> </tr> <tr> <td>Criminal:</td> <td>6 mos. imprisonment \$5000 fine per individual \$10,000 fine per organization</td> </tr> <tr> <td>Civil:</td> <td>\$12,000 for each violation</td> </tr> </table>	Maximum Penalties:		Criminal:	6 mos. imprisonment \$5000 fine per individual \$10,000 fine per organization	Civil:	\$12,000 for each violation		
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<p>Wild Exotic Bird Conservation Act - (16 USC 4901-4916; 50 CFR 15). The Act promotes the preservation of exotic birds by encouraging wild bird conservation and management programs in countries of origin; by ensuring that all trade in such species involving the United States is biologically sustainable and to the benefit of the species; and by limiting or prohibiting imports of exotic birds when necessary to ensure that exotic wild populations are not harmed by removal for the trade.</p>	<table border="1"> <tr> <td colspan="2">Maximum Penalties:</td> </tr> <tr> <td>Felony:</td> <td>2 years imprisonment \$250,000 fine per individual \$500,000 fine per organization</td> </tr> <tr> <td>Misdemeanor:</td> <td>6 mos imprisonment \$5000 fine per individual \$10,000 fine per organization</td> </tr> <tr> <td>Civil:</td> <td>up to \$24,000</td> </tr> </table>	Maximum Penalties:		Felony:	2 years imprisonment \$250,000 fine per individual \$500,000 fine per organization	Misdemeanor:	6 mos imprisonment \$5000 fine per individual \$10,000 fine per organization	Civil:	up to \$24,000
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