April 29, 2009

Senator Maria Cantwell
Chair, Senate Committee on Commerce, Science and Transportation
511 Dirksen Senate Office Building
Washington, DC 20510

Subject: Alternative Legislative Language Provisions for the Western and Central Pacific Fisheries Commission and Pacific Whiting Treaty

Dear Senator Cantwell,

Thank you for your staff’s request for a Pacific Fishery Management Council (Pacific Council) perspective on the subject matter. At its April 2009 meeting, the Pacific Council directed me to submit the following comments.

The Western and Central Pacific Fisheries Commission (WCPFC) Advisory Committee is being severely hampered in conducting its business because of the interpretation of Commissioner and Advisory Committee members’ status in relation to Federal law. Similarly, we understand implementation of the U.S./Canada agreement on Pacific Whiting (Pacific Whiting Treaty) would be hobbled by effectively neutering the activities of the Joint Management Committee and the Advisory Panel. The current language in legislation creating these advisory committees states that individuals appointed to serve as members shall be considered Federal employees with respect to Federal requirements concerning conflicts of interest (18 U.S.C. 503(d)(2)(b)(ii)(II)). This effectively prevents Commissioner or Committee members to United States (U.S.) delegations to these international fishery management organizations from providing any substantive advice on matters relating to the negotiation of agreements in these forums, because virtually all qualified individuals for these positions have some stakeholder interest in the affected fisheries. Ironically, the basis of their expertise and knowledge that qualifies them for appointment is also the basis for a technical conflict of interest that bars them from participating. We also note that this is the first time such an ethics proviso has been included in legislation establishing advisory groups supporting U.S. delegations to international fisheries management organizations.

Since being created in 1976 under the Magnuson-Stevens Fishery Conservation and Management Act, Regional Fishery Management Councils, including the Pacific Council, have put the involvement of stakeholders at the forefront of the fishery management process. Councils are advised by a variety of committees; they include not just scientists and fishery managers, but also representatives from a wide range of the interested public, including commercial and recreational fishery participants, conservationist group representatives, and seafood consumers. We believe the Council process allows Federal decision-makers to better understand and take into account the potential effects of regulatory measures on different groups. Further, we believe this is the
kind of participatory government originally envisioned by Senator Warren Magnuson and a key reason for the successful decision making that has taken place at the Pacific Council. We also believe the original intent leading to U.S. involvement in the WCPFC and the Pacific Whiting Treaty was to allow for a similar structure and function: one whereby appointed U.S. citizens express their expert views on how proposed conservation measures developed by the WCPFC or the Whiting Treaty will affect the fish stocks, fisheries and those with interests in the fisheries. Allowing active participation by Commissioner or Committee member appointees would provide the full respective U.S. Delegations with valuable information, analysis, and perspectives to take into account when they negotiate conservation agreements in these forums.

At its April 2009 meeting, the Pacific Council and its Legislative Committee reviewed the *Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2009* (H.R. 1080) as introduced in the U.S. House of Representatives by U.S. Congresswoman Madeleine Bordallo. We would like to convey support for two additional corrections to legislation regarding U.S. involvement in the WCPFC and the Pacific Whiting Treaty that are relevant once the conflict of interest problem is successfully addressed. First, H.R. 1080 would amend the Western and Central Pacific Fisheries Commission Implementation Act to correct confusing language to clarify that the U.S. shall be represented by five U.S. Commissioners, one of whom shall be a member of the Western Pacific Fishery Management Council, and one of whom shall be a member of the Pacific Fishery Management Council. Second, H.R.1080 would amend the Pacific Whiting Act of 2006 with a technical correction that the U.S. shall appoint no more than two rather than six scientific experts to the joint technical committee under the Pacific Whiting Treaty.

We understand that the Committee on Commerce, Science and Transportation is currently considering legislation that would exempt the advisory committees from the provisions in Federal law that currently prevent them from providing advice on fishery management issues. Since the Pacific Council plays an active role in international management of Pacific whiting and highly migratory species, the effective functioning of these advisory committees is important to us. For that reason we applaud your efforts to amend Federal law to allow the committees to effectively function.

Sincerely,

D. O. Meisaac, Ph.D.
Executive Director

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cc:
Council Members

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