

## MANAGEMENT QUESTIONS AND RELEVANT CPS FMP EXCERPT REGARDING THE QUINAULT INDIAN NATION'S INTENTS FOR 2012

Treaties between the United States and Pacific Northwest Indian Tribes reserve the rights of the Tribes to take fish at usual and accustomed fishing grounds. The Pacific Fishery Management Council's Coastal Pelagic Species Fishery Management Plan (CPS FMP), as amended by Amendment 9 and codified in National Marine Fisheries Service (NMFS) regulations (50 CFR 660.518), outline a process for the Council and NMFS to consider and implement tribal allocation requests for CPS. The Quinault Indian Nation has expressed their intent to take 9,000 metric tons (mt) for the 2012 fishing season. The Council is scheduled to make recommendations on the allocation request at its November 2011 meeting. Following is a key excerpt from the CPS FMP:

**Procedures.** The rights...will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Southwest Regional Administrator, at least 120 days prior to the start of the fishing season as specified at 50 CFR 660.510, and will be subject to public review according to the procedures in 50 CFR 660.508(d). The Regional Administrator generally will announce the annual tribal allocation at the same time as the annual specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

At the September, 2011 Council meeting, several questions were posed as to how a tribal sardine fishery in 2012 would be managed according to the CPS FMP and other applicable law or regulations. Towards a goal of assisting in the understanding of what matters are mandated or flexible according the CPS FMP, the Council staff has developed draft responses to the following hypothetical questions.

- **How is the 50 percent entitlement for tribal fisheries calculated?** Is the 9,000 mt level brought forward by the Quinault Indian Nation greater than a 50 percent entitlement?
  - The CPS FMP does not contain formulaic procedures for calculating an amount of sardines applicable to the tribal fishing right in usual and accustomed fishing areas. This is a matter brought to the Council from the NMFS, when applicable. The NMFS Southwest Region and Southwest Fisheries Science Center are analyzing available data on migration patterns and population dynamics, relative to this question.
- **Where would the tribal allocation come from?** Would a tribal allocation be accounted for as part of the directed fishery allocation, i.e., part of the Harvest Guideline/Annual

Catch Target (HG/ACT)? Alternatively, would it be considered a separate allocation and not a portion of the directed fishery allocation?

- The FMP does not provide guidance on this issue. It appears there may be flexibility on how to source a tribal allocation. One way would be to consider it a part of the directed fishery HG/ACT, similar to the way that Exempted Fishing Permit fish are accounted for. It is unclear whether a tribal allocation could be accounted for between the ACL and the ACT. However, under all scenarios, the Council and NMFS would have to account for all sources of mortality and avoid overfishing, by managing to not exceed the ACL.
- **Would any unharvested tribal allocation be “rolled” back into the non-tribal directed fishery, prior to the close of the fishing season?**
  - The FMP does not provide guidance on this issue. This scenario would likely be more feasible if a tribal allocation were to be allocated as a portion of the directed fishery HG/ACT, and if sufficient time remained in the non-treaty fishing season to access any uncaught tribal allocation (similar to the way Pacific Whiting are managed). Historically, rollover provisions in CPS fisheries have applied only to sectors fishing under the directed fisheries harvest guideline. Rollover provisions between sectors operating under separate harvest specifications would have to be further explored.
- **What regulations would the Tribe follow in prosecuting a fishery under a tribal allocation?**
  - The FMP states that the tribal allocation of fish “...*will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries.*” This provides flexibility for the Council to recommend specific regulations.
- **Would management measures implemented for 2012 set a precedent for future tribal allocation of sardine or other CPS?**
  - The FMP does not provide guidance on establishing long-term management for tribal CPS allocations. The Quinault Indian Nation indicated that the 9,000 mt catch level should not be considered as setting any precedent for future considerations.