March 5, 2010

Mr. David Ortmann, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Agenda Item H.2 Coastal Pelagic Species Fishery Management Plan Amendment 13 – Annual Catch Limits and Accountability Measures.

Dear Mr. Ortmann and Council Members:

The Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) are in the process of amending the Coastal Pelagic Species Fishery Management Plan (CPS FMP) to comply with new National Standard One (NS1) guidelines issued in January of 2009. Oceana believes that this process and amendments to the plan are extremely important and we have been engaged in this issue since the Council began discussing it a year ago. This process provides the Council and NMFS the opportunity to advance the long-term conservation and management of fisheries targeting coastal pelagic species, refine ecosystem-based management, including approaches to protect the food web, and ensure the health of the California Current ocean ecosystem and related fisheries. To that end, we offer the following comments on the preliminary draft of CPS FMP Amendment 13.¹

1. **Advance alternatives to identify and designate Ecosystem Component species**

Oceana supports many elements of the draft analysis and we believe that the Council and NMFS are essentially on the right track. In particular we support adding forage species to the CPS FMP as Ecosystem Component (EC) species. Forage species like sardine and anchovy, and those identified as potential CPS Ecosystem Component species, play a critical functional role as prey in the marine ecosystem. These forage species are important to many other managed fish species, as well as seabirds and marine mammals. For example, the alternative prey hypothesis suggests that juvenile salmon are more likely to survive when populations of forage species are high, as juvenile salmon then become less likely prey as they leave the coastal estuaries and enter the marine ecosystem.²

The NS1 guidelines encourage fishery management councils to incorporate ecosystem considerations into management and to protect marine ecosystems. The rule states that

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¹ PFMC, Agenda Item H.2.a Attachment 1.
The benefits of protection afforded to marine ecosystems are those resulting from maintaining viable populations (including those of unexploited species), maintaining adequate forage for all components of the ecosystem...  

To achieve this, NMFS encourages the designation of EC species:

While EC species are not explicitly provided in the MSA, in the MSRA, Congress acknowledged that certain Councils have made significant progress in integrating ecosystem considerations, and also included new provisions to support such efforts (e.g., MSA section 303(b)(12)). As noted in the preamble of this action, NMFS wants to continue to encourage Councils to incorporate ecosystem considerations, and having classifications for ‘‘stocks in the fishery’’ versus ‘‘ecosystem component species’’ could be helpful in this regard.

The Council has made progress in integrating ecosystem considerations and is continuing to do so. Amendment 12 to the CPS FMP prohibited the harvest of krill and is an excellent example. In designating krill as a prohibited species, the Council and NMFS articulated these very reasons.

The final rule stated that

protector krill will help to maintain . . . important ecological relationships and to ensure the long-term health and productivity of the West Coast ecosystem . . . NMFS believes it is critical to take preventive action at this time to ensure that a krill fishery will not develop that could potentially harm krill stocks, and in turn harm other fish and non-fish stocks.

We request that similar to krill, non-target forage species are added to the FMP as EC species and measures are taken to prohibit directed commercial harvest unless and until there is a plan in place that shows any such fishing can be conducted without harming the health of the marine ecosystem, including an ecosystem fishery management plan, stock assessment, and a FMP amendment defining appropriate Annual Catch Limits and Accountability Measures. We stress that krill should retain its prohibited status, placed within the CPS FMP EC category. Table 3.1-1 of the preliminary draft of Amendment 13 (pg 15) lists other important forage species that could be included in the EC category. We support continued consideration of adding these species to the CPS FMP as EC species.

The Council has already demonstrated it has the authority and responsibility to take such actions and this authority is clearly stated in the NS1 Final Rule. The final rule also reiterates that management of EC species can be undertaken in order to meet obligations to minimize bycatch.

3 74 FR 11 at 3207 (January 16, 2009).
4 Id. at 3185 [emphasis added].
5 74 FR 132 at 33372-33373 (July 13, 2009).
6 Prohibition on directed catch and/or retention can be applied to either a stock that is ‘‘in the fishery’’ or an ‘‘ecosystem component’’ species. 74 FR 11 at 3186 (January 16, 2009).
and protect ecosystem health.\textsuperscript{7} As with the management of krill, prohibiting the directed commercial harvest of EC species would achieve these mandates.

2. **Status Determination Criteria alternatives must be expanded to include alternative criteria, including analyses of other Minimum Stock Size Thresholds.**

Status determination criteria (SDC) are quantifiable factors, including Maximum Fishing Mortality Threshold (MFMT), Overfishing Limit (OFL), and Minimum Stock Size Threshold (MSST), or their proxies, that are used to determine if overfishing has occurred, or if the stock or stock complex is overfished. These are required reference points for stocks that are in the fishery.

The preliminary draft Amendment 13 document contains only two alternatives for status determination criteria—status quo and status quo plus an MSY proxy for the Northern subpopulation of Northern anchovy. Status quo MSST for Pacific mackerel and Pacific sardine is not sufficient, and alternative MSST thresholds must be analyzed and considered.

As stated in the NS1 Final Rule:

\begin{quote}
The MSST or reasonable proxy must be expressed in terms of spawning biomass or other measure of reproductive potential. To the extent possible, the MSST should equal whichever of the following is greater: One-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years, if the stock or stock complex were exploited at the MFMT specified under paragraph (e)(2)(ii)(A)(1) of this section. Should the estimated size of the stock or stock complex in a given year fall below this threshold, the stock or stock complex is considered overfished.\textsuperscript{8}
\end{quote}

The MSST thresholds identified in the preliminary draft Amendment 13 document do not appear to have been determined in the fashion specified in the final rule. We note that page 20 of preliminary draft Amendment 13 document contains $B_{\text{MSY}}$ estimates for Pacific sardine. We request that additional alternatives that meet the final rule be analyzed.

3. **Include control measures that set a maximum catch value for targeted species.**

An important harvest control for commercially harvested coastal pelagic species is a maximum catch threshold. The Pacific sardine control rule currently employs a maximum catch threshold of 200,000 metric tons but other targeted CPS do not have this control in place.

The CPS FMP states:

\begin{quote}
In addition to the CUTOFF and FRACTION parameters, it may be advisable to define a maximum harvest level parameter (MAXCAT) so that total harvest
\end{quote}

\textsuperscript{7} Id. at 3205.
\textsuperscript{8} Id. at 3206.
specified by the harvest formula never exceeds MAXCAT. The MAXCAT is used to guard against extremely high catch levels due to errors in estimating biomass, to reduce year-to-year variation in catch levels, and to avoid overcapitalization during short term periods of high biomass and high harvest. MAXCAT also prevents the catch from exceeding MSY at high stock levels and spreads the catch from strong year classes over a wider range of fishing seasons.\textsuperscript{9}

We request consideration of a MAXCAT threshold for other CPS that are “in the fishery” including Pacific mackerel and Northern anchovy. While there may be multiple ways to calculate a MAXCAT value, we suggest at least two alternatives to the status quo, 1) an average of the three highest catches in the past ten years and 2) the average catch of the past ten years, for comparison. This would provide an important control for mackerel and anchovy where stock assessments are either nonexistent or highly uncertain.

4. The FMP must address social, economic and ecological factors used to establish Optimum Yield.

The preliminary draft Amendment 13 analysis does not describe the social, economic and ecological factors that must be addressed in determining Optimum Yield. The NS1 final rule states that

\textit{[a] Council must identify those economic, social, and ecological factors relevant to management of a particular stock, stock complex, or fishery, and then evaluate them to determine the OY . . . [and] . . . [t]o the extent possible, the relevant social, economic, and ecological factors used to establish OY for a stock, stock complex, or fishery should be quantified and reviewed in historical, short-term, and long-term contexts. Even where quantification of social, economic, and ecological factors is not possible, the FMP still must address them in its OY specification.}\textsuperscript{10}

We believe the issue of addressing these factors in the FMP is of specific importance, especially given the importance of managing forage fish stocks for a higher biomass than Bmsy to enhance and protect the marine ecosystem. As stated in the final rule:

\textit{[The] Magnuson-Stevens Act section (3)(33) defines ‘‘optimum,’’ with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with

\textsuperscript{9} Coastal Pelagic Species Fishery Management Plan. (Amendment 8 to the Northern Anchovy Fishery Management Plan) December 1998, at 4-3.

\textsuperscript{10} 74 FR 11 at 3207 (January 16, 2009) [emphasis added].}
producing the MSY in such fishery. OY may be established at the stock or stock complex level, or at the fishery level.\textsuperscript{11}

The final rule further clarifies ecological factors, stating that they include forage fish stocks, other fisheries, predator-prey or competitive interactions, marine mammals, threatened or endangered species, and birds.\textsuperscript{12}

The discussion of ecological factors also references the importance of forage species and encourages Councils to manage them in a conservative manner. The final rule states that

\textit{consideration should be given to managing forage stocks for higher biomass than Bmsy to enhance and protect the marine ecosystem.}\textsuperscript{13}

We believe this is sound advice and encourage the Council to incorporate management measures similar to the conservative measures adopted for the management of krill.

5. Amendment 13 to the CPS FMP must follow the environmental review provisions of the National Environmental Policy Act (NEPA).

The FMP amendment process requires NMFS to follow the environmental review provisions of NEPA. In this instance, Council and NMFS staff have developed a skeleton analysis for an FMP amendment and the Council is poised to make a preliminary decision without providing a draft Environmental Assessment or Environmental Impact Statement, a full range of alternatives, or complete analyses of existing alternatives. We believe that more alternatives should be analyzed and therefore request that the Council not select any preliminary preferred alternatives until a draft environmental analysis can be prepared that fully informs the decisions that are to be made and allowing for meaningful public comment.

In closing, Oceana appreciates the work the Council and NMFS are doing to protect important forage species. We believe that building upon the foundation established with the management of krill and the promulgation of the new National Standard 1 guidelines will successfully advance the long-term conservation of both the California Current ecosystem and the fisheries that depend upon a healthy ecosystem. The development of a successful CPS FMP amendment will achieve both of these results and we look forward to continuing to work with you on this important matter.

Sincerely,

Whit Sheard
Pacific Counsel and Senior Advisor
Oceana

\textsuperscript{11} Id.
\textsuperscript{12} Id. at 3208.
\textsuperscript{13} Id. [emphasis added].