Responses to Comments from Environmental Protection Agency
(October 19, 1998 letter attached)
on the Coastal Pelagic Species Draft Supplemental Environmental Impact Statement

1-2. The reviewer notes that both Pacific sardine and Pacific (chub) mackerel have been identified as overfished in recent reports prepared by the National Marine Fisheries Service (NMFS) and that harvest policies under the fishery management plan (FMP) will be similar to the status-quo. In view of the overfishing designations, the reviewer suggests that more conservative management measures may be required to manage fishing effort and harvest levels and the FMP should include rebuilding programs for overfished stocks.

Response: The maximum sustainable yield (MSY) control rule adopted for Pacific sardine is conservative and reflects the Council's policies and concern for the preeminent role of small pelagic fishes like sardine in the California Current Ecosystem. Compared to the status-quo for sardine (Option A in Appendix B, Table 4.2.5-1), long term average biomass under the new MSY control rule is expected to increase by 108% (from 936,000 mt to 1,952,000 mt) and median biomass will increase by 176% (from 598,000 mt to 1,648,000 mt). No fishing (other than a few thousand mt per year for use as live bait) is allowed in U.S. waters when the sardine biomass falls below 150,000 mt (50,000 mt under the status quo). Long term average catch levels are expected to decrease by four percent (from 151,000 mt to 145,000 mt per year) compared to the status quo. However, in the near term, (assuming 87% of a 600,000 mt coast-wide biomass in U.S. waters and current warm water conditions which are favorable for Pacific sardine), maximum U.S. catch will drop by 39% from 96,000 mt to 59,000 mt.

The MSY control rule for Pacific (chub) mackerel (Appendix B, Section 4.3) is similar to the status quo but more conservative, because U.S. catch is based on the biomass of mackerel *in U.S. waters*, rather than the coast-wide biomass in U.S. and Mexican waters. Roughly 70% of the stock is resident in U.S. waters so U.S. catch levels will decrease by about 30%. Even without the reductions in U.S. catch, the MSY control rule for mackerel tends to maintain relatively high biomass levels (MacCall et al. 1985 cited in the FMP).

Decisions about target fleet size and other aspects of limited entry in the CPS fishery reflect the need to balance benefits from accommodating existing participants in the CPS fishery against biological, management and economic benefits from reducing fleet size. The fishery and management process will likely benefit from implementation of limited entry. A more restrictive program would not have likely gained enough support to be implemented.

Reports describing Pacific sardine and Pacific (chub) mackerel as overfished are based on old information and are easy to misinterpret. The most recent stock assessments indicate that neither Pacific sardine nor Pacific (chub) mackerel are at a low biomass level. According to California Department of Fish and Game (CDFG) estimates, coast-wide sardine biomass was about 631,000 mt in 1997 and increasing at roughly 30% per year. Similarly, CDFG estimates a stable coast-wide Pacific (chub) mackerel biomass of about 120,000 mt. Neither stock is overfished or a candidate for a rebuilding program at this time.

3. The reviewer suggests a more complete discussion of the "take" of non-CPS species (especially endangered and threatened species of marine mammals, salmon and birds) in the Final Supplemental Environmental Impact Statement (FSEIS) for the CPS FMP. In particular, the reviewer recommends modifying the FSEIS to include information on the level of take, species most likely to be affected, potential mitigation and avoidance measures, and legal requirements for take, management, recovery and preservation of non-CPS species encountered in the CPS fishery.

Response: The information requested by the reviewer (legal requirements, estimates of take, species most likely to be affected) has been inserted into Appendix A as a new Section 2.2. References to Appendix A have been inserted into the FSEIS where appropriate. The relevant material in Appendix A is not repeated in the FSEIS to limit printing costs.

4. The reviewer is concerned that recent increases in sardine harvest levels may not be supported by accurate biomass estimates and sound science.

Response: Biomass estimates used to manage the sardine fishery tend to be imprecise (coefficient of variation [CV] of roughly 40%), because sardine are highly dynamic, the available abundance index data is noisy, and because the fishery (an important source of data) is relatively minor. State and federal biologists make every effort to apply the best science to the data available for sardine and other CPS. The MSY control rule for sardine was chosen in view of the underlying uncertainty and was designed to work well with imprecise biomass estimates (i.e., with CV's of roughly 50%). It is expected to provide adequate protection for the stock as long as biomass estimates are not biased high (i.e., estimated biomass consistently higher than actual).

There has been a trend in recent years towards a negative bias in sardine biomass estimates, despite improvements in stock assessment models and data, because the sardine stock has increased very rapidly in abundance and its distribution has increased beyond the range of the surveys used to collect abundance information. This negative bias operates to the detriment of the fishery, but not the sardine stock, because harvest levels tend to be lower than required.

5. The reviewer recommends that a preferred option and more detail be provided regarding the existing closed areas.

Response: In adopting the FMP, the Council decided to retain all existing area closures for anchovy reduction fishing, with exempted fishing permits.

6. The reviewer was concerned about the lack of limited entry for market squid and recommended monitoring of the fishery with a commitment to implement limited entry if required at some point in future.

Response: The Council decided early in development of Amendment 8 that limited entry for market squid was too controversial and would be impossible to implement in time for Amendment 8 with available staff and resources. In addition, the State of California had just implemented a license limitation program designed to fund a dedicated research fund for market squid. It may be possible; however, to implement limited entry for market squid at some point in the future if such an action becomes feasible or desirable and sufficient staff are available.

7. The reviewer requested that the FSEIS more clearly state how the Council or NMFS intend to ensure the conservation and enhancement measures contained in Appendix D (Essential Fish Habitat) are implemented.

The FMP and NMFS cannot ensure that the recommended nonfishing conservation measures are followed, because NMFS does not have authority over regulations for nonfishing activities. The final rule implementing the EFH provisions of the Magnuson-Stevens Act at 50 CFR 600.815 requires FMPs to *describe* these conservation and enhancement measures. Introductory language in publication of the interim final rule indicates the described measures are advisory in nature, non-binding, and not mandatory (62 FR 66540 and 66543).

However, NMFS may use these conservation and enhancement measures to guide consultation efforts. The EFH section of the FMP addresses consultation procedures as follows:

> The Magnuson-Stevens Act requires federal agencies undertaking, permitting or funding activities that may adversely affect EFH to consult with NMFS. Under section 305 (b)(4) of the Magnuson-Stevens Act, NMFS is required to provide EFH conservation and enhancement recommendations to federal and state agencies for actions that adversely affect EFH. However, state agencies and private parties are not required to consult with NMFS. EFH consultations will be combined with existing interagency consultations and environmental review procedures that may be required under other statutes such as the Endangered Species Act, Clean Water Act, the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Federal Power Act, or the Rivers and Harbors Act. (Appendix D)

The FSEIS and Appendix D to the CPS plan have been updated with the following text to include language providing more detail on the consultation process:

EFH consultation may be at either a broad programmatic level or project-specific level. Programmatic is defined as "broad" in terms of process, geography, or policy (e.g., "national level" policy, a "batch" of similar activities at a "landscape level", etc.) Where appropriate, NMFS will use a programmatic approach designed to reduce redundant paperwork and to focus on the appropriate level of analysis whenever possible. The approach would permit project activities to proceed at broad levels of resolution so long as they conform to the programmatic consultation. The wide variety of development activities over the extensive range of EFH, and the Magnuson-Stevens Act requirement for a cumulative effects analysis warrants this programmatic approach. (Appendix D).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

OCT 19 1998

James Morgan
National Marine Fisheries Service
Southwest Region
501 W. Ocean Blvd., Suite 4200
Long Beach, CA. 90802-4213

Dear Mr. Morgan:

The Environmental Protection Agency (EPA) has reviewed the Draft Supplemental Environmental Impact Statement (SDEIS) for **Amendment 8 to the Northern Anchovy Fishery Management Plan for the Washington, Oregon, and California Coastal Pelagic Species Fishery.** Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The Pacific Fishery Management Council and National Marine Fisheries Service (NMFS) propose to implement an amendment to the fishery management plan (FMP) for Northern Anchovy. The plan amendment proposes to add Pacific sardine, Pacific (chub) mackerel, jack mackerel, and market squid to the fishery management unit, which currently only covers northern anchovy, and to change the name of the plan to the Coastal Pelagic Species Fishery Management Plan. The plan proposes a system of "actively managed" (Pacific sardine, Pacific mackerel) and "monitored only" (northern anchovy, market squid, jack mackerel) species to help focus scarce resources and the direction of management and research efforts where they are most needed. The plan also proposes a limited entry program for coastal pelagic finfish species south of 39 degree N latitude. Tools to be used include limited entry permits to limit fleet size, limited harvest levels per trip, and a targeted geographical area. The option to utilize other tools without additional formal amendments is provided for in the FMP. The FMP contains harvest policy options that preserve a portion of the stocks as forage for marine mammals and birds while maintaining a stable fishery, and an Essential Fish Habitat section, both of which conform to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act of 1996.

EPA recognizes the significant challenges in managing a complex international resource and balancing biological, ecological, social, and economic demands. Maintaining a conservative balance between utilization and preservation of a resource is especially critical for highly variable, environmentally sensitive, unknown, and vulnerable resources such as the coastal pelagic species (CPS). We also believe a protective approach is necessary to minimize the "tragedy of the commons" which

encourages competition and over exploitation of the common resource. Thus, we urge a commitment to active stewardship of the CPS resource and to seeking agreements with Mexico and Canada on the sustainable management of this resource.

EPA supports the overall approach outlined in Amendment 8. We also strongly advocate consolidation of CPS management under a single FMP, increased international and interstate cooperation, and control of future fishery expansion; especially given the historical collapse of the pacific sardine resource and evidence that Pacific sardine and Pacific mackerel are being overfished (pg. B-4). Implementation of a limited entry management strategy in the highly utilized southern range of the CPS fishery appears very appropriate. The actively managed and monitor-only approach and goals and objectives (pg. B-7) are also commendable features of the proposed FMP.

Although we support your efforts to balance resource preservation and efficient utilization, we remain concerned with potential impacts to endangered marine mammals and birds, the minimal development of stock recovery plans (rebuilding program, pg. B-81), and scarcity of firm data upon which to base management decisions. Because of these concerns, we have classified this SDEIS as category EC-2, Environmental Concerns - Insufficient Information (see attached "Summary of the EPA Rating System").

We appreciate the opportunity to review this SDEIS. Please send one copy of the Final EIS to this office at the same time it is officially filed with our Washington, D.C. office. If you have questions or wish to discuss our comments, please call Ms. Laura Fujii, of my staff, at (415) 744-1601.

Sincerely,

David J. Farrel, Chief
Federal Activities Office
Cross Media Division

Enclosure: (3 pages)
Filename: cpsfish.wpd
MI003157

cc: USFWS, Sacramento
Pacific Fishery Mgmt Council

COMMENTS

1. The SDEIS states that a recent report has identified both Pacific sardine and Pacific (chub) mackerel as being overfished (pg. B-4). At the same time, proposed management appears to maintain 95-99% of existing harvest levels, the maximum allowable trip harvest limit, and no limits on fleet harvest capacity (pg. EIS-5). Given the possible precarious condition of the stock, we urge you to reconsider the preferred options for target fleet size, limiting effort, and trip limits and to chose more conservative options.

2. In addition, we strongly recommend the FMP include, at a minimum, the framework for a rebuilding program for overfished stocks. While we recognize the difficulties in meeting the rebuilding requirement to reach in ten years the maximum sustainable yield (MSY) biomass (pg. EIS-9), we believe every effort should be made to approach this goal.

3. The SDEIS states that many non-CPS species (bird, fish and marine mammal predators) may be taken when harvesting target CPS and that the problem does not seem to be significant at this time (pg. EIS-18). Reference is made to appendices to provide additional detail. The appendices are lengthy and technical and do not appear to address the specific issue of "take" of non-CPS species. We note that some of the non-CPS species are listed as sensitive, endangered, or threatened (e.g., marine mammals, salmon, Fin whale) and therefore require special protection. We recommend the Supplemental Final EIS (SFEIS) expand the discussion regarding the "take" of non-CPS species. Include summarized information on the level of take, species most likely to be effected, and potential mitigation and avoidance measures. The discussion should also include background information regarding the legal requirements for "take", management, recovery and preservation of these species.

4. As stated in the SDEIS, Pacific sardine experienced a dramatic collapse in the 1940s due to overfishing and poor environmental conditions (pg. A-31). A moratorium on harvesting and a recovery plan were implemented. The recovery plan allowed a small directed harvest quota only when the spawning biomass reached a certain minimum level. Anecdotal reports and incidental occurrence of sardines in other fish catches have suggested an increased abundance. As a result, the annual directed quota has been steadily increasing (pg. A-32). It is unclear whether the increased annual quotas have been based on sound science and an accurate estimate of the spawning biomass. Given the past collapse of Pacific sardine and the tendency to overfish this species, we remain very concerned with the wisdom of increasing annual harvest quotas when accurate data of the spawning biomass may be lacking. We have a similar concern regarding the northern anchovy quota. The SFEIS should persuasively demonstrate that the increasing directed quotas for Pacific sardine and

northern anchovy are based upon accurate and verifiable estimates of the spawning biomass and sound science.

5. Although options for closed fishing areas are described, it does not appear as if a preferred option has been selected (Section 2.2.2.2.4 Option for Closed Fishing Areas, B-17). The description also states that the FMP authorizes the issuance of exempted fishing permits for fishing in closed areas. We recommend the SFEIS include a preferred option and provide additional detail regarding the potential management scenario. For example, one scenario for evaluation may be retaining all closed areas to all CPS fishing with the issuance of exempted fishing permits.

6. We are concerned with the proposal not to limit entry for market squid especially given the lack of understanding of the harvest potential of this species (pg. B-52). We understand the possible difficulty of reducing the number of vessels currently harvesting squid and recognize that California is implementing its own vessel licensing program for squid. State management may help reduce the potential for overfishing. Nevertheless, the lack of scientific knowledge regarding market squid warrants extreme caution. Thus, we urge you to implement reliable, rigorous monitoring of the squid fishery and to firmly commit to implementation of limited entry, if necessary, to conserve this resource.

7. Table 4.0.1 describes adverse nonfishing activities, their impacts, and possible conservation and enhancement measures that can be taken to minimize and mitigate these impacts (pg. D-20). While we support the conservation measures, it is not clear how the Pacific Fishery Management Council or NMFS intend to ensure these measures are implemented. The SFEIS should clearly state how the FMP and implementing agencies will ensure conservation measures are followed so that nonfishing activities will have minimal adverse impact on the CPS resource.

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

RESPONSES TO COMMENTS RECEIVED ON COASTAL PELAGIC SPECIES DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

(Comments summarized from attached letters)

Comment: One commenter recommended that the Council not authorize a commercial fishery for sardine off the Washington coast to avoid bycatch of coho salmon and so that sardine in that area remain available as forage for salmon.

Response: While the fishery management plan (FMP) amendment involves procedures to set a coastwide harvest guideline of sardine and specifies a portion of that harvest guideline to be taken north of Pt. Piedras Blancas (35°40' N latitude), the FMP also defers to state fishery regulations. State fishery regulations in Washington currently prohibit commercial sardine fishing except under strictly monitored experimental fishing permits. States can request a consistency determination from the Council for new or existing state regulations under procedures specified in the plan.

Comment: One commenter proposed numerous changes to the essential fish habitat (EFH) portion of the FMP amendment, primarily with respect to the proposed conservation and enhancement measures.

Response: At its September 1998 Council meeting, National Marine Fisheries Service and Council staff worked with the commenter to develop language acceptable to all parties. That language was adopted by the Council and has been incorporated into the final coastal pelagic species (CPS) FMP.

Comment: One commenter recommended a target fleet size in a limited entry program of the vessels accountable for at least 99% of total CPS finfish landed in the window period (January 1, 1993 through November 5, 1997).

Response: The Council chose a target fleet size of vessels that were accountable for at least 99% of total CPS finfish landed in the window period (January 1, 1993 through November 5, 1997).

Comment: One commenter thought the limited entry program should contain provisions whereby a vessel under construction or conversion during the window period should be allowed to receive a permit under certain conditions.

Response: The Council chose not to allow such exceptions in the limited entry program with the explicit reasoning that owners who receive permit(s) are allowed, within the first year of the program, to transfer their permit(s) to any vessel.

Comment: One commenter opposed the inclusion of market squid in the CPS FMP on the grounds that squid is harvested almost exclusively within three miles and is currently being managed by California Department of Fish and Game.

Response: Market Squid is included in the FMP, but currently is assigned to the "Monitored" management category and is not subject to limited entry provisions. Monitored species are those not requiring intensive management efforts and stocks not well enough understood to be managed. The purpose of Active and Monitored management categories is to use available agency resources in the most efficient and effective manner while satisfying goals and objectives of the FMP. The distinction enables managers and scientists to concentrate efforts on stocks and segments of the CPS fisheries that need greatest attention or where

the most significant benefits might be expected. Monitored management involves tracking trends in catches and qualitative comparison to available abundance data, but without periodic stock assessments, periodically adjusted target harvest levels, or other types of active management.
Although market squid is Monitored, it is included in the CPS FMP because it is a mainstay of the CPS fishery, it supports a significant level of harvest, and it is harvested throughout its north-south range (from Baja California to Southeast Alaska) and in federal and state waters (though the majority is harvested in California state waters). There is also substantial overlap between fishing activities for squid and CPS finfish.

Comment: One commenter was opposed to the use of limited entry as a means of limiting effort in the CPS fishery.

Response: Vessels currently participating in the CPS finfish fishery are capable of harvesting more CPS finfish than is available under current biomass conditions. Fisheries characterized by excess harvesting capacity are described as overcapitalized in terms of the number of vessels and the amount of gear and equipment devoted to harvesting. This situation represents an economically inefficient use of society's productive resources and causes several problems for managers and the fishing industry when abundance declines and catches are reduced. As harvest capacity in the fisheries increases, problems arising from the need for more restrictive management measures and resolution of allocation issues become more acute. No relief from these problems will occur if harvest capacity continues to rise.

In addition to current CPS finfish participants, newcomers are likely to be attracted to the fishery, because of the expanding sardine biomass and squid fishery, and as competition in other Pacific Coast fisheries becomes more intense. Nearly all groundfish stocks are now fully harvested by domestic fishers in the Pacific Coast groundfish fishery.

In the Pacific Coast CPS finfish fishery, excess harvest capacity is likely to result in an increasing number and complexity of regulations. Accordingly, the Council will face increased pressure to balance the conflicting need to protect the resource with the need to provide sufficient allowable catch to sustain the fishery.

Increased number and complexity of regulations have many adverse impacts in such areas as fleet costs, resource utilization, safety, enforcement costs, and effectiveness. Moreover, there is a point beyond which additional regulations, which interfere with day-to-day vessel operations (e.g., trip limits or mesh size regulations), will not improve the Council's ability to accomplish its management goals. Pressures on industry arise not only from management measures which restrict operations, but also from increased competition for the allowable catches among larger numbers of vessels.

For these reasons, the Council has chosen a limited entry program for CPS finfish.

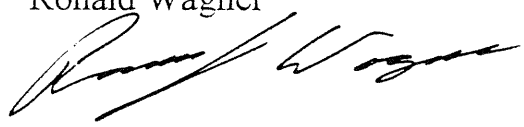
Ronald Wagner.
6205 N.E 88th St.
Vancouver, Wa. 98665
360-573-5318

Potential Fishery for Sardine, Mackerel and Squid

I would hope that you would not authorize a Commercial Fishery for Sardine off the Washington Coast. A Fishery of this nature would not fall under the Forage Fish plan. The primary objection is the Bycatch of Coho Salmon. The Forage Fish plan very clearly points out that the Sardines are alternate food source for the Salmon when Herring are not abundant. We must decide weather we are going to have a good crop of Salmon that would be enjoyed by all user groups or harvest BaitFish.

Thankyou,

Ronald Wagner



SDGE San Diego Gas & Electric
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August 31, 1998

FILE NO. SFH 200.241

Mr. Lawrence D. Six
Executive Director
Pacific Fishery Management Council
2130 SW Fifth Avenue, Suite 224
Portland, Oregon, 97201

FAXED TO (503) 326-6831 ON 8/31/98

Subject: **ESSENTIAL FISH HABITAT - PROPOSED AMENDMENTS TO THE COASTAL PELAGIC SPECIES FISHERIES MANAGEMENT PLAN**

Dear Mr. Six:

SDG&E herein submits its comments on the proposed amendments[1] to the Pacific Fishery Management Council's Fishery Management Plan for Coastal Pelagic Species regarding essential fish habitat.

SDG&E appreciates this opportunity to provide comments on the proposed amendments. These comments are based upon our initial review of the proposed amendments. As we conduct further review, we may have additional comments for your consideration.

SDG&E operates two steam electric generating power plants utilizing waters which may be affected by this plan amendment and these two power plants have been designated as must-run facilities by the Independent System Operator (ISO) in accordance with California AB1890, as their operation has been determined to be essential to maintain the required availability and reliability of service. Overly broad regulation may impact the availability of power as required by the ISO and AB1890 and, as written in their proposed form, the amendments are perceived by us to be unnecessarily broad. Although the proposed conservation and enhancement measures are considered to be "advisory", they have the potential to play a significant role in various regulatory proceedings, such as NPDES discharge permit proceedings. Consequently, it is very important that they be clear and specific in order to prevent being misconstrued or misapplied.

These comments address the definition of essential fish habitat, the description of non-fishing related effects, and the proposed conservation and enhancement measures. Comments on the description of non-fishing effects and the proposed conservation and enhancement measures are grouped together by each identified non-fishing related activity.

[1] Comments are in reference to the Pacific Fishery Management Council's *Draft Amendment 8 (CPS), Appendix D - Description and Identification of Essential Fish Habitat for the Coastal Pelagic Species Fishery Management Plan*, dated August 1998.

At the end of each section of the enclosed comments are proposed revisions that would incorporate SDG&E's comments into the plan. A table summarizing these revisions is also attached.

DEFINITION OF ESSENTIAL FISH HABITAT

The definition of essential fish habitat (EFH) in Section 2.0 (Appendix D) appears to be inclusive of all marine waters in California, from estuarine habitats out to the Exclusive Economic Zone (EEZ). This definition does not differentiate between habitat which is "essential" or "necessary" (as considered in the context of the Sustainable Fisheries Act) from habitat which is not "necessary". The legislative history (as described by the NOAA Office of General Council[2]) indicates that both the House and the Senate intended to include the "...idea that these waters must be "necessary" to the fish, presumably to prevent inclusion of less important habitat." In other words, there exists different grades of habitat within the range of a species, only some of which would be considered essential. The proposed definition appears to contradict the intent of the legislation. This has resulted in many areas being designated as EFH that are not truly "necessary" as specified by the legislation and will result in excess federal, state and private resources being expended to assess and mitigate impacts to EFH which do not have a significant effect on the managed species. Additionally, it appears unnecessary to identify the entire geographic ranges, both current and historic, of the species. For example, although Jack Mackerel occur from the coast to off-shore, the document indicates that they are more commonly found offshore and much of their range occurs outside of the 200 mile EEZ. Furthermore, Table 2.0, of the plan, states that "CPS may occur in shallow embayments and brackish water **but do not depend on these habitats to any significant degree." [emphasis added].** Therefore it appears off-shore habitats may be more important to this species than other habitats and should be the habitat identified as "essential". **At a minimum the definition should be revised to exclude shallow embayments and brackish water areas.** Additionally, the definition should only identify geographical areas which are high quality habitats and have high usage by the species, with an emphasis on those areas which do not have existing anthropogenic influences.

SDG&E appreciates that obtaining higher level data for all species may not have been possible within the time period allowed for preparing the EFH designations, but this approach places a high resource burden on both regulatory and regulated communities.

Recommended Revisions[3]

1. Revise Section 2.0 (Description and Identification of Essential Fish Habitat for the Coastal Pelagic Species Fishery) as follows:

    a) At a minimum, revise the first sentence in paragraph No. 3 to read as follows: "The east-west geographic boundary of EFH for each individual CPS finfish and market squid is defined to be all marine ~~and estuarine~~ waters, except for

[2] See "Essential Fish Habitat" discussion in the document "A Guide to the Sustainable Fisheries Act Public Law 104-297" prepared by the NOAA Office of General Counsel, February, 1997, located at http:\\kingfish.ssp.nmfs.gov/sfa/sfaguide/102.htm.

[3] Note that in the proposed revisions, underlined words are to be inserted and ~~lined out~~ words are to be deleted.

shallow embayments and brackish water areas, from the shoreline along the coasts of California, Oregon, and Washington offshore to the limits of the exclusive economic zone (EEZ) and above the thermocline where sea surface temperatures range between 10°C to 26°C."

NON-FISHING EFFECTS

Appendix D contains a discussion of a number of non-fishing activities that are considered to have the potential to have adverse effects on EFH. The broad categories of activities listed in the National Fisheries Marine Service's (NMFS) EFH interim final regulations are restated, along with NMFS's proposed conservation measures, in Appendix D.

One comment that is common to all of the categories below is that the adverse impacts sections should include examples of benefits to habitats that also result from the same activities evaluated for adverse effects. Beneficial effects, not just adverse effects, should be considered in any analysis of an action's net effect by agencies conducting adverse effects analyses.

Following are comments on several of these categories that are of interest to SDG&E.

Dredging

Dredging activities are identified as having a periodic impact on benthic and adjacent habitats during the construction and operation of marinas, harbors and ports.

It appears that dredging activities are not likely to have significant impacts on CPS because:

- dredging activities most likely to occur in bays and estuaries, not open coastal areas;
- the CPS Habitat/Life History Descriptions (Appendix D, Section 6.0) indicate that CPS are primarily open coastal and offshore species and not dependent upon bays and estuaries for stages of their life cycles; and
- where dredging does occur in bays and estuaries the overall net effect may be to increase usable habitat, as some dredging activities provide for better circulation and/or keep coastal lagoons open which would otherwise be naturally closed off to the ocean, resulting in no useable habitat to the CPS.

Dredging activities are conducted using several different types of equipment. The type of equipment used and its manner of operation will determine the type and degree of potential impacts.

Maintenance of previously dredged areas should be considered differently than new dredging activities that affect previously undisturbed habitat. For example, routine maintenance dredging of existing dredged channels and areas which support existing surface water dependent facilities should have less impact to overall habitat values than dredging of new areas.

The conservation and enhancement measures for dredging identify six measures. **Measure No. 1** ("To the maximum extent practicable, dredging should be avoided.") should be revised to apply to "New activities that require new dredging..." as many existing ports and facilities are dependent upon the maintenance of existing dredged areas.

Measure No. 2 ("Dredging in estuarine waters shallower than 20' in depth should be performed during the time frame when prey species are least likely to be entrained.") would be an unreasonable restriction for certain types of dredging activities and would not result in minimizing entrainment of prey species. Typical dredging activities are conducted 24 hours a day, six days a week in order to complete dredging over relatively short periods of time. SDG&E's experience in conducting dredging activities with the cutter head suction method is that the vibration and noise created by the operation keeps almost all fish away from the immediate vicinity of the dredging activities, thus preventing their entrainment. Use of this restriction should be dredging method specific, if at all.

Measure No. 6 ("To the extent possible, dredging should be conducted during ebb tides to minimize turbidity.") would also be an unreasonable restriction for certain types of dredging methods and would not result in minimization of turbidity. For example, cutter head suction type dredges do not result in significant turbidity as the material dislodged by the cutter head is removed from the water body by suction. As typical dredging activities are conducted 24 hours a day, six days a week, this measure would be very disruptive to dredging operations. Use of this restriction should be dredging method specific, if at all.

Recommended Revisions

1. Revise Section 4.2.1.1 (Adverse Impacts) as follows:

    a) Revise the first sentence in the first paragraph to read:
    "Dredging events <u>using certain types of dredging equipment</u> can result in greatly elevated levels of fine-grained mineral particles, usually smaller than silt, and organic particles in the water column habitat utilized by CPS finfish <u>(some equipment types, such as cutter head suction equipment, do not result in significant turbidity plumes).</u>"

    b) Add the following language to the end of the second paragraph:
    "<u>Routine maintenance dredging of existing dredged channels and areas which support existing surface water dependent facilities likely have less impact to overall habitat values than dredging of new areas. Dredging, however, can have certain beneficial effects to the habitat which need to be considered in the assessment of effects. For example, dredging of coastal lagoons can result in systems continuously open to the ocean making them available to CPS and overall more biologically productive. Also, in some cases dredging can improve the water circulation in bays, thereby enhancing its use.</u>"

2. Revise Section 5.2.1 (Dredging) as follows:

    a) **Measure No. 1** - Revise the first sentence to read:

"To the maximum extent practicable, new activities that require new dredging should be avoided."

b) **Measure No. 2** - Revise to read:
"Where the dredge equipment employed could cause significant long term impacts due to entrainment of prey species, d~~D~~redging in estuarine waters shallower than 20 feet in depth should be performed during the time frame when prey species are least likely to be entrained."

c) **Measure No. 6** - Revise to read:
"Where a dredging equipment type is used that is expected to create significant turbidity (e.g., clamshell), ~~To the maximum extent possible,~~ dredging should be conducted using adequate control measures ~~during ebb tides~~ to minimize turbidity."

Dredge Material Disposal/Fills

This section should also recognize the potential benefits of dredging activities, including dredge material disposal. Some dredged materials are suitable (i.e., chemical composition and grain size) for beach replenishment. This is very important in southern California, not only from economic and land protection standpoints, but also for supplementing the coastal sand budget resulting in enhanced near-shore sandy bottom habitat. Beach replenishment with appropriate dredging materials may also provide an increased food supply near beach replenishment disposal sites. The text, therefore, should clarify that dredge disposal can also have beneficial effects. Where adverse effects do occur, they should be weighed against any short-term and long term benefits.

The conservation and enhancement measures for "Fills/Dredge Material Disposal" identify six measures. **Measure No. 1** ("To the extent possible, fill materials resulting from dredging operations should be placed on an upland site.") should be revised to not preclude the use of permitted USEPA or ACOE off-shore dredge disposal sites that have been permitted for such use.

Measure No. 3 states that the disposal of contaminated dredge material should not be allowed in EFH. To eliminate the use of the vague term "contaminated", the measure should be revised to state that any disposal of dredge material in EFH meet applicable state and/ or federal quality standards for such disposal.

Measure No. 5 states that all non-avoidable impacts should be fully mitigated. This should be revised to apply to significant long-term impacts. Short term or insignificant impacts should not necessarily require mitigation.

Recommended Revisions

1. Revise Section 4.2.2.1 (Adverse Impacts) as follows:

a) Add the following language as the third paragraph:

"Disposal of dredge materials may also have beneficial effects. For example, beach replenishment can supplement the coastal sand budget resulting in enhanced near-shore sandy bottom habitat. Beach replenishment with appropriate dredging materials may also provide an increased food supply near beach replenishment disposal sites. Where short-term adverse effects do occur, they should be weighed against any short-term and long term benefits."

2. Revise Section 5.2.2 (Fills/Dredge Material Disposal) as follows:

   a) **Measure No. 1** - Revise the first sentence to read:
   "To the extent possible, fill materials resulting from dredging operations should be placed on an upland site, although this should not preclude the use of permitted USEPA or ACOE offshore disposal sites."
   b) **Measure No. 3** - Revise to read:
   "Any disposal of dredge material in EFH, should meet applicable state and/ or federal quality standards for such disposal. ~~The disposal of contaminated dredge material should not be allowed in EFH.~~"
   c) **Measure No. 5** - Revise to read:
   "All non-avoidable, adverse impacts (other than insignificant or short-term impacts) should be fully mitigated."

Water Intake Structures

Water intake structures are identified as potentially causing adverse effects to EFH. This section should also state that the operation of intake systems can provide benefits in terms of increased water circulation and playing a role in keeping coastal lagoons open to the ocean, resulting in enhanced habitat values.

The conservation and enhancement measures for "Water Intake Structures" identify four measures. **Measure No. 1**, second sentence ("Discharge points should be located in areas that have low concentrations of living marine resources, or they should incorporate cooling towers...") should be revised to clarify that it applies to new facilities, as relocation of existing facilities or retrofitting with cooling towers is not economically feasible. Additionally, this sentence should be revised to specify that discharges from cooling towers employ safeguards to ensure against release of blowdown pollutants into the aquatic environment in concentrations that exceed limits established pursuant to state and/ or federal NPDES regulations.

Measure No. 2 states that all intake structures should be designed to **prevent** entrainment or impingement of prey species **[emphasis added]**. Prevention is not a practical standard and is inconsistent with the Clean Water Act. This measure should be revised to state that intake structures should be designed to meet the best technology available (BTA) requirements as developed pursuant to Section 316b of the Clean Water Act.

Measure No. 3 ("Discharge temperatures (both heated and cooled effluent) should not exceed the thermal tolerance of the biota in the receiving body of water") is inconsistent with

the State of California "Thermal Plan" and possibly the thermal requirements in the other affected states. It should be revised to require compliance with applicable temperature limits established pursuant to state and federal NPDES regulations.

Measure No. 4 states that mitigation should be provided for the loss of fish larvae and eggs that may be entrained by large intake systems as well as the loss of prey organisms. This measure should be deleted as it is addressed by Measure No. 2 (see above comment) that would require intakes to meet the BTA standard of the Clean Water Act, thereby minimizing the impingement and entrainment at intake structures. Again, entrainment and impingement effects should be addressed by compliance with Clean Water Act Section 316b requirements.

Recommended Revisions

1. Revise Section 4.2.4.1 (Adverse Impacts) as follows:

   a) Add the following language as a second paragraph:
   "Intake systems can also provide benefits in terms of increased water circulation and playing a role in keeping coastal lagoons open to the ocean, resulting in enhanced habitat values. These benefits should be considered when assessing potential impacts."

2. Revise Section 5.2.4 (Water Intake Structures) as follows:

   a) **Measure No. 1** - Revise the second sentence to read:
   "New d~~D~~ischarge points should be located in areas that have low concentrations of living marine resources, or they should incorporate cooling towers that employ sufficient safeguards to ensure against release of blow-down pollutants into the aquatic environment in concentrations that exceed state and/ or federal limits established pursuant to state and/ or federal NPDES regulations;"

   b) **Measure No. 2** - Revise to read:
   "All intake structures should be designed to minimize ~~prevent~~ entrainment or impingement of prey species. Power plant intake structures should be designed to meet the "best technology available" requirements as developed pursuant to Section 316b of the Clean Water Act."

   c) **Measure No. 3** - Revise to read:
   "Discharge temperatures (both heated and cooled effluent) should comply with applicable temperature limits established pursuant to state and/ or federal NPDES regulations ~~be below the upper range of the thermal tolerance of the biota in the receiving body of water~~."

   d) **Measure No. 4** - Delete as follows:
   ~~"Mitigation should be provided for the loss of fish larvae and eggs that may be entrained by large intake systems as well as the loss or prey organisms."~~

Wastewater Discharges

The wastewater discharges section contains a long discussion regarding the significance of pollutants discharged from point sources. Much of the data in this discussion dates back to the 1970s and 1980s. Significant progress has been made in the regulation of point source discharges, both municipal and industrial, since that time. The most significant remaining source of pollution to the coastal areas and the ocean is non-point source/stormwater runoff. In fact, EPA and States are shifting their strategies to address water quality issues on a watershed basis, which looks at all of the sources of pollutants within a watershed which contribute to pollutant problems. A brief paragraph at the end of the description describes stormwater pollutants. It would seem appropriate to revise this section to provide more information regarding non-point source/stormwater pollution.

The use of biocides is also mentioned in the text. The text should clarify that discharges are made pursuant to state and federal NPDES permit requirements which set both technology-based and water quality-based effluent limits (including toxicity) for the discharges.

The conservation and enhancement measures for "Wastewater Discharges" identify three measures. **Measure No. 1,** second sentence ("Discharges should be treated using the best available technology, including implementation of up-to-date methodologies for reducing discharges of biocides (e.g., chlorine) and other toxic substances.") should be revised to specify that discharges should comply with the technology and water quality based effluent limits in their NPDES permits.

Recommended Revisions

1. Revise Section 4.2.6 (Wastewater Discharge) as follows:

    a) Revise the paragraph as follows:

    "The discharge of point and nonpoint source wastewater from activities including municipal wastewater treatment plants, power generating stations, industrial plants (e.g., pulp mills, desalination plants) and storm drains into open ocean waters, bay or estuarine waters can introduce pollutants detrimental to estuarine and marine habitats. These pollutants include pathogens, nutrients, sediments, heavy metals, oxygen demanding substances, hydrocarbons and other toxics. Historically, wastewater discharges have been one of the largest sources of contaminants into coastal waters. <u>However, non-point source/ stormwater runoff is considered the most significant remaining source of pollution to the coastal areas and ocean.</u> Outfall-related changes in community structure and function, health and abundance may result. Many of the changes can be long-lasting."

2. Revise Section 4.2.6.1 (Adverse Impacts) as follows:

    a) Revise the first sentence of the first paragraph to read as follows:

    "Wastewater effluent and <u>non-point source/ stormwater discharges</u> may affect the growth and condition of fish associated with ~~wastewater~~ outfalls should high contaminant levels (e.g., chlorinated hydrocarbons; pesticides; herbicides) be discharged."

b) Revise the ninth paragraph to read as follows:

"The use of biocides (e.g., chlorine; heat treatments) to prevent biofouling or the discharge of brine as a byproduct of desalinization may reduce the suitability of water bodies for populations of fish species and their prey in the general vicinity of the discharge pipe. The impacts of chlorination and heat treatments, if any, are minimized due to their intermittent use and regulation pursuant to state and/ or federal NPDES permit requirements. These compounds may change the chemistry and the physical characteristics of the receiving water at the disposal site by introducing chemical constituents in suspended or dissolved form. In addition to chemical and thermal effects, discharge sites may adversely impact sensitive areas such as emergent marshes, seagrasses, and kelp beds if located improperly."

3. Revise Section 5.2.6 (Wastewater Discharge) as follows:

a) **Measure No. 1 -** Revise the second sentence to read:

"Discharges should be managed to comply with applicable state and/ or federal NPDES permit requirements, including compliance with applicable technology-based and water quality-based effluent limits. ~~treated using the best available technology, including implementation of up-to-date methodologies for reducing discharges of biocides (e.g., chlorine) and other toxic substances."~~

Discharges of Oil or Release of Hazardous Substances

This section should clarify that it does not apply to discharges which are permitted pursuant to, and conducted in accordance with, the conditions of applicable state and/ or federal NPDES permits.

Recommended Revisions

1. Revise Section 4.2.7.1 (Adverse Impacts) as follows:

a) Revise the first sentence in the first paragraph as follows:

"Exposure to petroleum products and hazardous substances from spills or other unauthorized releases can have both acute and chronic effects on fish resources and their prey, and also potentially reduce the marketability of target species."

2. Revise Section 5.2.7 (Discharge of Oil or Release of Hazardous Substances) as follows:

a) Measure No. 2 - Revise to read:

"Each facility should have a "Spill Contingency Plan" and ~~all~~ employees identified in the plan as having responsibility for responding to a spill should receive appropriate training ~~be trained in how to respond to a spill~~. A Spill Contingency Plan(s) developed for another agency can be used to fulfill this measure."

Again, SDG&E appreciates this opportunity to submit comments. Please fell free to call me (619) 696-2511, if you would like to discuss these comments.

Sincerely,

Fredrik J. Jacobsen
Sr. Environmental Specialist

Attachment

cc: Mark Helvey (NMFS)

Summary Table of SDG&E's Recommended Plan Revisions

Issue	Recommended Revision
Description and Identification of Essential Fish Habitat for the Coastal Pelagic Species Fishery	1. Revise Section 2.0 (Description and Identification of Essential Fish Habitat for the Coastal Pelagic Species Fishery) as follows: a) At a minimum, revise the first sentence in paragraph No. 3 to read as follows: "The east-west geographic boundary of EFH for each individual CPS finfish and market squid is defined to be all marine ~~and estuarine~~ waters, except for shallow embayments and brackish water areas, from the shoreline along the coasts of California, Oregon, and Washington offshore to the limits of the exclusive economic zone (EEZ) and above the thermocline where sea surface temperatures range between 10°C to 26°C."
Dredging	1. Revise Section 4.2.1.1 (Adverse Impacts) as follows: a) Revise the first sentence in the first paragraph to read: "Dredging events using certain types of dredging equipment can result in greatly elevated levels of fine-grained mineral particles, usually smaller than silt, and organic particles in the water column habitat utilized by CPS finfish (some equipment types, such as cutter head suction equipment, do not result in significant turbidity plumes)." b) Add the following language to the end of the second paragraph: "Routine maintenance dredging of existing dredged channels and areas which support existing surface water dependent facilities likely have less impact to overall habitat values than dredging of new areas. Dredging, however, can have certain beneficial effects to the habitat which need to be considered in the assessment of effects. For example, dredging of coastal lagoons can result in systems continuously open to the ocean making them available to CPS and overall more biologically productive. Also, in some cases dredging can improve the water circulation in bays, thereby enhancing its use." 2. Revise Section 5.2.1 (Dredging) as follows: a) **Measure No. 1 -** Revise the first sentence to read: "To the maximum extent practicable, new activities that require new dredging should be avoided." b) **Measure No. 2 -** Revise to read: "Where the dredge equipment employed could cause significant long term impacts due to entrainment of prey species, d~~D~~redging in estuarine waters shallower than 20 feet in depth should be performed during the time frame when prey species are least likely to

ESSENTIAL FISH HABITAT - PROPOSED AMENDMENTS TO THE COASTAL PELAGIC SPECIES FISHERIES MANAGEMENT PLAN

Issue	Recommended Revision
Dredging (cont.)	be entrained." c) **Measure No. 6 -** Revise to read: "Where a dredging equipment type is used that is expected to create significant turbidity (e.g., clamshell), ~~To the maximum extent possible,~~ dredging should be conducted using adequate control measures ~~during ebb tides~~ to minimize turbidity."
Dredge Material Disposal/ Fills	1. Revise Section 4.2.2.1 (Adverse Impacts) as follows: a) Add the following language as the third paragraph: "Disposal of dredge materials may also have beneficial effects. For example, beach replenishment can supplement the coastal sand budget resulting in enhanced near-shore sandy bottom habitat. Beach replenishment with appropriate dredging materials may also provide an increased food supply near beach replenishment disposal sites. Where short-term adverse effects do occur, they should be weighed against any short-term and long term benefits." 2. Revise Section 5.2.2 (Fills/Dredge Material Disposal) as follows: a) **Measure No. 1 -** Revise the first sentence to read: "To the extent possible, fill materials resulting from dredging operations should be placed on an upland site, although this should not preclude the use of permitted USEPA or ACOE offshore disposal sites." b) **Measure No. 3 -** Revise to read: "Any disposal of dredge material in EFH, should meet applicable state and/ or federal quality standards for such disposal. ~~The disposal of contaminated dredge material should not be allowed in EFH.~~" c) **Measure No. 5 -** Revise to read: "All non-avoidable, adverse impacts (other than insignificant or short-term impacts) should be fully mitigated."
Water Intake Structures	1. Revise Section 4.2.4.1 (Adverse Impacts) as follows: a) Add the following language as a second paragraph: "Intake systems can also provide benefits in terms of increased water circulation and playing a role in keeping coastal lagoons open to the ocean, resulting in enhanced habitat values. These benefits should be considered when assessing potential impacts." 2. Revise Section 5.2.4 (Water Intake Structures) as follows: a) **Measure No. 1 -** Revise the second sentence to read:

ESSENTIAL FISH HABITAT - PROPOSED AMENDMENTS TO THE COASTAL PELAGIC SPECIES FISHERIES MANAGEMENT PLAN

Issue	Recommended Revision
Water Intake Structures (cont.)	"New d~~D~~ischarge points should be located in areas that have low concentrations of living marine resources, or they should incorporate cooling towers that employ sufficient safeguards to ensure against release of blow-down pollutants into the aquatic environment in concentrations that exceed state and/ or federal limits established pursuant to state and/ or federal NPDES regulations;" b) **Measure No. 2 -** Revise to read: "All intake structures should be designed to minimize ~~prevent~~ entrainment or impingement of prey species. Power plant intake structures should be designed to meet the "best technology available" requirements as developed pursuant to Section 316b of the Clean Water Act." c) **Measure No. 3 -** Revise to read: "Discharge temperatures (both heated and cooled effluent) should comply with applicable temperature limits established pursuant to state and/ or federal NPDES regulations ~~be below the upper range of the thermal tolerance of the biota in the receiving body of water~~." d) **Measure No. 4 -** Delete as follows: ~~"Mitigation should be provided for the loss of fish larvae and eggs that may be entrained by large intake systems as well as the loss or prey organisms."~~
Wastewater Discharge	1. Revise Section 4.2.6 (Wastewater Discharge) as follows: a) Revise the paragraph as follows: "The discharge of point and nonpoint source wastewater from activities including municipal wastewater treatment plants, power generating stations, industrial plants (e.g., pulp mills, desalination plants) and storm drains into open ocean waters, bay or estuarine waters can introduce pollutants detrimental to estuarine and marine habitats. These pollutants include pathogens, nutrients, sediments, heavy metals, oxygen demanding substances, hydrocarbons and other toxics. Historically, wastewater discharges have been one of the largest sources of contaminants into coastal waters. However, non-point source/ stormwater runoff is considered the most significant remaining source of pollution to the coastal areas and ocean. Outfall-related changes in community structure and function, health and abundance may result. Many of the changes can be long-lasting." 2. Revise Section 4.2.6.1 (Adverse Impacts) as follows: a) Revise the first sentence of the first paragraph to read as follows:

ESSENTIAL FISH HABITAT - PROPOSED AMENDMENTS TO THE COASTAL PELAGIC SPECIES FISHERIES MANAGEMENT PLAN

Issue	Recommended Revision
Wastewater Discharge (cont.)	"Wastewater effluent and non-point source/ stormwater discharges may affect the growth and condition of fish associated with ~~wastewater~~ outfalls should high contaminant levels (e.g., chlorinated hydrocarbons; pesticides; herbicides) be discharged." b) Revise the ninth paragraph to read as follows: "The use of biocides (e.g., chlorine; heat treatments) to prevent biofouling or the discharge of brine as a byproduct of desalinization may reduce the suitability of water bodies for populations of fish species and their prey in the general vicinity of the discharge pipe. The impacts of chlorination and heat treatments, if any, are minimized due to their intermittent use and regulation pursuant to state and/ or federal NPDES permit requirements. These compounds may change the chemistry and the physical characteristics of the receiving water at the disposal site by introducing chemical constituents in suspended or dissolved form. In addition to chemical and thermal effects, discharge sites may adversely impact sensitive areas such as emergent marshes, seagrasses, and kelp beds if located improperly." 3. Revise Section 5.2.6 (Wastewater Discharge) as follows: a) **Measure No. 1 -** Revise the second sentence to read: "Discharges should be managed to comply with applicable state and/ or federal NPDES permit requirements, including compliance with applicable technology-based and water quality-based effluent limits. ~~treated using the best available technology, including implementation of up-to-date methodologies for reducing discharges of biocides (e.g., chlorine) and other toxic substances."~~
Discharge of Oil or Release of Hazardous Substances	1. Revise Section 4.2.7.1 (Adverse Impacts) as follows: a) Revise the first sentence in the first paragraph as follows: "Exposure to petroleum products and hazardous substances from spills or other unauthorized releases can have both acute and chronic effects on fish resources and their prey, and also potentially reduce the marketability of target species." 2. Revise Section 5.2.7 (Discharge of Oil or Release of Hazardous Substances) as follows: a) Measure No. 2 - Revise to read: "Each facility should have a "Spill Contingency Plan" and ~~all~~ employees identified in the plan as having responsibility for responding to a spill should receive appropriate training ~~be trained in how to respond to a spill~~. A Spill Contingency Plan(s) developed for another agency can be used to fulfill this measure."

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September 14, 1998

Mr. Jerry Mallet, Chair
Pacific Fishery Management Council
2130 SW 5th Avenue, Suite 224
Portland, OR 97201

Dear Mr. Mallet

I would like to take this opportunity to present the Council with written comments on plan amendments proposed for coastal pelagic species. I am the owner as well as the vice-president of Monterey Fish Company, a wholesale seafood processor located in the Monterey area and I am also a member of the Coastal Pelagic Species Advisory Panel representing processors. Coastal pelagic species, including market squid, Pacific mackerel, sardine and anchovy make up the majority of the fish processed by the Monterey Fish Company. In addition, I own the Seawave, a boat which fishes primarily for coastal pelagic species.

I continue to support federal management of coastal pelagic species (CPS). Further, if the Council chooses to implement a limited entry system for CPS, then I want to go on record with the following:

1. **Target Fleet Size**
The Council should select a fleet size that represents those vessels accountable for a least 99% of total CPS finfish landed during the 5-year window period (January 1, 1993 through November 5, 1997). This percentage will provide for a fleet upwards of 70 boats. The CPS Development Team has recommended a percentage of 95%, which translates to a fleet of about 40 boats. This smaller fleet size is unacceptable. While the Team claims that 40 boats have the capacity to catch all the CPS finfish that is available, they ignore the impact of CPS finfish fishing in conjuction with squid fishing. Squid is a much higher-valued product then CPS finfish. One ton of squid often fetches 6-8 times the amount a ton of CPS finfish would receive. Referring to Table 3.8.7-1 on page B-58 of Draft Amendment 8, only 25% or 10 of the 41 boats that would receive permits land their catch in the Monterey area. Of those 10 boats, only 1 boat (or 3%) did not land any squid during the window period. If squid are abundant and markets exist; the majority of boats landing their catch in Monterey will be fishing for squid instead of CPS finfish. With larger fleet size of at least 70 boats, more boats

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would be apt to stay and fish for finfish. Again, referring to Table 3.8.7-1, at least 11 boats (or 16%) landed less than 10 mt of squid during the windowperiod; which means finfish made up much more of their catch. This larger fleet size provides a mechanism for a continued supply of CPS finfish into the seafood processors in Monterey, maintains necessary product flow to the processing plants, and allows more employment of plant workers.

2. Vessels under Construction

The Council must allow issuance of permits to those vessels under construction or conversion during the window period as long as they meet specific qualifications. Stringent qualification language was drafted that includes:

> "Under Option 2, the owner of a vessel constructed or converted for use in the CPS finfish fishery qualifies for a CPS limited entry permit if the owner:
>
> 1. Submits, along with the application for a permit, receipts showing that $100,000 or more was invested during the window period for purchase or towards the conversion or construction of a vessel with a purse seine net having mesh size 1-3/8 inches or less, power blocks, and a seine winch; and
> 2. Uses the newly constructed or converted vessel before year end of 1999 to land coastal pelagic finfish species."

Precedents for accommodating vessels under construction is found in Amendment 6 to the Pacific Coast Groundfish Fishery Management Plan, which allowed boats that were under construction or conversion during the window period to receive a limited entry permit. In fact, the provisions set forth in the groundfish limited entry system were much more broad than those intended for the CPS fishery.

In any case, I began constructing a vessel in good faith in June of 1997 specifically for utilization in the CPS finfish fishery. This was well before the control date set by the Council of November 5, 1997. I have invested well over $100,000 on the boat under construction and meet the other criteria specified. I also believe that vessels that qualify under this option should be forced to use their boats by a specific date (say 2 years after the end of the window period) to land CPS finfish or their permit will become defunct.

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Thank you for the opportunity to provide the above comments. I hope the Council will seriously consider the major investments that I and others have made in good faith for continued participation in the CPS finfish fishery.

Sincerely,

Sal Tringali

Sal Tringali
Monterey Fish Company
Vice-President

Consolidated Factors, Inc.

" Since 1945 "

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TO: PACIFIC FISHERIES MANAGEMENT COUNCIL ALL COUNCIL MEMBERS	DATE: SEPTEMBER 10, 1998
RE: COASTAL PELAGIC SPECIES	FROM: WARREN K. NOBUSADA

Our Tim Sweeney attended the September 9th hearing in Monterey regarding the CPS draft plan amendments. After meeting with him it is apparent that there is a significant misunderstanding between what myself and many fishermen believed was being drafted by the council and what has taken place. In part I feel much of this is due to either poor or misleading information from CPS advisory subpanel members. I strongly oppose many of the options from which the PFMC will develop a CPS FMP and ask that you consider the following:

1) A lot of time was spent last year in California by the California Fisheries and Seafood Institute, Squid Packers and Squid Fishermen in finalizing the passage of SB364 Sher which funds a 3 year study for squid with a moratorium for the number of boats "only" during this 3 year study period. When Tim Sweeney returned from the PFMC meeting in Seattle in June of this year, he informed me that Squid was included in the CPS management plan. I iniated discussions with CPS advisory panel members Joe Cappuccio and Sal Tringali about the inclusion of Squid in the FMP and was told that while there was discussion about the inclusion of Squid in the plan, they did not feel that this was going to occur. Mr. Sweeney informs me that when he asked about the possibility of removal of Squid from the FMP as even an option for the council to consider, he was informed that, no, that was not an option, and that it was the intention of the PFMC to include Squid in the CPS FMP from the beginning. CONSOLIDATED FACTORS, INC. IS OPPOSED TO SQUID BEING INCLUDED IN THE CPS FMP AS SQUID IS HARVESTED ALMOST EXCLUSIVELY WITHIN CALIFORNIA'S 3 MILE EEZ RATHER THAN IN FEDERAL WATERS AND IS CURRENTLY MANDATED BY STATE LAW TO BE STUDIED AND MANAGED BY THE CALIFORNIA FISH & GAME DEPARTMENT.

2)Anchovy, Mackerel and Sardine are secondary fisheries for boats that fish for Tuna and Squid. The vast majority of vessels qualifying for a CPS finfish permit have the ability and market to harvest Squid or Tuna. Therefore, in years of abundance for Squid and Tuna, along with favorable market conditions, there will be no boats, or very few boats, available to fish for CPS finfish. It would be a shame to have spent so much time and money to research this fishery, manage this fishery, implement quotas, and have little or no fishing effort. Therefore, CONSOLIDATED FACTORS, INC. IS OPPOSED TO LIMITING THE NUMBER OF BOATS IN THE CPS FMP.

3) Any fishery can be managed without limiting the number of participants involved in the fishery. The economics of any fishery will automatically limit the number of boats from year to year. Therefore, CONSOLIDATED FACTORS INC. IS OPPOSED TO LIMITING THE NUMBER OF BOATS IN THE CPS FMP.

Consolidated Factors, Inc.

" Since 1945 "

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4) California currently has limited entry for Dungeness Crabs and Pink Shrimp, both of which have seasons set by the States of California, but no quota. It was perceived by some that limited entry would be advantageous in negotiating ex-vessel price. It has since been realized that price is solely determined by supply and demand. Limited entry management has played no role in improving the economics of the fishery for the participants. Therefore, CONSOLIDATED FACTORS INC. IS AGAINST USING LIMITED ENTRY AS A MEANS OF MANAGING A FISHERY.

5) California's Herring and Salmon fisheries have a State and/or Federal mandated season and/or quota. These fisheries are also subject to State and/or Federal limited entry programs. Due to economic conditions many fishermen who are "licensed" through limited entry to participate in the fishery, have made the decision not to fish and the quotas have not been met. Many young or new fisherman have been denied the right to fish for these species due to limited entry while the resource goes unharvested. Limited entry has not been an effective means of managing these fisheries, only a deterrent to others harvesting the quota. Therefore, CONSOLIDATED FACTORS INC. IS AGAINST USING LIMITED ENTRY AS A MEANS OF MANAGING A FISHERY.

We have been in business over 50 years and have seen changes in all of the coastal fisheries. Further changes are due to come, so management, when needed, should be done effectively. Limited entry is not an ecologically or ecomically effective management method. The State of California has been mandated to conduct a 3 year study of the squid resource. Until the completion of that study, Squid should be removed from any federal management plan. If upon completion of the study it is determined that management is necessary, it should then be determined whether Federal or State Government should manage the fishery and what method(s) are effective. Since Anchovies, Mackerel, and Sardines each have a seperate quota and season, limited entry for participants will not effectively manage the goal of achieving maximum ecologic and economic benefits from these fisheries.

Thank You for reading my comments.

Regards,

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