



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
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Mr. Jim Lone, Chairman
Pacific Fishery Management Council
2130 SW Fifth Avenue, Suite 224
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Dear Jim,

At the March meeting, the Pacific Fishery Management Council (Council) will have its first opportunity to review the draft fishery management plan for highly migratory species fisheries (HMSFMP) and the initial analysis of the management issues in those fisheries. I believe it is important that the National Marine Fisheries Service (NMFS) provide updated information on recent domestic HMS fisheries management that will set the stage for the team presentation on the draft FMP and subsequent Council consideration of options for the FMP, including how to proceed with the FMP.

When the decision was made to develop the FMP, there was no clear and pressing need for consideration of management measures that would immediately go into effect. It was envisioned that the FMP could include some reporting requirements and perhaps some changes in permit requirements, and it would almost certainly establish framework procedures for implementing regulations in the future if new information or conditions warranted it. The FMP also could conceivably incorporate under Magnuson-Stevens Act authority a variety of HMS fishery management regulations currently in effect under other Federal law or State laws and regulations. However, the legal and programmatic environment for the FMP has changed substantially as a result of two (and maybe three) factors:

1. Drift Gillnet Fishery Management - This fishery is managed under a mix of State laws (time/area closures, limited entry, mesh size, logbooks) and Federal regulations (net depth, pingers, observers) under the Marine Mammal Protection Act. As a result of a new Section 7 consultation under the Endangered Species Act (ESA), NMFS is requiring that new restrictions be imposed on the fishery by August 2001. NMFS will promulgate these regulations by that time under the authority of the ESA. However, I would urge the Council to be sure that the draft FMP, when cleared for public review and comment, include an alternative under which the drift gillnet fishery would be managed through the FMP rather than under the anticipated mix of State laws and regulations and Federal regulations under the MMPA and ESA. Consolidating the management program under a single authority should greatly simplify the ability of fishers and managers to adjust to changing conditions in the future.



In addition, the changes being required under the ESA will likely make it very difficult for some fishers to maintain profitable operations. This adds to the feeling on the fleet's part that there should be some form of relief, and a proposal has been made to allow the vessels to fish with longline gear subject to a variety of restrictions, possibly including an experimental fishery process. This is a very contentious proposal, but the drift net fleet owners definitely want the Council to address it in the FMP process. I would strongly encourage that the plan include a full evaluation of the pros and cons of allowing longline fishing in the EEZ so that the final decision can be based on that evaluation.

2. Hawaii Longline Fishery Restrictions - As a result of court actions, a number of restrictive regulations have been promulgated for the Hawaii-based longline fishery. In addition, NMFS prepared and distributed for public comment and hearings a Draft Environmental Impact Statement (DEIS) that reviewed the history and performance of that fishery and analyzed several alternatives for management of the fishery. I believe the Council has received a copy of that DEIS. While final action has not yet been taken, the preferred alternative would further constrain the fishery, including prohibiting a fishing strategy that targets swordfish and setting time/area closures for the fishery. NMFS also is completing a Section 7 consultation to determine if the fishery jeopardizes the continued existence of any species of sea turtle and if conditions should be set for the fishery to ensure that there will be no jeopardy and to mitigate or reduce the potential for interactions. NMFS recognizes that longline fishing in the EEZ, or on the high seas seaward of the EEZ, off the West Coast might not have the exact same impacts on fish and protected species as longlining out of Hawaii. However, NMFS also believes it would be inappropriate to allow fishing by vessels out of the West Coast in times and areas that would be closed to vessels out of Hawaii or using strategies that would not be available to Hawaii-based vessels until further information is available to indicate that the impacts would be different. At the least, the draft FMP should include an alternative that would establish the same measures for West Coast-based longliners as for Hawaii-based longliners. This also would include provisions to minimize interactions with seabirds and to authorize the Regional Administrator to require that observer accommodations be made and to require the use of automated vessel monitoring system units at vessel expense.

3. U.S.-Canada Albacore Treaty - During the scoping process for the FMP, there was sufficient force of recommendations from the public that the Council established a control date for possible use in setting up a limited entry program in the future. Most of the interest came from the troll albacore fishery which is concerned that further restrictions in other fisheries (especially groundfish) might result in vessels shifting into the albacore fishery, possibly adversely affecting present participants and exacerbating marketing problems that have sometimes occurred when catches are too high and markets are flooded with landings. Also of concern was that additional effort could result in lower catch rates for historic participants. A more recent concern, however, is that there has been a dramatic increase in the participation of Canadian vessels in U.S. waters under the Treaty, so much so that the Western Fishboat Owners Association has promoted suspension of the Treaty unless the Canadians agree to some limit on their vessels' fishing in U.S. waters. We have now scheduled a negotiating session with Canadian authorities April 10-11, 2001, in Seattle, to discuss changes in Annex A to the Treaty under which there would be a process for annually determining fleet or fishing limits and to discuss potential limits in 2001.

In discussing the matter with NOAA General Counsel and industry, we have identified a broader issue. That is, there is no statute to implement the Albacore Treaty; thus, there is no statute authorizing NMFS (or anyone else) to issue regulations to carry out the Treaty. Before we can propose legislation, however, we need to consider and agree on how the FMP and Treaty interrelate. We need to consider what kinds of measures would best be handled by different agencies and through different procedures. We will be discussing with industry and General Counsel the manner in which different possible future fishery management measures might be carried out under the FMP or under the Albacore Treaty, or even under laws implementing other future international management agreements (e.g., IATTC). For example, if there were a total allowable catch of north Pacific albacore with an allocation to the U.S., the internal allocation between sectors could be done through the Council as with Pacific halibut; or it could be done by the Secretary of Commerce in consultation with the Council and the member States. Please be assured that the Council will be involved in the discussions. With respect to the FMP, we have no immediate recommendations, but we will be working with the plan team and your staff to provide some alternatives for discussion in the draft.

One consequence of the changes in circumstances is that the Council will likely have to address with immediate HMS fishery management regulation issues in final action on the FMP later this year. It will probably not be sufficient to simply leave in place existing State or Federal regulations (under other authorities) or simply defer to State regulations. NMFS is aware that this means more time will be needed to compile information and analyze the options for management. Indeed, it is recognized that there is a lack of information to support some analyses, especially with respect to consideration of the impacts of allowing the West Coast based longline fishery to be active in the EEZ while at the same time restricting its activities on the high seas.

The Southwest Region also is aware that the increasing pressure to immediately establish management measures increases the need for Council resources to be directed to HMS fishery management and related issues. The need for complete NEPA analysis is clearly a critical issue. We will do everything we can to support the Council in this process, and we are looking to the possibility of a supplemental cooperative agreement under which the Council would administer the plan development process (e.g., team and advisors' travel, printing, and other logistics). This could be in addition to NMFS funds that might be provided to the Council to assist in meeting NEPA analytical requirements generally. I am optimistic this can be achieved fairly soon.

Finally, I want to acknowledge that the Council has participated in past discussions with NMFS and other Pacific area fishery management councils about the need for coordination of management. The issues noted with respect to the longline fishery testify to the need for that coordination. In that respect, I have had informal discussions with Western Pacific Fishery Management Council members and staff and I am optimistic that we can arrange to resume discussions in the near future. I believe the draft FMP will provide a catalyst to launch discussions. I will work with you and your Executive Director to see when discussions might resume.

In summary, I appreciate the Council's dedication to developing a solid and comprehensive HMS FMP and pledge the Agency's support in that process. The Southwest Region views this as one of the Council's most complex fisheries with serious management issues and we are committed to helping establish a sound management framework to conserve the species to the extent practicable and to maintain or enhance the fisheries on these species.

Sincerely,



Rebecca Lent, Ph.D.
Regional Administrator

- cc:
- F/SWC - Tillman
- GCSW - Feder
- F/NWR - Robinson
- GCNW - Cooney
- WPFMC-Simonds
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