



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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PFMC

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Scott B. Gudes
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Room 6121, SP
14th and Constitution, NW
Washington, DC 20230

Donald McIsaac
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

Dear Mr. Gudes and Mr. McIsaac:

The Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement for the project entitled **Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (CEQ #020018)**. 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 National Marine Fisheries Service (NMFS) and the Pacific Fishery Management Council (PFMC) have conducted a comprehensive review of the fishery for highly migratory species (HMS) within the Exclusive Economic Zone (EEZ) off the states of Washington, Oregon, and California in the eastern Pacific Ocean. NMFS and PFMC propose to approve and implement an HMS Fishery Management Plan (FMP) for this zone in order to manage HMS fisheries in a sustainable manner, resolve inconsistencies in state regulations, and provide a consistent mechanism for addressing fishery management needs. The FMP would manage several species of tuna and sharks, striped marlin, swordfish, and dorado for both commercial and recreational fisheries. The DEIS evaluated two broad alternatives -- no action and adoption of the proposed FMP. However, for each proposed management action under the FMP, several alternatives were evaluated. The proposed FMP includes 20 preferred actions related to the decision making process, oversight/permitting, area closures, reporting requirements, harvest guidelines, bycatch reduction, prohibition on harvesting or selling certain species, and gear restrictions.

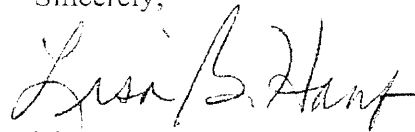
EPA commends the comprehensive approach taken by NMFS and PFMC to analyze management options for the fishery. The DEIS is well written, and the use of "sidebars" in the Executive Summary to provide information or anecdotes is a great way to illustrate the issues

associated with the HMS fishery. The framework approach for managing the fishery is progressive, and provides opportunity to adaptively manage the resources. Also, the DEIS recognizes the need for regional and international consistency to better conserve HMS species, and the importance of addressing information/research gaps. EPA strongly advocates an approach which addresses the entire ecosystem, managing for sustainable fisheries and naturally functioning systems. We are pleased that the FMP takes this approach. We also recognize that scientific information available to decision makers regarding the HMS fisheries is lacking, and recommend management alternatives which take a conservative approach to fishing practices.

Although EPA supports your efforts to comprehensively evaluate the HMS fishery ecosystem, we have several unresolved concerns about impacts of proposed actions due to a lack of information in the DEIS. As such, we have rated this DEIS as category EC-2, Environmental Concerns - Insufficient Information (see attached "Summary of EPA Rating System). In particular, the DEIS lacks information on alternatives for addressing bycatch in the fishery, the pros and cons of different mesh sizes for the drift gillnet fishery, Endangered Species Act coordination, and actions which would address the identified research needs for effectively managing HMS and their habitat.

We appreciate the opportunity to review this DEIS. Detailed comments are attached. Please send two copies of the Final EIS to this office and EPA's Region 10 office (attn: Chris Gebhardt, 1200 6th Avenue, Seattle, WA 98101) at the same time it is officially filed with our Washington D.C. Office. If you have any questions, or wish to discuss our comments, please call Ms. Shanna Draheim, of my staff at (415) 972-3851.

Sincerely,



Lisa B. Hanf, Manager
Federal Activities Office

Enclosures: Detailed comments
EPA Rating Sheet

cc: Svein Fougner, National Marine Fisheries Service
Jim Morgan, National Marine Fisheries Service
Chris Gebhardt, EPA Region 10

Bycatch of fish

The Magnuson-Stevens Act requires that fishery conservation and management measures should minimize bycatch and mortality of bycatch that cannot be avoided. The DEIS provides a substantive background discussion on bycatch in the Highly Migratory Species (HMS) fishery in the eastern Pacific Ocean Exclusive Economic Zone (EEZ). The document states that one quarter of the total world catch by commercial fishing operations is discarded annually, and that there are limited number of options for reducing bycatch in HMS fisheries. The draft Fishery Management Plan (FMP) proposes a catch and release program for recreational fisheries and some limited gear and fishing area restrictions to reduce bycatch in the HMS fishery, but the potential effectiveness of these measures in reducing bycatch is not discussed.

However, none of the proposed FMP actions addresses bycatch related to fishing on seamounts (floating objects) primarily associated with the large tuna purse seine fishery. The increasingly popular technique of fishing on seamounts is associated with some of highest rates of bycatch of non-target or juvenile species. The DEIS states that this is an issue of growing concern to the international fishery management community. The document does not provide any information on techniques or restrictions for fishing on or around seamounts that could be included to address the issue of bycatch. Have other fishery management plans addressed this issue? Are there any additional alternatives which might restrict use of this fishing technique, or at least reduce its associated bycatch?

- ▶ *Recommendation: The Final Environmental Impact Statement (FEIS) should provide further information on the estimated effectiveness of the proposed management actions in reducing bycatch. The document should also include information on how bycatch rates will be monitored and evaluated under the new FMP. Finally, the FEIS should specifically address the issue of bycatch associated with fishing on seamounts, and evaluate actions which might reduce the level of bycatch associated with this technique.*

Endangered Species

The DEIS provides a substantive discussion of the potential interactions of HMS fisheries and protected species -- those listed as threatened and endangered under the Endangered Species Act (ESA) or protected under the Marine Mammal Protection Act (MMPA). The document describes previous analyses of impacts for the drift gillnet, purse seine, and longline fisheries, and ESA Section 7 consultation activities. Biological Opinions were previously issued for the drift gillnet fishery, purse seine fishery and longline fishery (in the western pacific). Several of the reasonable and prudent alternatives identified in these previous consultations for minimizing the impacts to endangered species are incorporated into this FMP.

However, according to the DEIS, several of the proposed actions under the draft FMP could still have impacts on endangered species. While Biological Opinions have been issued in the past for three of the HMS fisheries (longline, purse seine, and drift gillnet), it is not clear whether NMFS/PFMC would need to initiate informal or formal consultation under Section 7 of the ESA for the adoption of the comprehensive FMP. Does the current FMP adequately incorporate all of the reasonable and prudent alternatives previously identified for these fisheries? Are there new concerns regarding interactions with endangered species under the FMP that have not been addressed by previous Section 7 consultations?

- ▶ *Recommendation: The FEIS should clarify the status of informal or formal consultation requirements under Section 7 of the ESA for the adoption of this FMP.*

Drift Gillnet Gear - Mesh Size Requirements

The DEIS states that the draft FMP offers two options for the legal definition of drift gillnet gear: 1) minimum mesh size of 14 inches, and 2) no mesh size restrictions. Some vessels are currently using nets with mesh smaller than 14 inches to target bluefin and albacore tuna. According to the DEIS, there is concern that this smaller mesh might have a negative impact on HMS fish stocks and other species because it results in more catch of juveniles and increases interactions with endangered species.

- ▶ *Recommendation: EPA encourages NMFS/PFMC to provide further discussion in the FEIS of the benefits and drawbacks of both mesh size options. If exploitation of juveniles could result in overfishing (with bigeye tuna, for example), EPA recommends the final FMP adopt a minimum mesh size of 14 inches.*

Lack of Research Actions in the Preferred Alternative

The DEIS acknowledges there is a lack of scientific information available about target HMS species and other related species in this ecosystem. The document identifies numerous research needs and information gaps which are important for understanding the sustainability of the fishery. Obtaining better scientific information is an important step in moving fishery management toward a more ecosystemic approach, and EPA is pleased with the substantive discussion of research needs. However, with the exception of increased reporting/monitoring of fishing effort, the DEIS does not discuss whether the FMP will include specific management measures which would help address this lack of scientific information. Increased reporting and monitoring would provide additional information on catch rates, species interactions, and gear effectiveness, but it would not provide needed information on the importance of essential fish habitat, population biology of target, protected and other keystone species, or environmental conditions which impact fisheries. No plans or funding for scientific research studies are included in the FMP, nor are schedules for regularly assessing and interpreting the data from logbooks and observer coverage provided. Also, the FMP does not include specific measures or goals for improving reporting by the fishing community or increasing the number of observers. These measures would help better inform decision making and management of the HMS fishery.

- ▶ *Recommendation: The FEIS should include specific actions under the FMP for improving scientific understanding of HMS fisheries and their habitat, such as research programs, experimental fisheries, improved reporting and monitoring, plans for assessing/interpreting the data from reporting and monitoring efforts.*

Miscellaneous Issues

Description of alternatives and environmental impacts

The DEIS is combined with a draft FMP, meeting requirements under both the Magnuson-Stevens Act and the National Environmental Policy Act. While the document is very comprehensive, the discussion of alternatives and associated environmental impacts in the document can sometimes be difficult to follow. Specifics on preferred FMP components and their impacts are discussed in several places in the document, and they are not always presented in a consistent manner. It requires the reader to continually cross-reference different sections of the document to piece together some of the issues.

- ▶ *Recommendation: In order to better meet the spirit of public disclosure of impacts under NEPA, the FEIS should provide a clear overview of all of the alternative FMP actions and potential impacts to relevant resources. An effective way to present this information would be to include a table or matrix which lists all of the proposed actions and alternatives on one axis and briefly identifies the associated environmental impacts along the other axis. This would give an overview of all the proposed actions, and offer a quick comparison of the different environmental impacts associated with each action and the entire FMP.*

Treaty Indian Fishing Rights

EPA is pleased that the FMP accommodates treaty Indian fishing rights, and provides a thorough background discussion on why treaty Indian fishing rights apply to HMS species that pass through coastal tribes' usual and accustomed grounds. However, the discussion of alternative ways to incorporate treaty Indian fishing rights into the FMP is somewhat confusing. The preferred action and Alternative 2 seem very similar. On what points do they differ? The preferred action states that it would be modeled on the coastal pelagic species fisheries regulations at 50 CFR Part 660.518. However, no description of that process or summary of the coastal pelagic species fisheries regulations is provided. As noted above, it is difficult to evaluate and compare the alternatives in the DEIS.

- ▶ *Recommendation: The FEIS should clarify how treaty Indian fishing rights will be incorporated into the FMP under the preferred action.*

Shark Finning

EPA is very pleased that the DEIS/FMP recognizes recent federal law which prohibits the finning of sharks as a necessary means to conserve the species and ensure full utilization of harvested species.

International Coordination

The DEIS states that HMS fishing by U.S. vessels or vessels landing in the U.S. make up a very small portion of the international HMS fishery. The document correctly acknowledges that international conservation of HMS species is a special problem requiring international cooperation. Specific examples of U.S. participation in international fishery management organizations, adoption of international treaties, or bi-lateral efforts to manage HMS fisheries are provided in the DEIS. Additional information on nations which have contributed to the exploitation of HMS stocks, and those which have helped coordinate international management of HMS species would provide a better understanding of the U.S.' efforts and ability to conserve HMS species relative to the international community.

- ▶ *Recommendation: If available, the FEIS should provide further information on risks to HMS sustainability from international fishing practices. In particular, provide information on where coordination efforts have or have not been successful in cooperatively managing fisheries.*

Coordination with Northern Pacific Council

The DEIS states that the North Pacific Fisheries Management Council (NPFMC) does not currently have an FMP for HMS. Given the nature of this fishery -- highly migratory species -- it is important that fishery management councils in the U.S. (and internationally) coordinate efforts to manage similar resources. EPA encourages a consistent approach among Councils which are managing the same resource.

- ▶ *Recommendation: The FEIS should address whether PFMC is coordinating with the NPFMC to develop an HMS FMP for that region, and how the two Councils will ensure consistent management of HMS fisheries*