



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE

Southwest Region  
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Mr. Hans Radtke, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

Dear Hans,

I am pleased to provide the Pacific Fishery Management Council (Council) with National Marine Fisheries Service (NMFS) comments on the draft Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP).

I appreciate all the work that the Council's plan development team has done with Council and NMFS staff and an outside contractor to complete the draft HMS FMP. NMFS believes the HMS FMP is warranted and that the overall approach of the HMS FMP is sound. NMFS also believes that the Council has generally used National Environmental Policy Act (NEPA) principles and processes effectively to compile and present the information and analyses needed for decision making. The following comments address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for fishery management plans and the requirements of other applicable law. NMFS will separately provide detailed comments suggesting editorial changes that we think would improve the HMS FMP. At the end of the comments on the HMS FMP, I will suggest an approach by which the Council can make final decisions with all required information in front of it, consistent with the Regulatory Streamlining Program on which NMFS and the fishery management councils have been collaborating for the past several months. In this connection, I must note that several important NEPA requirements relative to environmental impact statements need to be met. Southwest Region staff will work with the plan team and Council staff to address these aspects if the Council agrees with the approach I propose.

Comments

1. Maximum Sustainable Yield (MSY) Specifications for Management Unit Species

Section 303(a)(3) requires that a fishery management plan "assess and specify ... the maximum sustainable yield" (MSY) from the

fishery. The draft HMS FMP does not present MSY estimates nor MSY proxies for pelagic and bigeye thresher shark or for dorado (dolphinfish). It is noted that the principal reasons for including these species in the management unit is either their relative vulnerability (sharks) or the increasing frequency and importance in the catch (dorado in recreational fishing) and the desire to emphasize the consequent need for close monitoring. While NMFS appreciates these objectives, NMFS believes they can be achieved by emphasizing the need for effective data collection and monitoring of all species taken in the fisheries while retaining in the active management unit only those species for which MSYs or proxies can be specified at this point.

## 2. Essential Fish Habitat

Section 303(a)(7) of the Magnuson-Stevens Act requires that an FMP "describe and identify essential fish habitat" (EFH) based on guidelines of the Secretary. NMFS recently published its final guidelines for identification and specification of EFH (see 67 FR 2343), effective February 19, 2002. Therefore, when the final version of the HMS FMP is submitted for approval, the EFH sections will be reviewed against those guidelines. This poses two problems. First, the references in the draft HMS FMP to the guidelines will need to be updated. Southwest Region staff are committed to helping in this step. Second, some of the provisions affect the manner in which EFH must be described. For example, the final guidelines call for EFH to be geographically referenced and static. Therefore, they should not normally be made on a seasonal or yearly basis, for example, as is proposed for certain waters utilized by sharks. If the Council proposes to designate EFH in this manner, the reasons for departure from the guidelines must be very clear and convincing. In addition, the draft HMS FMP contains maps with the draft EFH designations but the maps are very hard to read as presented in the draft document. Again, Southwest Regional staff can work with the Council's plan team to refine the EFH proposals and presentation to be consistent with the new guidelines.

A more substantive difficulty is that there is little or no analysis of the alternatives for EFH either in Chapter 4 or Chapter 9. The analysis of the effects of the proposed alternative is simply a list of factors or issues that the EFH designation would not affect or relate to. It is important to evaluate how the different EFH designation alternatives would conserve and enhance EFH and how the designations of EFH might affect the fisheries differently. In this context, an evaluation of fishery impacts on EFH is necessary as well. While HMS fisheries may be viewed as generally not affecting EFH, there are ways in which the fisheries could affect EFH, for example, through the impacts of lost fishing gear on EFH components. A

more rigorous analysis of this aspect is needed.

Also, NMFS believes more attention could be given to the potential for designating habitat areas of particular concern (HAPC) in the FMP. HAPC is an important issue as it helps focus consultations concerning EFH. It would be helpful to indicate the kinds of information needed to follow through in determining if certain EFH components (e.g., bays and shallow coastal areas) may warrant HAPC designation through the framework process in the future. The Southwest Region offers to work with the plan team to address this as well.

### 3. Bycatch

Section 303(a)(11) of the Magnuson-Stevens Act requires that a FMP include a standardized reporting methodology to assess the amount and type of bycatch in the fishery. While the draft FMP alludes in different sections to data collection and reporting elements that could meet this requirement, they are not presented in a manner that ensures that this requirement is fully addressed. For example, the draft HMS FMP would authorize NMFS to require a vessel to carry an observer and would require completion of fishing logs, but it is not clear how or whether these together would suffice to ensure reliable assessments of bycatch. NMFS in other forums has acknowledged that direct fishery logbook reports are not likely to be sufficient for bycatch assessment and has developed observer programs in many fisheries with the intent of collecting reliable data on bycatch as well as protected species interactions. The final HMS FMP should contain additional information or details about (a) the different elements of the overall data collection and reporting system; (b) how the different pieces fit together; and (c) estimates of the level of coverage (e.g., X percent of all trips) needed to provide reliable bycatch data in the different fishery sectors. NMFS will then have a sound basis for judging the adequacy of the Council's recommendations and for seeking the necessary resources to carry out approved recommendations. NMFS will work with the plan team to provide information on our experience with different observer levels and the costs of current observer programs.

The same section of the Magnuson-Stevens Act also requires an FMP to include conservation and management measures that to the extent practicable will minimize bycatch and minimize the mortality of unavoidable bycatch. Chapter 6 presents historic information about bycatch in the different fisheries and an occasional comment about the difficulty in reducing bycatch due to the nature of much of the gear used. However, each fishing sector is not reviewed systematically in terms of how fishing gear (e.g., mesh size) or practices (e.g., seasonal adjustments)

could possibly be changed to reduce bycatch or minimize bycatch mortality without substantial adverse impacts on the fisheries. A more rigorous review is necessary.

A preferred alternative in the draft HMS FMP is to establish a voluntary catch and release program for recreational fishing so that released fish will not be designated as bycatch. NMFS supports the concept but it is necessary to describe more completely how this would work and why it is thought that a voluntary program would work to reduce bycatch or bycatch mortality in the context of West Coast recreational fishing for HMS. The draft HMS FMP presents the context for the program in terms of the experience on the Atlantic; but the Atlantic and West Coast situations are not identical and may not even be similar. This needs further discussion and analysis. It would help to ensure that any incidental mortality associated with release of recreationally caught fish be fully considered and that a method to collect data on the effects and effectiveness of the program be described. Alternative approaches to reduce bycatch and bycatch mortality in the recreational fisheries should also be discussed.

#### 4. Responding to Overfishing/Overfished Stocks Determinations

Section 304(e) of the Magnuson-Stevens Act presents the requirements for rebuilding plans for fisheries that are overfished or approaching a condition of being overfished. Section 8.2 of the draft HMS FMP presents language that attempts to address these requirements. However, that language is flawed and NMFS proposes alternative language (see enclosure 1).

#### 5. Monitoring and Compliance

While the preferred alternative is to apply to West Coast-based longline fishing vessels the same management and conservation measures as apply to Western Pacific longline limited entry permitted vessels for sea turtle protection and seabird interaction avoidance, it is not clear if this includes a requirement that West Coast vessels be equipped with vessel monitoring system (VMS) units. NMFS urges the Council to be clear on this point. NMFS notes that many if not most of the West Coast longline vessels shifted here from Hawaii and have VMS units on board, so including this requirement would not add substantially to the cost of compliance for most vessels. NMFS can provide current cost information for the FMP. If the Council requires VMS units for the longline fishery, NMFS is prepared to cover the cost of the units and messaging costs as we have found that VMS greatly enhances the enforceability of the regulations at very low cost. This would treat West Coast vessels equitably in relation to western Pacific-based vessels, for which NMFS has

covered VMS costs. However, it will be up to the Council to determine how or whether to apply the VMS requirement to West Coast longline vessels, and the final FMP will have to present the supporting rationale.

Section 303(a)(5) requires an FMP to specify the pertinent data which shall be submitted to the Secretary of Commerce (Secretary). The draft HMS FMP indicates that logbooks will be required for commercial fishing vessels but does not indicate the data to be collected through those forms. NMFS recognizes that, in some cases, the regulations implementing FMPs only indicate the requirement that fishers provide data using logbook forms provided by the Secretary. However, the FMP itself should more completely discuss the data that would be reported on the logs, possibly with a qualifier at the end that indicates "and such other data as the Secretary determines necessary." NMFS will provide copies of current logbook forms to provide the Council plan team with the initial listing of data elements now being reported and any changes proposed. In this context, note that NMFS recommends that the format of the Western Pacific longline logbook be used rather than the NMFS High Seas Fishing Compliance Act logbook now being completed by West Coast-based longline vessels.

#### 6. Continuation of Applicability of State Regulations

It is unclear whether the Council intends that certain State regulations that now govern the fisheries should remain in effect and are consistent with the FMP. We know from other instances that silence in Federal FMPs and regulations can result in very difficult enforcement issues for State management measures. NMFS urges the Council to be clear and explicit about which State regulations are intended to be continued or are endorsed by the Council as consistent with the FMP, and which are not. To the extent Federal regulations would be needed to effect this end, they should be recommended by the Council with the appropriate rationale. I understand that the State of California will be prepared to speak to this matter.

#### 7. Protected Species Interactions

NMFS appreciates the intent of the Council to ensure that protected species interactions be avoided to the extent necessary under other applicable law. The application of the western Pacific sea turtle and seabird conservation and management measures to West Coast longline vessels would fill an important gap, and maintaining the protections provided by the current drift gillnet regulations would continue a program that has proven effective. In this context, however, NMFS has two suggestions:

(a) That objective 17 be revised to read something like:

"To manage the fisheries to prevent adverse effects on any protected species and promote the recovery of any species listed under the ESA to the extent practicable"; and

(b) That the 6<sup>th</sup> bullet point in the framework procedures listing reasons for considering action (see 8.3.4.2, Ch. 8, p. 7) be revised to read,

"To reduce adverse effects of fisheries on protected resources and promote the recovery of any species listed under the ESA;".

These changes would make the FMP somewhat more proactive relative to protected species conservation and restoration. Changing this language does not have a large substantive effect. However, it provides a more positive tone and, among other things, recognizes the obligation of Federal agencies to use their authorities to further the purposes of the ESA as appropriate.

In the context of protected resources interactions, the provisions in the current text of the proposed rule governing western Pacific longline fishing vessels are listed in Enclosure 2 so that all the provisions in the HMS FMP can be current. I must point out that the regulations governing western Pacific longline vessels may change in the near future, and I will provide updated information as appropriate. Because the framework procedures allow for adjustment of West Coast regulations as appropriate to reflect changes in other area regulations or to respond to new problems related to protected species, this should not pose a problem for the HMS FMP.

## 8. Other Specifications under Magnuson-Stevens Act

Section 303(a)(4) of the Magnuson-Stevens Act requires specifications of domestic annual harvest, domestic annual processing, joint venture potentials and total allowable level of foreign fishing (if any). The draft FMP does not provide these except in the most general sense. More explicit discussion and specifications will be needed in the final FMP.

## 9. Exempted Fishing Permits

The draft HMS FMP indicates that the Council will rely on the NMFS regulations to govern application for and action on applications for exempted fishing permits (EFPs). NMFS is comfortable with this approach. However, NMFS recommends that the "Proposed Action" be presented as "Authorize NMFS to issue EFPs consistent with NMFS regulations and procedures at 50 CFR 600.745." This would eliminate any uncertainty about what is

proposed.

#### 10. Incidental Catch Allowance

The FMP needs to be clear as to the incidental catch level to be permitted and the facts and rationale for that level.

#### 11. Management Cycle

Further analysis of the rationale for a management cycle is needed. It is not clear what is gained by having a management cycle at all or why a two-year cycle is better than a one-year or a longer cycle.

#### 12. Costs of Management

Section 303(a)(2) of the Magnuson-Stevens Act requires that a FMP include the cost likely to be incurred with management. Additional information is required on this aspect.

#### Final Action on the FMP

As the Council is aware, there is considerable difficulty in meeting the documentation requirements of "other applicable law" in the same time frame as the development of the FMP and its adoption by the Council for submission for approval and implementation. For example, consultations required under Section 7 of the Endangered Species Act (ESA) are essentially tied to the actual rulemaking process; similarly, the Regulatory Flexibility Analysis is tied to proposed and final rules. At the same time, while NMFS has ultimate responsibility for filing an Final Environmental Impact Statement (FEIS), we believe that the Council has a strong role in meeting that responsibility. In this context, NMFS would like to do everything possible to make sure that all the required information will be available to the Council in near final form at the time of final decisions even if not necessarily having a final Biological Opinion or regulatory flexibility analysis. This is consistent with the principles of the Regulatory Streamlining Project as I noted above.

However, given the nature of the comments above and recognizing that there will be many other comments that will demonstrate a need for adjustments in the final language for the FMP to be ultimately submitted for review and approval, I recommend the following approach and timing for action on the FMP:

1. In March, the Council will consider public comments received, the comments from NMFS and other agencies, comments from the Council family, and such other new information as may be provided at the Council meeting. The Council will, in my view, be able to

make provisional final decisions on most substantive components of the FMP with the information before it at that time. However, I also expect that there will be some issues on which the Council will want additional information or analysis before a final decision. It also will be clear that revisions in the actual text for the final FMP will be needed before the FMP can be submitted. The Council could give direction to the plan team to work with NMFS and the contractor on these specific items as well as helping to ensure that, to the extent practicable, the Council will have all relevant information before it for final decisions.

2. In the period between March and June, the Council plan team would work with NMFS and the consultant to complete any needed additional analyses, revise the draft FMP consistent with the provisional decisions in March, and prepare the FEIS based on those decision. NMFS would assist to ensure that all required elements of the Regulatory Flexibility Act and Executive Order 13258 (which recently amended E.O. 12866) are met in the final documentation. NMFS also would complete draft regulations. This would ensure that the requirements for a Fishery Impact Statement (Section 303(a)(9)) also are met. NMFS, the plan team and the contractor would collaborate to prepare a "comments and responses" section for the FEIS. NMFS should then have relatively little difficulty clearing and filing the FEIS consistent with NEPA and making any necessary determinations or certifications under other requirements.

3. In June, the Council would take action on any holdover items. The Council and the public also would have an opportunity to review the final draft FMP and the draft regulations and any other documents prepared between March and June. This is not intended to repeat discussions on past actions but ensure that the information and analyses are complete so that the Council and the public all have a common understanding of the basis and rationale for the actions with virtually final language in front of the Council.

I believe this approach provides for timely and orderly decision making in a completely open manner. There are no critical management problems that require a faster decision process. This approach also should reduce the potential for successful legal challenge on procedural grounds.

Regional staff will separately provide additional editorial recommendations for consideration of the plan team in preparing the final documents.

In closing, I would like to again compliment the Council for the hard work in producing this high quality draft HMS FMP. NMFS believes that the Council is very close to completion of a final



approvable FMP that will move us all closer to effective and coordinated conservation and management of the U.S. fisheries for HMS in the Pacific consistent with the Magnuson-Stevens Act and other applicable law. I look forward to working with the Council to complete the documentation and processing of the FMP and regulations.

Sincerely,

*Rock*

Rodney R. McInnis  
Acting Regional Administrator

Enclosures

cc:

F/SF - Dunnigan  
F/PR - Knowles  
F/HC - Schmitt  
F/SWC - Tillman  
F/NWR - Robinson  
F/NWC - Varanasi  
GCSW - Feder  
GCNW - Cooney

Enclosure 1 - Substitute Language re: Overfished Stocks

If NMFS notifies the Council that a stock managed under an international agreement is overfished or is approaching a condition of being overfished, the Council may, in connection with preparing a rebuilding plan pursuant to the Magnuson-Stevens Act at 16 U.S.C. § 1854(e) and 50 CFR 600.310(e), provide analysis and documentation to NMFS and the Department of State supporting its recommendation for action under that international agreement to end or prevent overfishing. It is expected that the Department of State and U.S. delegation, in coordination with NMFS, will consider the Council's recommendation in developing U.S. positions for presentation to the international body, and will keep the Council informed of actions by the international body to end or prevent overfishing. These actions will be taken into account by the Council in completing its rebuilding plan and in developing its recommendation to NMFS as to what additional U.S. regulations, if any, may be necessary to end or prevent overfishing.

Enclosure 2 - Provisions in Proposed Rule for Western Pacific  
Longline

The rule would permanently implement the following restrictions governing the owners and operators of all vessels registered for use under either a Hawaii longline limited access permit or a longline general permit (longline vessels): (a) Prohibit longline vessels from using longline gear to target swordfish north of the equator; (b) require longline gear to be deployed such that the deepest point of the main longline between any 2 floats, (i.e., the deepest point in each sag of the main line), is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface when fishing north of the equator; (c) require that a minimum of 15 branch lines are used between any 2 floats on vessels using monofilament gear when fishing north of the equator; (d) require that a minimum of 10 branch lines are deployed between any 2 floats on vessels using basket-style longline gear when fishing north of the equator; (e) require that longline vessel operators possess and employ float lines of at least 20 m (65.6 ft) to suspend the mainline beneath any float on fishing trips north of the equator; (f) prohibit possession of a lightstick on board a longline vessel on fishing trips north of the equator; (g) prohibit the landing or possessing of more than 10 swordfish per trip by longline vessels fishing north of the equator; (h) prohibit fishing by longline vessels from April 1 through May 31 in the area bounded on the south by the equator,

on the west by 180° long., on the east by 145° W. long., and on the north by 15° N. lat.; (i) allow the processing of applications for the re-registration of a vessel that has been de-registered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October and require that applications must be received or post-marked between September 15 and October 15 to allow sufficient time for processing; and (j) require operators of longline vessels to annually attend a protected species workshop conducted by NMFS. This proposed rule would use slightly different wording from the current emergency rule in place for the requirement (see § 660.33(b)) that float lines used to suspend the mainline beneath floats be longer than 20 m (65.6 ft) when longlining north of the equator. The revision is intended to help vessel operators understand that they may not maintain on board the vessel multiple shorter float lines and claim the lines will be fastened together to form a line exceeding 20 m when or if deployed. The revised wording clarifies that the restriction applies not just to float lines when actually deployed, but also to float lines that are merely possessed on board a permitted vessel. Also, the prohibition on the use of lightsticks would be clarified to mean any type of light emitting device, including any fluorescent "glow bead," chemical, or electrically powered light that is affixed underwater to the longline gear.

This proposed rule would also: (k) Require gear retrieval to cease if a sea turtle is discovered hooked or entangled on a longline during gear retrieval, until the turtle has been removed from the gear or brought onto the vessel's deck; (l) require operators of all "large" longline vessels (those with a working platform 3 ft (0.9 m) or more above the sea surface) to, if practicable, use a dip net meeting NMFS' specifications as prescribed in 50 CFR 660.32 to hoist a sea turtle onto the deck to facilitate the removal of the hook or to revive a comatose sea turtle. Operators of all "small" longline vessels (those with a working platform less than 3 ft (0.9 m) above the sea surface) would be required to, if practicable, ease a sea turtle onto the deck by grasping its carapace (shell) or flippers.

In addition, the operators of all longline, and non-longline pelagic fishing vessels fishing with hooks within EEZ waters of the western Pacific region, would be required to: (m) Carry and use line-clippers to cut fishing line from hooked or entangled sea turtles. Operators of "large" vessels (those with working platforms more than 3 ft (0.9 m) above the sea surface) would be required to use line clippers meeting NMFS' performance standard as prescribed in 50 CFR 660.32. Operators of "small" vessels (those with working platforms 3 ft (0.9 m) or less above the sea surface) could carry and use either a line cutter that meets NMFS' performance standard, or one that is more appropriate to

the size and configuration of the fishing vessel, but in either case this line clipper must be capable of cutting the vessel's fishing line or leader within approximately 1 ft of the eye of an embedded hook; (n) carry and use wire or bolt cutters capable of cutting through fishing hooks to facilitate cutting of hooks embedded in sea turtles; (o) remove all hooks from sea turtles as quickly and carefully as possible; however, if a hook cannot be removed, cut the line as close to the hook as possible; (p) handle all incidentally taken sea turtles brought aboard for dehooking and/or disentanglement in a manner to minimize injury and promote post-hooking survival. If a sea turtle is too large or hooked in such a manner to preclude safe boarding without causing further damage/injury to the turtle, use line-clippers to clip the line and remove as much line as possible prior to releasing the turtle; and (q) where practicable, bring comatose sea turtles on board the vessel and perform resuscitation as prescribed in 50 CFR 223.206 (d) (1), 660.22, and 660.32.

This proposed rule would define Basket-style longline gear as a type of longline gear that is divided into units called "baskets" each consisting of a segment of mainline to which 10 or more branch lines with hooks are spliced. The lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater (50 CFR 660.12).