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March 4, 2002

Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220

Dear Dr. McIsaac:

National Audubon Society respectfully submits these comments on the draft fishery management plan (FMP) for highly migratory species (HMS) in United States (US) Pacific waters off the West Coast. We have chosen to comment on a selection of proposed actions that we feel are the most critical decisions to maximize conservation benefit and effective management of the plan. From this selection, we stress the following four points:

1. The US should take unilateral action to adopt the HMS FMP for U.S. Pacific waters to manage and conserve these species, as well as fulfill legal obligations.
2. Pelagic longline gear should be excluded from the exclusive economic zone (EEZ) of the US Pacific Coast to reduce wasteful bycatch.
3. Precautionary quotas should be set for all species included in the plan to prevent overfishing.
4. A statistically significant level of observer coverage should be mandated to increase compliance with regulations and to validate logbooks.

Mr. Eric Gilman, also with Audubon, will submit additional comments on the draft FMP, specifically pertaining to seabirds, on behalf of our organization.

Please consider our detailed comments below, addressed in the order they appear in the plan.

## **8.2. Support Unilateral Management.**

Audubon fully supports unilateral US management as a first step toward coordinated international management of Pacific HMS. The Magnuson-Stevens Act (MSA) mandates that councils shall develop a fishery management plan for each fishery under its authority that requires conservation and management. This language leaves no discretion for the council not to develop an FMP based upon a lack of international management. The MSA also mandates that the regional councils are responsible for developing rebuilding plans for those stocks that are declared overfished in their area of jurisdiction. This FMP is a necessary first step in preventing overfishing, and thus obviating the need for development of a rebuilding plan; however, it also

lays the groundwork for development of a rebuilding plan should one become necessary. A domestic FMP is also needed because HMS fisheries in the Pacific Council region affect species listed on or protected by the Endangered Species Act, Marine Mammal Protection Act, and Migratory Bird Treaty Act. The Plan would also help to fulfill obligations under the US National Plans of Action for the Conservation and Management of Sharks and for the Reduction of Incidental Catch of Seabirds in Longline Fisheries.

Additionally, many of the fish covered by the plan may spend the majority of their lives in US waters and would benefit from greater protection, even if not over their entire range. Some species may even have population structure such that a unique genetic unit exists only in US waters. Regardless, protection for Pacific HMS as per the HMS FMP is likely to improve the future of these fisheries.

US action could also serve to spearhead the formation of an international, basin-wide management plan. The US has had a leadership role in the management of highly migratory species and should set yet another precedent by taking the initiative in the Pacific. Should a Pacific-wide plan be developed, the FMP could also guide the implementation of our responsibilities under the recently ratified United Nations Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Agreement).

#### **8.3.1. Recommend Alternative 4 for Management Unit Species.**

We also encourage the addition of sixgill shark to the preferred management unit (yellowfin, skipjack, bigeye, albacore, & bluefin tuna; swordfish; striped marlin; common thresher, bigeye thresher, pelagic thresher, shortfin mako and blue sharks; dorado). While the Council states that sixgill sharks are rarely landed, their high value provides incentive for fishing them. Sixgill are a deepwater shark with low productivity (typical of most sharks) and are therefore more vulnerable to fishing pressure than teleosts. Including this species in the FMP would not add a significant work burden to the Council but would increase the accuracy of catch data needed to set future regulations.

Most critically, we would like to stress the importance of including sharks in the plan. As highly migratory species taken in HMS fisheries, it is critical that they be monitored and managed under this plan. Sharks are included in the Atlantic HMS FMP for this very reason; sharks are taken by the same gear in the same fisheries as tunas, swordfish, and billfish. Both the International and National Plans of Action for the Conservation and Management of Sharks provide further impetus for including shark species in the list of management unit species.

#### **8.3.2. Support Council's Proposed Action for Control Rules.**

Under the National Standard Guidelines, the Council must set biomass thresholds for a species' designation as overfished. In the draft FMP, the Council proposes to set this threshold at  $B_{MSY}$  for most species in the plan and  $B_{OY}$  for "vulnerable" species in the plan. All sharks included in the plan qualify as "vulnerable" based on low productivities. We commend the Council's proposed control rules and the precautionary action taken on behalf of sharks, as sharks are more susceptible to overfishing because of their life histories. Rebuilding could be difficult for these shark species if a rebuilding plan is not developed until population size drops below  $B_{MSY}$ ; the  $B_{OY}$  proxy provides greater protection of the long-term sustainability of shark fisheries.

#### **8.3.4.2. Support Council's Proposed Action for Framework Process.**

Audubon supports the Council's proposal to adopt framework procedures for changing or adding to the FMP in the future and the point of concern mechanism that would allow additional review of species or fisheries when needed.

#### **8.4.1. Support Council's Proposed Action to Authorize Legal Gears and Recommend Alternative 1 for the Drift Gillnet Definition.**

Audubon supports the inclusion of a limit on the gear types allowable in Pacific HMS fisheries. By restricting legal gear, the new FMP would prevent other existing or developing fisheries (e.g., trap) from targeting highly migratory species, thereby increasing mortality on these species whose status in the Pacific remains largely unknown. Given the overfished status of numerous HMS stocks in the Atlantic, a precautionary approach is warranted.

We strongly recommend Alternative 1 for the definition of drift gillnet. The 14-inch minimum stretch mesh size would reduce mortality of juvenile HMS, especially tunas, as well as reduce bycatch of other small finfish and potentially protected marine mammals, sea turtles, and seabirds. California already has a 14-inch mesh size for its swordfish drift gillnet fishery so there is precedent for this definition. There is evidence of a burgeoning small mesh gillnet fishery targeting small bluefin and albacore that could be detrimental to the health of these populations. This fishery could undermine the conservation measures included in the draft FMP if allowed to continue given the potentially high take of juvenile fish.

#### **8.4.2. Support Council's Proposed Action for Incidental Catch Allowance and Recommend a value of 10%.**

We believe that the incidental catch allowance should be at a level no greater than 10%. A higher percent could encourage the targeting of HMS with gears not listed as legal fishing gears in the FMP. The 10% catch allowance will help reduce excessive dead discards by allowing some retention, while minimizing motivation for non-HMS fishermen to target HMS. This FMP must prevent, or at least minimize, the profitability of non-HMS fishermen targeting HMS.

#### **8.4.3. Support Council's Proposed Action for Essential Fish Habitat.**

We support the species definitions of essential fish habitat (EFH) included in the draft FMP and Council initiative to adopt management measures that would minimize impacts of fishing on this critical habitat, as required by law under the Magnuson-Stevens Act. The tools of fishing gear restrictions, time/area closures, and catch limits are all necessary components of effective EFH protection and should be incorporated into management plans when they are deemed beneficial. Spawning, nursery, and feeding grounds are critical to the survival of fish and must be protected to be consistent with the conservation goals of the draft FMP. The EFH definitions in the draft plan are based on the best available science and should be adopted as such. As new data become available, EFH definitions should be updated to afford protection to newly identified critical areas. We support the Council's view, for example, that more data are needed to identify thresher and mako pupping grounds, as these could be particularly sensitive areas.

#### **8.4.4. Support Council's Proposed Action for Bycatch.**

Audubon supports the proposed bycatch reduction measures outlined in the draft FMP for the longline, gillnet, and purse seine fisheries, but believe they do not go far enough. Under National Standard Guideline #9, the Council must minimize bycatch, and we urge the development and implementation of a comprehensive bycatch reduction strategy that includes bycatch reduction targets, milestones, pre-defined triggers that lead to concrete actions if milestones are not met, and a timeline, as soon as possible. Data collection guidelines must be set at a level significant enough to accurately evaluate the level of bycatch in each fishery. Performance standards should be set to put a limit on allowable bycatch and to outline a required annual reduction in incidental take. Provided that longlining is excluded from US waters off the West Coast, the drift gillnet fishery would be the preferable first candidate for performance standards as it has the highest levels of bycatch of the legal gear fisheries described in the FMP.

The Council should also allocate funds for research to examine new methods (e.g., gear modifications or closed areas) of bycatch reduction for HMS fisheries. Reducing the level of wasteful dead discards of fish and protected species should be a top priority during the early stages of plan implementation. The Endangered Species Act, Marine Mammal Protection Act, and Migratory Bird Treaty Act already prohibit take of many of the species taken as bycatch in HMS fisheries. Eric Gilman, also with Audubon, has submitted separate detailed comments for our organization specifically pertaining to the reduction of seabird mortality in Pacific HMS fisheries.

#### **8.4.6. Support Council's Proposed Action for Observer Authority but Recommend Adoption of a Minimum Coverage.**

Audubon agrees that the Regional Administrator should have the authority to require boats to carry observers. However, this regulation is entirely insufficient in its present form. The FMP must set a minimum level of observer coverage (for example, 10%) that is found to be statistically significant to ensure compliance with regulations and to validate logbooks for increased confidence in target and incidental catch data. According to NMFS there are significant problems with the accuracy of self-reporting logbook programs. Accurate information on target catch is critical for stock assessments and management of the fishery, should quotas be adopted. Accurate information on bycatch is critical for analysis of the ecosystem effects of HMS fisheries and for monitoring compliance with the Endangered Species Act, Marine Mammal Protection Act, and Migratory Bird Treaty Act. The western Pacific has set a goal of 8% observer coverage in their HMS fisheries and should provide a minimum guideline for the draft FMP. The western Pacific fleet fishes many of the same individuals as the West Coast fleet given the highly migratory nature of the species included in the FMP; for consistency a minimum observer coverage must be chosen for the West Coast as well.

Audubon also supports the planned observer coverage on small purse seine vessels (by the Inter-American Tropical Tunas Commission, IATTC) and high seas longliners based on the West Coast (by NMFS). We also support observer coverage for the partyboat portion of the recreational fishing fleet.

#### **8.4.7. Support Council's Proposed Action for Prohibited Species.**

Audubon fully supports the designation of prohibited species (white sharks, megamouth sharks, basking sharks, salmon, and halibut) in the FMP. Certain species may be unable to sustain any level of fishing pressure. The life histories of sharks, in particular, make them very susceptible to overfishing. We applaud the proposal to list white, megamouth, and basking

sharks as prohibited species. White sharks frequent the California coastline in predictable times at predictable locations and could easily be targeted by fishing at levels much greater than their reproductive capacity could withstand. White sharks are already protected in California. The extreme rarity of megamouth sharks warrants their protection; fisheries would not be able to profit from them anyway given their sparse distribution. Basking sharks are not as rare as megamouth sharks, but they warrant protection because of the market demand for their fins. Although finning is illegal in U.S. waters, there may still be motivation to land the entire carcass just for the ability to sell the fins. Basking sharks have been proposed for listing under the Convention on the Trade of Endangered Species (CITES). The North Pacific basking shark population is also listed as endangered on the World Conservation Union's (IUCN) Red List of Threatened Species.

We also support the inclusion of Pacific halibut and salmon on the prohibited species list. Similar to the discussion under the section on incidental catch allowance, HMS fishermen might be motivated to seek Pacific halibut and salmon, given their high market value, if they are not prohibited from doing so. Fisheries for Pacific halibut and salmon are tightly managed, and significant take of these species in HMS fisheries could severely compromise their management plans. Many salmon runs are already listed as threatened or endangered and could decline further if HMS fishermen are allowed to target them.

#### **8.4.8. Recommend Alternative 2 for Quotas.**

We disagree with the Council's Proposed Action for quotas. While the Council recommends catch guidelines for shortfin mako and common thresher sharks, this action is insufficient. Since much is still unknown about the population status of Pacific pelagics and because fishing pressure is steadily increasing following fishery declines in the Atlantic, we encourage the implementation of precautionary quotas for all species included in the draft FMP. Given the lack of knowledge regarding the status of many Pacific HMS, we believe these quotas should be set at some level below current or historic catch rates. This proactive management measure would, at a minimum, prevent fleet expansion. As overfishing is known to be happening for bigeye and yellowfin, we urge the council to set definitive limits on mortality now to avoid overfished designations in the future. Pacific bluefin tuna and swordfish, in particular, are susceptible to substantial fishing pressure and would likely benefit from a landings cap. We must learn from our mistakes in the Atlantic and prevent widespread overfishing. The draft FMP includes many commendable conservation measures but these may be undermined by the absence of precautionary quotas.

Furthermore, as the UN Agreement recently came into force, the US must take a precautionary approach to the management of HMS, as mandated by Article 6 of the treaty. Catch limits are essential to precautionary management. If quotas would delay adoption of the FMP, catch guidelines should be set for all species in the interim. The first priority is to adopt the draft FMP as soon as possible, as exact quotas could be designated through the framework process. However, precautionary quotas are likely imperative to achieve the full conservation benefit of the draft FMP. Furthermore, we are supportive of establishing appropriate recreational bag limits.

#### **8.4.11. Recommend Alternative 1 for Exempted Fishing.**

Audubon opposes the proposed action of not specifying exempted fishing permit procedures in the FMP. Audubon strongly encourages the inclusion of specific language in the

FMP detailing procedures by which the Council would consider and implement an experimental fishing program (EFP). While the draft FMP states that “exempted fisheries are expected to be of limited size and duration and must be authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in the rules,” these rules need to be made explicit and concrete in the FMP to prevent future EFPs that compromise the status of species included in the plan, as well as other fish, marine mammals, sea turtles, and seabirds. While it is desirable to develop more efficient gear and techniques to reduce bycatch, this must not be done at the expense of the fish and other wildlife that compose the marine ecosystem.

We encourage the Council to adopt text similar to the Ocean Wildlife Campaign’s (OWC) Alternative 2 for Pelagic Longline Fishery Management Measures that details the implementation of a longline EFP. The OWC would gladly rewrite the text to provide general procedures for an EFP in any fishery, rather than only for a pelagic longline program. Most critical among the provisions is to put the burden of proof of insignificant bycatch on the permit holder. The FMP should require a cap on the number of vessels that could participate, 100% observer coverage for all EFP programs, clear definitions of “target catch” and “bycatch,” and a regular reporting rate so the fishery could be terminated if bycatch levels were unacceptably high.

#### **8.5.1. Recommend Alternative 6 for Permits.**

Audubon advocates a federal permit for all fishermen taking HMS in Pacific waters, both commercial and recreational. Permits are essential to quantify the universe of commercial or recreational fishers, to monitor expansion or contraction of a fishery, and to regulate limited entry programs. The permit process also provides an invaluable, annual line of communication to fishermen for regulations updates.

It is important to include recreational fishermen in the permit program to enable better quantification of recreational fishing effort based on the information required for each permit application. By including recreational fishermen in the program, the impact of partyboats, charter boats, and private boats can be estimated. Although California already has a mandatory state fishing license for targeting all marine and freshwater fish, this license is not specific to HMS, and Washington and Oregon anglers are not included under the program. A unified, coastwide federal permitting system for anglers targeting all highly migratory species listed in the FMP, similar to the Atlantic Tunas permit, would provide more complete information on recreational fishing effort.

#### **8.5.2. Support Council’s Proposed Action for Reporting Requirements.**

Audubon strongly supports the proposal to require all commercial and charter fishing vessels to submit logbooks to NMFS documenting catch and effort data for all HMS fishing. Logbooks are already required in many of the fisheries by other authorities (e.g., High Seas Fishing Compliance Act, IATTC, and state governments). A coastwide federal reporting system would allow more accurate assessments of species and fisheries status since the data would be in the same format in the same place. These data are critical for maximization of the conservation and profit of the managed fish and fisheries. Including recreational charter vessels would allow a better quantification of recreational catch and effort as the Marine Recreational Fishery Statistics Survery (MRFSS) and Pacific Fisheries Information Network (PacFIN) are inadequate for accurate monitoring of HMS fisheries. As mentioned previously, we believe any logbook self-

reporting program must be supplemented by observer coverage in commercial and recreational partyboat fleets.

### **8.5.3. Support Council's Proposed Action to Prohibit Sale of Certain Species.**

We support the Council's proposal to prohibit the sale of striped marlin on the West Coast. This prohibition would reduce the motivation for HMS fishermen to target them. This prohibition would not be without precedent; the sale of blue and white marlin from the Atlantic and Gulf of Mexico has been prohibited since 1988. The commercial value of striped marlin is currently quite low, particularly when compared to the high value of the popular recreational fishery, and this action would not create economic hardship.

### **8.5.4. Support Council's Proposed Action for Drift Gillnet Fishery Management.**

We support the inclusion of all existing gear regulations and time/area closures that aid compliance with the Marine Mammal Protection Act and Endangered Species Act. We strongly support the additional closed area off Oregon and Washington for the protection of thresher sharks. Given the protected status of marine mammals and endangered species, as well as the vulnerability of shark species based on their life histories, these management measures are the minimum required to reduce impact of the drift gillnet fishery.

We are concerned about the proposed action to defer management of the limited entry system for the drift gillnet fishery to the State of California. While California has the ability and expertise to oversee this program, we prefer that the Council adopt a federal version of the state program and assume jurisdiction of a unified coastwide limited entry program. If this is not possible at this point, the text of this rule must make it clear that the limited entry system managed by the State of California has coastwide jurisdiction and that additional gillnet permits may not be issued by Oregon or Washington. The Council must avoid a loophole that allows fishermen without permits to join the fishery by basing their operations in ports in Oregon or Washington.

### **8.5.5. Support Council's Proposed Action for Pelagic Longline Fishery Management.**

We commend the Council and support, in the strongest possible terms, the Council's proposed action to prohibit the use of pelagic longline gear within the U.S. Pacific exclusive economic zone (EEZ). Longlines are among the biggest culprits when it comes to bycatch of highly migratory and other species. In pelagic longline fisheries, half the catch is routinely thrown back to sea, unwanted or illegal. More than half of those thrown back are already dead. The states of California and Washington have already set the precedent for the longline ban, as the gear is illegal off their coasts, including the entire EEZ off California. Given the documented problems of longlines around the globe, now allowing longline fishing in these waters, even at a low level, would set back the clock and could pose a major threat to the health of Pacific HMS populations as well as federally protected seabirds, sea turtles, and marine mammals. In the Atlantic, management of longlines is increasingly dependent upon the use of area closures, as the gear has been recognized as indiscriminate and destructive. By adopting its proposed action to prohibit pelagic longlines, the Council would be choosing wisely to avoid future battles over this indiscriminate gear.

We also fully support the Council's proposal to apply management measures used in the Western Pacific to longliners based on the West Coast fishing outside the U.S. EEZ. The gear modifications and area closures are critical to reduce take of endangered sea turtles and seabirds,

as well as to ensure equal access to the fish among United States fishermen. To do less would be to knowingly undermine conservation measures imposed upon the US western Pacific fleet. As proposed, monitoring rules would also be consistent among US Pacific fishermen, thereby ensuring maximum data collection and allowing comparison of the western and eastern Pacific data. Monitoring is critical, even outside the US EEZ, as the species in question are highly migratory and are likely present in US waters during certain points of their life cycles or seasonal migrations. In addition, we strongly recommend mandatory vessel monitoring systems (VMS) for all pelagic longline vessels based on the West Coast and fishing on the high seas. VMS technology would be essential for enforcement of the proposed action to prohibit pelagic longline gear from US waters off the West Coast.

**8.5.6. Support Council's Proposed Action for Purse Seine Fishery Management.**

We stand behind the Council's preference to officially close waters north of 44°N to reduce the incidental take of threatened and endangered salmon in HMS fisheries.

Audubon appreciates the opportunity to comment on the draft FMP for Pacific highly migratory species. It is clear that the Council put a great deal of work into the development of this draft FMP, and we truly appreciate the effort. We commend the Council on a job well done, while recommending the changes described above. If you have any questions regarding Audubon's comments please contact Shana Beemer at 631-859-1588.

Sincerely,

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