

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL STATEMENT
ON ADOPTION OF FINAL HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN

The Highly Migratory Species Advisory Subpanel (HMSAS) met with the HMS Plan Development Team (HMSPDT) on October 22-23, 2002, in San Diego, California. The HMSAS reviewed the September 2002 draft fishery management plan (FMP) and the proposed changes to the September draft FMP prepared by the HMSPDT, the October 7, 2002 draft of the proposed regulations, the first draft of the Regulatory Impact Review/Regulatory Flexibility Analysis (RIR/RFA), and a status report on development of observer program sampling plans and logistics.

The HMSAS meeting was attended by 11 members (of a total of 13) on October 22, and by 9 members on October 23.

The HMSAS also wanted to meet again formally on October 28, but this was not possible, because of budget limitations. Some of the members will attend the HMSPDT meeting on October 28 at their own expense.

In addition to the following formal HMSAS recommendations on the FMP, individual members recommended a number of specific language changes directly to the HMSPDT to improve the accuracy of the FMP and also provided specific comments directly to the author of the draft regulations.

Opposition to the FMP

The HMSAS voted (6 yes, 2 no) to support the following statement in opposition to the FMP:

IT IS WITH REGRET THAT THE MAJORITY OF THE HMSAS HAVE COME TO BELIEVE THEY CANNOT SUPPORT AND WILL ACTIVELY OPPOSE THE ADOPTION OF THE DRAFT HMS FMP.

FIRST, WE SINCERELY AND WITHOUT RESERVATION THANK THE MEMBERS OF THE FMP DRAFTING TEAM, AND ESPECIALLY THEIR CONSULTANT, FOR THEIR HERCULEAN EFFORTS IN BRINGING TOGETHER EXISTING AND NEW INFORMATION ABOUT THE HMS FISHERIES OFF THE WEST COAST OF THE UNITED STATES. THEIR EFFORTS ARE GREATLY APPRECIATED TODAY, AND WILL BE BY GENERATIONS OF FISHERMEN TO COME. WE ALSO WANT TO THANK THE PACIFIC FISHERY MANAGEMENT COUNCIL, AND PARTICULARLY THEIR STAFF FOR THE CONTINUOUS AND OUTSTANDING SUPPORT THEY HAVE PROVIDED IN THESE EFFORTS. FINALLY, WE ALSO WISH TO EXPRESS OUR APPRECIATION FOR THE FUNDING, LEGAL, AND REGULATORY HELP AND ADVICE THAT NOAA/NMFS HAS BEEN ABLE TO OFFER.

THIS DRAFT FMP CANNOT BE SUPPORTED FOR THE FOLLOWING REASONS:

1. WHEN CONCEIVED, THIS FMP WAS TO PROVIDE A FRAMEWORK FOR IMPLEMENTING RULES, REGULATIONS AND RESOLUTIONS OF INTERNATIONAL REGIONAL MANAGEMENT ORGANIZATIONS OF WHICH THE UNITED STATES IS A MEMBER. HIGHLY MIGRATORY SPECIES IN THE EASTERN AND CENTRAL PACIFIC ARE ALREADY UNDER INTERNATIONAL REGULATION AND CONSERVATION, WHERE THOSE MULTILATERAL ENTITIES HAVE CONCLUDED IT IS NECESSARY. THE "PILING ON" OF UNNECESSARY FEDERAL REGULATIONS ON TOP OF THESE SAME FISHERIES IS A TREMENDOUS WASTE OF TAX PAYERS' MONEY AND GOVERNMENT AND PRIVATE RESOURCES. THESE FISHERIES ARE ALREADY MANAGED UNDER THE PACIFIC TUNA CONVENTIONS ACT AND THE SOON TO BE PASSED IMPLEMENTING LEGISLATION TO THE U.S. CANADA ALBACORE TREATY.

2. SECOND, A SECONDARY, BUT MAJOR GOAL OF THE FMP, WAS TO HARMONIZE THE REGULATIONS OF THE THREE WEST COAST STATES WHICH ARE ACTIVE MEMBERS OF THE COUNCIL, AND TO HARMONIZE MANAGEMENT AND SCIENTIFIC RESEARCH EFFORTS BETWEEN THE COUNCIL AND THE WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL (WPFMC). NEITHER GOAL HAS BEEN APPROACHED. ANOMALIES BETWEEN STATE REGULATIONS WHICH HAVE BEEN RESOLVED, HAVE BEEN RESOLVED BY STATE LEGISLATION. ANY EFFORT TO RESOLVE CONFLICTS BETWEEN THE TWO COUNCILS WHICH SHARE MANAGEMENT OF HMS IN THE PACIFIC, HAVE BEEN CURSORY, OR PROPOSED TO BE TAKEN WITHOUT REGARD TO THE DUE PROCESS RIGHTS OF WEST COAST FISHERMEN AND OTHERS.
3. THIRD, NO GENUINE CONSIDERATION OF THE AMERICAN CONSUMERS' RIGHT TO A FREE FLOW OF AMERICAN-CAUGHT FRESH FISH, WHICH IS A SUBSTANTIAL SOURCE OF HEALTHY PROTEIN, IS REFLECTED IN THE DRAFT FMP. RATHER, MEASURES ARE SUGGESTED WHICH WOULD WITHOUT QUESTION SUBJECT AMERICAN FISHERMEN TO COMPETITIVE DISADVANTAGES. THIS IS PARTICULARLY EGREGIOUS IN THE FACE OF INCREASING DEMAND FOR FRESH SEAFOOD IN THE U.S., PARTICULARLY TUNA, AND THE INCREASING SHARE OF THIS DEMAND WHICH IS BEING FILLED BY FOREIGN SUPPLIERS, WHICH IN MANY CASES HAVE DISPLAYED LITTLE REGARD FOR THE SUSTAINABILITY OF THESE RESOURCES.
4. FOURTH, SEVERAL ACTIONS SUGGESTED OR RECOMMENDED BY THIS DRAFT FMP ARE CLEARLY NOT BASED ON THE BEST SCIENTIFIC INFORMATION AVAILABLE, AND IN SOME INSTANCES ARE OBVIOUSLY POLITICAL, RATHER THAN SCIENTIFIC MANAGEMENT DECISIONS.

WHILE WE ARE HESITANT TO MAKE THIS STATEMENT IN VIEW OF THE EFFORTS WHICH HAVE BEEN EXPENDED THUS FAR BY ALL INVOLVED IN THE DRAFTING OF THIS FMP, WE BELIEVE WE HAVE AN OBLIGATION TO THE PUBLIC AT LARGE, TO THE FISHERMEN, THEIR SUPPLIERS, AND THE COMMERCIAL BUYERS AND PROCESSORS THROUGHOUT THE WEST COAST, AND PERHAPS MOST IMPORTANTLY TO THE POLICY MAKERS IN WASHINGTON, DC, WHETHER THEY BE IN THE EXECUTIVE OR LEGISLATIVE BRANCHES OF OUR GOVERNMENT, THAT ADOPTION OR RELEASE FOR PUBLIC COMMENT OF THIS FMP IS UNNECESSARY, DUPLICATIVE, UNHELPFUL TO EXISTING CONCERNS, SCIENTIFICALLY FLAWED IN ITS CONCLUSIONS, AND NOT IN THE BEST INTERESTS OF THE UNITED STATES.

TO REMAIN SILENT WOULD BE TO SHIRK OUR RESPONSIBILITIES AND OBLIGATIONS AS MEMBERS OF THE HMSAS.

This statement was supported by the six commercial fishing representatives present and opposed by the two sport fishing representatives present. This vote was taken on the second day of the meeting, when the conservation and charter boat members were not in attendance. Also, the southern and northern processors representatives were not in attendance during the entire meeting.

Minority Response:

The sportfishing members of the HMSAS submitted the following statement; the conservation representative also supported this response:

ACCORDING TO A LETTER DATED NOVEMBER 20, 2000 FROM D.O. MCISAAC, PH.D., EXECUTIVE DIRECTOR, PACIFIC COUNCIL IN RESPONSE TO OUR REQUEST FOR A BETTER BALANCE OF RECREATIONAL REPRESENTATION ON THE HMSAS, THE FOLLOWING WAS NOTED REGARDING COUNCIL'S CONSIDERATION OF OUR REQUEST: "THE COUNCIL NOTED THE HMSAS IS NOT INTENDED TO BE A "VOTING" ENTITY IN WHICH THE NUMBERS OF REPRESENTATIVES OF DIFFERENT SECTORS ARE CAREFULLY BALANCED."

AS SUCH, THE COUNCIL SHOULD CONSIDER THE MERITS OF THE "MAJORITY" STATEMENT RATHER THAN THE VOTE TALLY. WE WILL ADDRESS OUR COMMENTS ON A POINT-BY-POINT BASIS.

WE SUPPORT THE ADOPTION OF THE DRAFT HMS FMP WITH ITS SUITE OF PROPOSED ACTIONS. WE HAVE NOTED THAT INADEQUATE BUDGETS WERE AVAILABLE FOR ADEQUATELY COMPILING AND ANALYZING HISTORICAL RECREATIONAL DATA, HOWEVER, ITS IS OUR VIEW THAT THE PLAN'S "PROPOSED ACTIONS" DOES NOT UNFAIRLY ADVERSELY AFFECT RECREATIONAL FISHING. FURTHER, ADOPTION OF THE PLAN WILL PROVIDE OPPORTUNITIES TO CURE SHORTCOMINGS ON RECREATIONAL FISHERIES DATA IN ORDER TO PREPARE FOR THE FUTURE.

WE SPECIFICALLY ADDRESS THE RATIONALES EXPRESSED BY THE COMMERCIAL REPRESENTATIVES ITEM BY ITEM:

1. WE HAVE DIFFICULTY UNDERSTANDING WHAT THIS COMPLAINT IS. COMMERCIAL REPRESENTATIVES ORIGINALLY CHAMPIONED THE IDEA OF AN FMP TO IMPLEMENT FEDERAL REGULATIONS IN ACCORDANCE WITH MAGNUSON AND ARE NOW CLAIMING IT'S A WASTE OF MONEY AND RESOURCES WITHOUT PROVIDING ANY SUBSTANTIVE EXPLANATION AS TO WHY.
2. THIS FMP INDEED DOES SUBSTANTIALLY FURTHER BOTH CAUSES ORIGINALLY CHAMPIONED BY THE COMMERCIAL REPRESENTATIVES. THIS FMP GOES A LONG WAYS TO BRINGING HARMONY TO REGULATIONS OVER FISHERIES UNDER THE CONTROL OF THE PACIFIC COUNCIL AND WPFMC. WE SUBMIT THAT, IN FACT, THE COMMERCIAL REPRESENTATIVES ARE MERELY NOW OPPOSED TO SUCH HARMONY. IN THIS HMSAS REPORT THE COMMERCIAL REPRESENTATIVES HAVE VOTED TO DEHARMONIZE THESE REGULATIONS (SEE LONGLINE – OUTSIDE THE EEZ, BELOW IN THIS HMSAS STATEMENT). ADDITIONALLY, SIGNIFICANT NEW HARMONY IS BEING CREATED BETWEEN STATE REGULATIONS WITH UNIVERSAL LOGBOOKS, MONITORING, DATA COLLECTION, AND PERMITTING. THESE AND OTHER MEASURES WILL HELP PROVIDE A CONSISTENT METHOD OF DATA COLLECTION AND CAREFUL MANAGEMENT TO PROTECT HABITAT, REDUCE BYCATCH, AND IMPROVE EFI.
3. WE AGREE PROBLEMS EXIST WITH FOREIGN FISHING. HOWEVER, IT IS OUR BELIEF THIS FMP WILL PROVIDE AN OPPORTUNITY TO BEGIN TO CORRECT THE SHORTCOMINGS OF EXISTING INTERNATIONAL MANAGEMENT BY BRINGING A CONSISTENT UNITED STATES MESSAGE TO INTERNATIONAL NEGOTIATIONS. THIS FMP PROVIDES A CONSISTENT NATIONAL BASIS FOR ADDRESSING PROBLEMS TO PROTECT THE VALUE OF PUBLIC RESOURCES AND PROVIDE FOR LONGTERM BENEFICIAL USE OF OUR RESOURCES BOTH RECREATIONALLY AND COMMERCIALY WHILE RECOGNIZING LOCAL NEEDS.
4. WE DISAGREE THE MANAGEMENT REGIME PROPOSED BY THIS FMP IS NOT BASED ON THE BEST SCIENTIFIC INFORMATION AVAILABLE. BECAUSE OF BUDGET AND TIME CONSTRAINTS MORE DATA ON RECREATIONAL FISHING IS AVAILABLE THAN WAS COLLECTED AND UTILIZED, HOWEVER, IT IS ALSO OUR BELIEF THAT IF SUCH DATA WAS COLLECTED AND UTILIZED THROUGH ADDITIONAL EFFORTS THE SAME RECOMMENDED MANAGEMENT REGIME WOULD HAVE RESULTED. OUR POSITION REMAINS CONSISTENT THAT THESE DATA GAPS MUST BE CORRECTED BEFORE ANY INCREASE IN FISHING EFFORT IS ALLOWED. THIS FMP PROVIDES A BASIS FOR BEGINNING TO ADEQUATELY BASELINE RECREATIONAL FISHING.

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Observer Programs (FMP Section 8.4.5)

The proposed action in the FMP mandates observer programs initially for the longline, surface hook-and-line and small purse seine fisheries and indicates that observer sampling plans would be prepared for these 3 fisheries plus the commercial passenger fishing vessel (CPFV) and private recreational fisheries. There was considerable discussion at the HMSAS meeting about the need to observe all HMS fisheries, including CPFV and private recreational fisheries. There also was confusion about the Council action in June 2002 on this issue. Some individuals thought the Council-preferred alternative included the CPFV fishery. Commercial fishery representatives argued there is no justification provided for putting recreational fishery observer programs "on the back burner," especially given that the recreational fishery is the one where we have the least information. Recreational representatives and the conservation representative noted that an observer program for the private recreational fishery presents special difficulties, because of the large number of small vessels; an observer program may not be the best way to collect information on bycatch and bycatch mortality in this fishery. Furthermore, the FMP proposes a voluntary catch-and-release program for the recreational fishery, in which released fish would not be considered bycatch. The HMSAS voted (9 yes, 2 no) to recommend addition of a fourth alternative to the FMP, which would mandate observer programs for all HMS fisheries.

The HMSAS also received a status report from the contractor preparing observer sampling plans for HMS fisheries and provided a number of specific comments directly to the contractor.

Longline (8.5.2)

Outside EEZ: The commercial representatives are concerned that the proposed alternative for longlining outside the EEZ will effectively shut down the fishery. Since this fishery operates in a different area than the Hawaii-based fishery, they believe that imposing all of the onerous western Pacific regulations is inappropriate. The HMSAS voted (8 yes, 3 no) to recommend alternative 3 as the preferred alternative. This alternative would apply most of the western Pacific measures to the West Coast-based fishery, but would not include the ban on swordfish targeting.

Inside EEZ: Commercial fishery representatives argued that it is unnecessary and confusing to include alternatives 2 and 4, which propose a prohibition on longlines in the EEZ and include specific exempted fishing permit (EFP) procedures to be used to evaluate longlines. They feel the EFP process should be addressed after implementation of the FMP when EFP applications are submitted, and the decision at this time should simply be a choice among the 3 remaining alternatives: no action (alternative 1), a limited longline fishery (alternative 3), or a general prohibition (alternative 5). The sport fishery representatives disagreed and stated that the process needs to remain open and transparent with all of the alternatives considered. The HMSAS voted (6 yes, 2 no, 1 abstain) to recommend that the Council delay dealing with the 2 EFP proposals as part of the FMP process and deal with them after FMP implementation when an application is submitted. (This vote was taken on the second day of the meeting, when the conservation and charter boat members were not in attendance.)

Purse Seine (8.5.3)

The proposed action would close the EEZ north of 45° N latitude to purse seine fishing to address concerns about potential bycatch, protected species interactions and gear conflicts. Some members of the HMSAS have been concerned for some time about the lack of information to justify this closed area, and we were prepared to recommend another preferred alternative for Council consideration which would close the area inside 25 miles north of 45° N (vote 7 yes, 1 no). However, subsequent to this action, the HMSAS was informed by the Washington State member of the HMSPDT that the State of Washington would support alternative 4, which would open the entire EEZ to purse seine fishing. In response to this change, the HMSAS rescinded the former action and voted to support alternative 4 (8 yes, 1 abstain).

There is a potential problem that needs to be addressed that pertains to the State of California purse seine closure in Santa Monica Bay (District 19A). Sport fishing representatives are concerned that a portion of this

closed area extends into the EEZ and want to make sure that this closure continues to be in effect after implementation of the FMP. We were unable to verify the extent of this closed area at our meeting, and asked the State of California to look into this issue and be prepared to address it at the Council meeting if necessary.

Permits (8.5.5)

The proposed action requires that a federal permit be obtained for each U.S. fishing vessel used in commercial fishing for HMS, with a specific endorsement for each gear type, and requires a federal permit for all charter vessels (emphasis added). The HMSAS believes that permits need to be issued to persons, and voted unanimously to recommend that permits be assigned to a person for a vessel. That would mean that in alternative 2, Ch. 8, Page 2 under Commercial Permits, the word "each" would be replaced by "a person to a..."

It was brought up in discussion that under the new proposed U.S./Canadian albacore treaty, one nation may operate under a different set of management directives than the other. One example given was that U.S. fishermen may be required to carry observers while Canadians may not depending on regulations. Also Canadians may not be required to have the same permit or any that U.S. fishermen will be required to possess while fishing within the EEZ of the U.S.

Scientific Information in the FMP

There is concern that the FMP contains data that has not been peer reviewed and in some situations is presented in an unsubstantiated or biased manner. There also is concern that the most recent data available is not included in the FMP. The HMSAS voted (7 yes, 1 no) to request the addition of a statement to the FMP that the data in this document is the best available science, but may not be the most recent and may not be peer reviewed. The recreational representative who voted no, noted that indeed more recent data may have come available during the plan development, however, a great deal of available historic data on recreational fishing was left out of the plan because an experienced recreational economist was never assigned to the plan team nor adequate budget committed to effectively compile and analyze available recreational data by the plan team economists. The representative also noted that while more recent data may have come available during the development of the FMP, that situation will almost always be the case. Additionally, there is no generally-accepted definition of what a peer review entails and that in fact the Scientific and Statistical Committee of the Council provides a form of peer review. The recreational representative strongly supports the plan going forward with the preferred options despite the plan's shortcomings; as implementing the plan will provide an opportunity for funds to come available to compile good recreational baselines for future decision making under the plan's framework.

8.5.7 Comparisons of initial Magnuson Alternatives by Fishery.

The Plan Development Team agreed to add language to the chart Ch.8, Pg 41, in the row of "stock health." In the box under alternative 2 - Preferred Action it was agreed to eliminate the "period" and add the words "and domestic fleet harvest reduction."

