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Dr. Hans Radtke, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

Re: Agenda Item F.2.e. Pacific Sardine Stock Assessment and Harvest Guideline for 2003

Dear Mr. Chairman and Council Members:

These comments are presented on behalf of the **West Coast Seafood Processors Association (WCSPA)**. WCSPA represents shore-based seafood processors in Washington, Oregon and California. Specific to the issue of sardine management, these comments reflect a majority opinion of producers who process a major portion of the sardine landed into west coast ports.

WCSPA believes that the Coastal Pelagic Species Fishery Management Plan (CPS FMP) and the National Marine Fisheries Service's (NMFS) implementing regulations for Amendment 8 (published in the Federal Register on December 15, 1999) contain language which allows flexibility when setting the annual harvest guidelines. Specifically, that NMFS has discretionary authority when deciding whether or not to set the one-third, two-thirds allocation scheme in the Pacific sardine fishery for the upcoming season.

WCSPA is strongly urging the Council to recommend that NMFS not implement the one-third, two-thirds allocation between the northern and southern management areas for the 2003 season. This recommendation is both prudent and justified for the following reasons:

- Eliminating the allocation for the 2003 season will prevent a recurrence of the premature closure in the northern management area fishery (Washington, Oregon and Monterey, CA).
- The ongoing process of determining long-term sardine harvest allocation and management will likely not be completed prior to the start of the fishery in the northern management area.
- The 110,908 metric ton (mt) harvest guideline is sufficiently large enough to prevent one management area from usurping the other without a formal allocation system in place.
- Eliminating the allocation for the 2003 season will help ensure that the optimum yield from the fishery is reached.
- Based on the best available data combined with the conservative harvest policy outlined in the CPS FMP, as long as the harvest guideline is not exceeded, there will be no impact on the status of the resource.
- Flexibility exists within the CPS FMP and implementing regulations when setting the annual specifications. The action for NMFS to implement an allocation is a discretionary action.

Eliminating the allocation for the 2003 season will prevent a recurrence of the premature closure in the northern management area fishery

In 2002 the northern management area fishery was closed prematurely on September 14, 2002 when the northern area allocation of 39,418 mt was expected to be reached. Although there was still fish available on the traditional fishing grounds for harvest, markets waiting to buy the fish, sufficient weather conditions to cross the Columbia River bar, and a federal coast-wide harvest guideline which was only 60% utilized, the fishery was still closed. Hundreds of employees (fishing vessels, processing plants, and other secondary and tertiary businesses) lost their jobs in Oregon and Washington and millions of dollars in potential revenue was lost to businesses and coastal communities due to the closure. Fishermen in Monterey, California were forced to stay tied to the dock even though they are licensed for the limited entry fishery, some of them paying several thousand dollars for their permits. Monterey processors were also forced to shut their doors, essentially leaving millions of dollars worth of cannery and other processing infrastructure sitting idle. The Council realized that shutting down the fishery would cause undue economic hardship for the northern management area participants. Ultimately NMFS and the Secretary of Commerce agreed stating in the Federal Register notice implementing the emergency rule to reallocate available sardine resource prior to October 1st, "delaying reallocation will have a negative economic impact on the industry at a time when there is adequate resource available for all users". Catches in the northern management area are expected to exceed levels caught in the truncated 2002 season. The northern allocation, if implemented, would likely be reached prior to September, again resulting in a premature closure and additional economic hardship.

The ongoing process of determining long-term sardine harvest allocation and management will likely not be completed prior to the start of the fishery in the northern management area

Moving through the process of either a regulatory or plan amendment to the CPS FMP will likely take a considerable amount of time, especially if a full plan amendment is necessary to complete the changes. Due to time constraints and certain processes required by law, the plan amendment will not be completed and implemented prior to the start of the sardine fishery in the northern management area. The industry will face the same premature shut down in the northern management area as it did during the 2002 season. Industry will be forced once again to shut their doors while large numbers of fish are still available on the southern allocation. The reallocation would not occur until October 1st. Industry will be forced to request an emergency rule once again from NMFS in order to reallocate available resource prior to October 1st. This arduous and uncertain process can be avoided if no allocation is specified for the 2003 season.

The 110,908 mt harvest guideline is sufficiently large enough to prevent one management area from usurping the other without a formal allocation system in place

The 2003 harvest guideline is approximately 7,500 metric tons less than what was available in 2002, a decrease of about 6%. This reduction is not an indication of a declining biomass, but rather the continued refinement of a past assessment which possibly overestimated the spawning stock biomass. The amount of fish available for harvest is more than enough to satisfy all management areas without a formal allocation.

Eliminating the allocation for the 2003 season will help ensure that the optimum yield from the fishery is reached

If the one-third, two-thirds allocation scheme is implemented in 2003 it will prevent the fishery from obtaining the optimum yield in the 2003 season. This will force a situation where once again large amounts of fish will be left on the table. Between the 2000 and 2001 fisheries 127,000 metric tons were left unharvested. A goal of the FMP and the Magnuson Stevens Fishery Conservation and

Management Act is to ensure overfishing does not occur while achieving on a continuing basis, the optimum yield from the fishery.

Based on the best available data combined with a conservative harvest policy, as long as the harvest guideline is not exceeded, there will be no impact on the status of the resource

In the Federal Register Notice filed on September 20th implementing the emergency rule which reallocated the remaining harvest guideline earlier than October 1st it states:

As long as the harvest guideline is not exceeded, there will be no impact on the status of the resource.

The current stock assessment for Pacific sardine is utilized when determining the coast-wide harvest guideline for the United States (California, Oregon and Washington). To calculate the harvest guideline the stock assessment authors use the maximum sustainable yield control rule defined in Amendment 8 to the CPS FMP. As the stock assessment states, "This formula is intended to prevent Pacific sardine from being overfished and maintain relatively high and consistent catch levels over a long-term horizon". There is a federal coast-wide harvest guideline in place that is intended to include fisheries in Washington, Oregon and California.

Flexibility exists within the CPS FMP and implementing regulations for setting the annual specifications. The action for NMFS to implement an allocation is a discretionary action.

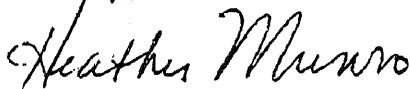
The FMP under section 2.1.1. specifically recognizes that the Council is not required to issue any type of geographic allocation. Clearly the action to implement the one-third, two-thirds allocation while defining annual harvest policies is a discretionary one.

Conclusions

In order to prevent a premature closure of the northern management area fishery and a resulting request for another emergency rule, it is necessary for the Council to recommend to NMFS that no allocation scheme be implemented for the 2003 season, but rather a coast-wide harvest guideline of 110,908 metric tons be utilized by all participants. The harvest guideline is sufficiently large enough that no one sector will usurp the other with no formal allocation in place. As long as the harvest guideline is not exceeded there will be no impact to the resource. The allocation issue is an economic one, not a biological one. WCSPA believes that the flexibility to accomplish this action exists as outlined in both the FMP language as well as the implementing regulations. We strongly urge the Council to recommend that no allocation be implemented with the annual specifications for the 2003 season.

Thank you for your consideration.

Sincerely,



Heather M. Munro

cc Rod Moore, West Coast Seafood Processors Association

October 28, 2002

Dr. Hans Radtke
Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220

<Administrative Record>

Dear Dr. Radtke:

I ask today that the Pacific Fishery Management Council act to prevent a repeat in 2003 of the premature closure of the sardine fishery in the northern area that occurred in 2002. The economic loss suffered by the local communities due to the premature closure of the fishery was significant and unnecessary. The council should take action to prevent it from happening again. I agree with the CPSAS recommendation that there should be no allocation of the 2003 Sardine Harvest Guideline.

Section 4.8.1 of the CPS FMP directs the Council to make recommendations to NMFS on specification issues, including allocations. Part 4 of that section is included here:

4. At its first opportunity, the Council will review all information compiled for the annual specifications, consult with its SSC, CPSMT, CPSAS, and hear public comments. The Council also will review any important social and economic information at that time, then make a recommendation to the NMFS Regional Administrator on the final specifications, including OY levels, harvest guidelines, quotas, allocations, and other management measures for the fishing season.

NMFS does not need to allocate the Sardine Harvest Guideline. Section 5.2 of the CPS FMP authorizes North-South allocations of Pacific sardine, **but it clearly does not mandate the allocations**. Section 5.2 specifically establishes that additional allocation schemes are likely and that they are not precluded. Additional allocations are simply required to be developed in accordance with the FMP.

Section 5.2 North-South Allocation for Directed Fishery

This FMP **authorizes** allocations of Pacific sardine harvest guideline to participants by northern and southern areas (defined below). **Nothing in this FMP precludes additional allocations based on geographic areas or other factors developed under the authority of the FMP.**

Justification for the Council to recommend no allocation of the Sardine Harvest Guideline is found in the CPS FMP Section 2.1.4 and 1.5. And in the Magnuson-Stevens Act National Standards 1,2,5,8 and 10. These sections are included below, with the pertinent text highlighted:

Section 2.1.4 Allocation

*In addition to other requirements in this FMP, the Council will consider the following factors when considering **direct allocation** of the resource:*

1. **Present participation in and dependence on the fishery, including alternative fisheries.**
2. **Historical fishing practices in, and historical dependence on, the fishery.**
3. **Economics of the fishery.**
4. **Agreements or negotiated settlements between the affected participants in the fishery.**
5. **Potential biological impacts on any species affected by the allocation.**
6. **Consistency with the Magnuson-Stevens Act national standards.**
7. **Consistency with the goals and objectives of this FMP**

Section 1.5 Goals and Objectives

Goals and objectives for the CPS FMP (not listed in order of priority).

1. **Promote efficiency and profitability in the fishery, including stability of catch.**
2. **Achieve OY.**
3. **Encourage cooperative international and interstate management of CPS.**
4. **Accommodate existing fishery segments.**
5. **Avoid discard.**
6. **Provide adequate forage for dependent species**
7. **Prevent overfishing.**
8. **Acquire biological information and develop long term research program.**
9. **Foster effective monitoring and enforcement.**
10. **Use resources spent on management of CPS efficiently.**
11. **Minimize gear conflicts.**

Modification of a direct allocation cannot be designated as “routine” unless the specific criteria for the modification have been established in the regulations

Magnuson-Stevens Act

Section 301 National Standards for Fishery Conservation and Management

- (a) *In General.*—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:
- (1) **Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.**
 - (2) **Conservation and management measures shall be based upon the best scientific information available.**
 - (3) **To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.**
 - (4) **Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably**

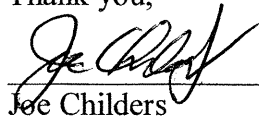
calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or entity acquires an excessive share of such privileges.

- (5) Conservation and management measures shall, consider efficiency in utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.**
- (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.**
- (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.**
- (8) Conservation and management measures shall, consistent with the conservation requirements of the Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.**
- (9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.**
- (10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.**

The Council should develop a Sardine allocation plan for the future. The CPSAS has developed a range of alternatives for analysis and I encourage the Council initiate the plan amendment process.

While a new allocation plan is developed under the Socioeconomic Framework of the FMP, no allocation should be made under the existing plan because none is justified. No biological rationale for the present allocation has been provided. The Harvest Guideline has not been achieved in more than 20 years, and it will not be achieved in 2002. Present participation and economic dependence on the fishery is ignored by the existing plan. Adverse economic impact on all of the communities dependent on the sardine fishery will best be served for the time being if no sardine allocation is made for 2003.

Thank you,



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