



BAY OAK LAW FIRM
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June 10, 2003

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VIA FACSIMILE AND UNITED STATES MAIL.

RECEIVED

JUN 10 2003

Hans Radke
Pacific Fishery Management Council
7700 NE Ambassador Place, Ste 200
Portland OR 97220-1384

PFMC

6/18/2003
Agenda Item F.
HMS Management

Re Highly Migratory Species Fishery Management Plan

Dear Mr. Radke:

Bay Oak Law represents Vietnamese Longline Fishery Association ("Association"). The Association is alarmed by some of the current alternatives to the Highly Migratory Species ("HMS") Fishery Management Plan ("FMP") of the Pacific Fishery Management Council ("PFMC"), which would put them out of business without so much as a single study as to their effect on the sea turtles the FMP purports to protect. Indeed, a wealth of studies in other fishery management jurisdictions indicate the exact opposite result: that preventing the regulated American fisheries will *increase*, not decrease, sea turtle mortality. The Association urges the PFMC to (1) begin conducting objective, neutral studies to examine the best alternatives to protect sea turtles and other sealife, while minding the technological and economic feasibility required by law; and (2) wait upon the results of the current litigation against the National Marine Fisheries Service in Washington, D.C., which may invalidate the current moratorium against longline fishing in Hawai'i. In the interim, the Association is willing to abide by the modified Alternative 2 of the Highly Migratory Species Advisory Subpanel ("HMSAS"), with some clarifications, detailed below.

HMS FMP. The PFMC released a draft HMS FMP in September, 2002. In it, the PFMC acknowledged that "U.S. fisheries for highly migratory species in the Pacific Ocean, and West Coast fisheries in particular, harvest a small fraction of the total catch taken by all nations involved. In most cases, effective conservation will require international action." 9/2002 HMS draft FMP, pg. ES-6. The draft HMS FMP also acknowledges that the "eastern Pacific stock [of Pacific swordfish] is healthy," and does not need regional harvest guidelines at this time.

The problem of by-catch of sea turtles by those involved in longline fishing has been a concern for environmental and other groups. However, "there is little information for estimating impacts of a longline fishery in the [Economic Exclusion Zone ("EEZ") off the West Coast]." 9/2002 HMS draft FMP, pg. ES-13. However, despite the acknowledged lack of information, the very next sentence states that "[t]he preferred alternative in the FMP is to impose an indefinite moratorium on pelagic longlining in the West Coast EEZ. . . ." *Id.* Various alternatives, which would allow continued fishing under more regulated conditions, have since been proposed, including by the HMSAS.

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The Association believes that the original Alternative 2, the ending of longline swordfish fishing, is not only illegal because of the lack of information, but unwise as well. Instituting such a stoppage without comprehensive studies as to how it would affect the sea turtles at issue could, perversely, cause more harm to the sea turtles.

The Endangered Species Act requires an evaluation of the effects of an action, and to issue an opinion as to whether the proposed action is likely to jeopardize the continued existence of the endangered species. 16 U.S.C. § 1536(b)(3). The draft HMS FMP acknowledges the lack of information as to the impacts of a longline fishery, and does not have any information whatsoever as to a stoppage. As a result, proposing a longline fishing stoppage without such information would violate the Endangered Species Act.

Even the study by James V. Carretta, "An Analysis of Sea Turtle Take Rates in the High-Sea Longline Fishery in the Eastern Pacific Ocean," included as Exhibit F.2.b in the Briefing Book for the June 2003 meeting of the PFM, fails to provide the necessary information. In it, Mr. Carretta, of the Southwest Fisheries Science Center, purports to find that sea turtle take rates east of W150° longitude are somewhat higher for loggerhead and leatherback sea turtles, but lower for olive ridley turtles, compared to similar data for sea turtle take rates west of W150° longitude.

However, this study does **not** establish danger to the sea turtle populations by continued longline fishing east of W150°. Previous NMFS studies, using the TURTSIM computer simulation program, show that even a **five-fold** increase in fishing in the Western Pacific would not substantially affect the trajectory of the turtle populations. The Carretta study fails to make any analysis as to how the purported increase in sea turtle take rates would affect sea turtle species, as opposed to particular sea turtles.

Moreover, there has been an absence of analysis as to how only stopping longline swordfish fishing by American vessels would impact the sea turtle populations. As the draft HMS FMP itself suggests, "effective conservation will require international action," (ES-6), because of the great number of foreign longline vessels; those vessels are not regulated to the same extent as the American vessels, if at all. The almost 5000 foreign vessels that set out longlines in the Pacific Ocean dwarf the West Coast-based American fleet, which is less than 25. With the regulated American vessels out of action, the sea turtle mortality rate probably would actually rise, as unregulated foreign vessels supply the market demands created by the end of supply from regulated American vessels.

Hawai'i Litigation. The Hawaiian moratorium with which the draft HMS FMP originally sought to harmonize is subject to a legal challenge in the federal district court for the District of Columbia. That action, *Hawaii Longline Association v. National Marine Fisheries Service*, Civil Action No. 1:01cv00765:CKK, is awaiting a court decision on a motion for summary judgment, to vacate the biological opinion issued by the NMFS on November 15, 2002. Should the court grant the requested relief, the scientific basis for the Hawai'i moratorium – itself the motivation for the stoppage proposed in the original Alternative 2 of the HMS FMP – will be vacated. That could lead to the illogical result, that a moratorium would be instituted here, to harmonize with a moratorium struck down because it has no scientific basis.

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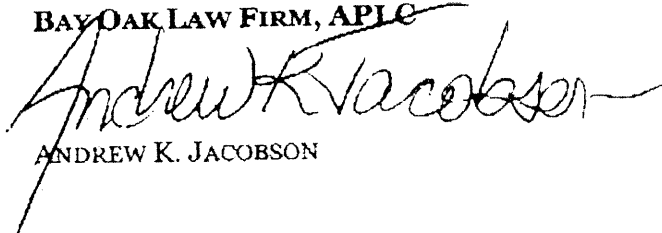
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HMSAS. The Association can agree to the proposed Alternative 2 of the HMSAS (4/29/2003 draft), with a few clarifications. First, the prohibited season (Measure 4) should be May 1 through July 1, as the late March and April fishing season is an important time for the members of the Association. Second, if any observers are placed on board vessels, the observers' out-of-pocket expenses, (which would have to include liability insurance), should be paid by the government or other entity, not the fishermen themselves.

The Association's members depend on the health of the oceans for their livelihood. They risk their lives in America's most dangerous profession (*USA Today*, 3/13/2003) to provide healthy options for America's tables. The Association urges the PFMC to affirm its commitment to keep the longline fishery open to responsible, regulated American vessels, and order further impartial scientific study.

Very truly yours,

BAY OAK LAW FIRM, APLC



ANDREW K. JACOBSON

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JUN - 4 2003

PFMC

June 2, 2003

Dr. Hans Radke, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

SUBJECT: Longline fishing

Dear Dr. Hans Radke,

The news about the state of our oceans becomes more and more troubling every day. As a lover of the sea, and a consumer of seafood, this is one of the issues of most concern to me.

I very much appreciate the PFMC for taking a precautionary and risk-averse approach in the conservation of tunas, billfish and sharks by maintaining a ban on longline fishing within 200 miles of the California coast. But California fleets are being allowed to use longlines in fisheries where Hawaiian boats were banned.

I respectfully urge that you immediately pass regulations requiring US vessels fishing outside the US exclusive economic zone (beyond 200 miles from shore) be subject to all catch limits and bycatch reduction measures in place for vessels fishing the same waters out of Hawaii. I also urge a requirement minimum of 25% observer coverage and use of mandatory vessel monitoring in order to accurately count the catch and bycatch on the high seas and to ensure compliance with conservation measures.

Thank you for your attention to this matter.

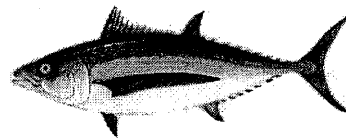
Sincerely,



Andrew Reich
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As of June 10, 2003, approximately 820 copies of this correspondence were received from different individuals.

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Don McIssac - Executive Director
Pacific Fisheries Management Council
7700 NE Ambassador Place, Ste 200
Portland, OR 97220-1384
Via Facsimile 503-820-2299 / and email

June 8, 2003

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JUN 11 2003

Dear Mr. McIssac:

PFMC

WFOA still believes that it makes no sense to attempt to manage internationally fished highly migratory fish stocks, such as swordfish and tuna, under the same fishery management scheme that has been used in the past for groundfish, salmon (anadromous species) and coastal pelagics. Once again, WFOA would like to make very clear that it would support a management plan for sharks, most of which are not highly migratory in nature, and only a few of which are subject to international fisheries (primarily the blue shark). It will be a complete disaster for the U.S. fleet which fishes for albacore, yellowfin, bluefin, big eye, and skipjack tunas (as well as the vessels which fish for swordfish) to be subject to the unilateral management and conservation measures of the Council or National Marine Fisheries Service.

NMFS appears to have been forced, through incessant litigation by special interest groups, to take the position that the Magnuson-Stevens Act must be interpreted to require unilateral management measures on U.S. vessels, irrespective of the percentage of participation by U.S. vessels in the international fishery, and irrespective of whether the U.S. management measures will have any significant affect on the fish, protected species, or endangered species present in the international fishery. Unfortunately, such a position flies in the face of the unbiased science which the same agency prepares and reports on, and also shows a clear absence of any logic.

While WFOA does not represent long line vessel owners, it does support their criticism of the HMS FMP management measures pending approval before this Council on June 18th. WFOA supports fisheries management based upon the best scientific advice available. It defies common sense to impose regulations on long line vessels home ported on the West coast which have been imposed by NMFS and the Western Pacific Management Council as a result of litigation to which West coast fishermen were not parties. Many of those regulations and closures are based upon a Biological Opinion which has been discredited and thrown out by a Federal court. Many of these very closures, which the NMFS is advocating, are the subject of the WPFMC's meetings being held today and tomorrow, during which they may be significantly revised.

Once again WFOA supports fisheries management based upon science. It does not support fisheries management based upon bureaucratic desires for conformity for its own sake, or political pressure. WFOA has great faith in the intelligence and common sense of the members of this Council to make reasoned decisions. We hope that one of these would be to place the draft FMP on hold until there can be a full discussion by the Plan Development Team, the HMS Advisory Subpanel, the Scientific and Statistical Committee, and the Enforcement Consultants of the potential economic, social, and biological, as well as legal, consequences of sending the current draft FMP forward to the Secretary of Commerce.

Sincerely,

Wayne Heikkila

Wayne Heikkila
Executive Director

