

conspicuous location on the device:  
"This device may not interfere with TV reception or Federal Government radar."

\* \* \* \* \*

11. Section 95.1101 is revised to read as follows:

**§ 95.1101 Scope.**

This part sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz and 1427–1429.5 MHz frequency bands.

12. Section 95.1103(c) is revised to read as follows:

**§ 95.1103 Definitions.**

\* \* \* \* \*

(c) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz frequency bands.

13. Section 95.1115(a)(2) and (d)(1) are revised to read as follows:

**§ 95.1115 General technical requirements.**

(a) \* \* \*

(2) In the 1395–1400 MHz and 1427–1429.5 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

\* \* \* \* \*

(d) *Channel use.* (1) In the 1395–1400 MHz and 1427–1429.5 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

\* \* \* \* \*

14. Section 95.1121, is revised to read as follows:

**§ 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 MHz and 1427–1429.5 MHz bands.**

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1429.5 MHz bands. The locations of government systems in these bands are

specified in footnotes US351 and US352 of § 2.106 of this chapter.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 600, 635, 648, and 660**

[Docket No. 010612153–2015–02; I.D. 041901A]

RIN 0648–AP21

**Fisheries Off West Coast States and in the Western Pacific; Atlantic Highly Migratory Species; Fisheries of the Northeastern United States; Implementation of the Shark Finning Prohibition Act**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes this final rule to implement the provisions of the Shark Finning Prohibition Act (Act). This final rule prohibits any person under U.S. jurisdiction from engaging in shark finning, possessing shark fins harvested on board a U.S. fishing vessel without corresponding shark carcasses, or landing shark fins harvested without corresponding carcasses. Finning is the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea. This final rule is issued in accordance with the requirement of the Act that the Secretary of Commerce (Secretary) issue regulations to implement the Act. This final rule does not alter or modify shark finning regulations already in place in the Atlantic for Federal permit holders.

**DATES:** Effective March 13, 2002.

**ADDRESSES:** Copies of the environmental assessment (EA) and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213; fax 562–980–4047.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, at 562–980–4040; or Charles Karnella, Administrator, Pacific Island Area Office, NMFS, at 808–973–2935; or

Karyl Brewster-Geisz, NMFS headquarters, at 301–713–2347.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This Federal Register document is also accessible via the Internet at the Office of the Federal Register's website at <http://www.access.gpo.gov/su-docs/aces/aces140.html>

**Background**

The proposed rule published for this action (66 FR 34401, June 28, 2001) provided substantial background information on the issue of shark finning. A summary of that information is provided here. The Act was passed by Congress and signed by the President in December 2000 out of concern for the status of shark populations and the effects of fishing mortality associated with finning on shark populations. The Act amends the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Act prohibits any person subject to U.S. jurisdiction from (1) engaging in shark finning, (2) possessing shark fins aboard a U.S. fishing vessel without the corresponding carcass, or (3) landing shark fins without a corresponding carcass.

The strong international market for shark fins has increased the potential for fishing shark stocks at unsustainable levels. Uncontrolled shark finning may lead to unsustainable shark harvests, as well as to the waste of usable (but often relatively lower value) shark meat. The intent of the Act is to end the practice of shark finning and support domestic and international conservation of shark stocks.

**Provisions of the Final Rule**

To implement the Act, this final rule prohibits: (1) Any person from engaging in shark finning aboard a U.S. fishing vessel; (2) any person from possessing shark fins on board a U.S. fishing vessel without the corresponding shark carcasses; (3) any person from landing from a U.S. fishing vessel shark fins without the corresponding carcasses; (4) any person on a foreign fishing vessel from engaging in shark finning in the U.S. exclusive economic zone (EEZ), from landing shark fins without the corresponding carcass into a U.S. port, and from transshipping shark fins in the U.S. EEZ; and (5) the sale or purchase of shark fins taken in violation of the above prohibitions. In addition, this final rule requires that all shark fins and carcasses be landed and weighed at the same time, once a landing of shark fins and/or shark carcasses has begun. This rule does not affect the reporting

requirements currently in place for fisheries that take sharks or for any U.S. vessels that fish solely in state waters and that have not been issued a Federal Atlantic shark or dogfish permit.

This final rule establishes a rebuttable presumption that any shark fins possessed on board a U.S. fishing vessel, or landed from any fishing vessel, were taken, held, or landed in violation of these regulations if the total wet weight of the shark fins exceeds 5 percent of the total dressed weight of shark carcasses landed or found on board the vessel. It would be the responsibility of the person conducting the activity to rebut the presumption by providing evidence that the fins were not taken, held or landed in violation of these regulations. NMFS has used wet weight to apply the 5-percent limit for shark fins landed in the Atlantic, Gulf, and Caribbean, where the fins are generally wet when landed. In the proposed rule for this action, NMFS specifically requested comments regarding how the weight of shark fins should be determined for purposes of this final rule. Public comments generally favored the use of wet weight, and this approach is maintained in the final rule for consistency with the approach used in the Atlantic shark fisheries.

The prohibition of landing shark fins without corresponding carcasses extends to any vessel (including a cargo or shipping vessel) that obtained those fins from another vessel at sea. Any such at-sea transfer of shark fins effectively would make the receiving vessel a "fishing vessel," as the receiving vessel is acting "in support of fishing." Thus, the receiving vessel is prohibited from landing shark fins without corresponding carcasses under this final rule.

#### Applicability in State Waters

NMFS requested public comment on whether the prohibitions in the Act should be applied to activities in state waters and the possession or landing of fins from sharks harvested from state waters. After reviewing the language of the Act and its legislative history, together with the public comments on this issue, NMFS concludes that the final rule should not operate to alter or diminish the jurisdiction or authority of any state within its boundaries. Therefore, this final rule does not apply to activities by persons on vessels fishing only in state waters. However, consistent with existing regulations at 50 CFR 635.4(a)(10) and 648.4(b), any person aboard a vessel issued an Atlantic shark or spiny dogfish permit shall be, as a condition of such permit, subject to the requirements of this

subpart during the period of validity of the permit, without regard to whether the fins were taken from sharks harvested within or outside the U.S. EEZ. Persons aboard such federally permitted vessels that fish within the waters of a state that has more restrictive regulations pertaining to shark finning must abide by any of the state's regulations that are more restrictive. Because Pacific states, by and large, already prohibit finning, NMFS decided not to enact similar provisions in the Pacific.

#### Effects of Final Action

This final rule will directly affect (1) owners, operators, and crew of U.S. fishing vessels that engage in finning, and in landing and selling those fins; (2) owners and employees of U.S. firms that buy and sell shark fins harvested in and beyond the U.S. EEZ (which could include U.S. fishing vessels and foreign vessels that obtain fins without carcasses from foreign vessels at sea) or that sell sharks harvested by vessels that have been issued a Federal Atlantic shark or spiny dogfish permit; and (3) owners, operators, and crew of foreign fishing vessels that would otherwise land shark fins without carcasses in U.S. ports. Shark finning has been prohibited in the Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea since 1993, and finning of spiny dogfish in this region was prohibited in 2000. Further, finning is effectively prohibited under state regulations on the West Coast and in the north Pacific, as well as in a number of Atlantic states and Hawaii. Therefore, there will be minimal impacts in these areas.

Most, if not all, of the impacts will likely affect businesses in the western Pacific. This final rule is expected to have moderate impacts on fishermen and businesses in Guam and American Samoa, where shark fin landings have been made by U.S. and foreign vessels and substantial sales and trade in shark fins have been conducted for many years. In Guam and American Samoa, domestic landings of shark fins have been very low; however, foreign longline vessels have landed shark fins there in the past. Under this final rule, sales of those fins would be prohibited unless the corresponding carcasses were also landed. As there is no market for carcasses, it is likely that shark fin landings will cease or drop to very low levels. This would affect vessel sales as well as the earnings of crew on foreign fishing vessels because the revenue from fin sales often accrues directly to crew members. If that income is reduced, there could be less spending by crew members in port calls in American

Samoa and Guam. It is estimated that shark finning accounts for between \$1.8 million and \$2.5 million of economic activity in the western Pacific (not including the values formerly attributable to finning by domestic vessels in Hawaii until 2000, when finning was prohibited).

This final rule may indirectly affect U.S. retailers and consumers of shark fins, but the extent of impact cannot be determined with available data. It is likely that shark fins, which would no longer be available in large quantities from domestic landings, would continue to be available through air, ocean, or surface freight shipments. It is also possible that the price of shark fins would rise due to lower domestic supply. If a market for shark carcasses could be developed, the effects of the landings prohibition on fins without carcasses could be alleviated somewhat. Because NMFS' interpretation of the Act is that it targets fishing vessels and was not meant to interfere with international trade, NMFS has drafted this final rule not to directly affect the owners and employees of businesses that are engaged in regular domestic and international cargo shipments of, and trade in, shark fins, or the owners and employees of businesses that provide supplies and services to foreign fishing vessels that may (but do not necessarily) engage in shark finning and associated sales.

This final rule does not establish any new reporting or recordkeeping requirements. Reporting requirements currently in place are believed to be sufficient for monitoring and enforcing these regulations. However, these regulations may be amended if information or conditions demonstrate that additional reporting or recordkeeping requirements are necessary to achieve the purposes of the Act. NMFS will work with the regional fishery management councils (councils), interstate marine fisheries commissions, and states to determine whether changes are needed to ensure adequate records for monitoring the fisheries and enforcing the prohibitions. If any changes are needed in reporting and recordkeeping requirements, they may be made nationally or in separate regions.

#### Alternative Construction of the Statute

NMFS considered applying broader interpretations of the Act that would likely have had much greater impacts on foreign fishermen. One alternative that NMFS considered would have prohibited foreign fishing vessels from possessing shark fins without carcasses while in U.S. ports. This could have

resulted in a substantial reduction in the use of those ports by foreign longline vessels that have shark fins on board without corresponding carcasses. It is estimated that this port activity generates between \$40 and \$60 million per year in sales by Hawaiian businesses.

NMFS considered a second alternative that would have prohibited the possession of shark fins without corresponding carcasses by all foreign fishing vessels whenever they are in the U.S. EEZ, even if not engaged in fishing. This could have forced some vessels fishing throughout the Pacific to adjust their navigation routes at high expense. It would have also constituted an infringement on the right of freedom of navigation under customary international law. This construction appears to go beyond the intent of the Act.

A third alternative would have extended the landing prohibition to all vessels, including non-fishing cargo vessels, whether or not such vessels are operating in support of fishing activity. Under this alternative, there would have been greater impacts on shippers, retailers, and consumers. U.S. Customs Service data indicate that documented imports and exports of shark fins into and out of the U.S. were valued at \$3 million and \$5 million, respectively, in 1999. Under this alternative, these shipments would likely be eliminated and shark fins could only enter the U.S. via air or land freight.

NMFS also considered a fourth alternative that would not have promulgated these regulations but would have used fishery management plans prepared by councils (and by the Secretary with respect to Atlantic Ocean, Gulf of Mexico, and Caribbean shark fishery management) under the Magnuson-Stevens Act to implement the Act. However, actions by the Councils would require an extended amount of time that would not meet the statutory time constraints of the Act.

#### Comments and Responses

A summary of the substantive comments on the proposed rule and responses to those comments follow.

#### Application of the Act in State Waters

*Comment 1:* Several commenters indicated that not applying the prohibitions of the Act in state waters is inconsistent with the Act and should not be incorporated in the final rule. Finning is a national concern, and the failure of states and councils to prohibit finning is what led to the need for the Act. The term "at sea" was meant broadly by Congress and Congress could

have specifically excluded state waters if that was the intent. Therefore, the prohibitions should be applied in state waters, or at least in state waters where there are no state regulations prohibiting finning. It was suggested that non-application in state waters would result in unnecessary enforcement difficulties. One state had no objection to application of the regulations in state waters as long as states could adopt more stringent regulations. Another state agreed with NMFS' proposed approach under which the regulations would not apply in state waters.

*Response:* The language and legislative history of the Act indicate that the regulations should not apply in state waters. The prohibitions contained in the Act were enacted as an amendment to the Magnuson-Stevens Act. The Magnuson-Stevens Act grants authority to the Secretary and the eight fishery management councils to regulate fisheries in ocean areas seaward of state waters, while providing that such authority shall not be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries (16 U.S.C. 1856(a)). Neither the language nor the legislative history of the Act reveals an intent by Congress to extend Federal fishery management authority to regulate state shark fisheries, or the finning of sharks taken in such state fisheries. Hence, NMFS understands the prohibitions contained in the Act to apply to the finning, possession, and landing of sharks harvested seaward of state waters. The comprehensive prohibition of shark finning would require either corresponding state regulation or a specific exception to the Magnuson-Stevens Act under 16 U.S.C. 1856(b) allowing for Federal regulation of sharks harvested within the boundaries of a state. While most states already have prohibitions on shark finning in state waters, NMFS intends to work with regional fishery management councils, interstate marine fisheries commissions, and states to promote consistency in management throughout state and Federal waters.

#### Application of the Regulations to Foreign Vessels

*Comment 2:* The Act does not provide authority to prohibit foreign vessels from possessing shark fins from sharks caught on the high seas. The Act (as an amendment of the Magnuson-Stevens Act) is limited to regulating the possession or offloading of fish harvested in the U.S. EEZ. The only reasonable interpretation of the Act, therefore, is that the new law does not regulate shark fins caught by foreign

vessels on the high seas. The Act does not authorize prohibiting shark finning by foreign fishing vessels on the high seas and therefore, the Act cannot prohibit the landing of shark fins without the corresponding carcasses if they were taken on the high seas.

*Response:* Foreign vessels, when they are engaged in fishing or fishing related activities in the U.S. EEZ, in state waters, or in U.S. ports, are subject to U.S. jurisdiction under customary international law. These vessels are subject to the Magnuson-Stevens Act, the Nicholson Act and other applicable law with respect to any fishing activity (defined in the Magnuson-Stevens Act to include any operations in support of the catching, taking or harvesting of fish) within the U.S. EEZ, or activities, including landing of fish or fish parts, conducted in U.S. ports in the 50 states and the U.S. Virgin Islands for vessels greater than 50 feet in length, as regulated by the Nicholson Act (see 46 U.S.C. Appx. sec. 251). Accordingly, the Act requires NMFS to prohibit both finning (as a fishing activity) and landing of shark fins without the corresponding carcasses by foreign vessels, when these activities occur in U.S. waters or U.S. ports. However, the Act does not confer jurisdiction to prohibit shark finning by foreign vessels on the high seas. Absent specific evidence to the contrary, NMFS must presume that any shark fins in the possession of a foreign vessel passing through the U.S. EEZ were harvested either on the high seas or in a foreign jurisdiction. The possession of such shark fins by foreign vessels in U.S. waters does not, of itself, constitute fishing or other activity subject to U.S. regulatory jurisdiction. Therefore, NMFS interprets the Act as not imposing the prohibition regarding possession of shark fins without corresponding carcasses against foreign vessels, except when those vessels are offloading shark fins in a U.S. port.

*Comment 3:* Sections 600.1022(b) and 600.1023(f) should be revised to clearly be limited to U.S. fishing vessels.

*Response:* Section 600.1022(b) has been revised to clearly indicate that the 5 percent threshold of the rebuttable presumption as it applies to possession of shark on board a vessel is applicable only to U.S. vessels, while the 5 percent threshold of the rebuttable presumption as it applies to landings is applicable to all vessels landing shark fins in a U.S. port or transshipping shark fins in waters under U.S. jurisdiction. No change was made in § 600.1023(f) (see response to comment 5).

*Comment 4:* There should be a clearer statement that foreign fishing vessels

that call at U.S. ports are exempt from application of the possession prohibition. There should not be any restriction on foreign vessels' freedom to transit the U.S. EEZ or enter a port in Hawaii based on possession of shark fins without corresponding carcasses on board the vessel. Section 600.1023(b) does not address the right of a foreign vessel to have possession of shark fins without carcasses in ports under U.S. jurisdiction. This would allow a state to prohibit such possession, and § 600.1020 further suggests this possibility. Prohibiting foreign vessels from possessing shark fins in U.S. ports could have serious adverse consequences on the economy of some ports because it would make it very difficult for Japanese fishing vessels to visit such ports.

*Response:* This final rule prohibits persons aboard U.S. or foreign fishing vessels from landing shark fins without corresponding carcasses. This final rule does not prohibit foreign vessels that possess shark fins without corresponding carcasses from transiting the U.S. EEZ or state waters, or from entering a U.S. port.

*Comment 5:* Foreign fishing vessels should be exempt from inspection under § 600.1023(f).

*Response:* Under customary international law, foreign vessels in U.S. ports are subject to inspection in accordance with the jurisdiction of port states to enforce their laws. Consequently, a foreign fishing vessel may be inspected when in a U.S. port.

#### States' Authority Over Foreign Vessels in U.S. Ports

*Comment 6:* Two commenters indicated that, as written, the proposed application of the prohibitions to foreign fishing vessels would occur even in state waters, while domestic vessels would not be subject to prohibitions in state waters. This distinction is troubling, especially in the context of trade disputes concerning environmental laws. At the least, NMFS should explain the basis for applying the Act differently for foreign and domestic fishing vessels.

*Response:* The comment refers to language in the preamble to the proposed rule that discusses the likely effects of the proposed prohibitions on persons aboard U.S. fishing vessels and foreign fishing vessels, respectively. The language in question discusses the effect of the proposed landing prohibition on persons aboard foreign fishing vessels that would be prohibited from landing shark fins without corresponding carcasses "in or inside" the U.S. EEZ. However, the landing prohibition under

the final rule applies equally to foreign and domestic fishing vessels. Nor is there any disparate treatment of foreign vessels with respect to the prohibition against shark finning in waters seaward of the inner boundary of the U.S. EEZ.

*Comment 7:* If retained, § 600.1020 should be revised to limit states to regulating the taking of sharks in state waters and the rules should expressly authorize foreign vessels to possess shark fins without corresponding carcasses in U.S. ports.

*Response:* As discussed previously, the Act does not provide NMFS with authority or jurisdiction over state waters. Persons conducting activities regulated by this final rule must abide by any more restrictive state regulations as applied to sharks harvested in state waters or landed in a state. Foreign fishing vessels, while subject to the landing prohibition, may possess shark fins without corresponding carcasses as they transit the U.S. EEZ and state waters, and when they are in U.S. ports. Since such possession of shark fins by foreign vessels is not prohibited, no express authorization is required.

#### Application of the Rules in a Foreign Trade Zone

*Comment 8:* One commenter asked if the prohibitions against landing fins without carcasses by foreign fishing vessels would apply in the foreign trade zone in Hawaii; another commenter recommended that the landings prohibition be applied to foreign fishing vessels in a foreign trade zone.

*Response:* The final rule clarifies that foreign fishing vessels are prohibited from landing fins without corresponding carcasses in a foreign trade zone, whether in Hawaii or elsewhere. The Foreign Trade Zone Act, which establishes foreign trade zones, exempts imports from U.S. customs duties. The Free Trade Zone Act does not exempt fishing activity, including landing of shark fins, by persons or entities under U.S. jurisdiction.

#### Definition and Application of Terms

*Comment 9:* The terms, "dressed weight," "wet fins," and "corresponding carcass" should be defined. The use of wet weight is supported but it was noted that there are species differences in the ratio of fin weight to carcass weight. NMFS should consider requiring that fins be packed in ice to prevent drying. A definition of "wet" was suggested.

*Response:* The term "Corresponding Carcass" is self explanatory, and the term "dressed weight" is defined for the Atlantic at 50 CFR part 635. NMFS has retained the use of wet weight in the

final rule and will use dressed weight in the application of the rebuttable presumption at § 600.1022(b). Therefore, no changes are made in this final rule. NMFS notes that enforcement and prosecution of violations will not be contingent solely on the use of the rebuttable presumption. NOAA will consider all evidence available in each instance, including the number and weight of fins, the number and weight of shark carcasses, the condition of the carcasses (e.g., dressed or not dressed), and the amount or weight of other shark products when determining whether a violation likely occurred and whether to prosecute. More specific definitions of the terms as proposed will not necessarily increase NMFS' ability to enforce the regulations in a reasonable manner or help the public comply with the regulations. As recommended by the commenter, NMFS considered whether to require special packing of fins or keeping fins attached or specially identified with specific carcasses as a way of enforcing the finning definitions. Based on experience in the Atlantic, NMFS concluded that it has not been demonstrated that such restrictions are necessary or appropriate at this time. As more experience is gained in implementing the regulations in the Pacific, NMFS will consider the need for additional measures or new definitions to ensure that the Act is carried out effectively.

#### International Cooperation

*Comment 10:* The Act is unscientific and irrational, and efforts to enforce the Act may be counterproductive. The Act disregards established international rules concerning conservation and management of marine resources. Management must be based on objective and justifiable grounds, and an across-the-board prohibition on finning lacks objective and reasonable grounds. The Act will dampen Food and Agricultural Organization (FAO) efforts to conserve and manage sharks, which the U.S. has agreed is necessary under the International Plan of Action for Shark Conservation (IPOA) and the U.S. National Plan of Action (NPOA). Shark finning controls should not be taken up in isolation but should be part of a complete management strategy.

*Response:* The Act is U.S. law, reflecting the intent of Congress, and expressly provides that its terms must be implemented by domestic rulemaking. In enacting this law, Congress emphasized the need for international cooperation to conserve and manage sharks and their utilization in a reasonable and effective manner. In fact, the Act is fully consistent with the



objectives in paragraph 22 of the IPOA, namely encouraging the full use of dead sharks and minimizing the waste and discards from shark catches.

*Comment 11:* The Secretary should move forward with implementation of the international provisions of the Act.

*Response:* The Secretary is working with the Department of State to develop a strategy for complying with the international provisions of the Act.

#### Atlantic Fishery Regulations

*Comment 12:* Section 635.30(c)(1) should be revised to apply only to shark fins harvested by a vessel pursuant to a commercial vessel permit for sharks. This would make clear that this section would not apply to foreign fishing vessels transiting the EEZ or entering a U.S. port.

*Response:* Section 635.30(c)(1) has been clarified to apply only to shark fins harvested by fishermen that hold a Federal Atlantic commercial shark limited access permit.

#### Consideration and Evaluation of Alternatives and Negative Impacts

*Comment 13:* There is insufficient evaluation of possible effects of the measures; there should be a full evaluation along with consultations with FAO, other international organizations, and other nations.

*Response:* Both an EA and a combined RIR and initial regulatory flexibility analysis were prepared for the proposed rule, and a range of alternatives and their impacts have been considered. The proposed rule published for this action was widely available to, and open to comment by, U.S. interests, foreign nations, and international organizations. NMFS considered the comments it received on the proposed rule in drafting this final rule and its associated analytical documents.

This final rule affects foreign vessels' activities only while they are under U.S. jurisdiction and does not purport to control their activities on the high seas or in other nations' waters. Therefore, NMFS does not believe that consultations with other nations or international organizations on this action are necessary. However, in coordination with the Department of State, NMFS will continue to work with other nations to develop and implement international agreements for the conservation and management of sharks.

*Comment 14:* A legislative ban on shark finning could seriously impact port calls by foreign vessels and result in job and revenue loss in Hawaii. There will be a negative impact on people in

small communities including Guam and American Samoa.

*Response:* Based on the RIR/FRFA for this final rule, NMFS does not believe that the ban on shark finning will result in significant job or revenue loss in Hawaii. Foreign fishing vessels do not land shark fins in Hawaii at this time. Further, this final rule does not prohibit foreign vessels from making port calls even if they have shark fins on board without corresponding carcasses. Therefore, this final rule is not expected to result in a reduction of port calls or associated adverse impacts on jobs and revenue in Hawaii. NMFS recognizes, as discussed above and in the supporting documents, that there may be adverse impacts in Guam and American Samoa. However, NMFS is obligated to promulgate regulations to implement the Act and has attempted to structure the regulations to have the least possible social and economic impacts on communities in American Samoa and Guam.

*Comment 15:* Pelagic shark populations are stable (especially blue sharks) and prohibition of finning is not necessary for conservation.

*Response:* Not enough research has been done and too few stock assessments have been prepared to demonstrate that pelagic shark populations are stable. In fact, the absence of good information on shark abundance was one of the principal concerns behind the FAO IPOA. This final rule should help reduce uncontrolled and unmonitored shark fishing mortality.

*Comment 16:* Prohibiting finning will lead to less data for stock monitoring and management because fishermen will not cooperate in collecting data under a regulation which does not have a scientific base.

*Response:* The regulations are not expected to result in a decrease in data needed for shark stock assessments or conservation and management. NMFS is working with regional fishery management councils, interstate marine fisheries commissions, and states to address data needs for these purposes. In addition, NMFS is working with the Department of State to develop and implement an international strategy for shark conservation.

*Comment 17:* An option before the U.S. could be to abolish the Act or adopt the status quo.

*Response:* NMFS cannot abolish the Act. NMFS is obligated to promulgate regulations to carry out the Act unless the Congress directs NMFS to do otherwise.

#### Reporting Requirements

*Comment 18:* NMFS should change logbooks to require additional catch and effort information by species; it is not clear how NMFS can enforce the regulations (especially the 5 percent weight ratio) without additional data reporting. The absence of data reporting requirements contradicts section 7 of the Act, which mandates a number of data collection and research priorities.

*Response:* NMFS has considered the need for data collection or reporting requirements and believes that it is premature to conclude that new requirements are necessary. Existing Federal fishery management plan and state reporting requirements generate much of the fishery information needed for shark conservation and management. Improvements in these reporting systems are expected as NMFS gains experience under these and other regulations. NMFS notes that a special effort to review reporting requirements will be undertaken in the Pacific. The EA for this action includes a comparison of current Atlantic and Pacific reporting requirements.

#### Other Comments

*Comment 19:* Two commenters objected to the statement that shark finning is a wasteful act that goes against sportsmanship when no clear definition of wastefulness is given; stated that finning makes effective use of unnecessary incidental catch; and indicated that there is no reason to prohibit finning if the species involved is healthy. Finning is neither wasteful nor unsportsmanlike. Retaining only the fins, especially of species whose meat is unpalatable, does not inherently make the practice wasteful. There are many cases in which only parts of fish are used.

*Response:* As stated in the Act, the United States has decided, through Congress, that shark finning is wasteful and should not be permitted by persons or vessels subject to U.S. jurisdiction. However, NMFS recognizes that other nations may feel differently and together with the Department of State, will work with other nations on developing and implementing international agreements that meet mutually acceptable objectives.

*Comment 20:* Notwithstanding that unilateral action on shark finning is a terrible precedent, it is recognized that NMFS needs to comply with the legislation and NMFS has made a good effort to implement it in a practical and reasonable manner, especially with respect to allowing foreign fishing vessels to possess fins without carcasses

while transiting and allowing cargo vessels to carry out regular shipping activities.

*Response:* NMFS is implementing the Act in a manner that minimizes adverse economic impacts while meeting the objectives of the Act.

*Comment 21:* The regulations should be implemented as quickly as possible and the 30-day "cooling off" period should be waived. NMFS should strictly enforce the prohibitions and should develop measures to combat illegal landings and transfer of illegally taken fins and to prevent "highgrading." Fins should have to either remain on the carcass or somehow be identifiable with the carcass (this will help in species identification as well). The fisherman should have the burden of proof to show that fins on board or landed relate to carcasses in the proper ratio.

*Response:* There is no legal basis available with respect to this rule to waive the 30-day delay in effectiveness required by the Administrative Procedure Act. NMFS intends to enforce the regulations. In prosecuting enforcement actions, NMFS carries the burden of proving violations of this rule. In proving violations of the prohibitions against possession or landing shark fins without the corresponding shark carcasses, this burden may be satisfied as a threshold matter using a rebuttable presumption based on evidence that the total weight of the fins exceeds 5 percent of the dressed weight of the carcasses. The person conducting the alleged illegal activity can rebut that presumption by providing evidence that the fins were not taken, held or landed in violation of these regulations.

*Comment 22:* All recreationally and commercially caught sharks that are endangered, protected, undersized or not a desirable species to market or eat should be properly handled and released alive, in the water.

*Response:* While NMFS agrees that every effort should be made to release unwanted sharks alive, the Act did not address the manner in which sharks should be handled or released. This is a matter to be evaluated through the fishery management process.

*Changes From the Proposed Rule*  
The following changes have been made from the proposed rule:

Section 600.1019, has been clarified to better define shark finning.

In § 600.1022, paragraph (b) has been revised to indicate that the 5-percent possession limit of fins to shark carcasses applies only to U.S. vessels. (See also the response to Comment 3.)

In § 600.1023, paragraph (i) has been revised and new paragraphs (j) and (k) added to clarify prohibited acts for

vessels with a Federal Atlantic commercial shark limited access permit.

In § 635.30, paragraph (c)(1) has been revised to clarify that it applies only to shark fins harvested by fishermen that hold Federal Atlantic commercial shark limited access permits. (See also the response to Comment 12.)

In § 635.30, paragraphs (c)(1) and (c)(3) have been clarified to show that all carcasses and fins must be landed at the first point of landing.

There have been additional editorial changes made from the proposed rule to correct references and for clarity and consistency.

#### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. It will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. NMFS has also determined that this final rule will not create serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NMFS prepared an FRFA that describes the impact this final rule is expected to have on small entities. A copy of this analysis is available from NMFS (see ADDRESSES). A summary of the analysis follows.

The need for and objectives of this rule are described in the Summary and Background sections of this preamble.

The principal affected entities are: (a) Western Pacific U.S. longline and purse seine fishing vessel operators and crew, and the businesses that buy and resell shark fins (without corresponding carcasses) from these vessels; (b) businesses that buy and export shark fins from crews of foreign longline vessels delivering those fins in western Pacific ports; and (c) businesses that sell goods and services to foreign vessel crew members who receive the revenue from the sale of shark fins in U.S. ports. The western Pacific is the region mainly impacted because this is the only region where shark finning by U.S. interests and delivery of fins by foreign vessels have not previously been regulated under Federal or state law. The principal effects of this action are to

terminate finning by U.S. fishing vessels in the western Pacific, and to terminate landings of shark fins without corresponding carcasses into U.S. ports by U.S. and foreign fishing vessels in the western Pacific. Persons and businesses in that area may be seriously affected by the elimination of their principal source of shark fins.

NMFS does not know how dominant a role shark fin trade plays in the economic activity of the affected businesses. It is estimated that there are four to six active trading businesses in American Samoa and Guam. If trade in shark fins is their only trade, these businesses may be forced to cease activity and/or find alternate lines of trade. They may also seek ways to find more valuable uses of sharks (e.g., shark meat, cartilage, skins) such that more carcasses would be retained with the fins and greater values could be derived from the shark catches in the longline fishery. However, any such transition is likely to take some time and the businesses would suffer losses until that time. Based on studies of shark fin landings and crew income, it is estimated that the loss could be between \$422,000–653,000 annually. It is acknowledged that there could be reductions in the availability of shark fins for soup and other products in the U.S. under this final rule. However, the supply impacts will be moderated if suppliers are able to use other means to ship shark fins into the United States.

NMFS considered four alternatives to this action other than the status quo or no action. These alternatives are discussed in the Alternative Construction of the Statute section of this preamble, which explains why these alternatives were not adopted. While NMFS received no comments regarding the IRFA, NMFS' response to comments 4, 8, 13, and 14 address economic aspects of this final rule.

This rule applies only to vessels harvesting sharks seaward of the inner boundary of the U.S. EEZ, and to federally permitted vessels in the Atlantic shark and spiny dogfish fisheries, and therefore, it does not conflict with any state laws governing fishing activities in state waters. NMFS does not intend by this regulation to supercede any state law or regulation with respect to shark finning and landing or possession of shark fins by state registered vessels, even with respect to more restrictive state laws or regulations pertaining to such activities occurring seaward of the state's boundary. NMFS intends to work with those states that do not already prohibit the landing of shark fins without the corresponding shark carcasses to enact

appropriate laws and to issue appropriate regulations so that the objectives of the Act are fully achieved.

NMFS completed an informal consultation on September 6, 2001, with regard to the effects of this proposed rule on endangered and threatened species under NMFS' jurisdiction. It was found that the action is not likely to adversely affect listed species under NMFS' jurisdiction.

#### List of Subjects

##### 50 CFR Part 600

Fisheries, Fishing.

##### 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

##### 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

##### 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: February 1, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600, 635, 648 and 660 are amended as follows:

1. The authority citation for parts 600, 635, 648, and 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

#### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

2. Subpart M is added to read as follows:

##### Subpart M—Shark Finning

sec.

- 600.1019 Purpose and scope.
- 600.1020 Relation to other laws.
- 600.1021 Definitions.
- 600.1022 Prohibitions.
- 600.1023 Shark finning; possession at sea and landing of shark fins.

##### Subpart M—Shark Finning

###### § 600.1019 Purpose and scope.

The regulations in this subpart govern "shark finning" (the removal of shark fins and discarding of the carcass), the possession of shark fins, and the landing into U.S. ports of shark fins without

corresponding carcasses under the authority of the Magnuson-Stevens Act. They implement the Shark Finning Prohibition Act of 2000.

###### § 600.1020 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in §§ 600.514 and 600.705 and in paragraphs (b) and (c) of this section.

(b) Regulations pertaining to shark conservation and management for certain shark fisheries are also set forth in this subpart and in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), and 660 (for fisheries off West Coast states and in the western Pacific) of this chapter governing those fisheries.

(c) Nothing in this regulation supercedes more restrictive state laws or regulations regarding shark finning in state waters.

(d) A person who owns or operates a vessel that has been issued an Atlantic Federal commercial shark limited access permit or a spiny dogfish permit is subject to the reporting and recordkeeping requirements found at parts 635 and 648 of this chapter, respectively.

###### § 600.1021 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

*Land or landing* means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shoreside location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

*Shark finning* means taking a shark, removing a fin or fins (whether or not including the tail), and returning the remainder of the shark to the sea.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

###### § 600.1022 Prohibitions.

(a) In addition to the prohibitions in §§ 600.505 and 600.725, it is unlawful for any person to do, or attempt to do, any of the following:

(1) Engage in shark finning, as provided in § 600.1023(a) and (i).

(2) Possess shark fins without the corresponding carcasses while on board a U.S. fishing vessel, as provided in § 600.1023(b) and (j).

(3) Land shark fins without the corresponding carcasses, as provided in § 600.1023(c) and (k).

(4) Fail to have all shark fins and carcasses from a U.S. or foreign fishing vessel landed at one time and weighed at the time of the landing, as provided in § 600.1023(d).

(5) Possess, purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section, as provided in § 600.1023(e) and (l).

(6) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to and/or inspection or copying of any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses, as provided in § 600.1023(f).

(7) Fail to have shark fins and carcasses recorded as specified in § 635.30(c)(3) of this chapter.

(8) Fail to have all shark carcasses and fins landed and weighed at the same time if landed in an Atlantic coastal port, and to have all weights recorded on the weighout slips specified in § 635.5(a)(2) of this chapter.

(9) Fail to maintain a shark intact through landing as specified in §§ 600.1023(h) and 635.30(c)(4) of this chapter.

(b)(1) For purposes of this section, it is a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of this section if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

(2) For purposes of this section, it is a rebuttable presumption that shark fins possessed by a U.S. fishing vessel were taken and held in violation of this section if the total weight of the shark fins on board, or landed, exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel.

###### § 600.1023 Shark finning; possession at sea and landing of shark fins.

(a)(1) No person aboard a U.S. fishing vessel shall engage in shark finning in waters seaward of the inner boundary of the U.S. EEZ.

(2) No person aboard a foreign fishing vessel shall engage in shark finning in waters shoreward of the outer boundary of the U.S. EEZ.

(b) No person aboard a U.S. fishing vessel shall possess on board shark fins harvested seaward of the inner boundary of the U.S. EEZ without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(2), except that sharks may be dressed at sea.

(c) No person aboard a U.S. or foreign fishing vessel (including any cargo vessel that received shark fins from a fishing vessel at sea) shall land shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ without corresponding shark carcasses, as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(1).

(d) Except as provided in paragraphs (g) and (h) of this section, a person who operates a U.S. or foreign fishing vessel and who lands shark fins harvested in waters seaward of the inner boundary of the U.S. EEZ shall land all fins and corresponding carcasses from the vessel at the same point of landing and shall have all fins and carcasses weighed at that time.

(e) A person may not purchase, offer to sell, or sell shark fins taken, landed, or possessed in violation of this section.

(f) Upon request, a person who owns or operates a vessel or a dealer shall allow an authorized officer or any employee of NMFS designated by a Regional Administrator access to, and/or inspection or copying of, any records pertaining to the landing, sale, purchase, or other disposition of shark fins and/or shark carcasses.

(g) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in an Atlantic coastal port must have all fins weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing. Such weights must be recorded on the "weighout slips" specified in § 635.5(a)(2) of this chapter.

(h) A person who owns or operates a vessel that has not been issued a Federal Atlantic commercial shark limited access permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c)(4) of this chapter.

(i) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall engage in shark finning.

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the corresponding carcass(es), as may be determined by the weight of the shark fins in accordance with § 600.1022(b)(2), except that sharks may be dressed at sea.

(k) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall land shark fins without the corresponding carcass(es).

(l) A dealer may not purchase from an owner or operator of a fishing vessel issued a Federal Atlantic commercial shark limited access permit who lands shark in an Atlantic coastal port fins whose wet weight exceeds 5 percent of the dressed weight of the carcasses.

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

3. In § 635.30, paragraphs (c)(1) through (c)(3) are revised to read as follows:

##### **§ 635.30 Possession at sea and landing.**

(c) *Shark.* (1) Notwithstanding the regulations issued at part 600 (subpart M) of this chapter, no person who owns or operates a vessel issued a Federal Atlantic commercial shark limited access permit shall possess or offload wet shark fins in a quantity that exceeds 5 percent of the dressed weight of the shark carcasses. No person shall possess a shark fin on board a fishing vessel after the vessel's first point of landing. While shark fins are on board and when shark fins are being offloaded, persons issued a Federal Atlantic commercial shark limited access permit are subject to the regulations at part 600, subpart M, of this chapter.

(2) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit may not fillet a shark at sea. A person may eviscerate and remove the head and fins, but must retain the fins with the dressed carcasses. While on board and when offloaded, wet shark fins may not exceed 5 percent of the dressed weight of the carcasses, in accordance with the regulations at part 600, subpart M, of this chapter.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart M, of this chapter. Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing. The wet fins may not exceed 5 percent of the dressed weight of the carcasses.

4. In § 635.31, paragraphs (c)(3) and (c)(5) are revised to read as follows:

##### **§ 635.31 Restrictions on sale and purchase.**

(c) \* \* \*

(3) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart M, of this chapter and in § 635.30(c).

\* \* \*

(5) A dealer issued a permit under this part may not purchase from an owner or operator of a fishing vessel shark fins that were not harvested in accordance with the regulations found at part 600, subpart M, of this chapter and in § 635.30(c).

\* \* \*

5. In § 635.71, paragraphs (d)(6) and (d)(7) are revised to read as follows:

##### **§ 635.71 Prohibitions.**

\* \* \*

(d) \* \* \*

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c)(4).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c)(2) and (c)(3) and § 600.1023 (e) and (l) of this chapter.

\* \* \*

#### **PART 648—FISHERIES OF THE NORTHEAST ATLANTIC OCEAN**

6. In § 648.14, paragraph (aa)(4) is revised and paragraphs (aa)(5) and (6) are removed and reserved as follows:

##### **§ 648.14 Prohibitions.**

\* \* \*

(aa) \* \* \*

(4) Violate any of the provisions prohibiting finning in §§ 600.1022 and 600.1023 that are applicable to the dogfish fishery.

\* \* \*

7. In § 648.235, paragraph (c) is added as follows:

##### **§ 648.235 Possession and landing restrictions.**

\* \* \*

(c) Regulations governing the harvest, possession, landing, purchase, and sale of shark fins are found at part 600, subpart M, of this chapter.

\* \* \*

#### **PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC**

8. In § 660.1, paragraph (c) is added as follows:

##### **§ 660.1 Purpose and scope.**

\* \* \*

(c) Regulations governing the harvest, possession, landing, purchase, and sale

of shark fins are found at part 600, subpart M, of this chapter.  
[FR Doc. 02-3113 Filed 2-8-02; 8:45 am]  
BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 020402F]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 6, 2002, until 2400 hrs, A.l.t., December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2002 red king crab bycatch limit for the RKCSS is 20,924 animals as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2002 red king crab bycatch limit specified for the RKCSS will be caught. Consequently, NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the amount of the 2002 red king crab bycatch limit specified for the RKCSS constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 6, 2002.

**Bruce Moorehead,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 02-3269 Filed 2-6-02; 3:29 pm]

BILLING CODE 3510-22-S





## NATIONAL MARINE FISHERIES SERVICE REPORT

Situation: National Marine Fisheries Service will briefly report on recent international and domestic developments relevant to highly migratory species fisheries and issues of interest to the Council.

**Council Task: Discussion.**

Reference Materials:

1. Exhibit G.1, Attachment 1, Sharkfinning Rule

Agenda Order:

1. NMFS Report
  - a. Council Discussion

Svein Fougner

PFMC  
02/21/02

## NMFS REPORT ON HMS ACTIVITIES

### 1. Domestic

NMFS published final rules to implement the Shark Finning Prohibition Act; a copy is provided as Attachment 1 in the Council briefing materials for this agenda item. The regulations went into effect March 13, 2002. Essentially, the rules prohibit a person on a U.S. fishing vessel from engaging in finning of sharks, from possessing shark fins without corresponding carcasses on a U.S. fishing vessel, or selling shark fins without corresponding shark carcasses.

### 2. International

a. IATTC Work Groups on Negotiations, Bycatch, and Fleet Capacity have met in the past 3 months. The Work Group on Negotiations resolved a number of major issues relating to a new convention for the IATTC. The Chair of the Working Group is expected to provide a chairman's draft for discussion at the annual meeting of IATTC in June, but a final text is not likely to be considered for signing until early next year. The Bycatch Working Group will present a draft resolution for the full Commission to consider in June. Essentially this resolution would maintain the current pilot project for full retention of tuna, prompt release of other non-target fish species, and special handling for sea turtles taken in purse seine fisheries; would promote research and testing of new techniques and gear for bycatch reduction in purse seine fisheries; and would promote collection and exchange of sea turtle bycatch in all other fisheries. This resolution is likely to be adopted. The Fleet Capacity Working Group agreed (subject to review of final language) to an approach that would "freeze" purse seine capacity at recent levels (with some national exceptions) and use an IATTC fleet capacity management plan to achieve a long-term target level of 135,000 mt carrying capacity in the purse seine fleet. The conditions to allow "new" capacity through introduction of new vessels to the fleet would be very limiting. It is not possible to say whether this approach is likely to be approved by all the parties to IATTC in June.

b. A second preparatory conference for the central and western Pacific HMS management agreement was held in Papua New Guinea a couple of weeks ago. Considerable progress was made in the area of monitoring, control and surveillance, with the United States being the chair of a special committee to address this issue more fully. There is still concern that no way has been found to assure Japanese participation in the arrangement given the importance of Japanese fisheries in the region. Several other nations that did not sign the agreement appear to be closer to joining subject to affirmation that such aspects as boardings and inspection procedures have been satisfactorily established.

c. In December, the United States embassy delivered a diplomatic note to the Government of Canada indicating that there would need to be substantively final agreement by the end of 2002 on limits for reciprocal fishing under the U.S.-Canada Albacore Treaty or the United States would file a notice of intent to terminate the Treaty by the end of 2003. Canada responded with a counter to the latest U.S. proposal that had called for a very substantial reduction in Canadian fishing in U.S. waters. The Canadian proposal did not call for a significant movement toward the U.S. proposal, but subsequent direct contact between the Department of State and Canada's foreign ministry, followed by discussions with the U.S. industries involved, have led to agreement that the United States will indicate that additional talks with Canada are necessary to see if agreement can be reached this year. A new U.S. proposal is being developed that will build on the proposal that the United States tabled at the last meeting taking into consideration some ideas that the Canadian side has presented in the direct contacts mentioned above. Meeting dates in April are being explored. The Council will be kept informed of progress so that Council representation at such a meeting can be arranged.



United States Department of the Interior

FISH AND WILDLIFE SERVICE  
911 NE 11th Avenue  
Portland Oregon 97232-4181

IN REPLY REFER TO:  
AES/HC

MAR 13 2002

Memorandum

To: Director, Office of Environmental Policy and Compliance  
Department of the Interior, Washington, D.C.

From: Regional Director, Region 1  
Portland, Oregon *Bill Shale*

Subject: Review of the Draft Environmental Impact Statement (DEIS) for the Fishery Management Plan (FMP) for the U.S. West Coast Fisheries for Highly Migratory Species (ER 02/0109)

RESPONSE: Team Leader, Natural Resources Management (Terry Martin)

In response to your February 7, 2002, memorandum, the U.S. Fish and Wildlife Service offers the following comments on the subject document. Please refer any questions to Julie Concannon, Regional Environmental Specialist, at (503) 231-2068.

Attachment

Ms. Valerie L. Chambers  
Chief, Domestic Fisheries Division  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Silver Spring, MD 20910

Ms. Chambers:

In reviewing the fisheries impacts of this draft EIS, the Department of the Interior (Department) notes the pelagic longline fishery has the greatest potential for significant incidental catch and mortality of migratory seabirds. Information from other longline fisheries, and specifically the Hawaii based pelagic longline fisheries, has documented the vulnerability of seabirds and especially albatross to this type of gear.

#### *International Migratory Bird Treaty Act*

Observer data for the Highly Migratory Species (HMS) drift gillnet fisheries indicates that seabird mortality is rare in this fishery as it currently operates. However, it is unknown what the consequences will be for seabirds if proposed alternatives to remove the restrictions on mesh size in the DEIS are adopted. It has been well documented for several other fisheries that gillnets can pose a serious threat to marine birds.

The interactions between seabirds and coastal purse seine fisheries and hook and line fisheries are poorly documented. We request a monitoring section be provided for in the final EIS which helps to determine how these fisheries should be monitored to determine conservation measures necessary to protect marine birds.

#### *Pelagic Longline Fishery*

The Department supports the proposed alternative to "prohibit the use of longline gear in the U.S. Exclusive Economic Zone [EEZ] off the west coast." Initiation of any longline fisheries within the EEZ is likely to increase the take of albatross, especially Black-footed Albatross (*Phoebastria nigripes*), and we recommend against all alternatives, which propose new longline fisheries within the EEZ. The proposed action adopts an initial set of conservation measures, which are consistent with the Hawaii based longline fisheries. Given that there is little data on rates of mortality and seabird interactions specific to the west coast longline fishery, this seems a prudent initial course of action. We recommend the final EIS provide a plan for data collection to accurately assess levels of take, specific to this fishery, and research to develop and evaluate protective measures which will reduce seabird mortality to zero.

#### *Drift Gillnet*

We recommend against Alternative 2 which removes restrictions on the mesh size. Catch rates of seabirds are well documented for the west coast HMS drift gillnet fishery. Observer data for the



drift gillnet fishery for swordfish and shark indicates that interactions with seabirds are frequent and few seabirds are killed in this fishery as it currently operates. Two alternatives are proposed for legal drift gillnet gear: Alternative 1 specifies a minimum stretched mesh size of 14 inches, and Alternative 2 does not specify any restrictions on mesh size. Alternative 1 is consistent with current regulations. The use of smaller mesh nets allowed in Alternative 2 is relatively new and the consequences for seabirds are unknown, and therefore not recommended.

### Coastal Purse Seine

The extent of seabird interactions with the coastal purse seine fishery is unknown. We recommend the final EIS provide a plan for data collection to determine if seabird mortality exists in this fishery and if it does, we recommend the development of conservation measures to reduce this take to zero.

### Hook and Line

Seabird interactions in the HMS recreational fisheries have not been monitored, but anecdotal accounts (reported in the DEIS) indicate that seabirds do become hooked while chasing baited hooks. "Most" are reportedly de-hooked and released alive. Pelicans (*Pelecanus occidentalis*), gulls (*Larus* spp.), and cormorants (*Phalacrocorax* spp.) are the species most frequently involved. Albatross are also known to be caught in the albacore troll fishery but the frequency is unknown. We recommend the continued development of gear and fishing techniques that reduce these interactions to zero, and the development of outreach materials that can be provided to fishers illustrating the methods for proper handling and release of captured birds, to promote their survival.

### Endangered Species Act

We are concerned that the DEIS does not address the potential effects of the proposed actions upon U.S. Fish and Wildlife Service (Service) listed species. We recommend the National Marine Fisheries Service (NMFS) initiate informal consultation with the Service to obtain a list of listed/proposed species or designated/proposed critical habitats in the action area for the final EIS. Once a list of endangered/threatened/proposed species or designated/proposed critical habitat is provided to your agency from the Service you can determine if certain species would be adversely affected by the proposed action in a biological assessment.

Some listed species known to occur within and adjacent to the EEZ include (but are not restricted to) the threatened marbled murrelet (*Brachyramphus marmoratus marmoratus*), threatened southern sea otter (*Enhydra lutris nereis*), endangered short-tailed albatross (*Phoebastria albatrus*), threatened bald eagle (*Haliaeetus leucocephalus*), endangered California least tern (*Sterna antillarum* (=albifrons) browni), threatened western snowy plover (*Charadrius alexandrinus nivosus*), and endangered brown pelican (*Pelecanus occidentalis*). A comprehensive list of listed/proposed species and designated/proposed critical habitats within the action area can be obtained from the Service to initiate the informal section 7 process.

## SPECIFIC COMMENTS

Pg. 6 - 9: 6.1.3. Interactions and the Migratory Bird Treaty Act - Species of Concern Paragraph 1, Sentence 3: We request you replace the existing sentence with "The estimated number of BFAL worldwide is approximately 290,000 birds, of which 58,000 pairs (116,000 birds) breed in 2001/2002 (USFWS data, 2002)."

Paragraph 1, Sentence 5: We request you replace the estimated number of LAAL individuals "est. 2,400,000 individuals" with "est. 2,200,000 individuals" (USFWS data, 2002). Please add the following sentence: "Numbers of breeding LAAL have declined over the last 5 years in the 2 largest colonies of this species. (USFWS data, 2002)."

Paragraph 1, Sentence 8: The DEIS states that "the birds begin returning to the Hawaiian Island chain after August. Please replace "after August" with "in October".

Pg. 8 - 13. Legal Gear and Gear Restrictions - Commercial Gear - Drift Gillnet: Two options are considered for this definition: 1. minimum stretched net mesh size of 14 inches, and 2. no minimum mesh size. We are concerned there is no discussion of the environmental consequences of these two options in 9.2.3.1. Given this lack of analysis, we recommend against selection of Option 2: no restrictions on mesh size. Over 10 years of observer data indicate that seabird mortality associated with the current gear type is very low. Rates of seabird mortality associated with smaller mesh gillnets are unknown/not presented. If the unrestricted mesh size option is selected, then we recommend that the new fishery be closely monitored to ensure that the level of interactions with seabirds does not increase.

Pg. 8 - 29: 8.5.5. Pelagic Longline Fishery Management Measures: We support the proposal to prohibit the use of longline gear in the U.S. EEZ off the west coast. We are strongly opposed to Alternatives 2, 3, and 4, which would initiate longline fisheries or experimental longline fisheries inside the EEZ. Expansion of the longline fishery into this area would certainly increase the number of Black-footed Albatross killed. We support the proposal to apply all of the seabird conservation and management measures applied to western Pacific longline vessels to control sea turtle and seabird interactions, to west coast-based longline vessels, as is outlined in the preferred alternative. We also recommend the Council document the support research and development of additional and/or alternative measures that increase the protection of seabirds in the areas fished by the west coast-based longline fleet in the final EIS. Finally, we support the proposal to monitor this fishery. An observer program (20% coverage would match the effort in the Hawaii longline fishery) could document the levels of mortality and assist in the evaluation of protective measures.

Pg. 8 - 30: 8.6.2 Research and Data Needed for Management - Information Needs for Fishery - Pelagic Longline: We recommend adding item "d." to the final EIS. Evaluate effectiveness of the conservation measures adopted from the Hawaii longline fisheries in the area fished by the west coast longline fishery and develop and test new measures in an effort to reduce seabird incidental take to zero.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

**MAR 08 2002**

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 - Schmitten  
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).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

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PFMC

March 8, 2002

Scott B. Gudes  
U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
Room 6121, SP  
14<sup>th</sup> and Constitution, NW  
Washington, DC 20230

Donald McIsaac  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

Dear Mr. Gudes and Mr. McIsaac:

The Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement for the project entitled **Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (CEQ #020018)**. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The National Marine Fisheries Service (NMFS) and the Pacific Fishery Management Council (PFMC) have conducted a comprehensive review of the fishery for highly migratory species (HMS) within the Exclusive Economic Zone (EEZ) off the states of Washington, Oregon, and California in the eastern Pacific Ocean. NMFS and PFMC propose to approve and implement an HMS Fishery Management Plan (FMP) for this zone in order to manage HMS fisheries in a sustainable manner, resolve inconsistencies in state regulations, and provide a consistent mechanism for addressing fishery management needs. The FMP would manage several species of tuna and sharks, striped marlin, swordfish, and dorado for both commercial and recreational fisheries. The DEIS evaluated two broad alternatives -- no action and adoption of the proposed FMP. However, for each proposed management action under the FMP, several alternatives were evaluated. The proposed FMP includes 20 preferred actions related to the decision making process, oversight/permitting, area closures, reporting requirements, harvest guidelines, bycatch reduction, prohibition on harvesting or selling certain species, and gear restrictions.

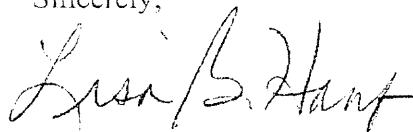
EPA commends the comprehensive approach taken by NMFS and PFMC to analyze management options for the fishery. The DEIS is well written, and the use of "sidebars" in the Executive Summary to provide information or anecdotes is a great way to illustrate the issues

associated with the HMS fishery. The framework approach for managing the fishery is progressive, and provides opportunity to adaptively manage the resources. Also, the DEIS recognizes the need for regional and international consistency to better conserve HMS species, and the importance of addressing information/research gaps. EPA strongly advocates an approach which addresses the entire ecosystem, managing for sustainable fisheries and naturally functioning systems. We are pleased that the FMP takes this approach. We also recognize that scientific information available to decision makers regarding the HMS fisheries is lacking, and recommend management alternatives which take a conservative approach to fishing practices.

Although EPA supports your efforts to comprehensively evaluate the HMS fishery ecosystem, we have several unresolved concerns about impacts of proposed actions due to a lack of information in the DEIS. As such, we have rated this DEIS as category EC-2, Environmental Concerns - Insufficient Information (see attached "Summary of EPA Rating System). In particular, the DEIS lacks information on alternatives for addressing bycatch in the fishery, the pros and cons of different mesh sizes for the drift gillnet fishery, Endangered Species Act coordination, and actions which would address the identified research needs for effectively managing HMS and their habitat.

We appreciate the opportunity to review this DEIS. Detailed comments are attached. Please send two copies of the Final EIS to this office and EPA's Region 10 office (attn: Chris Gebhardt, 1200 6<sup>th</sup> Avenue, Seattle, WA 98101) at the same time it is officially filed with our Washington D.C. Office. If you have any questions, or wish to discuss our comments, please call Ms. Shanna Draheim, of my staff at (415) 972-3851.

Sincerely,



Lisa B. Hanf, Manager  
Federal Activities Office

Enclosures: Detailed comments  
EPA Rating Sheet

cc: Svein Fougner, National Marine Fisheries Service  
Jim Morgan, National Marine Fisheries Service  
Chris Gebhardt, EPA Region 10



### Bycatch of fish

The Magnuson-Stevens Act requires that fishery conservation and management measures should minimize bycatch and mortality of bycatch that cannot be avoided. The DEIS provides a substantive background discussion on bycatch in the Highly Migratory Species (HMS) fishery in the eastern Pacific Ocean Exclusive Economic Zone (EEZ). The document states that one quarter of the total world catch by commercial fishing operations is discarded annually, and that there are limited number of options for reducing bycatch in HMS fisheries. The draft Fishery Management Plan (FMP) proposes a catch and release program for recreational fisheries and some limited gear and fishing area restrictions to reduce bycatch in the HMS fishery, but the potential effectiveness of these measures in reducing bycatch is not discussed.

However, none of the proposed FMP actions addresses bycatch related to fishing on seamounts (floating objects) primarily associated with the large tuna purse seine fishery. The increasingly popular technique of fishing on seamounts is associated with some of highest rates of bycatch of non-target or juvenile species. The DEIS states that this is an issue of growing concern to the international fishery management community. The document does not provide any information on techniques or restrictions for fishing on or around seamounts that could be included to address the issue of bycatch. Have other fishery management plans addressed this issue? Are there any additional alternatives which might restrict use of this fishing technique, or at least reduce its associated bycatch?

- *Recommendation: The Final Environmental Impact Statement (FEIS) should provide further information on the estimated effectiveness of the proposed management actions in reducing bycatch. The document should also include information on how bycatch rates will be monitored and evaluated under the new FMP. Finally, the FEIS should specifically address the issue of bycatch associated with fishing on seamounts, and evaluate actions which might reduce the level of bycatch associated with this technique.*

### Endangered Species

The DEIS provides a substantive discussion of the potential interactions of HMS fisheries and protected species -- those listed as threatened and endangered under the Endangered Species Act (ESA) or protected under the Marine Mammal Protection Act (MMPA). The document describes previous analyses of impacts for the drift gillnet, purse seine, and longline fisheries, and ESA Section 7 consultation activities. Biological Opinions were previously issued for the drift gillnet fishery, purse seine fishery and longline fishery (in the western pacific). Several of the reasonable and prudent alternatives identified in these previous consultations for minimizing the impacts to endangered species are incorporated into this FMP.

However, according to the DEIS, several of the proposed actions under the draft FMP could still have impacts on endangered species. While Biological Opinions have been issued in the past for three of the HMS fisheries (longline, purse seine, and drift gillnet), it is not clear whether NMFS/PFMC would need to initiate informal or formal consultation under Section 7 of the ESA for the adoption of the comprehensive FMP. Does the current FMP adequately incorporate all of the reasonable and prudent alternatives previously identified for these fisheries? Are there new concerns regarding interactions with endangered species under the FMP that have not been addressed by previous Section 7 consultations?

- *Recommendation: The FEIS should clarify the status of informal or formal consultation requirements under Section 7 of the ESA for the adoption of this FMP.*

#### Drift Gillnet Gear - Mesh Size Requirements

The DEIS states that the draft FMP offers two options for the legal definition of drift gillnet gear: 1) minimum mesh size of 14 inches, and 2) no mesh size restrictions. Some vessels are currently using nets with mesh smaller than 14 inches to target bluefin and albacore tuna. According to the DEIS, there is concern that this smaller mesh might have a negative impact on HMS fish stocks and other species because it results in more catch of juveniles and increases interactions with endangered species.

- *Recommendation: EPA encourages NMFS/PFMC to provide further discussion in the FEIS of the benefits and drawbacks of both mesh size options. If exploitation of juveniles could result in overfishing (with bigeye tuna, for example), EPA recommends the final FMP adopt a minimum mesh size of 14 inches.*

#### Lack of Research Actions in the Preferred Alternative

The DEIS acknowledges there is a lack of scientific information available about target HMS species and other related species in this ecosystem. The document identifies numerous research needs and information gaps which are important for understanding the sustainability of the fishery. Obtaining better scientific information is an important step in moving fishery management toward a more ecosystemic approach, and EPA is pleased with the substantive discussion of research needs. However, with the exception of increased reporting/monitoring of fishing effort, the DEIS does not discuss whether the FMP will include specific management measures which would help address this lack of scientific information. Increased reporting and monitoring would provide additional information on catch rates, species interactions, and gear effectiveness, but it would not provide needed information on the importance of essential fish habitat, population biology of target, protected and other keystone species, or environmental conditions which impact fisheries. No plans or funding for scientific research studies are included in the FMP, nor are schedules for regularly assessing and interpreting the data from logbooks and observer coverage provided. Also, the FMP does not include specific measures or goals for improving reporting by the fishing community or increasing the number of observers. These measures would help better inform decision making and management of the HMS fishery.

- *Recommendation: The FEIS should include specific actions under the FMP for improving scientific understanding of HMS fisheries and their habitat, such as research programs, experimental fisheries, improved reporting and monitoring, plans for assessing/interpreting the data from reporting and monitoring efforts.*

### Miscellaneous Issues

#### **Description of alternatives and environmental impacts**

The DEIS is combined with a draft FMP, meeting requirements under both the Magnuson-Stevens Act and the National Environmental Policy Act. While the document is very comprehensive, the discussion of alternatives and associated environmental impacts in the document can sometimes be difficult to follow. Specifics on preferred FMP components and their impacts are discussed in several places in the document, and they are not always presented in a consistent manner. It requires the reader to continually cross-reference different sections of the document to piece together some of the issues.

- *Recommendation: In order to better meet the spirit of public disclosure of impacts under NEPA, the FEIS should provide a clear overview of all of the alternative FMP actions and potential impacts to relevant resources. An effective way to present this information would be to include a table or matrix which lists all of the proposed actions and alternatives on one axis and briefly identifies the associated environmental impacts along the other axis. This would give an overview of all the proposed actions, and offer a quick comparison of the different environmental impacts associated with each action and the entire FMP.*

#### **Treaty Indian Fishing Rights**

EPA is pleased that the FMP accommodates treaty Indian fishing rights, and provides a thorough background discussion on why treaty Indian fishing rights apply to HMS species that pass through coastal tribes' usual and accustomed grounds. However, the discussion of alternative ways to incorporate treaty Indian fishing rights into the FMP is somewhat confusing. The preferred action and Alternative 2 seem very similar. On what points do they differ? The preferred action states that it would be modeled on the coastal pelagic species fisheries regulations at 50 CFR Part 660.518. However, no description of that process or summary of the coastal pelagic species fisheries regulations is provided. As noted above, it is difficult to evaluate and compare the alternatives in the DEIS.

- *Recommendation: The FEIS should clarify how treaty Indian fishing rights will be incorporated into the FMP under the preferred action.*

#### **Shark Finning**

EPA is very pleased that the DEIS/FMP recognizes recent federal law which prohibits the finning of sharks as a necessary means to conserve the species and ensure full utilization of harvested species.

## International Coordination

The DEIS states that HMS fishing by U.S. vessels or vessels landing in the U.S. make up a very small portion of the international HMS fishery. The document correctly acknowledges that international conservation of HMS species is a special problem requiring international cooperation. Specific examples of U.S. participation in international fishery management organizations, adoption of international treaties, or bi-lateral efforts to manage HMS fisheries are provided in the DEIS. Additional information on nations which have contributed to the exploitation of HMS stocks, and those which have helped coordinate international management of HMS species would provide a better understanding of the U.S.' efforts and ability to conserve HMS species relative to the international community.

- *Recommendation: If available, the FEIS should provide further information on risks to HMS sustainability from international fishing practices. In particular, provide information on where coordination efforts have or have not been successful in cooperatively managing fisheries.*

## Coordination with Northern Pacific Council

The DEIS states that the North Pacific Fisheries Management Council (NPFMC) does not currently have an FMP for HMS. Given the nature of this fishery -- highly migratory species -- it is important that fishery management councils in the U.S. (and internationally) coordinate efforts to manage similar resources. EPA encourages a consistent approach among Councils which are managing the same resource.

- *Recommendation: The FEIS should address whether PPMC is coordinating with the NPFMC to develop an HMS FMP for that region, and how the two Councils will ensure consistent management of HMS fisheries*

## HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL STATEMENT ON DRAFT HMS FISHERY MANAGEMENT PLAN

The Highly Migratory Species Advisory Subpanel (HMSAS) met March 13 to discuss the December 2001 draft Environmental Impact Statement (EIS)/Fishery Management Plan (FMP) and has the following comments.

### Small-Mesh Gillnet Fishery

One unresolved issue is the treatment of the small-mesh drift gillnet fishery for albacore and bluefin. The Highly Migratory Species Plan Development Team (HMSPDT) is in the process of analyzing information on this fishery. The HMSAS reserves comment on this issue until the new information is presented.

### Drift Gillnet Fishery Measures

Drift gillnet fishery representatives believe the federal regulations should include all of the existing state drift gillnet measures, including the California limited entry program. While there was no consensus on this point, HMSAS members agreed this issue needs further review by the Council and NMFS, since there may be some duplication of regulations at the state level.

The HMSAS voted (9 yes, 1 no) to recommend deletion of the proposed closure of the drift gillnet fishery north of 45° N Latitude, and inclusion of a closure east of 125° W Longitude off Oregon and Washington.

### Longline Fishery Measures

The HMSAS voted (5 yes, 4 no, 1 abstain) to recommend longline alternative 3: authorize a limited entry pelagic longline fishery for tunas and swordfish with effort and area restrictions to evaluate longlines as an alternative to drift gillnets to reduce bycatch (industry proposal).

### Purse Seine Fishery Measures

There is consensus there is insufficient justification in the FMP for prohibiting purse seine fishing north of 44° N Latitude. The HMSAS recommends the Council develop an alternative which closes the area east of a certain longitude north of 44°.

### Sale of Striped Marlin

Some members felt that, while the FMP states that no initial allocations are proposed, the preferred alternative of prohibiting the sale of striped marlin in effect allocates this species to the sport fishery.

Some members representing the sport fishery suggest the language on page 8-25 needs to be revised to make it clear that sale of all striped marlin caught in waters under the jurisdiction of the Council is prohibited.

### Permits

The HMSAS is concerned with the requirement for gear endorsements on HMS permits. If some evidence of minimal participation in a fishery is required to get an endorsement, this could be considered a limited entry program. It may be desirable to find a way of achieving the objective of the endorsement without creating a limited entry program. The HMSAS recommends the Council explore with NMFS the possible impacts of an endorsement.

Hook-and-line fishery representatives proposed that the FMP address permit requirements for Canadian troll vessels fishing in U.S. waters.

#### Sale of Prohibited Species

Several members expressed support for a complete prohibition on the sale of prohibited shark species. The FMP allows the sale to recognized scientific institutions. There was no consensus on this point.

#### Bluefin Net Pens

A description of the net pen operation for bluefin tuna needs to be included in chapter 2.

#### Charter Survey

There was consensus to recommend the Pacific States Marine Fisheries Commission look at the economic information for the Commercial Passenger Fishing Vessel fleet throughout the entire coast. The current data in the FMP is limited to southern California.

#### Management Cycle

Some members expressed concern about making decisions at the September Council meeting, during the middle of the albacore season.

#### Process After March Meeting

The agency comments on the FMP suggest that substantial revisions to the EIS/FMP are necessary before final Council action can be taken. The HMSAS does not have a consensus recommendation on the time required to complete these revisions, but does want the job done completely and correctly so the final FMP will be approvable. The HMSAS recommends NMFS commit additional resources as necessary to ensure the revisions can be completed.

We also recommend the process continue to be very transparent with opportunities for HMSAS and public comment. The HMSAS would like to meet in advance of the Council meeting when final action is taken, not during the Council meeting week, to give us more time to develop recommendations to the Council.

With regard to the next draft, the HMSAS recommends the Council and HMSPDT consider preparation of a supplement, instead of a new complete version of the FMP. The supplement would contain only the revisions prepared in response to Council direction at this meeting. This document should reduce costs and facilitate understanding of the changes.

PFMC  
03/14/02

HIGHLY MIGRATORY SPECIES PLAN DEVELOPMENT TEAM COMMENTS ON  
NATIONAL MARINE FISHERIES SERVICE'S SUGGESTED CHANGES TO THE  
DRAFT HIGHLY MIGRATORY SPECIES PLAN AND RECOMMENDATIONS FOR A TIMELINE

The Highly Migratory Species Plan Development Team (HMSPDT) discussed the changes described in the March 8, 2002, letter from the National Marine Fisheries Service (NMFS) Southwest Region. First of all, the HMSPDT would like to acknowledge its agreement with points raised in the letter and believes the changes would significantly improve the HMS fishery management plan (FMP). However, given the volume and nature of the changes being suggested, we think we can successfully address only some of these issues by the June Council meeting.

The HMSPDT and the Council has received compliments on its transparent and open public processes throughout the development of the FMP. Many of the changes being proposed by NMFS will require substantial HMSPDT discussion, drafting time, and public input in order for them to be adequately addressed. Specifically, the changes regarding maximum sustainable yield (MSY) proxies for three of the management unit species (item #1), the essential fish habitat updates (#2), the bycatch changes (#3), most of the monitoring and compliance changes (#5), and the incidental catch allowance amounts (#10) will take a considerable amount of time and effort.

Because the HMSPDT would like to address all of the changes being proposed by NMFS and address them in an open, satisfactory manner, the HMSPDT is proposing delaying the adoption of the final HMS FMP until the September 2002 Council meeting. If the Council decides the final FMP must be completed in time for its June meeting, then the HMSPDT will likely not be able to adequately address the proposed changes listed above.

**Council Action:**

1. Provide guidance to the HMSPDT on the suggested changes it would like the team to address, and the appropriate timeline.

PFCM  
03/14/02

HABITAT STEERING GROUP COMMENTS ON  
THE DRAFT HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN

The Habitat Steering Group discussed the essential fish habitat (EFH) descriptions contained within the draft highly migratory species (HMS) fishery management plan (FMP). It was noted that the HSG's request to include prey species in the legal EFH definitions was addressed.

National Marine Fisheries Service (NMFS) Southwest Regional staff indicated the direction received from NMFS headquarters relative to HMS EFH definitions was to use static geographical areas, rather than having variable areas based on changes in sea surface temperature. It was noted that the Coastal Pelagic Species (CPS) FMP contained variable EFH definitions, and the question was raised about the need for consistency. The HSG also discussed the possible benefits of having static areas versus variable areas, and could not identify any, other than its possible potential in consultations to address such activities as offshore dredge dumping.

After further discussion on the EFH language in the draft plan, the HSG has the following recommended changes:

- The HSG requests the EFH chapter contain a section regarding Habitat Areas of Particular Concern (HAPCs) with a statement that clearly states whether HAPCs were explored for the various management unit species, and whether they will be developed in the future.
- The HSG also requests the EFH chapter contain a section regarding marine reserves or the use of closed areas as habitat protection measures. The HSG realizes that closed areas may not necessarily be feasible for HMS given their highly migratory behavior, but would like the HMSPDT to have a discussion and note its conclusions in the plan.

PFMC  
03/14/02





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

Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

**MAR 08 2002**

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 - Schmitten  
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).

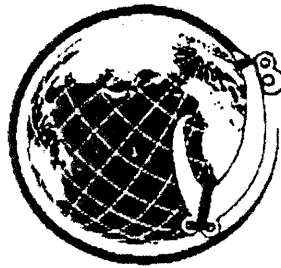
**TRIBAL COMMENTS**

Mr. Chairman,

I would like to offer a brief comment on the Draft Highly Migratory Species FMP.

The tribes are in favor of the proposed action in the Draft HMS FMP to adopt a framework to accommodate treaty fishing rights in the implementing regulations. The tribes also favor modeling the initial proposed regulations after the coastal pelagic species regulations at 50 CFR 660.518 as stated in the Draft FMP.

Thank you.



**Western  
Pacific  
Regional  
Fishery  
Management  
Council**

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PFMIC

March 6, 2002

Don McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

Dear Don:

The Western Pacific Council would like to congratulate the Pacific Council on completing the Highly Migratory Species Plan for the U.S. West Coast. The development of this plan will stabilize management of U.S. pelagic fisheries across the Pacific, particularly as the new plan tries to harmonize as much as possible with the Western Pacific Council's Pelagics FMP. The following is a synthesis of comments on the HMS Plan made by WP Council staff.

**Species to be managed**

The list of species to be managed is similar to this Council's pelagics management unit. We note that moonfish and pomfrets are not included in the list, although longline vessels operate from the U.S. West Coast and presumably land these species. Is there a reason for their exclusion from the management unit? The list of pelagic sharks is more limited than this Council's which in addition to the blue, thresher and mako sharks also includes silky shark, oceanic whitetip shark, longfin mako shark, salmon shark. The silky and oceanic white tip sharks reflect the warmer tropical waters in which some of our fisheries operate.

We note the protection extended to white, megamouth and basking sharks as well as halibut. The banning of the landing and sale of striped marlin marks a clear difference in perspective between our two regions. Marlins are a popular food fish throughout the Western Pacific and we realize that this puts us out of step with attitudes in the mainland U.S. However, what is the biological basis for preventing commercial exploitation of striped marlin? Why should this apply to landings of striped marlin from longline vessels, which would be caught outside the EEZ and be well beyond the range of recreational fishermen? If there were competition for striped marlin by longline fishing within the EEZ this would be understandable, since there may be direct competition between the two sectors. However, high seas catches of striped marlin are unlikely to have a demonstrable influence on recreational catches.



### **Fisheries to be managed**

The main difference between our two regions in terms of fishing gears to be managed is this Council's ban on the use of drift gillnets within the EEZs of the Western Pacific, which was based primarily on the non-selective nature of the fishery and its impacts on protected species. We thought that the proposal to shift gillnetters over to longline fishing was a neat solution to concerns about gillnetting, but the current hyperbole and hysteria generated by some conservation and recreational fishery organizations has effectively made this proposal untenable. Under the circumstances, the continuation of the status quo for no longline fishing within the EEZ off the West Coast is the most tenable alternative. Longline vessels operating from the West Coast have "traditionally" never operated within the EEZ and structured their operations around high seas fishing so the status quo will have little to no impacts.

Similarly the 44 deg N ban for purse seine operations continues a status quo already in effect. A factor not appreciated about typical purse seine operations is that they are only suited to tropical latitudes, where winds are generally light, and do not create problems with the "sail" effect when the purse seine is being hauled. We note that there is little discussion on fish aggregating devices (FADs), particularly untethered FADs, which have become a major issue in both the eastern and western Pacific. The overarching concern in our region is the catch of juvenile bigeye and yellowfin tunas, as well as the much larger bycatch associated with these type of FAD.

In terms of recreational fishing activity, this is a major sector of the fishing industry in both our two regions, including charter-vessel fishing. The California-based long-range charter operations mark a clear difference between our two regions, although there is some interest in long-range charters to distant seamounts in Hawaii.

### **Framework**

The framework process is well thought out and described. The biennial management cycle is an interesting approach, however, our experience has been that events can occur over relatively short time periods, requiring an accelerated response. The American Samoa fishery doubled in fleet size and quadrupled in terms of fishing effort during six months in 2001.

### **Longline fishery**

The management measures for longline fishing, other than the EEZ prohibition mirror those for the Western Pacific, including the measures developed in the March 30, 2001 Final Environmental Impact Statement. Looking at the alternatives for longline fishing within the EEZ, numbers 2 and 4 appear to be rather similar, i.e. some form of exempted fishing experiment, either to provide data for a bycatch reduction program or to see if longline fishing can be conducted in an eco-friendly manner. Are these so different that they need to be elaborated separately?

### **MSY and overfishing control rules**

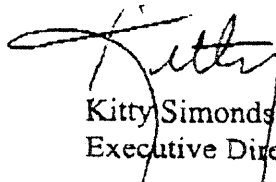
The MSY and overfishing control rules for West Coast HMS present no surprises, and make extensive reference to control rules developed for the Western Pacific pelagics. The different reference points for sharks versus tunas and tuna like species reflect the susceptibilities of and lower resilience of elasmobranch populations to fishing. The consideration of OY in an international context also makes sense since most of the HMS species need to be managed across their range, which requires international management.

### **Essential Fish Habitat**

The EFH descriptions are similar to those given for pelagic species in the Council's 1998 Comprehensive SFA amendment. The HMS Plan notes that this Council's FMP has a different type of framework relating to EFH, but acknowledges differences in habitat utilization and plan development and design. It might be useful, however, to begin thinking about how both Council's could minimize differences between the two EFH sections in both FMPs.

Thank you for this opportunity to comment on the West Coast HMS Plan. We hope that the comments made here are useful and will assist in finalizing the document.

Sincerely



Kitty Simonds  
Executive Director

cc: Rod McInnis  
Svein Fougner  
Charles Karnella



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FMC

Dear Dr. McIsaac;

I am writing to object to  
the proposed action of placing  
observers on Albacore Tuna

Jig Trollers (60ft and less).

Reasons Why:

- A) The jig fisheries extremely low bycatch.
- B) Very little bird and mammal interaction.
- C) Safety problems of placing observers on small (most are 55ft. or smaller) old fashioned trollers with little or no proper accommodations.

D) Expenses to boat owners where there is very little profit. Many boat owners fish alone due to profits being so small due to P.&I insurance, and crew shares

Thank you for your time  
in this very important matter.

Sincerely,  
Bernard Bjork

**DARB FISHING, INC.**  
F/V New Dawn  
Bernard Bjork  
36293 Bartoldus Loop  
Astoria, OR 97103

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FEB 19 2002

AUGUST FELANDO

**PFMC**

Proctor In Admiralty

870 San Antonio Place  
San Diego, CA. 92106  
TEL: (619) 223-7654  
FAX: (619) 223-7958

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February 15, 2002

Dr. Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

Draft Fishery Management Plan and Environmental Impact Statement  
for U.S. West Coast Fisheries for Highly Migratory Species

Dear Dr. McIsaac,

Pursuant to your letter request dated December 31, 2001, received in early January 2002, enclosed you find my written Comments to the above Matter.

Also enclosed you find an Executive Summary for the convenience of the Council's Staff and members of the Council. However, I hope that they will also critically review the Comment and its three (3) Tables and two (2) Attachments prior to the Council's March meeting in Sacramento. Thank you for providing copies to the members of the Council. As a member of the HMS Advisory Subpanel, I plan to attend this meeting. I may offer oral testimony.

A draft of the enclosed Comment was sent to Union Representatives of tuna fishermen, tuna vessel owners, and Representatives of Tuna vessel owners for their comments, additions, and corrections.

Thank you for the opportunity to be part of the process of developing a draft Fishery Management Plan and Environmental Impact Statement for the Council.

Regards,



August Felando

Enclosure



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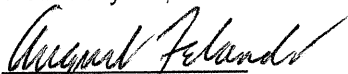
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**PFMC**

**COMMENTS**  
to the  
**DRAFT FISHERY MANAGEMENT PLAN**  
and  
**ENVIRONMENTAL IMPACT STATEMENT**  
for  
**U.S. WEST COAST FISHERIES**  
**FOR HIGHLY MIGRATORY SPECIES**  
December 2001  
**PACIFIC FISHERY MANAGEMENT COUNCIL**

Dated: February 15, 2002

By:



August Felando,

Member, Highly Migratory Species Advisory Subpanel

870 San Antonio Place  
San Diego, CA 92106  
Telephone: (619) 223-7654

## EXECUTIVE SUMMARY

This is a summary of comments on the draft fishery management plan and environmental impact statement (FMP) applicable to U.S. west coast (California, Oregon, and Washington) fisheries for highly migratory species (HMS).

**Introduction.** In its presentation, the first part of the COMMENT, at pages 2-10, is used to set forth detailed facts and argument for rejecting three preferred initial regulatory measures applicable to the Pelagic Longline Fishery (Section 8.5.5. - Pages 27-29 ) and to the Purse Seine Fishery (Section 8.5.6.- Page 30). The main argument of the COMMENT is that for the conservation and management of the tunas harvested by commercial tuna hook and line and tuna purse seine fisheries within and beyond the EEZ, a regulatory regime based upon the FMP is not necessary, and therefore, in this respect, the FMP is not consistent with National Standard Seven (7). The COMMENT supports FMP regulation for the commercial Drift Gill Net and Pelagic Longline fisheries; arguing that the need for improving the conservation and management of non-oceanic sharks found within the EEZ and the need to resolve and reduce conflicts with recreational fisheries exists for regulating these two subsurface HMS fisheries within the EEZ.<sup>1</sup> The COMMENT also states that the FMP used a "Management Unit" based exclusively upon a "biological" perspective, and did not consider the alternative of using a "technical" perspective as provided in the Secretary's guidelines, and therefore, the FMP is not consistent with National Standard Three (3). The COMMENT argues that in using a "technical" basis for the "Management Unit," the FMP, in restricting its regulatory authority to the Drift Gill Net and Pelagic Longline fisheries, becomes consistent with National Standards Three (3) and Seven (7).

### **The Necessity of Federal Management under Fishery Management Plan.**

The COMMENT states that the Magnuson Act requires the FMP to be consistent with ten (10) national standards for fishery conservation and management. The Magnuson Act requires the Secretary to establish advisory guidelines "based on the national standards, to assist in the development of fishery management plans."<sup>2</sup> Following the part of the COMMENT concerning proposed initial regulatory measures in Chapter 8 of the FMP (pages 2-10), the argument that there exists no necessity for a FMP regulatory regime for certain HMS fisheries is summarized as follows:

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<sup>1</sup> The COMMENT, at page 2, notes that the term HMS, as defined in the FMP, is not the same definition of HMS as in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act). The term HMS in the FMP specifies certain sharks and fish that are not defined as HMS in the Magnuson Act. See: FMP, Ch.3 Pgs. 2-5.

<sup>2</sup> Title III, Sec. 301; 16 U.S.C. 1851



The COMMENT, at pages 10-15, argues that only two U.S. west coast fisheries have a need for a FMP, namely the commercial Drift Gill Net and Pelagic Longline Fisheries, and that no necessity for regulation under a FMP exists for two other commercial fisheries, namely for tuna fishermen who use hook and line gear (trollers and baitboats) and for fishermen who use tuna purse seine gear. In these two surface tuna fisheries, the fishermen are primarily dedicated to fishing tuna within the eastern Pacific Ocean. Under a federal statute enacted in 1950, the Secretary of Commerce has existing regulatory authority over these two surface fisheries and has promulgated regulations since 1966. This federal statute was enacted to implement a 1949 treaty obligation of the United States.

This Tuna Treaty created the World's first international organization [Inter-American Tropical Tuna Commission (IATTC)] to make tuna investigations and recommendations for tuna conservation and management measures. The Treaty directs the IATTC to perform its duties (jurisdiction) **"in the waters of the eastern Pacific Ocean fished by the nationals of the High Contracting Parties"** These waters include the EEZ of the United States off California, Oregon, and Washington. The current regulatory area applicable to the conservation of Yellowfin tuna includes this EEZ. The IATTC, which has its headquarters and main laboratory in La Jolla, California, employs a Director and Scientific Staff that makes recommendations to the 12 member governments. The Secretary of State and the Secretary of Commerce must approve these recommendations as a condition for the Secretary of Commerce to promulgate regulations. The COMMENT argues that the FMP, in seeking jurisdiction over all HMS fisheries operating within the EEZ and beyond the EEZ when these fisheries operate from ports based in California, Oregon, and Washington, is not consistent with National Standard Seven (7) and other applicable laws.<sup>3</sup> In support, the COMMENT notes that under Magnuson Act the Secretary of Commerce must establish guidelines based on National Standard Seven (7). Further, under the criteria set forth in the Secretary's guidelines, there exists no necessity for an FMP regulatory regime when a fishery **"is already adequately managed"** by **"Federal regulations pursuant to \* \* \* international commissions, \* \* \* consistent with the policies and standards of the Magnuson-Stevens Act."**

This argument with supporting facts and references as to the extent of the existing regulatory regime under the Tuna Conventions Act Of 1950, as amended, is set forth on pages 10-13.

- For IATTC logged catch data showing that the tropical tunas (Yellowfin, Bigeye, and Skipjack) are insignificantly present within the EEZ off California, Oregon, and Washington, see TABLE 1.

<sup>3</sup> "(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication."

- For IATTC logged catch data by U.S. tuna vessels of Bluefin and Albacore tunas within the eastern Pacific Ocean, see TABLE 1A.
- For IATTC data on the decline in the share of catch of the U.S. Tuna Fleet and of the U.S. Tuna Canner share of tuna landings during the period 1989-200, See TABLE 2.

**The COMMENT, at pages 14-15, argues that the FMP offers no significant benefits to these two surface two fisheries that outweigh its associated costs in having duplicative regulatory regimes.** . This potential duplication is especially pronounced by the fact that the U.S. Commissioners to the IATTC under existing law must appoint a Scientific Advisory Subcommittee. See: pages 16-17 and footnote 9, page 17. It is argued that under the FMP, the Scientific and Statistical Committee of the PFMC would be duplicative of this Subcommittee and that the work of the HMS Advisory Subpanel would be duplicative of the General Advisory Committee to the U.S. Commissioners to the IATTC. Further, that the work of the PFMC would be duplicative of the decisions of the U.S. Commissioners of the IATTC.

**The COMMENT, at pages 15-17, argues that the FMP does not adequately inform the public on existing federal law for adopting and promulgating tuna conservation and management regulations.** In support, see the summary of data based upon Chapter 2, FMP: (1) concerning the U.S. tuna fisheries within the EEZ, see ATTACHMENT 1, and (2) concerning the tuna fleet size, revenue and number of landings, see ATTACHMENT 2.

### **The Appropriate "Management Unit"**

**The COMMENT, at pages 17-18 argues that the FMP is inconsistent with National Standard Three (3) of the Magnuson, in failing to consider an alternative for establishing a "Management Unit". The Secretary's advisory guidelines state that a "management unit" may be "Technical" and could be based on a fisheries utilizing a specific gear type or similar fishing practices.**<sup>4</sup> The Drift Gill Net and Pelagic Longline fisheries use similar fishing practices; they both use stationary gear that take advantage of HMS biological behaviors when migrating deep below the water's surface. Without analysis on why a "Technical" basis was not utilized, the FMP decided to use a "Biological" in establishing the "Management Unit." The COMMENT argues that "Biological" basis is practicable as a management unit only when the range of fish stocks are found substantially within the jurisdiction of the regulatory authority. In this circumstance, a FMP using these stocks as the "management unit" is relevant to its conservation and management objectives and in compliance with National Standard Three (3).<sup>5</sup> The COMMENT refers to reports by the IATTC and data in TABLES 1 and 1A to show that the tuna

<sup>4</sup> 50 CFR §600.320(d)(1)(iv)

<sup>5</sup> "(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."

stocks are not found substantially within the EEZ , and to reports by the IATTC and data in ATTACHMENTS 1 and 2 to show that the catch of tuna within the EEZ and by tuna vessels operating from ports located in California, Oregon, and Washington are not meaningful, in terms of effect upon the success of a tuna conservation program that would be adopted under the FMP in addition to the measures adopted by the IATTC. The COMMENT argues that these facts (1) do not justify additional FMP regulation of tuna vessels using surface gear within the EEZ or when operating from west coast ports, and (2) that these facts justify exclusion of surface tuna fisheries (hook and line and purse seine) from the "Management Unit". ..

### **Comments on Chapter 8 of the FMP-Initial Management Measures**

The COMMENT argues that it is unreasonable for a FMP to promote the objective of eliminating competition between fishermen by favoring one group over another on grounds of political or economic importance. **Regulatory action under the FMP must be formulated to promote national interests and not special interests.** The PFMC is under an obligation to propose management measures to the Secretary that will achieve objectives that promote national interests. These national interests are no mystery, they are clearly identified in the Magnuson Act as part of its findings, purposes, and policy. 16 U.S.C. 1801

**Pelagic Longline Management Measure: Prohibition within EEZ.** The COMMENT, at pages 2-8, argues that the establishment of time and area closures, patterned after the California and Federal regulations for the Drift Gill Net fishery, would be consistent with the Magnuson Act and other applicable federal law. This method of regulation, rather than a total prohibition, would also be consistent with the measures applicable to the Pelagic Longline fishery in the western Pacific Ocean. Significantly, the western Pacific longline fishery avoid conflicts with the important recreational HMS fisheries based in Hawaii, not by the prohibition of longlining within the EEZ but by establishing limited and purposeful closed areas within the EEZ. The COMMENT, at pages 3-5, notes that contrary to claims made by recreational and other interests about the destructive features of a HMS longline fishery, scientific studies and reports by the IATTC show that the use of longline gear is beneficial in sustaining the tuna fisheries of the EPO. IATTC reports state that the yield-per-recruit is enhanced by the use of longline gear in fishing yellowfin and bigeye, that the blue marlin stock in the eastern Pacific is in healthy condition, and that the IATTC exempted longline fishery from the Yellowfin tuna quota and other management measures imposed on the surface purse seine fishery during 2001.

The COMMENT, at pages 5-6 notes that the data in Chapter 2 of the FMP does not support a finding of significant recreational marlin and swordfish fisheries within the EEZ. The FMP makes an extremely weak case for a finding that the entire EEZ off Central and Northern California, Oregon and Washington should be closed to the Longline fishery for purposes of insulating a recreational tuna fishery off Southern and Central California. Tables of the FMP show that 86% of the Marlin taken aboard California Passenger Fishing Vessels were taken off Mexico, and that 36% of the 14 swordfish caught aboard these vessels during a 18 year period were caught off Mexico. The COMMENT argues that it is in the national interest to maintain and develop a HMS

Longline fishery within the EEZ, noting the growing demand for the "fresh tuna" market developed by the longline fisheries of the United States based at ports located in Hawaii, the Gulf States and the Atlantic States. The COMMENT notes that since October 2001, major U.S. tuna canners no longer operate plants in California or in other parts of continental United States and Puerto Rico. It argues that this fact should influence the PFMC to promote the development of a sustainable Pelagic longline tuna fishery on the west coast. The COMMENT argues that this action is in the national interest because it would stimulate west coast tuna fishermen to compete with other domestic and foreign longline fisheries for a share of the growing "fresh tuna" market in the United States, thereby reducing dependence upon foreign imports and in providing price benefits to the U.S. consumer of tuna.

**Pelagic Longline Management Measure: The Regulations Applicable to the Hawaii Based Longliners Must Apply to the West Coast Based Longliners.**

The FMP argues that If the west coast longline fleet fishes in the same areas and encounters the protected and prohibited species in the same manner and degree as the Hawaii fleet, then the proposed measure should be adopted. But, the FMP provides no data or analysis to support this premature claim of identical fishing, oceanographic, and environmental conditions. Therefore, the COMMENT argues that the proposal should be rejected. Importantly, the FMP analysis clearly describes the sudden and unexpected economic disaster facing the west coast longline fleet by the adoption of this premature regulatory action. The COMMENT questions whether the guidelines of the Secretary were followed before considering this proposal. Was an initial estimate made of the relative benefits and hardships imposed by the proposed measure? See: 50 CFR § 600.340(d). The FMP provides no discussion of the "rationale for selecting this alternative over another with a lesser impact on a fishing communities." See: 50 CFR § 600.345 (a) and (b). Was there a studied comparison of the economic consequences of the proposal with the status quo? The FMP, at Ch. 9 Pg. 28, notes that "There are 37 high seas longline vessels operating from west coast ports. Many of these vessels are owned and operated by Vietnamese Americans." The FMP, Ch.10 Pg. 5, notes the existence of E.O 12898 (requiring a federal agency to achieve environmental justice for minority and low-income populations "to the greatest extent practicable and permitted by law.", and concludes that the "proposed action for the longline fishery is expected to have a disproportionate impact on a minority group(Vietnamese Americans)."

**Purse Seine Measure: Closed Area north of 44° North Latitude.** The FMP argues that if no CPS purse seining is reasonably expected within such area, then the proposal creates only benefits and no costs result. The COMMENT notes that in fact a coastal pelagic purse seine sardine fishery operating from ports in Oregon and Washington has been developing for the past few years without any serious bycatch of protected or prohibited species. Therefore, the proposal should be rejected or substantially modified to accommodate realistic concerns about bycatch problems. This new sardine fishery off Oregon and Washington may provide an opportunity for the CPS purse seine fleet to duplicate the success of the CPS seiners fishing for Bluefin and Albacore off Southern and Central California. The COMMENT provides information recently developed by Oregon Washington, and Canada on the issue of bycatch. The documentation shows that the bycatch of protected and prohibited species was low. As noted in the FMP for CPS, adopted by the PFMC, "Management and monitoring of bycatch and incidental catch is less important for CPS than other fisheries. Incidental catches tend to be low for CPS because they are harvested mostly in relatively pure schools near the surface

where fish are easily identified." This is particularly true when CPS vessels fish for pure schools of Bluefin tuna and Albacore tuna. The COMMENT argues that to justify this Closed Area proposal on the incorrect assumption that it maintains the status quo is arbitrary, that a denial of access to fishing grounds to any HMS fishing gear is a serious matter for reasons of precedent alone, and that a prohibition of using commercial gear to catch HMS should not be based upon speculation or on an undocumented claim of non-use in the past. The COMMENT contends that to regulate for the reasons offered is to prevent the development of new HMS fishing grounds within the EEZ and to further depress the spirit of adventure and economic risk-taking required in successful commercial tuna fishing.

My name is August Felando, residing at 870 San Antonio Place, San Diego, California 92106. Currently, I am a member of the **Pacific Fishery Management Council ("PFMC")** Highly Migratory Species Advisory Subpanel.

The **Draft Fishery Management Plan and Environmental Impact Statement (FMP)** assumes that all U.S. West Coast Fishermen engaged in fishing for **Highly Migratory Species (HMS)** need a PFMC Fishery Management Plan. Without considering other alternatives, the FMP decided that the "Management Unit" is to be based exclusively upon a biological perspective and proposes that certain species are to be in the management unit. The FMP notes that this specification of species goes beyond the definition of HMS in the **Magnuson-Stevens Conservation and Management Act ("Magnuson Act")**. See: FMP, Ch. 3 Pgs. 2-5.

## **COMMENTS ON CHAPTER 8 OF THE FMP**

### **Section 8.5.5. Pelagic Longline Management Measures.**

1. The FMP, at Ch.8 Pg 27-28 proposes to prohibit all longlining within the Exclusive Economic Zone off California, Oregon, and Washington ("EEZ"). The FMP, at Ch. 9 Pgs. 28-29, provides an analysis of the proposal. An analysis of the four Alternatives is in the FMP at Ch.9 Pgs. 52-72.

This proposal is inconsistent with the Magnuson Act and other applicable federal law. It is also unacceptable for the following reasons:

The FMP provided alternatives that proposed closed areas within the EEZ as an alternative to total prohibition or an indefinite moratorium, namely Alternative 1 (status quo) and Alternative 3. Alternative 4 imposes a temporary prohibition pending a fishing experiment.. See: Ch.8 Pgs 28-29 The establishment of closed areas would be consistent with measures regulating the Drift Gill Net Fishery. Importantly, it would also be consistent with the measures used to regulate the western Pacific longline fishery. Significantly, the western Pacific longline fishery avoids conflicts with important recreational HMS fisheries based in Hawaii not by the prohibition of longlining within the EEZ but by establishing closed areas within the EEZ.

**The following comments further explain my opposition to the proposal to prohibit commercial longline fishing within the EEZ and to support an alternative that includes the establishment of limited closed areas for purposes of reducing conflicts between the longline fishery with recreational HMS interests off Southern California:**

Within the EEZ off Southern California, Recreational Hook & Line fishermen perceive that the commercial Drift Gill Net and Longline Gear are harmful to their interests in catching HMS, particularly billfish. It is their perception and claim

that the Longline HMS fishery is both wasteful (excessive bycatch) and environmentally destructive (interaction with protected and prohibited species). Both recreational and commercial fishermen promote their interests when lobbying to reduce or eliminate competition on the fishing grounds from other fishermen.

**It is unreasonable for the FMP to promote the objective of eliminating competition between fishermen by favoring one group over another on grounds of political or economic importance. Regulatory action under the FMP must be formulated to promote national interests and not special interests. The PFMC is under an obligation to propose management measures to the Secretary that will achieve objectives that promote national interests. These national interests are no mystery, they are clearly identified in the Magnuson Act as part of its findings, purposes, and policy. 16 U.S.C. 1801**

Recreational interests have long characterized the HMS Longline fishery in terms that come close to making the longline fishermen evil and almost demonic. What is the record of the HMS longline fishery within the eastern Pacific Ocean (EPO)? Do convincing scientific proofs sustain any of the claims made by recreational interests about the destructive features of the Longline HMS fishery within the EPO?

**a. What is the scientifically documented experience of the HMS Longline fishery within the EPO? <sup>1</sup>**

Scientific studies and reports by the Staff of the Inter-American Tropical Tuna Commission (IATTC) and the recommended regulatory actions proposed by the 12 member countries of the IATTC show that the use of longline gear is beneficial in sustaining the tuna fisheries of the EPO. The following comments support this conclusion:

Within the EPO, the Longline fishery for Yellowfin and Bigeye is meaningful in terms of its impact on the conservation and management of these stocks. (See the references in catch statistics in ATTACHMENT 1.)<sup>2</sup> In 2001, the IATTC published a report on the status of the Tuna and Billfish stocks in 1999.<sup>3</sup> This IATTC Report makes favorable comments about how yield-per-recruit is enhanced by Longline gear in fishing yellowfin and bigeye as follows<sup>4</sup>

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<sup>1</sup> The FMP provides very little data and information respecting the HMS Longline Fishery that has been investigated by the IATTC for decades.

<sup>2</sup> For the entire Pacific Ocean, Longline Gear in 1999 accounted for over 60% of the Albacore catch, over 62% of the Bigeye catch for 1998, over 15% of the 1999 Bluefin catch, 10% of the 1998 Yellowfin catch, and about 0.1% of the Skipjack catch. See Table 2-81, Ch.2 Pgs. 301-303.

<sup>3</sup> IATTC, Stock Assessment Report 1, Status of Tuna and Billfish Stocks in 1999. ISSN: 1532-7337.

<sup>4</sup> Skipjack catches are *de minimis* in the Longline fishery See: Table 2-81, Ch.2 Pg. 302

At Page 24: "The current average weight of yellowfin in the catch is much less than the critical weight, and therefore, from the yield-per-recruit standpoint, yellowfin in the EPO are overfished. **The AMSY (Average Maximum Sustainable Yield) calculations indicate that catches could be greatly increased if the fishing effort were directed toward longlining and purse-seine sets on yellowfin associated with dolphin. This would also increase the SBR (Spawning Biomass Ratio) levels.**" (emphasis added)

At Page 132: "The stock of bigeye in the EPO is currently being exploited in a manner that prevents the combined fishery from maximizing the yield per recruit. . . . (This) recent performance of the combined fishery . . . can be attributed to the expansion of the fisheries that catch bigeye in association with floating objects and the widespread use of FADs. "

" . . . **The AMSY of bigeye in the EPO could be maximized if the age-specific selectivity pattern were similar to that for the longline fishery that operates south of 15° N (Fishery 9).**" (emphasis added)

This IATTC Report, at page 289, states "that the blue marlin stock in the Pacific is in a healthy condition, with the current levels of biomass and fishing effort near the levels required to maintain the AMSY." The following comment in this Report shows that the EPO Longline fishery has been selective in avoiding a catch of Marlin::

At Page 287: "The principal targets of the longline fisheries are bigeye and yellowfin tuna, particularly the former. During the 1970s deep longlines, which may be more effective for catching bigeye, were introduced into the western equatorial Pacific, and by 1980 were the predominant type of longline gear throughout the equatorial Pacific Ocean (citation). Blue marlin spend the majority of their time near the surface in waters within 1° to 2°C of the local sea-surface temperature (citation). **The use of deep longlines results in relatively fewer hooks being in the warmer, shallower portion of the water column where blue marlin are found.**" (emphasis added)

From 1967 through 1979, an annual quota on yellowfin was recommended and successfully implemented by member countries of the IATTC. From 1980 through 2000, excepting 1987, annual quota and other yellowfin conservation measures were approved by the IATTC. In June 2001, the IATTC adopted a recommendation for a yellowfin quota of 250,000 metric tons plus authorizing the Director of the IATTC to increase this limit up to three successive increments of 20,000 metric tons. A quota of 310,000 was implemented and the fishery was closed on October 27, 2001.

**Significantly, the longline fishery was not subject to the quota and other conservation measures imposed on the purse seine fishery.** So also, the baitboat and sportfishing fisheries were exempt from these conservation measures.

The above findings by the scientific staff of the IATTC and the exemption action taken by the 12 member countries of the IATTC concerning the longline fishery for Yellowfin and Bigeye in the EPO do not support the claims of the recreational interests that the use of longline gear should be prohibited within the EPO or within the EEZ off California, Oregon, and Washington.



**b. How extensive and important is the U.S Recreational Fishery on Marlin and Swordfish within the EEZ?:**

The FMP data in Chapter 2 on the Billfish Fishery (Marlin and Swordfish) supports a finding that a small number of recreational anglers relative to the number of licensed recreational fishermen within the EEZ participate in the Billfish Fishery. Further, that most of this data on catch and effort come from anglers who are members of highly respected angler Clubs located in Southern California.

The data in Chapter 2, as shown in the figures and tables noted herein, do not support a finding of significant recreational marlin and swordfish fisheries within the EEZ of California, Oregon, and Washington. These two fisheries are restricted almost exclusively to waters off Southern California. The California Department of Fish & Game Commercial Passenger Fishing Vessel (CPFV) catch data found in Chapter 2, Figures 2-4 to 2-15 supports a finding that the tropical tunas (Yellowfin, Bigeye, and Skipjack) and Dorado are sought by recreational fishermen in waters off Southern California and not along the remainder of the Central and Northern California coast. These Figures show that Albacore and Bluefin are sought along the coast of California, with most of the effort off Southern California. These figures do not show that the recreational effort is spread throughout the entire EEZ off California. No illustration of recreational effort for the tunas and billfish off the Oregon and Washington coast is provided in the FMP. The FMP makes an extremely weak case for a finding that the pelagic longline fishery must be prohibited within the entire EEZ.

The California recreational HMS fishery has adjusted to a California Drift Gill Net fishery that is subject to a variety of regulatory measures, such as open and closed seasons, limited entry, and closed areas. The recreational interests must be required to show that they cannot adjust to a Longline fishery within the EEZ that is subject to a variety of regulatory measures such as time and area closures off Southern California as in the Drift Gill Net Fishery. No documentation is in the FMP showing that the entire EEZ off Oregon and Washington should be closed to the Longline fishery for purposes of insulating a significant recreational fishery on Marlin, Sailfish, Swordfish, Oceanic Sharks, the Tropical Tunas, Bluefin Tuna, and Albacore. The reason for such lack of data is due to the absence of any significant recreational HMS fisheries off Oregon and Washington, as indicated by the following documentation:

Table 2-57 California CPFV Catch (No. Of Fish) of HMS for the years 1980 to 1998:

During the period 1980-1998, statistics collected from California Passenger Fishing Vessels (CPFV) showed that **86% of the Marlin taken aboard these vessels occurred when fishing off Mexico.** During 2000, 122 Marlin were landed, and a total of 1,279 during an 19 year period (1980-1998). During this same 18 year period, **36% of the 14**

**swordfish caught by CPFV were fished off Mexico;** only 1 swordfish was landed in 2000.

Table 2-62 Summary of all fish tags in 2000 with releases and recoveries for 1963-2000.:

This Table does not indicate whether these statistics were developed from catches within waters off California, Oregon, and Washington. Because the Table lists the tagging and releases of Atlantic Blue Marlin, this fact gives rise to serious concerns and doubts about the utility of this Table relative to the objectives of the FMP.

Table 2-58 Marine Recreational Fisheries Statistics Survey Catch Estimates (1,000's fish.

For Striped Marlin, no catch estimates were made for CPFV. For private boats, a zero catch of Striped Marlin was reported for the years 1993-1995 and 1997; no estimates were made for the remaining years of the 1990 decade.

Figure 2-17 show weights of 522 swordfish caught by recreational anglers based in the California ports of Newport Beach and San Diego during a 90 year period, (1906-1996) No data is provided in this Figure to determine what percentage of these fish were caught beyond the U.S. EEZ off California, e.g. Mexico..

Figure 2-18 to 2-19 shows a downward trend in the number and weight data on the catch of Marlin recorded by Southern California angler Clubs.

Figure 2-20 compares the catch rates for striped Marlin recorded during the period 1968-1999 between anglers landing their catches in Baja California, Southern California, and Hawaii.

Figure 2-21 illustrates the record of striped Marlin tag releases and recoveries made from Hawaii and Southern California and Southern California and Mexico..

**c. Why is it in the national interest to maintain and develop a HMS Longline Fishery within the U.S. EEZ off California, Oregon, and Washington.?**

With the closing of tuna canneries in continental United States and Puerto Rico, tuna vessels landing frozen tunas no longer have a U.S. cannery market for their product other than for transshipment to the two tuna canneries located in American Samoa. The other option is to export frozen tuna to foreign tuna canners. Another option is to process their tunas on board the vessel for the "fresh tuna" market that has been developing within the United States since the early 1980s..

The development of the "fresh tuna" market in continental United States was due to the quality of longline caught tuna. The FMP, Ch. 9 Pg. 65, notes that "The longline fishing method, whereby trauma to the fish is minimized, results in a good product appearance, texture and flavor, with a corresponding increase in

consumer appeal. " The FMP, at Ch. 2, pgs. 19-21, presents historical information on the development of the California , Hawaii, and Oregon Longline fisheries. In the FMP, at Ch. 9, pg.66, it is noted that "fresh tuna is a most valuable commodity," and that "currently there appears to be a healthy and quite adequate market and demand along the West coast, particularly in the Los Angeles area, which represents one of the largest markets in the U.S. for fresh tuna." During 1999, imports of fresh yellowfin tuna into California only was over 9 million pounds or about 4100 metric tons. ( See Internet site: <http://swr.nmfs.noaa.gov/fmd/bill/1999imp.htm>) In 1999, the commercial landings of yellowfin in California was only 1,353 metric tons, and almost all of these landings were utilized in the canned tuna market and not in the fresh tuna market. Tuna is an extremely important item for the consumers of fish in the United States. See: Ch. 2, Tables 2-83 and 2-85. It is in the national interest to provide an opportunity for the commercial taking of tuna within the EEZ rather than to increase this Nation's growing dependence on imported tuna products.

**2. The FMP, at Ch. 8 Pgs 27-29, proposes to "apply to west-coast based commercial longline vessels all of the conservation and management measures applied to western Pacific commercial longline vessels to control sea turtle and seabird interactions and monitor the fishery." An analysis of this proposal is in the FMP at Ch.9 Pgs. 26- 32.** An analysis of the alternatives is in the FMP at Ch. 9 Pgs 72-75.

This proposal is unacceptable for the following reasons:

The proposal presumes that the oceanographic and other environmental conditions applicable to the western Pacific longline fishery also apply to the ocean area fished by the west coast based longline fishery. Yet, no data or study is referred to in the FMP analysis to support this premature claim of identity. What is the basis for presuming that the two fleets fish the same North Pacific areas, and that they encounter the protected species in the same manner and degree?

In support of this proposal, the analysis states the novel claim that assessment of impacts are better commenced only after all regulatory measures are in effect. No such approach was experienced by the western Pacific longline fishery. This fishery was permitted to develop their fishing gear and fishing areas over a long period of time under fishing conditions and in fishing areas quite different than those experienced by the west coast longline fishery. What is the basis for presuming that the west coast longline fleet can economically operate under a rule that they be prohibited from using longline gear to fish for swordfish north of the equator? The FMP analysis clearly describes the sudden and unexpected economic disaster facing the west coast longline fleet by such premature regulatory action,

Under the proposed rule, will the western Pacific longline fishery sustain a competitive windfall? The analysis notes that the proposal imposes costly gear requirements and closed areas without a study as to their utility in the areas fished by the west coast longliners. Has the PFMC followed the Secretary's guideline in making an initial estimate of the relative benefits and hardships imposed by this proposed measure? Has the PFMC compared the economic consequences of the proposal with the status quo? The FMP is silent on this point, and therefore, subjects the proposal as being inconsistent with the Secretary's guidelines for the development of regulatory proposals in the FMP.

### **Section 8.5.6 Purse Seine Management Measures**

**The FMP, at Ch.8 Pg.30, the FMP proposes to prohibit the use of purse seines to harvest HMS north of 44° North Latitude . An analysis of this proposal is in the FMP, at Ch. 9 Pgs. 30-31. An analysis of the Alternatives is in the FMP are at Ch. 9 Pgs. 75-76.**

This proposal is unacceptable for the following reasons:

The FMP argues that since there has been "virtually no purse seine fishing in the waters proposed" only benefits and no costs result from the proposal. However, the FMP failed to describe the coastal pelagic purse seine sardine fishery operating from ports in Oregon and Washington. This fishery may provide an opportunity for this Coastal Pelagic Species (CPS) purse seine fleet to duplicate the success of CPS seiners fishing for Bluefin and Albacore off Southern and Central California.

Why is the FMP taking premature action to deny these Oregon and Washington based CPS seiners from using the opportunity to also fish for Bluefin and Albacore? Fear of a significant bycatch of protected and prohibited species? As the following documentation indicates, only low bycatch problems in the Northwest Sardine fishery were documented for this sardine fishery.

Is it reasonable to presume that a bycatch problem would become more significant in the case of seining migrating pure schools of Bluefin and Albacore offshore? No such problems have been documented in the case of CPS seiners fishing for tunas off Southern and Central California. The CPS-FMP recognizes that "Management and monitoring of bycatch and incidental catch is less important for CPS than other fisheries. Incidental catches tend to be low for CPS because they are harvested mostly in relatively pure schools near the surface where fish are easily identified." See: EIS-19. Nevertheless, the CPS-FMP has a variety of management measures "authorized to address bycatch of predators and other non-CPS species if problems arise." See: EIS-19. These comments do not support the initial regulatory measure to close extensive areas of the EEZ off Oregon and Washington, They support the view that such recommendations have no basis in fact. Otherwise, regulatory measures would

be taken under the CPS-FMP or under the Secretary's regulatory authority under the Tuna Conventions Act of 1950, as Amended ("Pacific Tuna Act"). 16 U.S.C. 951-961

In 2001, a purse seine fishery for sardines was conducted off the coasts of Oregon and Washington. Reports by the Washington Department of Fish and Wildlife and the Oregon Department of Fish and Wildlife on this coastal pelagic fishery were presented to participants of the Trinational Sardine Forum in San Diego, California, November 28-29, 2001.

As in the 2000 trial purse seine ocean fishery on sardines, the Washington Department of Fish and Wildlife imposed a number of conditions on its "2001 Trial Purse Seine Fishery for Sardines". The fishery was restricted from the "area inside 3 miles to minimize bycatch, conserve fish and reduce conflicts with the existing baitfish fishery." One of the goals of this trial fishery was to "document the extent of bycatch occurring in the fishery". The Report stated: "Based on observer data, the bycatch of non-targeted species was fairly low. Bycatch included chinook and coho salmon, spiny dogfish, blue shark, and other species. Salmon and shark were the primary bycatch species of concern. Salmon and shark species accounted for 1.8% of the overall bycatch, and there were 23 observed chinook mortalities." The Observer coverage averaged about 24%. Logbook recording of bycatch was required. The fishery began on May 15 and continued through October 31, 2001, however, the first landing did not occur until June 19. A total of 10,837 mt of sardines was landed.

The Oregon Department of Fish and Wildlife reported that "bycatch was low". The Report stated that "The estimated total catch of salmon for the fishery, based on observer data, is 491 salmon, down from an estimated 663 in 2000." Observed salmon averaged one salmon per trip, with 64% being released alive. Through October 2001, 12,798 mt of sardines was landed in Oregon. "Incidental catch (landed non-target species) recorded on fish tickets consisted of 52.8 mt of Pacific mackerel and 1.2 mt of jack mackerel, for a total of 0.4% of the total catch."

A report to the Forum was also made by Canadian fishery scientists on Canada's commercial fishery for Pacific Sardines. This Report noted that "By-catch consisted primarily of mackerel (53%) but was less than 1% of the entire sardine catch. The entire sardine quota for 2001 of 1600 mt was taken.

The above Reports on the sardine fishery conducted by coastal pelagic purse seine vessels do not support the proposed establishment of an extensive closed area in the EEZ on the ground of assumed bycatch problems with protected species or with prohibited species.

To justify this Closed Area proposal on the incorrect assumption that it maintains the status quo is arbitrary. The FMP made no mention of the 3 year old purse

seine fishery for sardines off Oregon and the 2 year trial fishery by seiners for sardines off Washington. A denial of access to fishing grounds to any HMS fishing gear is a serious matter for reasons of precedent alone. A prohibition of using commercial gear to catch HMS should not be based upon speculation or an undocumented claim of non-use in the past. To so regulate is to prevent the development of new HMS fishing grounds within the EEZ, and to further depress the spirit of adventure and economic risk-taking required in successful commercial HMS fishing

## THE NECESSITY OF FMP REGULATION

National Standards. The FMP must be consistent with the with the ten (10) national standards for fishery conservation and management set forth in the Magnuson Act. 16 U.S.C. 1851 National standard seven (7) states that "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." 16 U.S.C. 1851(a) (7)

Under the Magnuson Act, the Secretary of Commerce must establish advisory guidelines based on the national standards "to assist in the development of fishery management plans." 16 U.S.C. 1851 The criteria in deciding whether a fishery needs management through regulations implementing an FMP is set forth in 50 CFR 600.340(b) (2).

## A

**The FMP is inconsistent with national standard seven (7) of the Magnuson Act in that the FMP is unnecessary for the regulation of two commercial west coast fisheries primarily engaged in fishing the tunas and using the fishing gear described in FMP, at Ch. Pg. 3, as tuna (Albacore) surface hook & line and tuna purse seine, herein referred to as the "two fisheries". The reasons in support of this position, is set forth as follows:**

1. An Existing Tuna Regulatory Regime. These "two fisheries" are already adequately managed by federal regulations that implement the (Pacific Tuna Act).. The legislative and regulatory history of the Pacific Tuna Act shows the extent to which the two fisheries are subject to a very comprehensive conservation and management regime.<sup>5</sup> A history of 30 plus years of what, when, and how conservation and management measures were and are presently

<sup>5</sup> For instance: On March 30, 2001, NMFS published a proposed rule (66 FR 17387) to implement two recommendations that were agreed to by the IATTC and approved by the Department of State in accordance with the Pacific Tuna Act. "The first recommendation would establish measures implementing a 1-year pilot program to reduce bycatch in the tuna purse seine fisheries from members of the IATTC. The second would require commercial fishermen who fish in the Convention area (set forth at 50 CFR part 300, subpart C) to report certain information about their vessels to a regional vessel register being developed by the IATTC." (66 FR 20129, April 19, 2001)

applicable to these two fisheries is available from the IATTC, the Federal Register, and the Code of Federal Regulations. This history requires a finding that there is no necessity for a duplicative or additional federal management under a FMP for these two fisheries.

2. Of particular importance is the agreement reached under the IATTC framework to resolve the problems arising from the fishing of mixed tuna/porpoise schools. The United States, as a party to the Agreement on the International Dolphin Conservation Program (1999) **is obligated to perform its duties and rights within the framework of the IATTC.** This Agreement commits the Parties to "to ensure the sustainability of tuna stocks in the EPO and to progressively reduce the incidental dolphin mortalities in the tuna fishery of the EPO to levels approaching zero", and also "avoid, reduce and minimize the incidental catch and discard of juvenile tuna and the incidental catch of non-target species . . ."

3. Since 1960, the IATTC, an international commission financed largely by the United States, has been involved in the scientific investigation "concerning the abundance, biology, biometry, and ecology" of the tunas, and "of other kinds of fish taken by tuna fishing vessels, and the effects of natural factors and human activities on the abundance of the populations of fishes supporting all of these fisheries." See: Article II, Convention Between the USA and Costa Rica for the Establishment of the IATTC ("Eastern Pacific Tuna Convention). The United States is in no geographic, political, or economic position to achieve these objectives by promulgating and implementing federal regulation through a FMP adopted by the PFMC..

4. Additional FMP Regulation Not Needed for the Two Fisheries.

(a) The tropical tunas migrating within the EEZ and harvested by these two fisheries are not sufficiently abundant and available within the EEZ to support a need for PFMC scientific investigations and recommendations in addition to those conducted by the IATTC and required of the Secretary of Commerce under the Pacific Tuna Act.<sup>6</sup>

**(1) Data support the conclusion that the range of tropical tunas are not present throughout the EEZ, that these stocks are not abundant within any portion of the EEZ on a meaningful measure, in terms of effect upon any conservation program that would be proposed by the PFMC under the FMP regulatory regime.** The tropical tunas (Yellowfin,

<sup>6</sup> The Secretary can request the Scientific Advisory Subcommittee to the U.S. Commissioners to the IATTC to perform a number of functions, including the review data, make recommendations on research needs, scientific reviews and assessments, and provide advice on "(i) the conservation of ecosystems; (ii) the sustainable uses of living marine resources related to the tuna fishery in the EPO, and (iii) the long-term conservation and management of stocks of living marine resources in the EPO." 16 U.S.C. 953.

Bigeye, and Skipjack) range throughout the EPO but only irregularly migrate over a small area of the EEZ, namely the southern most section of the EEZ off Southern California. ATTACHMENT 1, ATTACHMENT 2, TABLE 1 and TABLE 1A show that within the EEZ the annual commercial catch of tropical tunas is negligible or *de minimis* compared to the total annual catch of these species by surface and longline fishing gear as reported by the IATTC. The data provided by the IATTC (1989-2000) also shows the insignificant availability of tropical tunas within the EEZ to U.S. tuna fishing gear. Historic data shows that the spasmodic availability of tropical tunas off Southern California to both commercial and recreational fisheries is almost wholly dependent upon well recognized ocean processes, e.g. tropical storms off Mexico, El Nino

(b) U.S. commercial tuna vessels are not presently engaged in catching tropical tunas in the EEZ on a meaningful scale, in terms of effect upon the success of a conservation and management program that would be implemented under a FMP regulatory regime.

(1) The 1999 catch data of the west coast Longline Fishery is almost exclusively a swordfish fishery and not a tuna fishery. See: Ch. 2, Tables 2-48 to 2-55. The commercial harpoon fishery makes no catch of tunas. In 1999, the landings of tropical tunas by the commercial Albacore Tuna Hook & Line fishery was one (1) metric ton. For 1999, zero landings of tropical tunas by the drift gill net fishery, by the Longline fishery, by the Harpoon fishery, and by a fishery using "other gear." In 1999, zero landings of Yellowfin and Bigeye were logged by U.S. Tuna vessels within the EEZ. The logged Skipjack landings from all commercial surface hook & line and seine vessels was insignificant (538 metric tons) See: TABLE 1, COMMENT.

(2) In 1999, the tuna purse seine fishery made landings in California of 4, 562 metric tons of tropical tunas.<sup>7</sup> See: Ch.2, Tables 2-71 and 2-72. However, the prospect of future landings of tropical tunas by commercial tuna fisheries operating from west coast ports is very doubtful. With the October 2001 closing of the last tuna cannery in continental United States (located at San Pedro, California), the prospect of duplicating 1999 tropical tuna landings in west coast ports by the purse seine fishery has been virtually eliminated. For the same reason, the prospect of CPS seiners operating from west coast ports catching the tonnage of tropical tunas on the scale landed during the 1990s has also been virtually eliminated.

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<sup>7</sup> The FMP has restricted its use of data as of 1999. However, this approach does not satisfactorily inform the interested public and the PFMC of the current trends in the U.S. West Coast Tuna Industry that have been recorded since 1999. Post 1999 information relating to the issues of whether the FMP is necessary should be made public by the PFMC Staff prior to the time the PFMC is scheduled to take final action on the FMP.



(3) The IATTC 2001 Bimonthly Report for the Third Quarter notes that as of October 1, 2001, twelve (12) U.S. vessels were engaged in fishing for tuna in the EPO during the period January 1, 2001 to September 30, 2001. All 12 vessels were tuna purse seiners. These seiners were composed of five (5) large seiners (>400 short tons frozen tuna capacity), three (3) small seiners of <400 short tons frozen tuna capacity, and four (4) CPS seiners. **These 4 CPS seiners operated from San Pedro, California. The remaining 8 seiners operated from foreign ports in Central and South America. In view of the current absence of tuna cannery operations on the west coast, there exists no reasonable prospect of these 8 seiners landing tropical tunas in west coast ports. The only market available for CPS seiners catching tuna within the EEX would be the "fresh tuna market." If the 1990 decade landing data is a guide, then it is reasonable to predict that CPS landings of tunas post 2001 will be *de minimis*.**

5. The FMP does not provide information on how PFMC regulations under the FMP will improve or maintain the status of the tunas harvested by these two commercial fisheries. The FMP does not describe circumstances supporting a finding that significant competing interests and substantial conflicts exist regarding these two fisheries. The FMP offers no data on whether a need to resolve competition problems and/or conflicts involve these two fisheries. The FMP is silent on whether a need exists to improve existing economic conditions in these two fisheries, and whether improvement can be achieved by the FMP. The FMP is silent on whether there exists a need for developing these two fisheries, and whether an FMP can foster orderly growth. The FMP offers no significant benefits to these two fisheries that outweigh its associated costs in having duplicative regulatory regimes.

6. U.S. tuna purse seiners do have the capacity to fish the tropical tunas on a meaningful scale in EPO waters located beyond the EEZ. And, this is why the conservation and management regime implemented by the Pacific Tuna Act should not be replaced by the FMP. This is why the regulations implementing the IATTC recommendations under the Pacific Tuna Act must continue to apply "to all vessels and persons subject to the jurisdiction of the United States." 16 U.S.C. 955. This is the "necessity" of federal regulation under the Pacific Tuna Act that cannot be replaced by regulations implemented under the FMP. FMP regulations apply only to U.S. tuna vessels (1) when operating with permits within the EEZ, and (2) when operating beyond the EEZ from west coast ports. U.S. tuna vessels operating beyond the EEZ and from ports other than west coast ports are not subject to FMP regulations.

7. The benefits of a FMP system of federal regulation over these two fisheries as a substitute or as a supplement to the existing Pacific Tuna Act regime are not real or substantial relative and do not outweigh their increased burdens and costs.

The FMP does not clearly state what measurable benefits will result for these "two fisheries" from the management measures proposed other than what now exists under the regulatory regime promulgated by the Secretary under the Pacific Tuna Act. The regulatory costs to these "two fisheries", the Federal Government, and to the PFMC are substantially increased by exercising regulatory action under the FMP. See: FMP, Ch.9, Pgs 79-80. And for the Tuna Purse Seine Fishery (including Coastal Pelagic Seiners), the opportunity to increase tuna revenue may be adversely impacted by the extent of the proposed initial regulatory measure to establish new closed areas within the EEZ off Oregon and Washington.

8. The FMP will not produce real benefits for improving the economic condition and growth of the two fisheries.

There is no factual basis for claiming that the FMP will offer better economic conditions than presently exist for commercial fisheries that rely upon the demand for frozen tuna by west coast based tuna canners..

ATTACHMENT 2 shows the small size of the tuna purse seine fleet operating from west coast ports during 1999. TABLE 2 of the COMMENT illustrates the downward trends of the U.S. Canned tuna Industry during the period 1989 through 2000. This rate of decline increased during 2001. Recent NOAA/NMFS reports on the U.S. Canned Tuna Industry show that since 1996, total U.S. Tuna cannery receipts, at all locations, are continuing a substantial decline; and that for the period January-August 2001 domestic and imported tuna receipts from the Eastern Pacific and Western Pacific have substantially declined compared with receipts in 2000.<sup>8</sup> If this trend continues for the foreseeable future, the final result will be the complete absence of any tuna cannery operations within the jurisdiction of the United States except for the operation of facilities that process imported tuna loins.

9. The FMP will not provide benefits on the issue of access to traditional tuna fishing grounds located within the EPO?

The FMP provides only brief comments on the issue of access by the two fisheries to traditional tuna fishing grounds within the EPO. In 1919, U.S. tuna fishing vessels commenced the discovery and development of fishing grounds for tropical tunas within the EPO. For over 10 years, the provisions of the

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<sup>8</sup> "Canned Tuna Industry Update United States Tuna Cannery Receipts January-August 2001 and Comparison"

Magnuson Act have directed the Secretary of State in cooperation with the Secretary of Commerce to initiate negotiations with respect to obtaining access for U.S. tuna fishing vessels within the EEZs of other nations. See 16 U.S.C. 1822(e)(2 and (3)(B). For over 10 years, no negotiations have been initiated on obtaining access for U.S. tuna fishing vessels within the EEZs off foreign nations located south of San Diego, California. Since 1991, no Latin American nation has been requested by Secretary of State or the Secretary of Commerce to consider and take into account this traditional activity by U.S. tuna fishing vessels, and thereby acknowledge the sense of Congress stated in the Magnuson Act. See: 16 U.S.C. 1822 (f).

## B

### **The FMP does not adequately inform the public on existing federal law (The Pacific Tuna Act) for adopting and promulgating tuna and other HMS conservation and management regulations.**

In Chapter 1, page 10, very limited background information is provided about the IATTC and some of the statutory duties of the NMFS required under the "Pacific Tuna Act." In Chapter 3, short references are made to IATTC conservation measures and studies. The FMP, in Chapter 7, pages 1-10, provides summary information on current state and federal fishery rules and regulations applicable to both commercial and recreational U.S. West Coast HMS fisheries. In Chapter 7, page 5, reference and short comments are made on existing HMS federal regulations at 50 CFR Part 300, Subpart C.

1. The FMP does not provide by an Appendix, a copy of current IATTC conservation and management measures. Draft Appendix B and Draft Appendix C provide detailed comparison of state regulations for HMS fisheries.. However, public review of the Eastern Pacific Tuna Convention or the Pacific Tuna Act or a summary of their key provisions is not possible by reviewing the FMP. A comparison of current IATTC conservation and management measures with those proposed in Chapter 8 is not possible.

2. The FMP does not adequately inform the Public about the impacts of a FMP regulatory regime on the important procedural and substantive protections in the Pacific Tuna Act.

(a) In Ch. 1, pg. 10, the FMP states "The FMP can provide a mechanism to implement certain measures agreed to by the IATTC." However, this mechanism already exists in the Pacific Tuna Act. This remark raises the following issue: Upon the adoption and approval of the FMP by the PFMC and the Secretary, are the various limitations on the regulatory power delegated to the Secretary under the "Pacific Tuna Act" no longer applicable?

(b) Presently, under the "Pacific Tuna Act," the Secretary has a limited power to promulgate regulations that are applicable to all vessels and persons subject

to the jurisdiction of the United States. **This limited regulatory authority does not include the fixing of the size and character of fishing appliances to be used in any area of the IATTC Convention waters. This type of regulatory action power was expressly deleted by Congress from being included in the regulatory authority given to the Secretary under the Pacific Tuna Act.**

Recommendations to prohibit the use of traditional fishing gear, such as longline, hook and line, seines, have never been adopted by the IATTC and approved by the Secretary of State. These facts raises the following issue: Under the FMP, will the Secretary's power to promulgate regulations be identical or greater than the limited regulatory powers the Secretary has been delegated in the Pacific Tuna Act?

(c) The FMP proposes to make tuna conservation and management recommendations that have not been proposed by the IATTC. For example, new closed areas within the EZZ off Oregon and Washington for tuna purse seine fishing. See: FMP, Ch.8, Pg. 30. Also, the FMP proposes to prohibit Tuna Longline operations within the EEZ and to subject these operations to regulations when fishing waters located beyond the EEZ but within the EPO, waters that are within the jurisdiction of IATTC.. See: FMP, Ch.8 Pg. 27-29.. This raises the following issue: Are such proposals consistent with the Secretary's obligations under the PacificTuna Act and/or in substantial compliance with the Secretary's guidelines, the Magnuson Act, and other applicable federal law?

(d) Under the Pacific Tuna Act, the Secretary is obligated to establish a date when the regulations go into effect, but this date cannot be prior to an agreed date for applications by certain countries fishing within the EPO. Under the Pacific Tuna Act, the Secretary is obligated to "suspend at any time the application of any such regulations" subject to consultations. Under the Pacific Tuna Act, the Secretary is required to prohibit tuna imports when certain foreign "repeated and flagrant fishing operations within the regulatory area by vessels of any country which seriously threaten the achievement of the commission's recommendations". Under the Pacific Tuna Act, the provisions of penalties and fines do not include criminal penalties, nor of civil penalties that subject the vessel and its fishing gear to seizure, *in rem* liability and the imposition of a maritime lien on the fishing vessel.. These provisions raise the following issues: How will the FMP regulatory regime impact the statutory duties of the Secretary under the Pacific Tuna Act? How will the fines and penalties be applied by Secretary's in view of the differences between the Pacific Tuna Act and the Magnuson Act.

(e) Under the Pacific Tuna Act, a General Advisory Committee and a Scientific Advisory Subcommittee must be appointed by the U.S. Commissioners representing the United States on the IATTC.<sup>9</sup> This fact raises the following

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<sup>9</sup> The United States is represented on the IATTC by no more than four persons appointed by the President. Of the four Commissioners, one Commissioner must be either the Administrator, or an

issues: How is this arrangement impacted by the regulatory power exercised by the Secretary under the FMP? What are the expected roles of the PFMC, the Scientific and Statistical Committee, the Highly Migratory Species Plan Development Team, and the Highly Migratory Species Advisory Subpanel? How are these roles not duplicative of the arrangement established under the Pacific Tuna Act?

### COMMENTS ON THE "MANAGEMENT UNIT"

At 50 CFR § 600.320(d)(1)(iv), the Secretary's guidelines for developing a fishery management plans states that a "Management Unit" may be "based on a fishery utilizing a specific gear type or similar fishing practices. The FMP proposes that the "Management Unit" be based upon a biological perspective. The FMP did not consider a "technical" based approach or any other alternative. A "biological based management unit is practicable when the range of fish stocks to be conserved and managed are found substantially within the jurisdiction of the regulatory authority. However, not all of the HMS, as defined in the FMP, range throughout the EEZ. In view of this fact, is the management unit established by the FMP consistent with National Standard Three (3) of the Magnuson Act? 16 U.S.C. 1851(a)(3) <sup>10</sup>

The current management of the tropical tunas (Yellowfin and Bigeye) by the IATTC provides evidence that the most practical approach to conserving these far-ranging tunas is to manage on a "technical" as well as on a "biological" basis. Currently, the IATTC is managing the purse seine fishery to achieve its conservation and management goals for the Yellowfin and Bigeye tuna stocks in the EPO. Some surface fisheries (baitboats and sportfishing) and longliners are not subject to regulations applicable to the purse seine fishery. This is the approach that should be taken by the PFMC in managing the HMS within the EEZ. The Drift Gill Net fishery and the Pelagic Longline fishery are similar in their fishing practices. Both fisheries rely upon fishing gear that entangle deep swimming HMS (drift gill net) or attract hungry deep-swimming HMS with baited

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appropriate officer, of the NMFS, one Commissioner must be from a nongovernmental conservation organization, one must be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the area of the convention, and one must be chosen from the public at large and who is not a salaried employee of the State or of the Federal Government.

The U.S. Commissioners must appoint a General Advisory Committee and a Scientific Advisory Subcommittee. The General Advisory Committee must "be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations." The Scientific Advisory Committee must "be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations." Very detailed rules as to the functions of the Committee and Subcommittee were established in the 1997 amendment to 16 U.S.C. 953.

<sup>10</sup> " (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."

hooks (longline). The PFMC is faced with the fact that the catch of Yellowfin, Bigeye, and Skipjack by Surface hook & line gear and purse seine gear within the EEZ are not meaningful, in terms of effect on the tuna conservation and management program recommended by the IATTC for the EPO. Further, that such tropical tunas only spasmodically range within the EEZ, primarily off a small area of Southern California. The migratory ranges of the North Pacific Albacore and North Pacific Bluefin also go beyond the EEZ. Although investigated and studied by scientists, the status of the EPO North Pacific Albacore stock has not resulted in recommendations by the IATTC for the establishment of a conservation program. Nor have IATTC scientific investigations and studies on the North Pacific Bluefin resulted in conservation and management recommendations.

The need for a FMP regulatory regime over the Drift Gill Net and Pelagic Longline fisheries within the EEZ arises from their taking of non-oceanic sharks within the EEZ and not from their taking of tunas. The need also arises from their taking of protected species and prohibited species within the EEZ. These takes have given rise to federal regulatory efforts that would be better developed and implemented under a FMP regime that is coordinated with the Western Pacific Fishery Management Council. The need for a FMP regulatory regime also arises from multiplicity of State regulatory regimes that address the problems of reducing or resolving conflicts between these two commercial fisheries and the perceptions of recreational interests concerning the use of drift gill nets and longlines..

For the above reasons, I recommend that the "Management Unit" of the FMP should be based upon technical factors and not only on biological factors, and that the only specific gear types to be regulated under the FMP be the Drift Gill Net and Pelagic Longlines.

### CONCLUSION

Thank you for the opportunity to submit my views and opinions .

Dated: February 15, 2002

  
August Felando

TABLE 1  
 Logged Catch in Metric Tons of Tunas  
 Within 200 EEZ of the United States  
 Eastern Pacific Ocean  
 1990-2000  
 Source: IATTC

YEAR		YELLOWFIN	SKIPJACK	BIGEYE	OTHER	TOTAL
1990		0	3	0	4004	4007
1991		102	6	0	96	204
1992		99	370	0	1897	2366
1993		13	928	0	343	1284
1994		1195	192	0	1238	2625
1995		477	1459	0	676	2612
1996		419	554	4	4054	5031
1997		752	271	0	1096	2119
1998		0	133	11	2547	2691
1999		0	538	0	69	607
2000		10	0	0	342	352
total		3067	4454	15	16362	23898

TABLE 1A  
 Logged Catch in Eastern Pacific Ocean  
 By U.S. Flag Tuna Vessels  
 of Bluefin, Albacore, Black Skipjack,  
 Miscellaneous Sharks and Fish,  
 1990-2000

Source: Inter-American Tropical Tuna Commission (IATTC) <sup>1</sup>

YEAR	BLUEFIN	ALBACORE	BONITO	BLACK SKIPJACK	MISC.	TOTAL
1990	1627	203	4195	418	907	7350
1991	499	919	252	27	304	2001
1992	2092	337	301	2	161	2893
1993	912	1	406	0	35	1354
1994	1094	94	391	104	1	1684
1995	864	506	52	21	1	1444
1996	4559	83	326	63	46	5077
1997	2439	60	240	1	71	2811
1998	1193	31	373	76	33	1706
1999	2327	20	1473	41	56	3917
2000	1007	59	177	0	29	1272
total	18613	2313	8186	753	1644	31509

<sup>1</sup> For years 1995-1998, Annual Reports, Table 4a; for years, 1990-1994, Annual Reports, Table 2; for 1999, Quarterly report, 4<sup>th</sup> Quarter, 2000, Table 4, and for 2000, Quarterly Report, 1<sup>st</sup> Quarter, 2001, Table 5.



**TABLE 2**

**1989-2000 EASTERN PACIFIC (EPO) TUNA CATCH  
USA TUNA FLEET SIZE AND SHARE OF CATCH  
USA TUNA PROCESSOR SHARE OF LANDINGS  
(METRIC TONS)**

**SOURCE: INTER-AMERICAN TROPICAL TUNA COMMISSION (IATTC)**

<b>YEAR</b>	<b>USA Fleet Frozen Tuna Cargo Capacity (Metric Tons)</b>	<b>Number of Vessels</b>	<b>Percentage Total Frozen Tuna Cargo Capacity of EPO International Fleet</b>	<b>USA Fleet Tuna Catch in EPO (Metric Tons)</b>	<b>Percentage Total International Fleet Catch</b>	<b>Total EPO Tuna Catch Landed in USA locations for Processing (Metric Tons)</b>	<b>Percentage of Total EPO Tuna Landings at International Locations for Processing</b>
2000 **	9,738	19	5%	18,183	3.3%	13,450	2.5%
1999 **	9,525	35	6%	20,172	3.5%	22,766	3.6%
1998	8,952	27	6%	20,445	4.5%	13,564	3.0%
1997	9,717	38	8%	32,007	6.7%	20,728	4.3%
1996	9,415	31	8%	33,487	7.9%	24,500	5.8%
1995	8,193	30	8%	34,877	8.5%	35,203	8.7%
1994	13,337	39	11%	32,071	8.7%	20,281	5.4%
1993	11,949	32	11%	46,038	12.7%	32,181	9.0%
1992	10,981	26	10%	44,268	12.2%	20,969	5.9%
1991	15,671	31	13%	39,587	11.6%	30,947	8.8%
1990	32,666	52	24%	79,530	19.5%	82,193	20.1%
1989	33,690	62	25%	110,981	25.2%	160,976	37.4%

\*\* Preliminary



## ATTACHMENT 1

### DATA BASED UPON FMP, CHAPTER 2.

#### **A. The U.S. Tropical Tuna (Yellowfin, Bigeye, and Skipjack) Fisheries within the Eastern Pacific Ocean (EPO)**

**In General.** In 1999, the Pacific Ocean catch of Tropical Tunas totaled 2,250,453 "tons". For 1999, the total catch in the Eastern Pacific Ocean (EPO) was 646,724 "tons" representing 29% of the total Pacific Ocean catch; with a composition of Yellowfin 304,640 (47%), Skipjack 262,903 (41%), and Bigeye 79,181 (12%). FMP Table 2-81, (Note: It is unclear whether this Table records short tons or metric tons)

#### **1. Commercial Catch of Tropical Tunas within the U.S. EEZ off California, Oregon, and Washington:**

The annual commercial catch of Tropical Tunas taken within the EEZ off **California, Oregon, and Washington** is negligible compared to the total annual catch of these species by surface and longline gear as reported by the IATTC within the Eastern Pacific Ocean (EPO). **For 1999, the IATTC "logged" catch within the US EEZ off California, Oregon, and Washington was 568mt of Skipjack, zero landings for Yellowfin and Bigeye.**

- In 1998, the "logged" catch of yellowfin, skipjack, and bigeye within the US EEZ off **California, Oregon, and Washington** reported by the IATTC was zero metric (mt). 113 mt, and zero mt., respectively. The yellowfin, skipjack, and bigeye catch within the EPO by both surface and longline gear for 1998 was about 279,000 mt., 143,966 mt., and 70,700 mt., respectively. See 1998 Annual Report, IATTC, Table 3, page 160, Table 10, page 171, and Table 16, page 181. For surface gear catch only, see FMP Table 2-27.
- No tropical tuna fisheries exist off **Washington** and "less than 0.5 mt of skipjack and yellowfin " have been landed annually in **Oregon** by the salmon troll fishery as an incidental catch. See: FMP 2-Pg 13 and 2-Pg 14. Tables 2-6 and 2-7 (**Washington**) Tables 2-8 and 2-9 (**Oregon**) .
- Tropical tuna fisheries are found off **California**, but the annual catch within the EEZ off **California** has ranged from zero to a high of about 1996 metric tons during the 10 year period 1990-1999. The IATTC reports that the logged catch of the tropical tunas within the United States EEZ located within the EPO during the ten year period of 1990-1999 in metric tons was 3067 of Yellowfin, 4,454 tons of skipjack, and 15 tons of bigeye. During 2000, the preliminary catch estimate for Yellowfin was 10 tons, zero tons for Skipjack and Bigeye. The following FMP Tables show the landings/value of tropical tunas for **California**: Table 2-10 and 2-11..

**2. Commercial Landings of Tropical Tunas in ports of California, Oregon, and Washington.**

In General. For 1999, landings totaled 5,218mt, ex-vessel revenues of \$4.9 million. The following FMP Tables show the 19 year decline in Pacific Coast landings of tropical tuna tunas: Table 2-1 and Table 2-2. A high landing in 1981 of 135,128mt with ex-vessel revenues of \$290.3 million to the lowest level in 1999. During October, 2001, the last major tuna cannery located on the Pacific Coast servicing tuna vessels closed; therefore, the commercial landing/value of tropical tunas is expected to decline substantially in 2002, if any is recorded..

**3. Commercial landings of Tropical Tunas by Gear in ports of California, Oregon, and Washington**

a. **Purse Seine.** Purse Seine gear dominated the landings of tropical tunas . In 1999, total purse landings came to 5039 mt valued at \$4.1 million, representing about 97% of total landings and 85% of total ex-vessel revenues. See: FMP Tables 2-1 and 2-22 and Tables 2-31 and 2-32.

In 1999, five (5) purse seiners landed tropical tunas. In 1981, 101 purse seiners landed tropical tunas. FMP Table 2-66. In 1999, 56 landings were recorded; for 1981, landings totaled 3,138. FMP Table 2-69.

The NMFS-SWR monitors the US Tuna Cannery Fleet, and has reported that In 1999, 7 tuna purse seiners and 10 baitboats were located in the EPO. As of September 30, 2001, 6 tuna seiners and 10 baitboats were located in the EPO, however, only 2 tuna seiners were operating from a Pacific Coast port. :

b. **Drift Gill Net.** Total landings of tropical tunas by the drift gill net fishery in 1999 did not exceed 19 mt, valued at about \$96,000. These totals may have been landings of Bluefin.Tuna. See: FMP Tables 2-44 and 2-45.

In 1999, no drift gill net vessels were reported landing tropical tunas but fewer than 3 vessels were reported to have landed Bluefin. A total of 35 vessels reported landings of swordfish but no tropical tunas. FMP Table 2-66

c. **Pelagic Longline.** Total landings of tropical tunas by the pelagic longline fishery in 1999 did not exceed 132mt valued at about \$928,000. These totals may have included landings of Bluefin. See FMP Table 2-50 and Table 2-53.

In 1999, 32 vessels reported landing swordfish but no tropical tunas. FMP Table 2-66..

d., **Surface Hook and Line.** One metric ton of tropical tunas were landed by this gear in 1999. FMP, Table 2-71 and Table 2-69.. Fewer than 3 vessels were recorded as landing tropical tunas. FMP, Table 2-66..

**The IATTC should be contacted for data on the catch location and landings of tropical tunas by the 10 U.S. Flag Baitboats that were recorded by the IATTC as**

**fishing within the EPO during 1999.** 1999 Quarterly Report, 4<sup>th</sup> Quarter, Table 1, pg. 27. (The total 1999 catch of Tropical Tunas by the 22 baitboats of all flags was estimated by the IATTC at about 2600mt.).

e. **Harpoon/Other Gear.** No vessels in this category made landings of tropical tunas. FMP, Table 2-71 and Table 2-66. No landings of tropical tunas. FMP Table 2-69.

## **B. The U.S. Northern Bluefin Tuna Fishery within the EPO**

**In General.** In the Pacific Ocean, the 1999 catch of Bluefin was 22,934 "tons". Within the "EPO", the catch was 2,570 "tons" (11%). FMP, Table 2-81. In 1999, the "North Pacific" catch of Bluefin by US commercial gear totaled 249mt, of which 186mt by Purse Seine, 39mt by Longline, 21mt by Drift Gill Net, and 3mt by "Baitboats". FMP, Table 2-39.. ( See also: FMP Table 2-4, reporting preliminary data for 1997 of catches by gear, location.)

PACFIN Bluefin Landing data presented in the Draft FMP raises questions of accuracy. An examination of one set of Tables show a total landings by States of 186mt, another set of Tables show total landings by gear of 268mt., In addition, ex-vessel revenue amounts seem to be inaccurate on their face.

### **1. Commercial Catch of Bluefin within the U. S. EEZ off the coasts of California, Oregon, and Washington**

**The IATTC should be contacted to determine the annual "logged" catch of Bluefin Tuna by US Flag vessels within the U. S. EEZ off the coasts of California, Oregon, and Washington.** In 1998, the IATTC reported that the EPO Bluefin catch by US Flag tuna vessels within the EPO was 1,193 mt. **This report differs with FMP, Table 2-28. In this FMP Table, the USA catch is reported as 2,222mt.** See: IATTC Annual Report, 1998, Tables 4a, Pg. 163 For the 1999 preliminary report, the EPO Bluefin catch for US vessels was 411 mt See: IATTC Quarterly Report, First Quarter 2000, Table 6, Pg. 32. .

### **2. Commercial Landings of Bluefin in ports of California, Oregon, and Washington**

**California** reported 168mt valued at \$995,837. FMP Tables 2-10 and 2-11.  
**Oregon** reported landings of 6mt valued at \$38,117. FMP Tables 2-8 and 2-9..  
**Washington** reported landings of 12 mt valued at \$27,772 of Bluefin. FMP, Tables 2-6 and 2-7.

### **3. Commercial Landings of Bluefin by Gear in ports of California, Oregon, and Washington**

For 1999, FMP documentation show total landings of Bluefin by all US commercial gear was 268mt. FMP, Table 2-71. Purse Seine gear landed 180mt, one (1) mt by Drift Gill Net gear, and 87mt by "Other Gear." Total revenue was \$832,224, of which "Other Gear" received \$596,417; Purse Gear received \$229,234, and Drift Gill Net was \$66,573 (sic). FMP Table 2-72.

### C. The U.S. Albacore Tuna Fishery within the EPO

**In General.** In 1999, the Pacific Ocean catch of Albacore was 131,954. The 1999 catch of Albacore within the EPO is not reported in Chapter 2 of the FMP; the catch of Albacore is reported by catches in the "South Pacific" and by the "North Pacific". The 1999 "North Pacific" was 94,874 "tons". FMP, Table 2-81. (It is unclear whether the catch is in short tons or metric tons) In 1999, a total of 9746mt of Albacore was landed in the ports of California, Oregon, and Washington .

For West Coast charter and party boat catches of Albacore in 1999, RECFIN estimated 180,000 fish Table 2-59. At ES-5 the estimate of 180,000 fish was converted to 1746mt, however, in Table 2-60, an estimate of 181,839 fish landed in 1984 was equal to 1278mt. A significant percentage of this Albacore catch landed in California was probably caught within the Mexico EEZ. Table 2-57.

#### 1. **Commercial Catch of Albacore within the U.S. EEZ off California, Oregon, and Washington.**

The Draft FMP provides no data on the catch of Albacore within the U.S. SSZ off California, Oregon, and Washington. The IATTC has data restricted to vessel that "log" their catch. U.S. Albacore vessels catch Albacore within the EEZ of Canada. See: Tables 2-15, 2-16, and 2-17. In addition, U.S. Albacore vessels catch Albacore in the South Pacific. Table 2-14.. Also, U.S. Albacore vessels catch Albacore in the North Pacific far beyond the U.S. EEZ. The FMP provides no data on how much of these catches (beyond the EZZ) are landed in ports of California, Oregon, and Washington.

#### 2. **Commercial landings of Albacore in ports of California, Oregon, and Washington**

For 1999, the California landings of Albacore was 5,601mt valued at \$10,292,638. FMP, Tables 2-10 and 2-11. For Oregon, landings came to 2,064mt, valued at \$3,782,057. FMP, Tables 2-8 and 2-9. For Washington, landings came to 2,081, valued at \$3,647,381. FMP, Tables 2-6 and 2-7. It would be incorrect to assume that all of these landings were caught within the U.S. EEZ off the coast of California, Oregon, and Washington.

#### 3. **Commercial landings of Albacore by Gear in ports of California, Oregon, and Washington**

a. **Surface Hook-and-line.** For 1999, the total albacore landed by this fleet came to 9,519mt, valued at \$17,424,581 FMP, Tables 2-12 and 2-13. Based upon the PacFin landings reported by the States, this represents about 98% of total Albacore landings of 9746mt. and about 98% of total Albacore revenues of \$17,722,076.

b. **Purse Seine.** In 1999, the Pacific purse seine fishery landed 47mt of Albacore valued at \$31,237. FMP Tables 2-31 and 2-32.

c. **Drift Gill Net** In 1999, the Pacific drift gill net fishery landed 93mt of Albacore, valued at \$100,734, FMP Tables 2-44 and 2-45. Landings in **California** totaled 92mt valued at \$99,944. FMP, Tables 2-42 and 2-43. Landings in Oregon were <0.5 valued at \$791. FMP, Tables 2-40 and 2-41.

d. **Longline.** In 1999, the Pacific coast pelagic longline fishery landed 66mt of Albacore, all landed in California, valued at \$133,460. FMP, Tables , 2-50, 2-51, 2-52, 2-53, and 2-54.

e. **Harpoon.** The Pacific coast harpoon fishery did not land Albacore in 1999, and its record of annual landings of Albacore are usually <0.5mt. FMP, Tables 2-46 and 2-47.





ATTACHMENT 2

DATA BASED UPON CHAPTER 2, FMP

**SUMMARY**

**A. HMS Fleet Size for 1999:** A total of 456 vessels plus less than 3 HMS longliners operating from Oregon plus less than 3 coastal seiners operating from ports in Central California and less than 3 coastal seiners operating from ports in Southern California

**B. HMS Fleet Revenue and Number of Landings for 1999:** Total HMS ex-vessel revenue was \$28,519,304; non-HMS ex-vessel revenue was \$4,349,960, involving 6,803 landings of HMS gear

**A. 1999 HMS COMMERCIAL FLEET SIZE**

**Albacore Surface Hook-and Line Fleet \*\***

In 1999, the fleet was composed of 366 vessels, of which 124 operated from ports in California, 124 in Oregon, and 88 in Washington.

**Swordfish and Shark Drift Gill Net Fleet**

In 1999, the fleet was composed of 37 vessels; all operating from principal ports in California, 31 in Southern California and 6 in Central California. No vessels operated from Oregon and Washington ports.

**HMS Longline Fleet**

In 1999, the fleet was composed of 30 vessels whose principal port was in California and less than three vessels having their principal port in Oregon... None in Washington.

**Swordfish Harpoon Fleet**

In 1999, the fleet was composed of 18 vessels whose principal port was in California. None operated in Oregon and Washington.

**Large Tuna Purse Seiner Fleet**

In 1999, the fleet was composed of 5 vessels whose principal port was in California. None operated in Oregon and Washington.

**Coastal Purse Seine Fleet**

In 1999, the fleet was composed of less than 3 vessels with principal port in California. None operated in Oregon and Washington.

**B. 1999 HMS COMMERCIAL FLEET REVENUE**

<b>NUMBER OF LANDINGS BY PRINCIPAL GEAR</b>	<b>NON-HMS EX-VESSEL REVENUE **</b>	<b>HMS EX-VESSEL REVENUE</b>
2485 Surface Hook-Line	\$509,830	\$14,179,130
399 Pelagic Longline	28,805	5,808,981
158 Purse Seine	507,125	4,149,850
1677 Drift Gill Net	105,873	3,181,585
295 Harpoon	4,050	603,283
1788 Other Gear	3,194,277	596,475
	<b>\$4,349,960.00</b>	<b>\$28,519 304.00</b>

\*\*HMS revenues for vessels whose principal species is not an HMS but whose principal gear is that indicated

**Subject: Fwd: A vote for drift nets in the HMS Plan**

**Date:** Thu, 24 Jan 2002 10:03:30 -0800

**From:** "Donald McIsaac" <Donald.McIsaac@noaa.gov>

**To:** carolyn.porter@noaa.gov

**CC:** daniel.waldeck@noaa.gov

Please include in BB public comment.

Thanks,

Don

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**Subject: A vote for drift nets in the HMS Plan**

**Date:** Wed, 23 Jan 2002 23:12:40 EST

**From:** <FVCalogera1@aol.com>

**To:** Donald.McIsaac@noaa.gov

Mr. McIsaac, my name is Tim Mulcahy and I've been a com. fisherman out of Santa Barbara Ca. for 30 yrs. I'm writing to support the use of small mesh gillnets to catch bluefin and albacore tuna. I participated in using this gear type last year. To my best knowlege there were about 15 boats involved, only 12 seriously on the entire west coast. This type of fishing does not impact turtles or cetaceans. Thanks for your thoughtful consideration on this issue.

I remain ; Tim Mulcahy  
F/V Calogera  
805 683-0545

Katey Grange  
414 E. 133<sup>rd</sup> St  
Tacoma, WA 98445

RECEIVED

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PFMC

February 9, 2001

Pacific Fishery Management Council  
7700NE Ambassador Place  
Portland, OR 97220

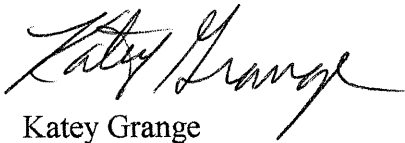
Chairman Lone,

I am writing to commend the council on the precautionary approach taken in the recent fisheries management draft plan for the conservation of Pacific tunas, billfish and sharks. In addition, I would like to express support for the ban on Pacific longline fishing within the 200-mile economic exclusive zone. Longliners have long been a source of indiscriminate fishing, which have produced large amounts of bycatch in other parts of the world. The measures directed at preventing the establishment of this fishing practice are an important step in the protection of Pacific tuna, billfish and shark populations.

During this period of public opinion, I urge the council to maintain their stance on longlines as stated in the FMP draft. Further, I would respectfully like to suggest an additional provision that should be incorporated into the plan. Since these species are highly migratory and can travel far outside of the 200-mile EEZ, U.S. vessels fishing outside of this zone should be held to the same bycatch reducing regulations and catch limits as their counterparts fishing within national waters. To ensure compliance to these conservation measures, monitoring devices and observers should be placed on these vessels.

I hope that the plan remains precautionary in nature during this public comment period, and that any changes to the plan will further enable Pacific migratory fish populations to thrive. Thank you for your time in reading this letter.

Sincerely,



Katey Grange

**RECEIVED**

**JOHN H. HENSLEY  
P.O. BOX 506  
SAN PEDRO, CA 90733-0506  
(310) 710-0523**

**JAN 15 2002**

**PFMC**

January 12, 2002

Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 220  
Portland, Oregon 97220

RE: Highly Migratory Species Draft Plan

Dear Dr. McIsaac

I acknowledge receipt of the Pacific Fishery Management Council's Draft Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species hereinafter referred to as the "Plan" that, frankly speaking, seems to favor certain fishers and therefore can only be interpreted as prejudicial to fishers, such as the undersigned.

For your consideration, I am a California Drift Gill-Netter for shark and swordfish. That there is a potential due to this "heavily regulated fishery" (Plan @ ES-4) that I could be out of business should this highly charged political-environmental trend continue.

There is every indication this trend will continue as evidenced by California Proposition 132 in 1990 putting the inshore gill netter who traditionally fished just off the beach out 3 miles from Point Conception to the Mexican border and locally in the Los Angeles and Orange County area out 12 miles effectively placing their target species out of reach and out of business.

Further evidencing the "trend" the National Marine Fisheries Service relative to the California Drift Net Fishery implemented gear restrictions, e.g., six fathom suspenders, and the use of pingers with the Marine Mammals Protection Act; and prohibited taking and zero tolerance of endangered species and most recently (August 2001) limiting fishing grounds above Pt. Conception by implementing the Pacific Leatherback Conservation Area. It is my understanding the NMFS now proposes in El Nino years limiting the fishing grounds from Pt. Conception to the Mexican border relative to the sea turtle.

It is clear the California Drift Net fishery is politically and environmentally charged and those fishers, such as myself, are in danger of being legislated out of business.

Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
January 12, 2002  
Page 2

RE: Highly Migratory Species Draft Plan

Should this happen, and like most fishers, I have all my monies invested in my boat and gear, after all it's been my living for many years, as in any business. Consequently, my only alternative would be to continue in the highly migratory species by supporting my family in the albacore surface hook and line fishery.

Unfortunately, the Highly Migratory Species Draft Plan proposes a limited entry plan with a control date of March 9, 2000. (Plan @ ES-11)

I am very concerning with the Council's position relative to albacore and related species that it is accepting a "plan" that "Some individuals from this fishery expressed concern to the Council that a limited entry program may be necessary to control excess capacity.". (Plan @ ES-11).

That "In response to this concern" those individuals and **not** based upon scientific studies which clearly indicate there is no over fishing of the albacore as evidenced by the participation of vessels "peaking at more than 2,000 in the mid 1970's. In 1999, 775 troll vessels landed albacore." (Plan @ ES-3). In fact the number of vessels has sharply declined.

That the Status of Fish Stocks as mandated by the Magnuson-Stevens Act, and implemented by the IASTTC assessments which states "Presently the albacore stock is healthy, and stock and catches are both increasing . . . no regional harvest guideline is recommended"; Eastern Pacific Yellowfin Tuna "no regional harvest guideline is recommended"; Bigeye Tuna "no regional harvest guideline is recommended"; Skipjack Tuna "no regional harvest guideline is recommended and Northern Bluefin Tuna "no regional harvest guideline is recommended". (Plan @ ES-6--ES-7)

It seems the Council is favoring a certain group of fishers who want to eliminate any and all other fishers in the obvious hope they can drive the price of albacore up being the "only" ones fishing albacore. That knowingly or unknowingly the Council's proposed draft plan is creating a commodity (albacore) that is being controlled by one group of fishers, effectively, creating a monopoly that in all likelihood would be thrown into the judicial system for resolution.

I propose the Council give consideration to those fishers who are already in the California Drift Gill Net fishery being able to change over to the Albacore Fishery without being sanctioned by a control date of March 9, 2000.

Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
January 12, 2002  
Page 3

RE: Highly Migratory Species Draft Plan

I will be attending the February 2, 2002 public hearing in San Pedro, California and request that I am placed on the list of speakers as well.

Further that my letter be circulated to all members of the Council for the March 2002 Council meeting and that I am placed on the list of speakers as well.

Thank you for your courtesy and cooperation.

Very truly yours,



**JOHN H. HENSLEY**

cc: Congresswoman Jane Harman

RECEIVED

FEB 19 2002

PFMC

Larry M Brown  
7020 Earldom Ave  
Playa Del Rey, CA 90293

February 13, 2002

Re: March 2002 Council Meeting on Longlines  
Highly Migratory Species FMP

Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

**PLEASE STOP ALL LONGLINING.** We need to feed our populations, but there are more viable and environmentally responsible types of commercial fishing. We must balance commercial and environmental needs, but the wholesale slaughter, discarding and waste of millions of sea animals is impossible to understand or justify. The inevitable by-catch of birds, turtles, mammals and other non-targeted fish renders long lining unacceptable and incompatible in today's environmentally conscious society.

Commercial Longlining is not even economically or commercially viable in the long run. Commercial fleets have frequently moved from area to area, decimating fish populations in their wake until their daily catches don't cover the cost of their daily operations. They then steam away to rape and pillage some other part of the ocean.

Please don't let this happen in California and the westcoast. Let's learn from the mistakes we have made off the east and gulf coasts, off of Hawaii and from the catastrophic mismanagement by third world countries of their oceanic resources.

I am extremely alarmed that our leaders are even considering a proposal to introduce additional long line gear in the 200 mile exclusive economic zones of California and other west coast states. Even our own California Fish and Game Commission opposed this potential catastrophe in 1992.

Please just say **"NO" to long line fishing gear off California and other west coast states.**

Thank you for your concern and help.

Sincerely,

Larry Brown

A handwritten signature in black ink, appearing to read "Larry Brown", written over the printed name.



Dear Sir

RECEIVED

2/4/02

FEB 11 2002

REMO

This letter addressing the Mgt of highly migratory species (Specifically) the Albacore is what?

- (A) A waste of my time and yours?
- (B) Farce of our Constitutional Rights?

As a taxpaying, Godfearing, hard working, former USN & USCG Vet., honorably discharged from both, I would like to convey to you that I'm far from satisfied the way the system is laid out on this issue.

How do you manage a species that is "highly migratory"? It sounds like political double talk "developing a plan to manage & regulate highly ~~reg~~ migratory species. What they mean is a plan to regulate the men that pursue these fish for a living.

I for one can only fish Albacore as I've been regulated out of the Salmon and Crab Industries but that's another SAD TAKE I won't bother you with.

This Plan Reeks of more "Regs", "permits" and yes lets not forget the "fees" that will be required from an already overregulated Industry.

In the summary we received at the meeting it states that North Pac. Albacore stocks and catch rates are healthy at this time. If these stocks are "healthy" and have not been regulated except by nature then what's wrong with the old adage "If it's working Leave it Alone." How did these

fish arrive at this point without any management &  
I feel that we have Natural Regulations Imposed on us  
by Nature itself. To wit; the weather, ocean temps, upwellings  
etc and the nature of the fish itself "Highly Migratory."

I make my living solely from Albacore fishing only. Every  
thing I own and the last 30 years of my life has been  
put into the vessel that I still owe 3 parts on. No Govt Subsidy,  
No help from State, County, or City officials. (Except for "regs,"  
permits, fees. Always the hand out on that end.)

I got regulated out of the Salmon Industry in '85. I certainly  
do not need to be regulated out of the Albacore fishery.

Enough of regulations, laws, fees, stamps, & stickers. Let the NATURAL  
order run its course. Thin down some of the regulatory bodies  
in order to meet payrolls not squeeze it out of an over-  
burdened hard working class of American Individualists commonly  
referred <sup>SP?</sup> to as "Fisherman" under the guise of "regulating."

I won't get into costs of keeping a 50' vessel running, fuel,  
groceries, maintenance, etc. Costs keep spiralling up every day. I also  
realize that I'm in this industry by "choice not chance." Why  
do you insist on regulating "producers" out of business?

The "Meeting" we attended is another farce, it's a formality that  
does nothing for the citizen that attends and voices his or her opinion.  
The Magnuson-Stevens FC&M Act makes some of that.

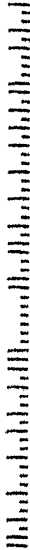
Again I say No, No, No, to regulating troll caught North Pac Albacore.  
You're not managing fish you're regulating men out of freedom.  
We live in America ladies & gentlemen, let us practice  
some of our God Given Rights of which I believe Freedom  
to be one of them.

Sincerely  
JAN H. Peterson  
211 Palomares

Tolson V H  
PO Box 5872  
Charleston OR  
97420

Pacific Fisheries Mgt Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220

97220+1354



RECEIVED

FEB 22 2002

Peter Zadis  
115-64 220 St  
Jamaica, N.Y. 11411

PFMC  
Don McIsaac, Executive Director  
Pacific Fishery Management Council  
2130 SW Fifth Ave # 224  
Portland, OR, 97201

2/13/02

Dear Director McIsaac

The commercial fishing longlines are indiscriminately killing sea birds, turtles and marine mammals. This indiscriminate killings must end. I fully support efforts to improve protections for migrating fish, sea birds turtles and marine mammals.

I urge you to prohibit longlines within 200 miles of shore.

I urge you to enact strict guidelines for any experimental longline programs.

I urge you to adopt conservation harvest guidelines for sharks.

I urge you to advocate for similar protections in Management Councils and international forums.

Sincerely  
P. Zadis

RECEIVED

FEB 19 2002

PFMC

William N. Ebersman  
1156 S. Hayworth Avenue  
Los Angeles, CA 90035  
February 13, 2002

Re: March 2002 Council Meeting on Longlines - Highly Migratory Species FMP

Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

Gentlemen:

I am requesting that you **STOP ALL LONGLINING** within 200 miles of the California coastline. While I realize that there is a need to provide quality animal protein to our citizens in the form of seafood, it should not be done using indiscriminate and wasteful commercial long-line fishing techniques. The ocean is part of the environment, and the wasteful taking of sea life, is impossible to justify to any rational being.

Commercial Long-lining is not even economically or commercially viable in the long run. Commercial fleets have frequently moved from area to area, decimating fish populations in their wake until their daily catches don't cover the cost of their daily operations. They then steam away to rape and pillage some other part of the ocean.

At best, these vessels sit in the harbor waiting for prices to justify their exploitation of the ocean environment. At worst, these vessels deploy curtains of death. In the form of long-lines, these interfere with migratory patterns and kill non-targeted species (by-catch). In the case of abandoned or damaged lines, these "fishing" devices continue to kill with no possibility of the "take" being harvested in any fashion.

Please don't let this happen in California and the West coast. Let's learn from the mistakes we have made off the east and Gulf coasts, off of Hawaii and from the catastrophic mismanagement by third world countries of their oceanic resources.

There are currently many bills which recognize the need to control or stop the gross overfishing in our coastal waters; HR 4612, HR 3390, HR 3516; HR 3331 and S1911. I am appalled that our leaders are even considering a proposal to introduce additional long line gear in California's 200-mile exclusive economic zone. Even our own California Fish and Game Commission opposed this potential catastrophe in 1992.

Please just say **"NO to long-line fishing off the coast of California."**

Thank you for your concern and help.

Sincerely,



Will Ebersman

RECEIVED

FEB 21 2002

February 15, 2002

PFMC

Dear Dr. McIsaac,

I am writing in support of prohibiting longlines in the "exclusive economic zone" within 200 miles of shore and enacting strict guidelines, including 100% observation coverage for any experimental longlining programs. Please do this to improve protection for migrating fish off the Pacific coast.

Thank you,

Mrs. Karen Ennis  
623 Wakerobin Lane  
San Rafael, CA 94903

February 15, 2002

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

RECEIVED

FEB 21 2002

PFMC

Dear Dr. McIsaac,

These comments are for the Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species. Thank you for the opportunity to comment on this plan. I applaud the effort and vast accumulation of material that is placed in this plan. In general, the information is extremely accurate and quite extensive. I have divided my comments into three categories. The first is comments on the data portions, the second is a proposal that I think should be included that would improve the fulfillment of the objectives in this plan, and the third is the options I would like to see the council adopt.

#### Data Comments

2.2.8.2 Private sport fishing fleet documentation appears solely based on southern California. In some years, the highest reported harvest for albacore will be from vessels north of Point Conception. In viewing the harvest estimates on Table 2-58 and 2-59 it appears that catch and effort was drastically underestimated, especially for areas north of Pt Conception. Within the section 9.1.1.6 there is a reference to a reduction in the marine recreational fishery that has occurred. While this may be the case in overall fishing effort for all species combined and due to reductions in groundfish limits and available time period, there is likely an increase in trips for HMS. The increase in effort for HMS would be due to decreased cost of good quality navigation equipment, increase in the population, increase in the number of vessels, and communication and weather forecasting via the internet. This trend of increased pressure is likely to continue.

4.2.8 Essential fish habitat for northern bluefin. The definition of the range should include areas in to 100 fm isobath north to Pt Reyes. The justification is that bluefin have been seen and caught for the past five plus years within areas from Pt Sur to Pt Reyes and all these areas have been outside the 1000 fm boundary listed in the document. Catch location for purse seine sets should provide some additional data on locations of catch. Other locations from sport caught bluefin could also be provided. In addition, the temperature listed should be adjusted to a low of 14 degree C. This should be for all years, not "warm years" as listed in the document. It appears that small bluefin do prefer the warmer water listed, but by the time fish are sub adults in the 40-60 kg size they are often in water between 14 and 16 degrees Celsius. The past few years have been reported as La Nina, or cold water years, and yet during this same time period bluefin tuna have been present near shore north of Pt Conception every year. These additional areas all fit the description of EFH listed in section 4.0.

One impact that I could not find listed within the document was the impact of one gear type on other gear(s). Increases in harvest by one gear will have impacts in other gears for two reasons. The first is in availability and the second is in the market. This can have significant economic impacts at the local level. I have seen this occur in the past three years. I have seen purse seine eliminate harvest on recreational and troll commercial. I have also seen where an excess of albacore in the market has created a lack of market price for albacore such that surface hook and line was not able to participate in the fishery at previous levels due to buyers not accepting albacore. This impact was greatest to those commercial boats that use HMS to supplement other fishing activity. Additional details can be

provided. Selection or lack of selection of the alternatives within this plan can have significant impacts on the economies at the local level and should have a discussion within this plan.

I agree with the document that the status of the bluefin stock is largely unknown. Longline and gill net catches of bluefin are reported as steadily increasing (Table 2-39). The pen rearing operations listed as being off Mexico were present this past year off Pt Sur to Pt Pinos and possibly elsewhere. The fish captured and put in the pens are likely not "landed" and the extent of this fishery may be unknown. This method of "take" may be difficult to document due to the lack of reporting at landing. No additional reference to pen rearing was made in the document or if the fish captured are recorded as landings in another section. From this FMP it is difficult to ascertain if the pen rearing is considered a method of take or if the purse seine is the method of take. I assume that it would be considered purse seine. Is the harvest recorded in the landings of purse seine? The document states that pen rearing "may provide economic incentive to increase targeting on this stock when it is available". The certainty for over fishing of the bluefin stock is less certain as stated in Table 3-3. Due to the potential for significant impacts to the bluefin stock, this method should be fully discussed in the document. Alternatives should be identified if harvest increases above a pre-set level. Due to the potential for significant impact to the northern bluefin stocks from increased harvest from gill netting and additional purse seine fishing, there should be provisions to monitor the increases and stabilize or decrease harvest if needed.

#### Additional Option

8.5.6 Purse seine fishery management measures. I would suggest that the following should be included. Prohibit the use of purse seine within 60 nautical miles of all harbors for the take of bluefin tuna.

Purse seining and hook and line are NOT mutually compatible. Section 2.2.3 acknowledges that northern bluefin is an important component of the U.S recreational fishery. This fishery was not even mentioned in the private sport fishing fleet section. The chance to harvest bluefin is important to the private sport fishing fleet and should be given due consideration in the management of this fishery.

"Local depletion" as defined in the FMP occurs due to purse seine activity. When the local depletion occurs within the range of the private sport boat fleet, then the private sport boat fleet does not have the opportunity to harvest this fishery.

This type of option would be good for the most individual users. Sport and surface hook and line commercial would benefit with minimal impact on total purse seine harvest. This would also fulfill management goals and objectives number 4 and 5 listed in the plan.

Due to the significant financial contribution that the sport fleet provides to the economy and the desire of sport fisherman for the opportunity to harvest bluefin, this additional option could decrease conflict between purse seine and private sport fleets and show a desire of user groups to work together in managing the bluefin resource.

#### My Preferences

I agree and support the "proposed action" unless otherwise stated below. I encourage the council to adopt the measures listed below.



8.4.1 Legal Gear and Gear Restrictions. I support the Alternative 2- Do not include pelagic longline gear as a legal gear for HMS. This alternative may decrease pelagic longline pressure outside the EEZ, and also may decrease the potential for additional incidental catch of non-target birds. For drift gillnets I support Alternative 1, use of 14 inch nets only. Gill nets less than 14 inch are used to target tuna. Increased harvest on tuna by this "new" user group can have impacts on other traditional users (surface hook and line) and should not be included.

8.4.11 Exempted Fishing. I support Alternative 1. EFP have the potential to "take" listed and protected non-target species. Additional harvest methods should have a predetermined review procedure and public input should be allowed.

8.4.2 Incidental catch allowance. A range of percent of landing was presented. I recommend the maximum be 10%. By selecting a low percent, the objective number 2 would be easier to achieve.

8.5.4 Drift Gillnet Fishery Management Measures. I support Alternative 3. It appears the proposed action has no limit on the number of drift gillnets that could be allowed. This could significantly impact the fishery resource and traditional user groups. I support the provisions in alternative three that would make the drift gillnet fishery a limited entry fishery.

Thank you for the opportunity to provide these comments.

Respectfully,



Greg Gerstenberg  
1551 Greenwood Way  
Los Banos, California 93635

**Subject: Fwd: LONGLINING**

**Date:** Mon, 05 Nov 2001 14:07:13 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov>

**To:** daniel.waldeck@noaa.gov

**Subject: LONGLINING**

**Date:** Tue, 30 Oct 2001 12:18:28 -0500

**From:** Richard Wollocombe <getlost@uio.satnet.net>

**To:** Fred.Keeley@assembly.ca.gov, doolittle@mail.house.gov, M.Thompson@mail.house.gov, samfarr@mail.house.gov, graydavis@governor.ca.gov, thesec@doc.gov, senator@feinstein.senate.gov, senator@boxer.senate.gov, rhight@dfg.ca.gov, graydavis@governor.ca.gov, William.Hogarth@noaa.gov, marty.golden@noaa.gov, jimlone@msn.com, pfmc.comments@noaa.gov

To whom it may concern,

Longlining outstrips resources faster than the regeneration of the resources permits. It has devastating impacts on non target species, that end up dying for absolutely no reason.

All long lining methods have proven to be ecologically unsound practices, no matter where the fishery takes place.

To allow further longlining is unacceptably irresponsible and unethical.

Longlining is not a method of harvesting resources to make a living, longlining is a way of stealing resources from future generations.

We must not allow this atrocity to continue.

Sincerely,

Richard Wollocombe  
WILDAID

**Subject:** [Fwd: Pacific coast]

**Date:** Thu, 07 Feb 2002 13:00:03 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov> **Internal**

**To:** daniel.waldeck@noaa.gov

----- Original Message -----

**Subject:** Pacific coast

**Date:** Thu, 7 Feb 2002 12:03:50 -0800

**From:** <santapat@juno.com>

**To:** [pfmc.comments@noaa.gov](mailto:pfmc.comments@noaa.gov)

Don McIsaac  
Executive Director  
Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, OR 97201

**Subject:** Prohibit longlines in the Pacific

Dear Dr. McIsaac,

We strongly support efforts to improve protection for migrating fish off the Pacific coast. Please adopt the proposed management measures in the highly migratory species fisheries management plan at your March meeting. These measures are the minimum needed to help keep these fish populations healthy and ensure the survival of seabirds, marine mammals, and turtles.

In particular, we support prohibiting longlines in the "exclusive economic zone" within 200 miles of shore and enacting strict guidelines, including 100 percent observer coverage, for any experimental longlining programs. The council should also adopt the conservative harvest guidelines and control rules for sharks, and advocate for similar measures with other fishery management councils and in international forums.

We hope you will consider taking these important steps and thank you very much for your time.

Sincerely,

Peter & Patricia Wilson

RECEIVED

JAN 28 2002

To Whom It May Concern: I'm writing this letter today to voice some comments about the new fishery management plan being drafted by the Pacific Fishery Management Council. As I'm sure you know thousands of billfish, sea turtles and sharks are needlessly killed each year by longline fishermen. Experts predict that white marlin will be extinct in three years, blue marlin in five to six years. There are also two species of sea turtles that are on the brink of extinction. Billfish populations are at a small fraction of their MSY [maximum sustainable yield]. It will take years for the billfish to recover and grow in numbers to their MSY. This is why we need to take immediate action to ensure that our fishery's are preserved. I strongly support the Council's preferred option to ban the gear from the West Coast EEZ. Please don't delay any longer, make sure this plan is finalized at the meeting in March 2002.

Thank you  
Joseph LoBianco

P.S. You can contact me at  
JS LOBIANCO @ msn.com or at 45 North  
Evergreen Ave. Woodbury N.J. 08096

Feb. 8, 2001

Don McIsaac

Pacific Fishery Management Council

3130 SW Fifth Avenue

Suite 224

Portland, Oregon 97201

RECEIVED

FEB 13 2002

Dear Dr. McIsaac:

PFMC

Please adopt the proposed management measures in the highly migratory species fisheries management plan at your March meeting! These measures are the least that can be done to keep these fish populations healthy! Many seabirds, marine mammals and turtles depend on these measures for their survival.

I hope you will also prohibit longlines in the "exclusive economic zone" within 200 miles of shore. You should support the conservative harvest guidelines & control rules for sharks.

Thank you!

Sincerely,

Ruth Niswander

622 Barbera

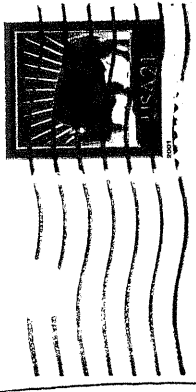
Davis, Ca. 95616

Mr. William Galli  
16 Parker St.  
North Adams, MA 01247



~~Dear Mr. Lone,~~  
I AM contacting you over my great  
concern regarding the status of high  
migratory fish in the Pacific (i.e. Matlamin tuna,  
swordfish and shark fisheries there) for which there is  
little regulatory for.  
The species mentioned are very vulnerable to  
longlines which are indiscriminately caught and  
wasted in longlines, as bycatch.  
Longlines are terrible worldwide for having  
large bycatch problems and should be allowed in the west  
coast EEZ. They catch far more than the small fish or tuna  
they are used to target. Sea turtles, marlin, juvenile  
swordfish and sharks are all caught as bycatch in this gear.  
I support the Council's proposed option to ban the gear  
from the west coast EEZ.  
I wish to urge you to finalize the plan no later  
than its March 2002 meeting.  
Thank you.

SWG  
2/28

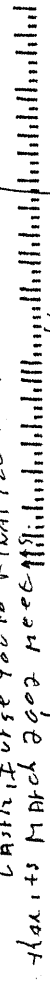


JIM LONE, Chair  
PACIFIC FISHERY MGMT. COUNCIL  
7700 NE AMBASSADOR PLACE  
SUITE 200  
PORTLAND, OR

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NOV 26 2001

PFMC



RECEIVED

FEB - 4 2002

PFMC

Pacific Fishery Management Council  
7700 NE Ambassador Place,  
Suite 200  
Portland, OR 97220-1384

Please do what ever is needed to stop  
long lining in our waters. This indiscriminate  
fishing method is depleting our oceans!

This is a time to let fisheries recover,  
not kill them. Thanks for your consideration.

Best Regards,

David Fry  
1272 St. Helena Ave  
Chula Vista CA 91913  
619-595-5029

**Subject: Fwd: Prohibit longlines in the Pacific**

**Date:** Mon, 04 Feb 2002 13:56:12 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov>

**To:** daniel.waldeck@noaa.gov

**Subject: Prohibit longlines in the Pacific**

**Date:** Mon, 4 Feb 2002 11:34:09 -0800

**From:** "Cameron Alston" <cameronalston@yahoo.com>

**To:** "Dr. McIsaac" <pfmc.comments@noaa.gov>

February 4, 2002

Don McIsaac  
Executive Director  
Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, OR 97201

Dear Dr. McIsaac,

If we do not aggressively protect our fish populations soon it may be too late to prevent their demise. I am writing in support of efforts to improve protection for migrating fish off the Pacific coast, and I specifically urge you to adopt the proposed management measures in the highly migratory species fisheries management plan at your March meeting. These measures are the minimum needed to help keep these fish populations healthy and ensure the survival of seabirds, marine mammals, and turtles.

Prohibiting longlines in the "exclusive economic zone" within 200 miles of shore and enacting strict guidelines, including 100 percent observer coverage, for any experimental longlining programs are specific measures which must be taken to protect our marine life. The council should also adopt the conservative harvest guidelines and control rules for sharks, and advocate for similar measures with other fishery management councils and in international forums.

By taking these important steps now, you may be able to protect these fish and other marine life while they still have a chance to remain healthy.

Sincerely,

Cameron Alston  
1156 Richmond St.  
El Cerrito, CA 94530  
USA



**RECEIVED**

FEB 11 2002

**PFMC**

Daniel D. Johnson  
2108 Muirhead ave. NW  
Olympia, WA 98502  
(360) 357-8557

Dear Dr. McIsaac:

Having read over the executive summary of the Draft Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species, I feel compelled to offer a few comments. My background has been as a commercial fisherman for the better part of 20 years, mostly in the Alaskan nearshore fisheries, but I have also participated in the tropical pelagic fisheries, and I have operated all of the gear types except harpoon proposed to be managed in the plan. I am currently a Fisheries Biology student in my senior year at The Evergreen State College in Washington State. My main concerns are in maintaining healthy, long-term, sustainable fisheries at optimum yield, and the protection of endangered species.

In my experience the gear types best suited to achieving the management goals and objectives as outlined are surface hook and line and purse seine. These gear types are actively fished, so that bycatch has a better chance of being released alive. Pelagic longlines and drift gillnets are often left unattended for long soaks, and many bycatch species, especially sharks, are drowned if immobilized for too long. Shark populations are especially vulnerable due to their slow reproductive rates, and sharks are also a low quality food source. If the U.S. intends to take a lead in conservation of these species, it would be wise to close the EEZ to pelagic longline and drift gillnet fisheries. This would not eliminate the fishery, but would probably help to reduce effort in these fisheries, and provide high quality refugia in areas of essential fish habitat for species that could be vulnerable to overfishing by other nations. A 14" min. mesh restriction on drift nets would only make them even more deadly for large prohibited shark species and Striped Marlin, nor would it make them any safer for turtles.

Incidental catch allowance is a difficult subject, as too high of an allowance could encourage illegal targeting of prohibited species, but too low of an allowance could lead to waste of legitimate bycatch. A maximum allowance of around 25% of landing by weight would probably be an appropriate starting point, however this should be closely monitored. Enforcement at sea is difficult at best, and there is no guarantee that fishers would accurately report bycatch if it's in their best interest not to. Conservation measures already in place in the Western Pacific should be implemented in the Eastern Pacific as well, and would be a good step towards international cooperation in the management of HMS. Excluding static gear from the EEZ would also help to reduce gear conflicts, and minimize the economic waste of low-quality fish saturating domestic markets.

All in all, I like the plan and approve of the proposed conservation measures, and am glad to see steps being taken toward international cooperation in the management of HMS and the protection of endangered species. Thank you for your time, and feel free to contact me for further commentary on the management of HMS.

Sincerely,  
Dan Johnson

**Subject: Fwd: longline**

**Date:** Tue, 05 Feb 2002 15:05:26 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov>

**To:** daniel.waldeck@noaa.gov

Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384  
Phone: 503-326-6352  
Fax: 503-326-6831  
On the web at: <http://www.pcouncil.org>

---

**Subject: longline**

**Date:** Mon, 4 Feb 2002 21:59:49 -0800 (PST)

**From:** mario falcon <dom\_maze@yahoo.com>

**To:** pfmc.comments@noaa.gov

Sir,

I,ve been fishing off the coast here in Santa Cruz for 60 years and my dad for 37 before that. This whole longline business is for the birds. I don't put no salt in how those guys catch with them things because its disrespectful. I urge you to publically disapprove of longlines when it comes up for discussion. Thank you.

Sincerely, Dominic M. Maze

---

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Great stuff seeking new owners in Yahoo! Auctions!  
<http://auctions.yahoo.com>

---

PFMC Comments <pfmc.comments@noaa.gov>

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FEB 13 2002

PFMC

Hopkins Marine Station  
Stanford University  
Oceanview Boulevard  
Pacific Grove, CA 93950  
kcmw@stanford.edu  
831-915-0296

February 11, 2002

Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-6352  
FAX: (503) 326-6831

Dear Mr. McIsaac:

I write concerning the hearings for the HMS FMP. I was unable to attend the hearings because I was putting satellite tags in bluefin tuna off the Outer Banks of North Carolina. Fun, fun, fun! I wish to submit my comments in writing.

From: Draft List of Management and Regulatory Options, starting on p. ES-13

- 6: Yes. Inclusion of the sixgill shark should enhance data collection for this species, allowing better assessment of its status.
- 17: Yes. Develop gear to reduce bycatch or bycatch mortality.
- 40: Yes. Prohibit longlining within the US EEZ. Use VMS to enforce. I have baited hooks and thrown floats for a longliner, and seen the bycatch issues first-hand. This fishing method catches lots of non-target species and lots of juveniles, and most are dead when the line is retrieved. While banning longline gear in the EEZ does not solve overfishing on the high seas, it is a step toward reducing overall mortality by providing some areas of sanctuary for pelagic fishes.
- 46: Yes. Time-area closures can protect species at critical points in their life cycle such as spawning, and can protect particularly vulnerable species during times they are abundant in areas targeted by longlining. This pertains to item 51.
- 51: Yes. See 46 above.
- 77: Yes. Require logbooks for longline.
- 78: Yes. Require observers for longline.
- 79: Require VMS for longline, drift-gill net and purse-seine.
- 83: Yes. Prohibit taking of basking and white sharks.
- 84: Yes. Prohibit taking of megamouth sharks.
- 86: Yes. Prohibit taking of striped marlin.

Kevin Weng, comments of HMS FMP

1 of 2

- 88: Yes. Prohibit removal of shark fins at sea. In the long term, the finning trade should be phased out, as it provides an unnecessary luxury good which is not justified given the slow growth and reproduction of most shark species.
- 89: Yes. Prohibit new shark fisheries pending research. Due to low fecundity and historical or present exploitation, sharks should be considered "at risk" until peer-reviewed research demonstrates otherwise.

Thank you for your time and consideration. Please contact me with any questions or comments.

Sincerely,



Kevin Weng  
MSc – Biological Oceanography

**Subject: Fwd:**

**Date:** Thu, 29 Nov 2001 08:09:12 -0800  
**From:** "PFMC Comments" <pfmc.comments@noaa.gov>  
**To:** daniel.waldeck@noaa.gov


**Subject:**

**Date:** Tue, 27 Nov 2001 01:35:50  
**From:** "Dennis Seider" <dennisseider@hotmail.com>  
**To:** daniel.waldeck@noaa.gov  
**CC:** pfmc.comments@noaa.gov

Daniel: I cdn't find the letter; the comments were these: (1)the size of swordfish caught has shrunk from 4-500 lbs to 90-120 in about twenty years, making the gillnet fishery deadly; runts cannot be returned alive and sustainable stocks may be irretrievably (2) any mistake we make toward conservation is a survivable mistake; the converse is not so. Thanks, Dennis

---

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 Hogarth11-05-01.wpd	<b>Name:</b> Hogarth11-05-01.wpd <b>Type:</b> WordPerfect 9 Document (application/x-unknown-content-type-WP9Doc) <b>Encoding:</b> base64
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LAW OFFICES

*Of Counsel*  
John H. Wolf

OF

DENNIS J. SEIDER

RECEIVED

NOV 26 2001

November 5, 2001

PFMC

William T. Hogarth, Ph.D.  
Assistant Administrator of Fisheries  
United States Department of Commerce  
National Oceanic & Atmospheric Administration  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Re: Fishery Management Plan for Highly Migratory Species Off the West Coast

Dear Dr. Hogarth:

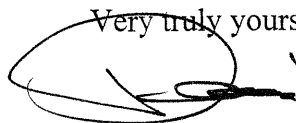
Thank you very much for your letter of September 19, 2001.

Would you be good enough to forward my letter directly to the Pacific Fisheries Council,  
Attn: Secretary Evans regarding the captioned matter.

I did go to their web site and checked on progress but found no way to contact them directly. If you will let me know what their e-mail address is, I will follow up there as well.

Thank you.

Very truly yours,



DENNIS J. SEIDER

DJS:laf

**Subject: Fwd:**

**Date:** Tue, 05 Feb 2002 15:11:31 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov>

**To:** daniel.waldeck@noaa.gov

Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384  
Phone: 503-326-6352  
Fax: 503-326-6831  
On the web at: <http://www.pcouncil.org>

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**Subject:**

**Date:** Tue, 5 Feb 2002 14:25:10 -0800

**From:** "Dave Barnett MD" <Dave.Barnett@sharp.com>

**To:** <pfmc.comments@noaa.gov>

Dear Sirs,

I am writing in regards to your Pacific Fishery Management plan. Please consider the following: The swordfish fishery in CA while officially healthy is devastated to such an extent that there is no longer a viable recreational fishery. In 15 years as a frequent fisherman in the Southern CA bight I have only seen one swordfish. Many of my fishing companions tell me they were once seen nearly every trip in Aug or Sept. I beleive there should be no targeting of swordfish w/in 200 nautical miles of shore by commercial interests until such time as they have recovered enough to permit a limited entry plank boat fishery only.

In regards to tuna, I feel there should be no commercial fishery inside of the channel islands and that the recreational fisherman should be limited to no more than 3 of any one species per day with no trading of fresh fish for canned/smoked fish. I also rec that all sportfisherman should be limited to circle hook use only when not fishing artificial lures. This would demonstrate to some extent the dedication/sacrifice that sportfisherman should be willing to undertake to attempt to restore tuna to their former abundance. Thank you for taking these recommendations into consideration. Sincerely yours, Dave Banrett, MD

---

PFMC Comments <pfmc.comments@noaa.gov>

**Subject: Fwd: Prohibit longlines in the Pacific**

**Date:** Tue, 05 Feb 2002 15:07:16 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov>

**To:** daniel.waldeck@noaa.gov

Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384  
Phone: 503-326-6352  
Fax: 503-326-6831  
On the web at: <http://www.pcouncil.org>

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**Subject: Prohibit longlines in the Pacific**

**Date:** Tue, 5 Feb 2002 00:40:51 -0800

**From:** "Brennan Smith" <soulchump@hotmail.com>

**To:** "Dr. McIsaac" <pfmc.comments@noaa.gov>

February 5, 2002

Don McIsaac  
Executive Director  
Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, OR 97201

Dear Dr. McIsaac,

I didn't become a SCUBA diver to become a naturalist. It was just for fun. But coming into intimate contact with something as majestic as the life that exists under water is an experience that is hard to resist.

It is in this spirit that I ask you to fight to protect areas that may well soon be in danger due to the upcoming longline proposals.

Please stand strong to hold off the destructive capacity that we have sometimes, even when we think we are acting in our own best interests. Thank you.

Sincerely,

Brennan Smith  
1939 S. Sherbourne Dr. #6  
Los Angeles, CA 90034  
USA

---

PFMC Comments < <a href="mailto:pfmc.comments@noaa.gov">pfmc.comments@noaa.gov</a> >
--



Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

FEB 07 2002

Gentlemen:

In regards to measures to effectively manage Highly Migratory Species off the West Coast, I would suggest you pay attention to facts, and not be motivated by the greed of special interest groups, specifically, commercial fishing interest. In addressing proper resource management practices, it would appear that the ultimate goal should be to manage the resource in such a way that all user groups are valued equally. The draft plan places further unwarranted and unsustainable burdens upon already overburdened resources. Secondly, the plan places additional unnecessary restrictions upon the greatest ally of highly migratory species, the recreational angler.

Somewhere, somebody must apply common sense to this matter, I challenge you to overlook the special interests of greed and use common sense here.

My point is this, if a resource is abused, reduced or damaged, or if one's activities cause that resource, or a secondary resource to be come abused, reduced or damaged, does it not make sense to severely restrict (my desire would be to eliminate) the primary factor causing the damage? On the surface it would seem to be a very easy question to answer.

Lets address a few specific issues here:

**Me**, the recreational angler: It is unfair for you to place any additional burdens upon me. Believe me I carry the burdens of the entire fishing industry on my back. When quotas are established, limits reduced, gear restriction imposed, they are always placed on me, the recreational angler. This seems backwards to me since by the government's own records, the recreational angler only takes 2% - 3% of the total of all fish taken.

- **Bottom Line:** don't place any new restrictions or fees upon the recreational angler, they have been shown to have no effect on the overall management of an HMS fish resource.

**Gill Nets:** Put the gillnets to 60 fathoms or deeper! Or remove them! Period!

- **Bottom Line:** Two of our local fisheries are beginning to thrive again, white sea bass and halibut. Do not allow the gill-netters to return. Lets not be foolish enough to reinstate the same or similar practices that nearly eliminated the fishery!

**Long Lines** in the North Pacific: Lets call these things what they are. Indiscriminate killing machines of anything that swims be it fish, mammal or reptile. We are all aware of the fisheries decimation in the Atlantic. Do not allow that to happen here! By order of US court, the Hawaiian based long line fleet was prohibited from fishing in the north

pacific. So we allow the fleet to move its base to our northwest coast and the killers go back and fish the same waters they were prohibited from fishing when they were based in Hawaii. Doesn't make a whole lot of sense, does it.

- **Bottom Line:** Long lines kill everything they come into contact with and call it "bycatch". Lets define "bycatch" for what it really is: the killing of a creature that does not have commercial value to the long liner. Long lines destroy fisheries, contribute to the extinction of species (sea turtles, for example), and are a killing tool, not a **management** tool. What is the name of your organization? The Pacific **Management** Council. Manage this problem by eliminating it!

**Purse Seiners:** I've watched these ships destroy our bluefin resource for the last 4 years, and unload the thousands of fish they have killed for \$450 a ton to be sold for cat food. Then listened to them laugh on the VHF about how the "took" those fish away from the recreational guys. Keep them out of our local waters!

- **Bottom Line:** Seiner ships are very efficient killing machines. In 1999, I watched as bluefin schools from horizon to horizon were wrapped up and gone in 1 day, eliminated from our fishery. Bluefin are in my opinion the most valuable HMS resource on the West Coast, and I have been fortunate enough to experience them. To see this resource sold off for \$450 a ton should truly be an embarrassment to you. It is to me. Eliminate the Seiners from our waters; my suggestion is no Seiners within 60 miles of our coast.

**Money:** The fact here is that both commercial and recreational fishing contribute essentially the same in terms of dollars to our economy, however, commercial fishing interests are awarded by quota or by other means (which nobody can figure out) the ability to take 97% - 98% of all fish removed from our oceans. This is a grossly discriminatory position (looks like I just found another lawsuit angle) which needs to stop, and stop here.

- **Bottom Line:** By my letter, you would infer that I am against all commercial fishing. You would be wrong. If you can earn a living, fishing with a hook, line, and pole, subject to the exact same regulations and restrictions that I am. Then, I honour your abilities as fishermen, and solute you for your efforts, congratulations. If it cannot be done without the use of nets, long lines, seine nets, etc., then it should not be done! Period! Why, because commercial fishermen are the primary abusers of our resource and any management efforts to conserve the resource placed upon the commercial fishing industry first. Period!

This is the counter argument to my letter you will receive from the special interest group i.e., the commercial fishermen.

"Commercial fishing is my life, its how I put food on the table, its how I pay my bills. I can't do anything else. If you are going to eliminate my ability to make a living, you should compensate me."

Here is the response: "Mr. Commercial fishermen, while it is true that you used to make your living from the ocean, recent fishing practiced employed by you and others involved in the same industry have decimated, or will soon decimate the very resource you are claiming you need to make a living. Therefore, we will offer this in response. We have not eliminated your ability to go to sea and reap its harvest. You will, however, be subject to the same rules, regulations and restrictions as are recreational anglers. If you find that you are unable to sustain your standard of living due to these new regulations, you should seek other employment. In response to your comment that we should compensate you for your lost income, we would ask why? Why should you be treated any differently than:

- The owner of a construction company who mortgages all that he owns for his business only to loose it all when we, a governmental body decide to place into effect a no-building ordinance. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and usually succeeds.
- A logger who looses his job when all of the trees in Northern California have been harvested, or defined as sanctuary. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and usually succeeds.
- The military weapons engineer who looses his job when the Federal government reduces its military spending budget. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and succeeded wonderfully. This person is now my immediate supervisor.

The bottom line is you shouldn't be treated any differently, you abused the resource and now you have to take the responsibility for your actions. That responsibility should not be placed on the recreational angler or the general public."

Sincerely,

A handwritten signature in dark ink, appearing to read "John Boseman", with a long horizontal flourish extending to the right.

John Boseman,  
A concerned and informed recreational angler  
3381 Lynn Oaks Drive  
San Jose, CA 95117

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FEB 11 2002

PFMC

# MALOLO

*Blue Water Tackle*

2/05/02

Dr. Donald McIsaac  
Executive Director, PFMC  
7700 NE Ambassador Place, Ste. 200  
Portland, Oregon 97220

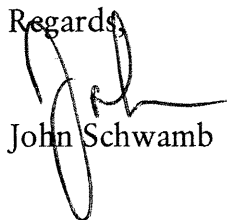
Dear Dr. McIsaac,

Let me first start off by saying that I have been a fisherman of Southern California waters for over thirty five of my forty years of life. I was introduced to fishing by my father and since that time both fishing and the ocean have been a major part of my life. Currently, I have two children ages ten and three, who in addition to being very fond of our weekend fishing trips on our boat, truly enjoy the many wonders the sea has revealed to them. In addition to being a recreational fisherman, I also am the proprietor of a Saltwater Fishing Tackle Business whose very existence relies on a viable and healthy saltwater fishery in order to survive.

I am in support of a plan which would not allow a Longline fishery to develop within the EEZ. The Longline method of fishing has proven to be a destructive and wasteful method in which very few benefit at the expense of many. I would also ask that your panel look into further control and regulation of the Drift Gillnet industry off our coast. This method is equally as destructive to the resource as Longlining, and is shameful in the amount of bycatch it produces.

I ask that you and your panel be mindful of the effect these wasteful methods of fishing could have on our resource. I hope to be able to fish with my grandchildren someday, not explain what happened to the great gamefish of the past.

Regards,

  
John Schwamb

February 6, 2002

**RECEIVED**

Timothy J Rioux  
1955 Hawk Dr  
Point Mugu, CA 93041

FEB 11 2002

**PFMC**

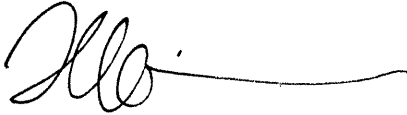
Jim Lone, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, OR 97220-1384

Dear Sir,

I am writing to offer my support for your decision to prohibit longline gear in U.S. western waters.

The council's decision will benefit many (fish included). Enclosed is a photo of my son, a future angler.

On his behalf, thank you.

A handwritten signature in black ink, appearing to read 'T. Rioux', followed by a long horizontal line extending to the right.

Timothy J. Rioux

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FEB 11 2002

February 5, 2002

Don McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

PFMC

David Brackmann  
16316 Niantic Circle  
Huntington Beach, CA 92649

Dear Mr. McIsaac:

I would like to thank the PFMC for all the hard work in developing the draft plan. I favor and approve of your current plan with the preferred options.

As a sport fisherman who has fished in Southern California for the last 30 years I have seen our human population grow and our fish stocks shrink. I blame this on pollution and commercial fishing pressure on the resources. The most recent gear to accelerate this destruction has been drift nets and especially long line gear fished in Mexico and outside 200 miles. I have fished all over the East Coast and have seen first hand the destruction to the resources that long line gear causes and has caused there – basically the stocks have collapsed. I do not want to see this happen where I live! **Long line gear has no place in the California or West Coast EEZ.** Long line gear is a non-selective gear type that has no place in today's oceans. It indiscriminately rapes the sea of life. For those long line boats who come to port here in California, they need to have 100% observer coverage and there must be VMS on board all boats to insure that these boats are fishing legally outside of 200 miles. The CA DFG is undermanned and does not and cannot currently give the area inside 200 miles adequate protection from those who might fish illegally inside the EEZ.

**Drift gill nets should not be allowed to target albacore or sell albacore caught in drift nets.**

This gear can destroy the albacore stocks and we all were lucky that it was banned in the high seas before the entire albacore biomass was wiped out. Drift gear needs to be taken out of the inshore and offshore waters as it is a non-selective gear that produces unacceptable levels (if there is such a thing) of bycatch (by-kill) of marine species including mammals. I hope to see drift nets removed from our waters soon. There needs to be 100% observers on drift gill net trips so that there can be accurate data provided on the extent of by catch. Could part of CA sportfishing license fees be used to pay for more observers? I would like to see more money go to providing data to insure that our stocks are being managed properly and that stock levels are not being over exploited.

Thank you and once again please stick with your preferred options of the plan – NO LONG LINES INSIDE THE EEZ, NO SALE OF STRIPED MARLIN AND NO SWORDFISH FISHING EFFORT NORTH OF THE EQUATOR, NO SMALL MESH DRIFT NET ALBACORE FISHERY, VMS ON ALL BOATS AND MORE OBSERVERS ON COMMERCIAL BOATS.

Sincerely,



David Brackmann  
Huntington Beach, CA



# *Los Angeles Rod & Reel Club Foundation*

*A Non-profit Corporation*

February 5, 2002

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FEB 11 2002

**PFMC**

Mr. Donald O. McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Suite 200  
Portland OR 97720-1384

Dear Sir:


At the February 2, public meeting of the PFMC in San Pedro I addressed the meeting as a representative of the Los Angeles Rod & Reel Club.

We represent hundreds of members in the Southland and spoke in favor of excluding long lining from the EEZ.

The text of my address is attached. It was suggested that I send a copy to each member of the PFMC.

Hopefully all the members will be able to review this in their final deliberations in the upcoming weeks.

Respectfully,

  
Eric Rogger  
Los Angeles Rod & Reel Club  
c/o 2625 Westridge Road  
Los Angeles, CA 90049-1234

# ADDRESS TO THE FEBRUARY 2<sup>ND</sup> 2002 MEETING OF THE PACIFIC FISHERIES MANAGEMENT COUNCIL



GENTLEMEN:

MY NAME IS ERIC ROGGER AND I REPRESENT THE LOS ANGELES ROD AND REEL CLUB. I ALSO SERVE ON THE BOARD OF DIRECTORS OF UNITED ANGLERS OF CALIFORNIA. LOS ANGELES ROD AND REEL CLUB HAS A 52 YEAR TRADITION IN THE SOUTHLAND AND BOASTS A NON-PROFIT ARM WHICH TAKES UNDERPRIVILEGED KIDS FISHING AND MAKES GRANTS TO ORGANIZATIONS INVOLVED IN THE PERPETUATION OF OUR MARINE RESOURCES.

THE MEMBERS OF YOUR GROUP ARE ASKED TO MAKE SOME VERY SERIOUS DECISIONS WHICH WILL NO DOUBT ALSO IMPACT OTHER AMERICAN COASTAL FISHERIES. AT ISSUE ARE THE LONG LINERS' EFFORTS TO OPERATE WITHIN THE EEZ AND THEIR CONSEQUENT INDISCRIMINATE DISASTEROUS EFFECT ON HIGHLY MIGRATORY SPECIES, MAMMALS AND BIRDS..

THIS PUBLIC HEARING GIVES US THE OPPORTUNITY TO TELL YOU THAT WE SUPPORT THE BILLFISH FOUNDATION AND UNITED ANGLERS IN THEIR OPPOSITION TO OPENING UP OUR COASTAL WATERS. NOTE THAT MOST OF OUR CONSTITUENTS HOWEVER, ARE NOT PRIVATE BOATERS BUT AVERAGE RECREATIONAL FISHERMEN INVOLVED IN TAKING THEIR FAMILIES ON PARTY BOATS OR CHARTERS. MENTION LONGLINES AND IT CONJURES UP THE ISSUE OF THE DREADFUL BYCATCH PROBLEM CREATED BY MILES OF HOOKS.

YOU KNOW BETTER THAN WE DO WHAT SPECIES ARE BEING MOST IMPACTED. IN SOUTHEAST AND CERTAIN GULF WATERS 133,000 SQUARE MILES OF OCEAN HAVE BEEN PLACED OFF LIMITS TO LONGLINES FOR THE HIGHLY MIGRATORY SPECIES BY THE NMFS. VAST AREAS OF THE PACIFIC OUT OF HAWAII ARE ALSO OFF LIMITS. OUR RESTRICTIONS SHOULD BE SIMILAR.

THE LATEST REAUTHORIZATION OF THE SUSTAINABLE FISHERIES ACT (1996) REQUIRED AN ECONOMIC ANALYSIS OF FISHING PARTICIPANTS AND THEIR EFFECTS ON COASTAL COMMUNITIES. THE NMFS STUDY CITES THE 1999 STATISTICS SHOWN IN THE NEXT PARAGRAPH.

RECREATONAL SALTWATER FISHERMEN NUMBER 10.4 MILLION. THE RECREATIONAL FISHING INDUSTRY GENERATES \$20.7 BILLION IN RELATED ACTIVITIES. THE COMMERCIAL INDUSTRY, WHICH IS RESPONSIBLE FOR 97% OF THE FINFISH CAUGHT GENERATES \$1.6 BILLION IN LANDING VALUES. THE RECREATONAL INDUSTRY TAKES 3% YET GENERATES 13% OF THE ECONOMIC ACTIVITY.

CONCLUDING, WE ASK MEMBERS OF THIS PANEL TO NOT ONLY LOOK AT THE IMPACTED SPECIES- SOME ENDANGERED - CAUSED BY INDISCRIMINATE GEAR, BUT ALSO THE ECONOMIC AND SOCIAL RESULTS TO BE CONTEMPLATED.

WE ASK THAT THIS GROUP DO THE **RIGHT** THING AND THANK YOU FOR LETTING US BE HEARD.



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FEB 1 2002

PFMC

To: Pacific Fishery Management Council

Date:2/1/2002

I am greatly opposed to the idea of allowing Long lining and Drift Gillnetting inside the 200mile limit. We have historical data that clearly shows the negative impact to the fishery when this type of fishing is allowed. It is beyond my understanding that anyone/group whom is even slightly aware of the impacts to the fisheries could consider allowing this in our waters. I do question the data gathering process. I am and have been a technical person for many years and cannot understand this process. The bottom line here is if this does not impact the fishery, then there would be no reason for a request of this type as the boats would not need to find additional locations. Additionally, I also strongly believe that allowing Purse seining of Bluefin Tuna also falls into this category.

I have my own boat and have fished albacore offshore for years and want to ensure that my children have that option. Do you have children?



Wayne Cheung  
Waynechssi@aol.com

**Subject: Fwd: gill nets and long lines**

**Date:** Thu, 10 Jan 2002 10:29:39 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov>

**To:** daniel.waldeck@noaa.gov

**Subject: gill nets and long lines**

**Date:** Sat, 05 Jan 2002 08:59:51 -0800

**From:** "John E. Millen" <millenj@pacbell.net>

**To:** graydavis@governor.ca.gov

**CC:** right@dfg.ca.gov, pfmc.comments@noaa.gov

Please accept my vote against gillneting and longlineing. The laws regulating gillneting have prevented the destruction of many types of fish just off our coast. Halibut fish have had a good turn around. Now you must not allow longliners to come into our area and spoil our recreational fishing. I am a small boat owner and pay alot in taxes and all the other expenses related to fishing and boating. I spend a lot to be able to catch those very few fish each year. I am blind and fishing is one way that I can get people to join me so that I can get out of doors. Otherwise I would be caught up all day in this damn condo. Lets not destroy all those fish by longliners that would prevent me and other recreational fisherman to get out and enjoy our God given environment. John Millen

INSIDE SPORTFISHING TELEVISION  
Michael Fowlkes Productions, Inc.

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FEB 19 2002

PFMC



2.14.02

Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

RE: Highly Migratory Species Fishery Management Plan - Long Lining

Dear Council Members,

I can't express strongly enough the importance of keeping any "exploratory or experimental" long line fisherie out of the Southern California bite. Any long lining anywhere near these waters would cause sever, and perhaps even irreversible damage to the marine life of Southern California.

Southern California waters are a nursery for both thresher and mako shark and must be protected from the indiscriminate and wholesale slaughter of high seas long line practices. Regardless of claims, the miles of baited hooks can't "target" certain species. It's that simple.

Please reference the destruction that long line practices have perpetrated on the waters surrounding the Hawaiian Islands, as well as the East and Gulf coasts of the continental United States. Wherever this type of fishing has been allowed the results have been the same, disastrous. Not only to the "targeted" species, but to every other species and form of marine life as well.

The negative economic impact on the State of California if Southern California sportfishing is ruined by allowing long lining, in and of itself, should be enough to prohibit this type of fishing off our coasts.

The future of our fisheries, and the health of our oceans are in your hands. I urge you to learn from the mistakes others have made in allowing this type of indiscriminate harvesting into their waters, and not make the same disastrous mistake here.

Please do not allow ANY type of high seas long line fishing into our waters.

Sincerely,

Michael D. Fowlkes  
Executive Producer  
Inside Sportfishing

**Eric Rogger**  
2625 Westridge Road  
Los Angeles, CA 90049-1234  
310.476-5936 fax 310.476-6811

RECEIVED

FEB 22 2002

PFMC

February 15, 2002

Donald O. McIsaac, Executive Director  
Pacific Fisheries Management Council  
7700 NE Ambassador Place #200  
Portland, Oregon 97220-1384

Re: PFM Plan for HMS Fishery

Gentlemen:

As a long time recreational fisherman I wish to add my voice to current discussions dealing with expansion of long lining in the EEZ adjacent to west coast areas.

This type of fishery is simply indiscriminate and has led to major declines at other coasts of the United States. Recent closures off the southeast and partial time closures in the Gulf Of Mexico are the result of authorities recognizing overfishing and by-catch waste.

The State of Hawaii has gone further and ended this type of fishery in wide swatches of the Pacific. The restricted boats now wish to move their operations to our areas.

I recognize the need for commercial fisheries but you are already familiar with alternatives and the various requests for "experimental" permits. Stop longlining now!

Thank you!

  
Eric Rogger

CAROL VIVCA  
P.O. BOX 70

W. ADAMS MA 01247

USA

Ph. #413-663-2135

EMAIL: VIVCA@adelphia.net

RECEIVED

FEB 19 2002

PFMC

DEAR Mr. LONE,

First as a recreational fisherman I highly commend you on possibly banning the use of longlines, which are notorious for decimating fisheries in many parts of the world, unintentionally killing many other types of marine life including sea turtles, sea birds, marine juvenile swordfish etc. If introduced into west coast waters this would be a disaster for many marine species that would be caught and discarded as bycatch, striped marlin, juvenile swordfish and tunas, and threatened shark species, as well as sea turtles, sea birds, marine mammals, and other innocent potential victims!

I commend the Pacific Fisheries Management Council for making a wise decision in its draft management plan, on banning the use of longlines. This ban on longlines is the right way to go!!

However, besides the wise step  
of banning longlines, the Council  
should include other Fish/Marine  
Conservation Measures including:

Requiring any new fishing gear or methods be  
thoroughly tested for bycatch problems and  
potential solutions to those problems before  
allowed to enter the fishery. The Council  
should create guidelines for use by NMFS when  
granting Experimental Fishing permits. In  
many circumstances should these permits be allowed  
for so-called "Explicitly" Fishing.

Outside the US zone US vessels fishing  
must be subject to all catch limits and bycatch  
reduction measures in place. A high level of  
observer coverage and mandatory vessel  
monitoring devices should be required to accurately  
count the catch and bycatch on the high  
seas and to ensure compliance with  
Conservation Measures.

The Council's decision to keep longlines  
out of the West Coast 200-mile zone stocks  
is to be highly commended! The bycatch problems  
of longlines are well documented and have depleted  
fish stocks and negatively impacted other  
marine species in many parts of the world. Just  
look at the negative impacts of our marine life  
on the US East Coast Areas!

Lastly, I commend you for taking a  
precautionary and risk-averse approach in the  
conservation of tonas, billfish and sharks!  
Thank you for allowing me my input! 2 more  
concerns

RECEIVED

FEB 21 2002

PFMC

February 20, 2001

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

Dear Dr. McIsaac:

These comments are submitted in response to the Draft Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species. I sincerely appreciate the opportunity to provide comments on this critically important Plan. It is apparent to me that your agency has committed substantial effort to this process; the draft contains extensive information essential to reasoned decisions which can determine the future of fishery resources which are of high value to the U.S. west coast. I applaud the effort and commitment of the Council and staff.

The concerns and suggestions submitted in this letter for your consideration are the expressions of a number of sport fishermen of the central California coast who have come to value very highly the opportunity to pursue and catch albacore, bluefin tuna, and sharks. For us, this opportunity provides the extreme experience of sport fishing as well as an important portion of the diet of our families. For this opportunity, we each expend thousands of dollars annually for boats, tackle, fuel, electronics and other equipment, lodging, meals, vehicles, bait, etc.

While I cannot know the scale of the offshore sport fishing contribution to the economy of coastal California, I have seen many instances in recent years of many private sport and party boats, targeting tuna, arriving and departing at landings from Morro Bay to Crescent City. Unfortunately, the Plan as written lacks adequate recognition of the sport fishery north of Pt. Conception. No doubt thousands of individual sport fishermen have participated annually in this fishery during the recent good years. Should good tuna fishing continue, it is reasonable to expect significant increases in central (and northern) California sport effort, especially considering recent advances in affordable electronics, efficient four-stroke outboard motors, human population and leisure time increases, and other factors. We believe, with careful management, this can be a sport fishery with a very bright future.

We have seen information on the nationwide economic value of recreational fishing as compared to the dollar value of the commercial catch. However, we feel that the dollar value of west coast sport tuna fishing should be assessed specifically, then compared to the contribution of the commercial fishery, and the resource allocated with this data as a major criterion. In fact, a recent State of California publication, "California Living Marine Resources-A status Report", includes data on the relative economic value of the commercial and sport fisheries. This document places an annual value of \$550 million on the commercial fishery, while the recreational fishery generates \$5 billion in personal income in California. The sport fishery supports about 150,000 jobs, while the commercial industry contributes only 17,000 jobs to the California economy. These numbers argue strongly that the sport fishery should receive top priority in all management programs.

We do not oppose commercial fishing! In fact, I am sometimes pleased to purchase albacore when unable to get out to fish. Our concerns relate to the total effect of all fishing methods on the populations and availability of the target and non-target species, and particularly the potential effects of drift gill nets and purse seining in the near-port areas where sport fishermen must focus due to their restricted range. Accordingly, we suggest an Alternative that would preclude drift gill netting and purse seining within 60 nautical miles of all harbors. We also support Alternative 1, which restricts gill nets to 14 inch size. For these above reasons we especially and strongly support Alternative 2 which prohibits the use of pelagic longline gear for HMS. Based on documented evidence, we believe strongly that the impacts of these gear types to nontarget species, including birds and mammals, present an unwarranted and unnecessary threat to the offshore marine ecosystem and therefore they should be tightly controlled or prohibited.

Our observations in recent years are the basis for our conviction that a new gear fishery (longlines) and increased commercial harvest is unwarranted. We have witnessed markets flooded with albacore to the point that prices fell well below what could be considered "fair market", severely impacting commercial troll fishermen. We submit to you that sport fishing and commercial hook and line fishing are highly compatible, that nontarget (and protected) species are not impacted by these methods, and that the troll fishery can usually satisfy market demand. For these reasons, and because of the high economic value of the recreational fishery, we feel that overall HMS management should give priority to these uses of the resource.

We catch bluefin at times; the possibility of such a catch is an important factor in our interest and investment in the sport. We have seen that possibility evaporate as purse seines have been used to wrap entire schools, taking huge numbers and causing fish to sound, effectively destroying the fishery within the range of sport boats. These experiences underscore our suggestion regarding prohibition of netting within 60 nautical miles of harbors. Such a prohibition could be considered an "experimental" fishery to assess potential economic and recreational benefits. We are convinced that such a measure could markedly contribute to the sport take of bluefin tuna. Based on our experience, we also submit that the Plan should describe the range of northern bluefin to include areas into 100 fm isobath north to Pt. Reyes because bluefin have been commonly seen and caught much closer to shore than the 1000 fm range boundary as stated in the Draft Plan.

To protect nontarget species, we believe that a low bycatch rate should be mandated and enforced. While a high (e.g. 30%) bycatch allowance provides the profitable opportunity to target nontarget species, a reasonable bycatch of 10% will be adequately effective in preventing undue waste while encouraging focus on the target species. Accordingly, we support a stated maximum of 10% bycatch rate to be included as the preferred alternative.

In closing, this group of central California sport fishermen strongly supports the basic direction and intent of the plan. We submit these comments in hope that the value and the future of the recreational fishery will receive full and fair consideration in your Plan now and into the future.



(Time constraints have prevented circulating this letter to the number of supporting anglers who have been waiting for me to "get with it". Below is a list of those I was able to contact for inclusion at the last minute.)

Written and submitted by,

Ron Thomas  
Box 342  
Somerset, CA 95684

Tim Caldwell  
Loma Rica, CA

Tom Blankenship  
Loomis, CA

Earl Yeager  
Somerset, CA

Jon Fischer  
Sacramento, CA

Richard Callas  
Mt. Shasta, CA

Rick Rockel  
Bridgeport, CA

RECEIVED

FEB 22 2002

To whom it may concern,

I am a PhD student at Scripps Institution of oceanography in San Diego California. Our laboratory works on juvenile mako sharks which frequent Southern California waters. The Southern California Bight (SCB) is considered to be a nursery ground for juvenile makos. Although both sport and commercial interests target the mako, the average size of makos landed is approximately 34 pounds dressed weight. Targeting juvenile, slow growing, late maturing fish that must grow to a large size to reproduce is NOT a good management strategy. Further, 2001 area closures to the pelagic gillnet fleet has placed even more pressure on the juvenile mako stock. Fisheries that target juveniles are extremely susceptible to over fishing, and in the case of the mako, because the Bight acts as a nursery ground, decimation of the juvenile stock could likely lead to a rapid and sudden decline in the abundance in the entire North Pacific.

Log book data from the Experimental Drift Long line Fishery Program that operated within a restricted sector of the SCB between 1988 and 1991 demonstrates how effective long lining is for the mako. This program indicated that makos are most abundant in SCB waters between April and September, with peak abundance occurring in August, and that juvenile makos are particularly abundant throughout these months. Further, it is during these same months that swordfish operations would be most prevalent in the SCB.

The introduction of a long line fishery within the Southern California Bight will have, at minimal the following repercussions. (1) Because of the excessive by-catch associated with long lining, the fishery will have a severe impact the elasmobranch stocks of the SCB, in particular, the mako, thresher, and blue shark populations. (2) Long lining will also have a pronounced effect on the existing harpoon fishery for swordfish. (3) Although swordfish are not actively targeted by most recreational anglers, the proposed long line fishery will affect recreational fisherman in that the principal by-catch of the fishery, mako and thresher sharks and the striped marlin all play important roles in the Southern California recreational fishery. Further, if the abundance of these three species is affected by the proposed fishery, a large financial loss will be felt by the recreational industry of Southern California.

Sincerely,

Chugey Sepulveda  
chugey@hotmail.com  
Scripps Institution of Oceanography, UCSD  
8655 Discovery Way, La Jolla CA 02093-0204

RECEIVED

2-20-02

Migratory Species

FEB 21 2002

PFMC

Dear PFMC

I find it unbelievable that you would even entertain the idea of allowing long lining in the EEZ. Long lining and gill netting are the land equivalents of strip mining and clear cutting. If the American public were aware of the effects of long lines and gill nets there would be a huge uproar. Long lining and netting cannot effectively target fish, they kill what ever bites them or swims into them. Why are people finding so many "lost" nets with Whales and other marine life caught in them? How long will these huge lost Mono and Nylon nets continue to kill sea life? Forever, right? They won't dissolve. Even lying on the bottom, deep living and diving creatures will be caught in them. I have heard that netters sometimes purposely-cut nets loose when they catch a mass of non-targeted fish, because it takes to much time and effort to untangle all those fish. I hope that's not true, but then where are all these loose nets coming from? How much sea life can a loose net, that catches a strong currant, kill, and for how long? Sport Tuna Fisherman and Commercial Hook and Line Fisherman, fish together everyday during Tuna season. We catch some fish, they catch many more because they have many more lines and they fish everyday, and we co-exist very well together. These methods have no bi-kill or loss to other sea life. Only about 50 years ago, man was only fishing by hook and line. Look at what Big Commercials target fish with today, Massive Boats, Spotter Planes. Thermal Imagine, GPS, sonar, Computers, Gill nets, Long lines, and much more. Fish have no way to defend against mans ability to catch them efficiently and in mass. Our abilities to commercially catch them far excides their ability to survive. The only hope fish have is that people like you, in government positions, recognize that man has the ability to destroy fish populations in a very short

period of time, when technology and mass production methods are used on them. Please do not allow long lining and stop gill netting in the EEZ.

THANK YOU.

Milo Vukovich  
10024 Yukon River Way  
Rancho Cordova, Ca.

A packet of letters and drawing were received from a Girl Scout Troop in San Jose, California. The seven letters expressed concerns about the use of long line gear and supported the prohibition of long line gear within the U.S. exclusive economic zone. These letters are on file at the Council office.

PFMC  
2/21/02

February 5, 2002

Don McIsaac  
Executive Director  
Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, OR 97201

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FEB 6 2002

PFMC

Dear Dr. McIsaac,

I support efforts to improve protection for migrating fish off the Pacific coast, and I specifically urge you to adopt the proposed management measures in the highly migratory species fisheries management plan at your March meeting. These measures are the minimum needed to help keep these fish populations healthy and ensure the survival of seabirds, marine mammals, and turtles.

In particular, I support prohibiting longlines in the "exclusive economic zone" within 200 miles of shore and enacting strict guidelines, including 100 percent observer coverage, for any experimental longlining programs. The council should also adopt the conservative harvest guidelines and control rules for sharks, and advocate for similar measures with other fishery management councils and in international forums.

Please take these important steps \*now,\* while these fish and other marine life still have a chance to remain healthy.

Sincerely,

Danny Reich  
38507 Fern Circle  
Zephyrhills, FL 33540  
USA

United Anglers of Southern California  
5948 Warner Ave.  
Huntington Beach, CA 92649



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FEB 21 2002

PFMC

Donald O. McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

Dear Director McIsaac and Council Members:

I am a California recreational fisherman and I strongly support the Pacific Fishery Management Council's (PFMC) preferred option to prohibit pelagic longlines in the 200-mile West Coast Exclusive Economic Zone (EEZ) included in the pending Highly Migratory Species (HMS) fishery management plan (FMP).

West Coast HMS are fully utilized by existing gear types. Recreational success with HMS has already declined over the decades because of increased competition for these fish. California marine anglers spend over \$2.5 billion dollars per year in pursuing saltwater fish. Further increases in competition would without a doubt harm the State of California, reduce total business revenues, reduce total taxes collected, reduce funds for marine conservation, and reduce the value of being a Californian.

It is obvious - introducing longlines in EEZ waters would be extremely irresponsible to the environment and would be a huge step backwards for fisheries management. I applaud you, your staff, and the PFMC for recommending and adopting a preferred option to prohibit longlining in the West Coast EEZ. Please ensure that longlines are permanently excluded from the EEZ in the final HMS FMP.

I beseech you that the plan recognize all existing State conservation and management programs regarding HMS and that the plan clearly requests to the NMFS that the council and public be fully involved in any future considerations for any potential experimental fishery or change to State regulations.

(Please Print Clearly)

Sincerely,

Name: ROBERT F. CRANK

Address: 18312 HARTLUND

City: HUNTINGTON BEACH St. CA Zip 92646

Signature: [Handwritten Signature]



Thomas C Polliard  
28900 Wight Rd.  
Malibu, Ca. 90265

To Members of  
Pacific Fishery Manegment Council  
7700 NE Ambassador Place  
Portland Oregon 97220-1384

FEB 25 2002

RE: Long Lining

I was born 82 years ago here on the coast of California and continue to live here to this day with the exception of 4 years for Military service in WWII.

During these years we have seen many changes to the Saltwater fishing enviornment, and have continued to learn what a tremendous influence we have on our total enviornment.

The Idea of permitting Individuals and or groups of Individualsto RAPE this Inviornment even further with LONG LINING operations within 200 miles of the West Coast, is one of the saddest Ideas I have had to contemplate in my 82 years.

Please do not do this thing.

Sincerely:

Tom Polliard

Tom Polliard Feb. 21, 2002



RECEIVED

Kerrie Byrne  
PO Box 4471  
Whitefish, MT 59937

MAR 5 2002

PFMC

byrnek@wfps.k12.mt.us

February 28, 2002

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

Dear Dr. McIssac,

For years I would not buy any seafood, even though I enjoy it, because I was not confident that the fisheries were being well managed. I did not know what I could buy with a clear conscience. Now several organizations make information readily available (especially on the internet) so I can be a responsible consumer.

Throughout human history, people have eaten food from their immediate habitat. Having access to seafood in Montana is an incredible luxury; unfortunately, too many people are so use to grocery stores and all the imported food, they tend to think of this luxury as a right. Thus we have a serious problem of fisheries being depleted all over the world.

Of course I'm not telling you anything you don't already know! But you are in the unique position to do something about it! Several issues have come to my attention that I would like to comment on:

- 1) Ban pelagic longline fishing gear from US Pacific waters. Too many animals are killed.
- 2) Establish limits on all fisheries. Many people won't like it, but future generations certainly will.
- 3) Increase monitoring efforts. I bet you could organize some volunteers for this effort.
- 4) Reduce bycatch. Again, too many animals are killed.
- 5) Educate the public on why these steps are necessary. This is probably the most daunting task of all! We are an indulgent culture!

I am an educator, and I will continue to work on my end to change the way we look at the natural world. Please use your position to do the right thing.

Thank you,

Kerrie Byrne

facsimile transmittal

RECEIVED

To: Dr Donald McIsaac

Fax: 503-326-6831

FEB 28 2002

Executive Director, PFMC

PFMC

From: Mark McCulloch

Date: 02/28/02

Corvallis, OR

Re: Comments on Draft Fishery Management Plan for HMS Pages: 3 including cover letter

Dear Dr McIsaac

Attached please find my comments letter for the draft Fishery Management Plan for HMS. I'm faxing it to ensure you receive it by the deadline. I will also send the original in the mail to you.

Thank you for taking the time to review my comments.

*Mark McCulloch*

*Re - sending ; FAX jammed 1st time!*

- 1 -

To: Dr Donald McIsaac  
Executive Director, PFMC  
7700 NE Ambassador Place, Ste 200  
Portland, OR 97220-1384

cc: Scott Gudes  
Svein Fougner

From: Mark McCulloch  
2575 NW Windsor Place  
Corvallis, OR 97330

Date: Feb 28, 2002

Subject: Comments on Draft Fishery Management Plan for HMS

Dear Dr McIsaac,

This letter is to submit my comments on the draft Fishery Management Plan for HMS. I greatly appreciate the opportunity to review the document, and to provide feedback on it. A note about my background: I've spent about 11 years of my life fishing for a living, and another 15 years fishing recreationally. Those 11 years were a combination of deckhand on charter boats, operating charter boats, and operating commercial boats. I've had a Coast Guard charter boat operator's license for 20 years. This combination of charter, commercial, and recreational experience has given me, I believe, a rather unique viewpoint on how fishery resources should be managed & shared.

Most of my feedback is around how the sport & charter fishery (primarily albacore) should be managed. Then a brief comment about commercial impacts & related options.

Regarding the sport & charter fishery, the plan document clearly states that we have a problem getting good sport catch data (primarily for albacore) on the west coast. Ideally, we shouldn't make major changes (e.g. quotas, limited entry) without reasonably good data. The only truly representative data you have is from California charter boats, since they have required catch log books for many years. Washington has the voluntary logs (with ~ 70% compliance) and none in Oregon. Therefore I **strongly agree with proposed action 8.5.2**, to include all west coast HMS charter vessels in the log book requirement. It will simply bring the Oregon charter operations, and the 30% of Washington operations, into the mainstream with those already keeping logs. There is no legitimate reason for any charter boat skipper to object to this.

I also **agree with proposed action 8.5.1** on federal permits for commercial HMS vessels. However, I believe the control date of March 9, 2000 (for potential future limited access programs) must be re-set, at least for charter vessels. This is because, as the plan document states, there is no "official" record (via catch logs) of which charter vessels in Oregon, and 30% of those in Washington, have been taking charters for HMS. You would have a mess of different methods that charter operators have to validate what they fished for, if they had passengers or not, etc. It would put your organization in the position of being subjective about who was legitimate, and who was not. The simple solution is to put the logbook requirement in place, then allow one to two seasons of operating with the logbooks, then set a new control date. Now you have one, valid, objective way of determining who is fishing for HMS. If you are concerned about more people "jumping on the bandwagon," I truly believe this concern is minimal. Have you seen how many charter boats are for sale? In one Oregon port alone (Depoe Bay), at least 6 boats went up for sale recently, with the owners (of 5 of those) wanting to get out of the business. There are similar sentiments in Northern California, mostly because of the severe rockfish season

restrictions. Other than the Southern and Central California charter fleets, the charter boats fish for albacore to augment the other fisheries.

Getting accurate catch data for private sport fishers is a more difficult matter. The plan attempts to address this in 8.5.1, Alternative # 4 (federal permit for all recreational vessels). This idea caused much outcry & resistance from sportfishers, in large part because of the thought of paying more money. I believe that we could get enough "critical mass" support for a new tracking / fish counting method, if the sportfishing community is educated on what the objectives are, and why it's so important for them to support these measures. This education should include "what's in it for them" (i.e., if we ever have to put quotas in place for sport tuna catches, your quota will likely be maximized if your historical catch is well documented). Without this education and conditioning, many people only see the additional cost, and the fear of government regulation.

So from both the plan document, and my experience in Oregon (where there is essentially no counting of the sport catch, via charter nor private), the #1 priority objective relative to sport fishers must be to get an accurate count of the catch. It is the method of achieving this objective that is up for debate. I believe the PFMC must take a stand on this, show leadership, and put something in place, despite the inevitable disagreement it will cause with some opponents. For the method, my first choice would be to add a section to all state fishing license tags to record HMS take. We already have this for salmon/steelhead, and for halibut & sturgeon in OR & WA. So most anglers are already familiar with the concept of recording their catch, and turning in the tag at the end of the year (or when they get the next year's license). As an alternative, I would support a permit for the vessel, as the means to track the participants and gather catch & other data, even if there was an associated fee.

Regarding the commercial gillnet & longline proposals in 8.5.4 and 8.5.5: I completely support the PFMC preferred options of banning longlines in the EEZ, and to establish the 14" mesh size used in the swordfish/shark fishery as the minimum size nets that can be used for HMS. We must bring an end to this emerging small mesh gillnet fishery. However, I am disappointed that proposed action 8.5.6 still allows purse seining for HMS south of 44 deg N Latitude. Purse seining for bluefin tuna virtually precludes any consistent opportunities for sport anglers to target bluefin. Time after time off the California coast, whenever sport boats start catching a few bluefin, the seiners quickly move in and put an end to the sport opportunity, all for the sake of cat food. This seems to go against the first five "management goals and objectives" stated in the plan, especially #2 "Provide a long-term, stable supply of high-quality, locally caught fish to the public," in that allowing citizens to access bluefin for food (and sport) should have equal, if not more weight than essentially allotting the bluefin resource for cat food.

#### Closing

This concludes my comments on the plan. Although I have some concerns, I think overall it is a very good plan, and I generally agree with the proposed actions. I appreciate all the hard work that went into this, by all the dedicated folks from the PFMC, NMFS, state governments, academia, and the private sector. This is an example of tax dollars well spent. Please feel free to contact me if I can be of any help, especially around the marketing of plans & ideas to sport fishers. I can be reached M-F days at 541-715-3064.

Very Best Regards,



Mark McCulloch

13410 Sunfish Drive  
Hudson, FL 34667  
Feb. 19, 2002

FEB 25 2002

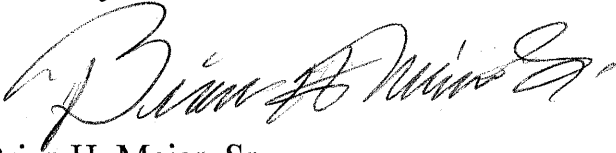
PRIC

Jim Lone, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, OR 97220-1384

Dear Mr. Lone,

I support the Council in prohibiting the introduction of longline gear. I have seen longliners in action and consider it extremely detrimental to our fish population. Please count me in as someone is very much against this practice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian H. Meier, Sr.", written in dark ink.

Brian H. Meier, Sr.

RECEIVED

To: Dr. Donald Mc Isaac.

MAR 04 2002

Feb 4, 2002

PFMC

Dear Sir,

I am writing to urge you to adopt a fishery management plan that can safeguard tunas, billfish and sharks. We need to learn from the mistakes made in the Atlantic Ocean and focus on the future of the Pacific Ocean.

Specifically, I am urging you to:

- ① Ban indiscriminate pelagic longline fishing gear.
- ② Limit the number of fish taken from the sea.
- ③ Increase levels of monitoring and observer coverage to properly assess catch and bycatch levels.
- ④ Include more precautionary measures to reduce bycatch.

Thank you for listening. The average citizen gets busy with his or her everyday jobs and lives we lead, but we do care about the precious resource that constitutes our oceans.

Sincerely,

Diane E. Stone  
24211 NE 27th Pl.  
Sammamish, WA. 98074

**Subject: Fwd: Management Plan for fishing in the Pacific**

**Date:** Wed, 27 Feb 2002 12:22:41 -0800

**From:** "PFMC Comments" <pfmc.comments@noaa.gov>

**To:** daniel.waldeck@noaa.gov

Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384  
Phone: 503-326-6352  
Fax: 503-326-6831  
On the web at: <http://www.pcouncil.org>

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**Subject: Management Plan for fishing in the Pacific**

**Date:** Tue, 26 Feb 2002 11:01:35 EST

**From:** <JenniferHILE@aol.com>

**To:** pfmc.comments@noaa.gov

**I would like to support the Council's desire to ban indiscriminate pelagic longline fishing gear from US Pacific waters.** Pelagic longline gear is composed of hundreds of hooks suspended from a mainline that is miles long. Half of the catch is routinely discarded into the sea and more than half of that is already dead! Longlines also take endangered seabirds, sea turtles, and marine mammals. I think this kind of random, wide scale slaughter of sea life is inexcusable. I am amazed it wasn't banned long ago.

**Limit the number of fish taken from the sea.** Given dramatic declines in giant fish populations in the Atlantic, I encourage the Council to adopt precautionary catch limits for all Plan species to avoid a similar overfishing problem in the Pacific. I know the Council has already done this for two species (common thresher and shortfin mako sharks) and should be commended, but all species need protection.

**Increase levels of monitoring & observer coverage to properly assess catch and bycatch levels.** The only way to know if the plan is working to protect marine life is through close monitoring of the fishery, particularly by placing observers on fishing vessels.

**Include more precautionary measures to reduce bycatch.** Harmful bycatch of federally protected seabirds, sea turtles, marine mammals, as well as innocent fish can be reduced by modifying gear and closing areas to fishing. Federal law mandates that bycatch be minimized. More needs to be done - again this kind of casual slaughter of so much sea life is astonishingly terrible. Such a total disrespect for the life of the ocean, which is so beautiful and complex.

Thank you for giving the public a chance to voice their views!

Cheers,  
Jennifer Hile  
Irvine, CA

---

PFMC Comments <pfmc.comments@noaa.gov>

Richard Ferries  
1019 E. Everett Ave.  
Spokane, WA 99207

RECEIVED

FEB 28 2002

PFMC

22 February, 2002

Dear Mr. Lone,

I am very pleased to hear that the PFMC has recommended a policy of banning longline commercial fishing in the Pacific coastal waters of the U.S. As I understand, this restriction applies only to swordfish, tuna and sharks, which is a good first step, and I approve of it completely. I would like to see a ban on longlining for all billfish as well, and in fact, a complete and total ban on longline gear in all American waters. Even better would be a total ban on longlining in international waters globally. I know the latter is going to be hard to achieve, since it involves international treaties, but it is what must happen to assure the survival of marine species of economic importance.

There is no longer a legitimate place in the world (if there ever was one) for such destructive methods of commercial fishing as longlining and trawling.

You and your colleagues have my congratulations for the wise policy choice advocated by the PFMC.

Sincerely,

A handwritten signature in cursive script that reads "Richard Ferries".

Richard Ferries



Dr. Donald Mc Isaac, Exec. Dir.  
Pacific Fishery Mgmt. Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220

96 Godfrey Ave.  
Bayville, NY 11709  
March 5, 2002

RECEIVED

MAR 05 2002

Dear Dr. Mc Isaac,

PFMC

I am writing on behalf of Pacific sharks, tunas, billfish, "bycatch" fish, sea turtles, sea birds and marine mammals who need our help & protection. I believe it is a "life & death" issue and a "now or never" issue.

As the Pacific Fisheries Council considers a comprehensive fishery management plan for the West Coast, I urge you to include the following:

- 1) Ban indiscriminate pelagic longline fishing gear from U.S. Pacific waters. The bycatch & other accidental deaths are staggering. Marine species are being compromised.
- 2) Limit the number of fish taken from the sea so we avoid the dramatic declines suffered in the Atlantic because we acted too late. Please adopt precautionary catch limits for all plan species.
- 3) Increase the levels of monitoring and observer coverage to properly assess catch and bycatch levels. Please adopt an effective level of observer coverage that is statistically significant to ensure compliance with the regulations and to validate logbooks.
- 4) Include more precautionary measures to reduce bycatch, such as modifying gear and closing areas to fishing. Please incorporate a comprehensive

cont. on p.2

To: Dr. McIsaac, continued

p. 2

bycatch reduction plan, before it's too late, to help protect the ecosystem in the Pacific.

To adopt an effective comprehensive fishery management plan for the West Coast is a critical short and long term move. It will help preserve the web of life of these marine species which are so precious for so many reasons. It will also benefit humans in so many ways, physically, "spiritually".

If not now, when?

If not us, who?

Thank you for your consideration and thoughtful deliberation over this critical issue.

Yours,  
Barbara & Fred Garriel  
96 Godfrey Ave.  
Bayville, NY 11709

RECEIVED

MAR 05 2002

PFMC

3-5-02

ATTN: Dr. Donald Mac Isaac, Executive Director  
Pacific Fishery Mgmt Council

Dear Dr Mac Isaac,

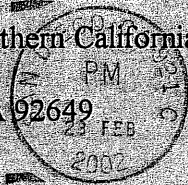
Please excuse this hand written note but my computer is down. I understand that some critical issues are under discussion with respect to fishing practices.

I wish to encourage you to <sup>①</sup> please ban indiscriminate pelagic longlining gear from US Pacific waters <sup>②</sup> Limit the # of fish taken, <sup>③</sup> Increase level of monitoring & observe coverage to properly assess catch & bycatch level, and <sup>④</sup> Include more precautionary measures to reduce bycatch.

Thank you

Rob Stewart  
10255 MT Ashland Rd  
Ashland Or 97520

United Anglers of Southern California  
5948 Warner Ave.  
Huntington Beach, CA 92649



RECEIVED

FEB 26 2002

PFMC

Donald O. McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

46



Dear Director McIsaac and Council Members:

I am a California recreational fisherman and I strongly support the Pacific Fishery Management Council's (PFMC) preferred option to prohibit pelagic longlines in the 200-mile West Coast Exclusive Economic Zone (EEZ) included in the pending Highly Migratory Species (HMS) fishery management plan (FMP).

West Coast HMS are fully utilized by existing gear types. Recreational success with HMS has already declined over the decades because of increased competition for these fish. California marine anglers spend over \$2.5 billion dollars per year in pursuing saltwater fish. Further increases in competition would without a doubt harm the State of California, reduce total business revenues, reduce total taxes collected, reduce funds for marine conservation, and reduce the value of being a Californian.

It is obvious - introducing longlines in EEZ waters would be extremely irresponsible to the environment and would be a huge step backwards for fisheries management. I applaud you, your staff, and the PFMC for recommending and adopting a preferred option to prohibit longlining in the West Coast EEZ. Please ensure that longlines are permanently excluded from the EEZ in the final HMS FMP.

I beseech you that the plan recognize all existing State conservation and management programs regarding HMS and that the plan clearly requests to the NMFS that the council and public be fully involved in any future considerations for any potential experimental fishery or change to State regulations.

(Please Print Clearly)

Sincerely,

Name: BRUCE L WOLFE  
Address: 4265 CLEARVIEW DRIVE  
City: CARLSBAD St: CA Zip: 92008  
Signature: Bruce L Wolfe

Between February 22, 2002 and March 5, 2002, 243 copies of this card were received.

March 1, 2002

RECEIVED

MAR 5 2002

Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220-1384

PFMC

Subject: Stop Long Lining Now

To whom it may concern:

I have been a recreational fisherman for many years. It is one of my passions that I have passed on to my children and grandchildren. I adhere to the rules and regulations pertaining to the sport I love and I pay my license fees diligently. I never keep more fish that I can eat, fish for species that are allowed and abundant and release all of the species that are endangered. I can truly say that my fellow fishing friends are of one mind as well.

I have never understood long line commercial fishing. It blatantly kills non-targeted fish, birds, mammals and turtles of which many are protected. They just dump these dead non targeted animals back into the water. It is impossible to permit long line fishing and protect these species. Long line fishing is definitely harmful to the environment and incredibly wasteful.

As a recreational fishing enthusiast I know that billions of dollars are added to the state's economy every year, and yet we catch only a small number of fish as compared to the commercial fishers. We definitely need to promote more acceptable techniques of commercial fishing and balance the interests of commercial and sports fishing or our hope of leaving a legacy after we are gone will go unanswered.

Please join the millions of recreational sports minded men and women and all environmentally concerned citizens and oppose long line fishing that is being considered in the 200-mile exclusive economic zones of California and other western states. Thank you.

Sincerely,



Arnold E. Stein  
328 15th Street  
Santa Monica, CA 90402

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

MAR 01 2002

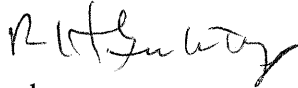
Dear Dr. McIsaac,

PFMC

This is a letter concerning the Fishery Management Plan and Environmental Impact Statement for US West Coast Fisheries for Highly Migratory Species. Although I have not read the complete report, I have read synopsis and summaries. I commend you for your effort and vast accumulation of materials on a subject that is extremely difficult to accomplish. However, I feel that not enough emphasis and importance has been placed on the private sport fishing fleet. They do provide as much revenue into the system as the commercial fleet and do not impact the fisheries as much. Also little importance has been placed on Northern California sportfisheries. I would also recommend that no longline or gillnets be allowed within 80 miles of shore. This would allow California sportfishers to harvest the migratory fish.

Thank you for the opportunity to provide these comments.

Sincerely,



R. H. Gerstenberg  
889 Millwood Drive  
Dinuba, CA 93618

Executive Director  
James A. Donofrio



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MAR 04 2002

PFMC

February 28, 2002

Mr. Jim Lone, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, OR 97220

VIA FACSIMILE (503) 326-6831

Dear Chairman Lone:

The Recreational Fishing Alliance (RFA) respectfully submits the following comments on the Draft Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMSFMP). We have already joined other sportfishing and conservation organizations in submitting a cosigned letter addressing issues we believe are important for you to consider, but want to reiterate our position and specifically comment on the initial conservation and management measures contained in the draft HMSFMP.

The cosigned letter stressed four recommendations:

- That the new HMSFMP seriously evaluate the cumulative impacts of all its fisheries on protected species and reduce those impacts significantly;
- That all fisheries implement a 100% observer coverage plan in order to effectively assess impacts on protected species, as well as other non-targeted finfish species;
- That various gillnet fisheries be regulated and permitted in a coherent manner that does not allow fishers to avoid certain protective regulations by changing its so-called "intended target species"; and
- That no new EEZ longline fishery be allowed.

We are very pleased that the Council has decided to take the choice of West Coast anglers and conservationists and make "Prohibit the use of longline gear in the U.S. EEZ off the West Coast..." a preferred alternative in the draft plan. We strongly support this preferred alternative (8.5.5) and commend you for taking a stand against this indiscriminate fishing gear. Requiring the West Coast based high seas longline vessels to be subject to the same controls that apply to Western Pacific longline vessels holding permits, including a ban on targeting swordfish, also makes sense. We suggest adding the word "dead" after "...incidentally caught" and before ", sever..." in the last bullet under 8. in the list of "controls."

Then at the end of that bullet, as a new sentence, add "All live swordfish should be released in the water by using a dehooker or by cutting the line as close to the hook as possible." Dehookers have proved useful in releasing turtles as well and reference to their use could be added to the first bullet under control 8.

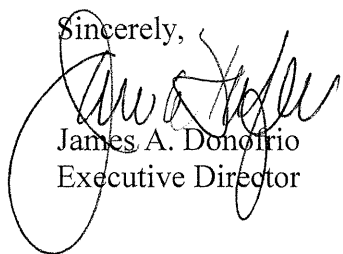
The RFA agrees with the Council's preferred alternative 8.5.3 prohibiting the sale of striped marlin but suggests that the other marlins and sailfish be added to the list. The same rationale that applies to striped marlin is appropriate for the other marlin species and sailfish as well.

We support the other preferred alternatives (8.5.1, 8.5.2, 8.5.4 and 8.5.6). However, we are concerned that the present 20% observer coverage in the drift gillnet fishery, which we believe is too low to adequately monitor the activities of these vessels, may be further reduced in order to provide observers for other fisheries. We oppose any reduction in observer coverage for this fishery. Also, there must be a high level of observer coverage (preferably 100%) and mandatory Vessel Monitoring Systems to accurately monitor the catch and bycatch of the West Coast high seas longline fishery and to ensure compliance with conservation measures. For 8.5.4 Drift Gillnet Fishery Management Measures, we applaud the Council for selecting a preferred option that will require all gillnets targeting HMS to have a minimum 14" mesh and conform to all current California state laws that mandate regional time and area closures for the 14"+ gillnets.

The RFA agrees with your concern over the "...substantial amount of uncertainty in the status of stocks and estimates of MSY for many HMS species." As well as the need for basic biological and life history data for some species, there is need for economic data on most fisheries, particularly the recreational fisheries, and accurate landings data for all fisheries. We urge you to take a precautionary approach while more accurately determining the health of these stocks.

The very interactive plan development process you used to prepare this draft plan was excellent. We commend the Council for its leadership on this process and for taking a precautionary and risk-averse approach in the management of these important species. Thank you for the opportunity to comment.

Sincerely,



James A. Donofrio  
Executive Director



HUIZENGA HOLDINGS, INC.  
450 EAST LAS OLAS BOULEVARD  
SUITE 1500  
FORT LAUDERDALE, FLORIDA 33301  
FAX (954) 627-5050  
TELEPHONE (954) 627-5000

RECEIVED

MAR 5 2002

PFMC

March 1, 2002

Mr. Jim Lone, Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, OR 97220

VIA FACSIMILE (503) 326-6831

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Mr. Jim Lone  
Page 2  
March 1, 2002

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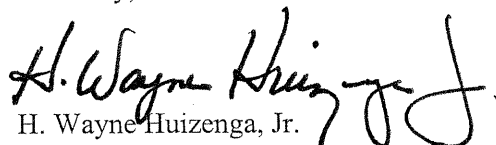
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In the Lord's Service

Sincerely,

  
H. Wayne Huizenga, Jr.  
President

HWHJr/sc

RECEIVED

John LaGrange  
533N. Rios Ave.  
Solana Beach, CA 92075

FEB 25 2002

PFMC

RE: H.M.S. Fisheries Management Plan

Dear Council Members,

As a commercial fisherman I have been involved in fishing highly migratory species for many years, and am still actively involved in the albacore troll fishery and pelagic longlining. During the development of this Fisheries Management Plan I had the opportunity to sit in and observe many of the meetings of the plan development team. I have several reservations about the plan that has resulted from this process, but I have read the comments of Mr. August Felando that are to be submitted and feel that he has done an excellent job of addressing most of my concerns: I will not repeat them here.

There are however, some issues that surfaced during the process that I feel seriously compromise the integrity of the plan. The most important of these is a serious conflict of interest that was accidentally revealed at the very last meeting of the team at Hubbs Sea World in November, 2001. At the end of that meeting a member of the audience stated that Mr. Steve Crook, California Department of Fish and Game biologist, who served as co-chair of the planning team from its beginning, was the president of the Balboa Anglers Club. This was evidently unknown to other members of the team, including the other co-chair. During the series of meetings it became obvious that there is an active campaign to prohibit American fishermen from participating in longline fishing, and recreational billfishing organizations are at the forefront of this campaign. To have a leader of one of these organizations drafting the wording of a fisheries management plan must have been a dream come true for the anti-commercial fishing groups. Among the sections drafted by Mr. Crook is the section concerning the management of Striped Marlin. No option other than reserving it for recreational anglers was considered, in spite of the fact that this is inconsistent with the policy of the Western Pacific Council.

Another troubling aspect of the plan is the fact that it will effectively end the pelagic longline fishery on the west coast, which is currently our second largest HMS fishery. This is given very little attention, especially in the examination of Economic Justice issues, which are required for the Environmental Impact Statement. This is covered by exactly ten words in the plan. Ch, 9, page 30, "... a disproportionate impact on a minority community (Vietnamese American)" I would like to see a little more consideration of the human cost of shutting down this fishery. Perhaps the language from the Hawaiian EIS could be borrowed, since the effects are the same. Section 4.9.3.3.1 of their draft EIS states, in part, "...The negative effects of this alternative on Vietnamese American

owners of swordfish vessels would be immediate and substantial. " And "This alternative would also likely impose a severe economic hardship on deckhands of Vietnamese descent. These crew members as a group are probably among the least occupationally flexible populations in Hawai'i. The majority have limited education and poor English skills. It is likely that there are few jobs available for them in the local community outside of minimum wage opportunities, and for many the income loss may be long term."

Thank you for your consideration in these matters.

John La Grange

RECEIVED

FEB 25 2002

PFMC

February 19, 2002

To the Highly Migratory Species Council:

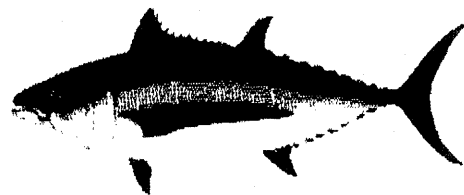
I am writing to you because one of your options for fishing tuna concerns me. It has to do with discontinuing the use of small mesh gill nets for the HMSpecies. I have been a fisherman for 30 years and have used gill nets for the last twenty. We use small mesh gill nets to take Bonita, Albacore, Blue- fin Tuna, Thresher Shark, Mako Shark and others. This is a limited fishery , only those who have gillnet licensing can do this. This has been done for as long as I can remember. I believe there is documented observer coverage on this fishery. The only reason for stopping the fishery is; gear conflict the troll fisherman don't want albacore caught any other way. Please don't listen to all the misleading information that has surrounded gill nets for years and allow those who use gillnets to keep on fishing. We have developed a good Bluefin market over the past few years. Small mesh gill nets are an efficient way to capture Bluefin Tuna.

As far as I know all the fish stocks we fish for are in good shape. We do not need fisheries closed without good scientific reason.

Sincerely,

Gary Burke  
2022 Foothill Road  
Santa Barbara, CA 93105  
805-965-4468  
FV Tytan

# WESTERN FISHBOAT OWNERS ASSOCIATION®



P.O. Box 138  
Eureka, CA 95502

Ph. (707) 443-1098  
Fax (707) 443-1074

e-mail <[wfoa@humboldt1.com](mailto:wfoa@humboldt1.com)>  
website: <<http://www.wfoa-tuna.org>>

March 4, 2002

RECEIVED

MAR 05 2002

PFMC

Dr. Donald McIsaac  
Executive Director, PFMC  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220  
Via Facsimile 503.326.6831

Re: Comments on Draft FMP for Highly Migratory Species

Dear Dr. McIsaac:

Western Fishboat Owners Association (WFOA) represents nearly 500 albacore troll vessels operating primarily from the west coast. Although diverse in our membership we have certain concerns about the FMP process, and reserve the right to amend and add to the attached comments at the HMS Advisory Subpanel meeting on March 13, 2002. WFOA recognizes and supports sound management and thinks its essential for the conservation of the species and survival of the fishery, as long as its based on sound science, has participation of all nations involved in harvesting the stocks, and does not put undue burdens on U.S. fishermen. Some factors to consider are:

- The U.S. jig albacore fleet catches about 5% - 7% of the world catch of albacore
- The U.S. jig fleet catches about 15% of albacore harvested in the North Pacific above latitude 20N
- The main producer in the this region is Japan, which has not signed onto MHLC - Western and Central Pacific Fisheries Convention for some reasons which it, other distant water fishing nations, and many fishermen think are quite legitimate. Japan, Korea, and China have also not ratified the UNIA.
- The North Pacific stock of albacore above 20N is mainly caught by pole and line methods (Jig or Baitboat) by all the nations mentioned above.
- The North Pacific stock of albacore is now managed under the IATTC and is also coordinated under the U.S. /Canadian Albacore Treaty, both international processes. As a signor onto MHLC - Western and Central Pacific Fisheries Convention, the U.S. will also be bound by international provisions of that convention despite the absence of Japan, Korea, and China as participants.

WFOA has been a participant and a constructive contributor to the FMP development process from the beginning. The WFOA Board of Directors confirmed the basic premise of the Majuro Declaration that came out of MHLC-3 back in 1996, that is, highly migratory species in the Pacific should be managed under an international regime. Since then we have attended all International forums in both the MHLC and IATTC and made progress protecting interests of small jig vessels. As the MHLC was mandated by the UNIA and the LOS, the federal process was begun in 1997 to have a framework plan in place on tunas and tuna like species in the event of international management. I have also attended this process as a troll representative on the HMS Advisory Subpanel since the establishment of the HMS Advisory Subpanel in 1998.

WFOA promoted, along with other industry groups such as drift net fishermen, longliners, purse seiners, and the West Coast Processors Association, the idea of a framework FMP, preferably jointly with all Pacific Councils. The framework arrangement which WFOA had in mind was something similar to the system used to carry out recommendations of the IATTC. Under that system, management operates quite simply. Each year the IATTC may make management recommendations. After the approval of the recommendations by the Department of State, they are implemented by the Department of Commerce. Generally the Regional Administrator from the Southwest Region implements the new regulations by direct notice to the U.S. fleet, with a "follow-up" notice in the Federal Register as soon as practicable. If there is a substantially new measure, a notice and comment rulemaking may be required. Generally it has not been. The Council is not involved in this process, and therefore the process operates quickly to take into account new international management measures. Unfortunately, as things moved along it became apparent that any process brought before the Council would become a forum for all groups to try to solve problems unrelated to tuna and tuna like species. The sharks species became the dominate species in the plan. Although called a framework procedure, what is contained now in the proposed FMP looks and sounds like a full-fledged FMP with all the bells and whistles attached.

WFOA's position has always been that any and all management of the albacore fishery should be fair and multilateral in nature, and that the U.S. fisherman should not bear an overwhelming burden of management measures. Nevertheless, some environmental groups continue to push for U.S. unilateral action in what they consider appropriate situations for the U.S. fleet to "set an example" to the fleets from other countries. It is suggested that section 8.2 on page 8-3 entitled "Unilateral Management and Precautionary Guidelines and Quotas" be read by all fishermen.

Please regard these as general comments in anticipation of what may be brought up at the advisory subpanel and from comment of others. I intend to make further comments in that forum as well as to the council. I have also attached a condensed version of some general comments we presented to our membership prior to public hearings in January.

Sincerely,



Wayne Heikkila  
Executive Director

# WESTERN FISHBOAT OWNERS ASSOCIATION OBSERVATIONS CONCERNING THE HIGHLY MIGRATORY SPECIES FISHERIES MANAGEMENT PLAN OF THE PACIFIC FISHERIES MANAGEMENT COUNCIL.

March 4, 2002

The following comments and observations are taken from a paper that was distributed to WFOA members on January 15, 2002 prior to the public hearings. Many of these are only observations and give some latitude to our membership to comment reflecting our diversity. These basically comment on only sections of the FMP that deal directly with the troll albacore fishery. Comments made at the March 2002 HMS advisory subpanel meeting in Sacramento and at the regular council meeting from the troll representative may be more specific in nature.

The following is a summary of the proposed actions and clarification when needed.

## Framework Process (for Rulemaking Actions): (Chapter 8.0)

Proposed Action: Adopt framework procedures with a point-of-concern mechanism.

Alternative: Adopt framework without the point-of-concern.

**WFOA comment:** The Proposed Action was not supported by WFOA at the FMP drafting team meetings since it goes far beyond what is set out in the Magnuson Stevens Act. The point-of-concern is a way for a person or entity to bring conservation concerns regarding a particular species directly to the Council Chair, who then takes it to the Council for action. The Council has the authority to act on the point-of-concern and pass its management recommendations on to the Regional Administrator. An example of a point-of-concern is: "An error in data or stock assessment is detected that significantly changes the estimates of impacts of current management". The above is an example where a point-of-concern might make sense and work for the long term benefit of the species and the fishermen. However, it could equally work the other way such as: "If developments in a foreign fishery or actions required under an international management framework affect the likelihood of overfishing HMS domestically". In such a case the point-of-concern may be detrimental to the domestic fleet as they would bear a disproportional burden of management while other nations not operating under the FMP or UNIA, MHLC, IATTC, etc. may not be affected.

## Management Cycle: (Chapter 8.3.5)

Proposed Action: Establish a biennial management cycle.

Alternative 1: no schedule for addressing management issues

Alternative 2: an annual management cycle would be established

**WFOA comment:** Yearly stock assessment and fishery review would take place under the proposed action, however, actions by the Council would only take place every other year. According to the FMP this leaves management measures in place "long enough to provide stability to the fisheries and a period for analysis of impacts and effectiveness." WFOA supports an annual management cycle, alternate 2. Again the danger lies in the fact that an international situation may require quicker action. Also WFOA is not in favor of the cycle beginning as proposed in March and ending in September which is very bad timing for the albacore fleet. As any proposed changes would be decided during the heart of the North Pacific Season.

## Incidental Catch Allowance: (Chapter 8.4.2)

Proposed Action: Allow landings of HMS caught with gear not listed as legal gear in the FMP, up to a maximum of 10-30% of the total landing by weight.



Alternative 1: All landings of HMS taken with non-HMS gears would be prohibited.

Alternative 2: All landings of HMS taken by gear types not listed as legal gear for targeting HMS would still be permitted.

**WFOA comment** The Council has specifically asked for public comment on the percentage range of incidental catch. (Page 8-14, Section 8.4.2.). After further study, WFOA believes Alternate 1 should be chosen. This would not affect albacore trolling bycatch since troll is a HMS legal gear type.

#### Bycatch:

Proposed Action: Adopt framework authorization for bycatch measures; adopt specific measures to minimize bycatch in pelagic longline, drift gillnet, and purse seine fisheries as described in section 8.5; adopt a "catch and release" program for HMS recreational fisheries.

**WFOA comment:** The Magnuson-Stevens Act defines bycatch as fish which are harvested in a fishery but are not sold or kept for personal consumption. Bycatch includes regulatory discards and economic discards (for example, small fish that are caught and thrown back in favor of larger fish). The FMP states that at this time a review of the practices in the troll albacore fisheries indicates that there are no practicable ways to reduce bycatch in these fisheries and no measures are proposed. If bycatch in the albacore troll fishery were perceived in the future to be a problem, measures authorized under this framework would include observers, time and area closures, gear modifications, etc. and be put in place under the shortened framework procedure. WFOA is opposed to this because of the huge changes which could be made to a fishery using only the abbreviated framework procedure rather than the more considered plan amendment process.

#### Observer Authority: ( Chapter 8.4.6)

Proposed Action: Authorize the Regional Administrator to require commercial and charter/party boats to carry observers.

Alternative 1: No Action. The FMP would not contain authority to establish observer programs for HMS fisheries. If any observer programs were implemented, they would be done under other statutory authority.

**WFOA comment:** Although there is some language in the FMP regarding individual plans for individual fisheries we would like to see more explicit language that recognizes some of the challenges an albacore fleet may face with observers. Being out at sea for 100 days would be challenging for an observer and crew and very expensive. The cost of an observer program usually falls on the boats. Also, surface hook and line gear, as we all know, has very little bycatch. The plan does contain the language which is a step in the right direction: "The council and NMFS recognize, however, that observers may not be suitable for all vessels, that smaller vessels may not have accommodations for observers, and that vessels that take extended trips are more costly to observe. There fore it is incumbent on NMFS to develop a sampling plan that recognizes the different type of vessels and vessel capabilities in various fisheries so that priorities can be met with minimal disruption to the fisheries and the least cost to industry. If NMFS proposes a new observer program, it will develop a sampling design and cost analysis, (including impacts on vessels being sampled) for council review and comment prior to implementing this program." WFOA believes the quoted language should be part of and specifically included in the Proposed Action language so observer programs cannot be put in place on the albacore fleet without such an analysis.

#### Permits:(Chapter 8.5.1)

Proposed Action: Require that all commercial HMS fishing vessels obtain a federal permit with an endorsement for the gear type(s) that will be used by the vessel; do not establish a federal permit requirement for vessels used in recreational HMS fishing; and authorize adjustment of the permit requirements through the framework process.

Alternative 1: No new federal permits would be required.

Alternative 2: Require a federal permit for vessels engaged in commercial HMS fisheries within and outside the EEZ. One federal permit would cover all HMS fisheries for a given vessel.

Alternative 3: Require a federal permit for all vessels engaged in selected commercial fisheries. Initial candidates for permits would be vessels engaged in drift gillnet and longline fisheries.

Alternative 4: Require a federal permit for all recreational vessels to fish for HMS within and outside the EEZ.

Alternative 5: Require a federal permit for all vessels that carry recreational fishing participants for a fee.

Alternative 6: Require a federal or state permit for all recreational vessels to fish for HMS. An existing state permit or license would meet the requirement.

**WFOA comment:** we strongly support having the endorsement of gear type along with the federal permit. However, the proposed action not only neglects to require a permit for recreational or charter boats it also fails to define "recreational" in the position. The term "recreational" in Washington includes charterboats but in California it does not include charter boats which are referred to commercial recreational or "party boats." If permits are necessary for the government to collect biological, economic, and social data then why would recreation boats be exempt? The permit databases would also be used to assist in law enforcement and evaluation of impacts of particular management actions to users. So there is no reason that "recreational" boats shouldn't contribute to this information.

#### **Reporting Requirements: ( Chapter 8.5.2)**

Proposed Action: Require all commercial and charter HMS fishing vessels to maintain and submit to NMFS logbook records of catch and effort statistics for all waters fished; eliminate the California offshore declaration requirement for the troll albacore fishery; do not establish recreational fishing reporting requirements; and authorize adjustment of reporting requirements under the framework process.

Alternative 1: No action. No new federal reporting requirements would be established.

Alternative 2: Limit new federal reporting requirements to commercial vessels that are not required to report under existing federal requirements.

Alternative 3: Explicitly indicate that far offshore fishery declarations are not required for any fisheries. This would allow all fishermen to fish inside and outside the EEZ on the same trip.

**WFOA Comment:** We strongly support the proposed action. As it stands, an albacore vessel (that has been fishing outside the EEZ) and is returning to California has to pull its' lines out of the water 200 miles from shore, come in and unload, file a declaration, and only then return to fish within the EEZ.

PACIFIC FISHERY MANAGEMENT COUNCIL Mr. Donald O. McIsaac  
7700 NE Ambassador Place, Suite 200  
Portland, Or.  
Particulars:

Name	Jim Fisher
Vessel	Lady Laura
Years Commercial Fished	32
Residence and Port	Hammond/Warrenton, Oregon
Fisheries	Drift, Troll Albacore, Crab

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MAR 05 2002

PFMC

## Statement:

Today I'm appearing before this council to strongly urge you to not consider the closure of anymore area to HMS fishing, especially drifting with a net, N. of 45 degrees N. (approximately Lincoln City, Or.)

I would recommend that current state regulations and management plans remain in effect for the present and interim future.

Going back in time, and not too far at that, in the 2000 fishing season, allowing for time area closures in place at that time the HMS grounds, including drift, extended from Canada to Mexico, outside three miles.

In 2001 an RPA was put into place due to concerns over the leather back turtle population. As a result of the RPA put into place by NMFS, the allowable area for drifting was diminished by more than 50% in California and 50% in the Oregon/Washington areas. These grounds, which are no longer fishable (for at least three years) at a time when the fish and weather are cooperative.

In the remaining area that is open from 45 degrees N to 48 degrees N there is still, at times, quite good fishing for HMS, with the net, primarily swordfish, thresher shark, and bluefin tuna. Additionally, there are some incidental catches of albacore, mako, louvar and opah.

Much has been made of the status of the thresher shark population especially in California where it appears that the stocks have pretty fully recovered. Much less is said about the status of the northern population because, in my estimation, of an almost complete lack of reasonably current information. Recently, ODFW, has received much more current data which I would hope, allow the regulatory agencies to view the drift fishery from a more favorable perspective, especially with the regard to sharks.

Looking at the HMS fisheries north of San Francisco, California, the intense user/group conflicts are not as apparent, and in fact, in the NW don't appear to be a factor at all. South of San Francisco the competition is extremely intense between all user groups.

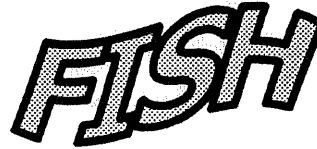
We need to examine, why, in the absence of any overriding problem with the HMS stocks N of 45 degrees N there is any need to impose further area closures.

Presently there are only a few participants that expend any significant amount of time and effort fishing HMS N. of 45 degrees N. Depriving these few fishing for HMS in the area N. of 45 degrees N. of the opportunity to continue fishing is far less than equitable. Closing the area in question more than likely will not be key to the survival of the leatherback turtle, but it will make the economic survival of the remaining fishermen much more precarious.

Additionally, although I know this will not be a popular position to take, there is a need to not permit a wide open move to exploit what I feel is a viable fishery. Today the management of most fisheries begins from a cautionary approach and in any discussion of managing the HMS including drift fishing it is important that the perceived mistakes of the middle 1980's not be repeated.

# *Federation of Independent Seafood Harvesters*

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Bridgewater Corners, VT 05035



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PFMC

February 24, 2002

Don McIsaac, Executive Director,  
Pacific Fishery Management Council  
7700 NE Ambassador Pl., Suite 200  
Portland, OR 97220-1384

Dear Don,

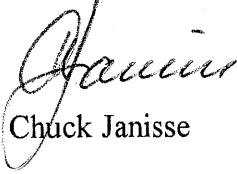
On behalf of FISH, and my position as the drift gillnet representative on the HMS ASP, I enclose comments on the Pacific Fishery Management Council's (PFMC) Draft Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries For Highly Migratory Species (FMP).

Regretfully, the FMP fails to accomplish the basic reason the drift gillnet (DGN) fishermen sought the implementation of federal fishery management for the fishery. The enclosed comments detail that while the FMP recognizes the need for a comprehensive and flexible management framework for the DGN fishery, it fails to establish the requisite management framework.

I do not believe that this is the PFMC's intent. I register this comment with the belief that the PFMC was not fully aware of the management issues in the DGN fishery, the options available to the Council to comprehensively address these issues and the deficiencies in the California proposal to ban longlining in the EEZ. Please consider closely FISH's Review and Discussion of Regulatory Alternatives Relating to the DGN Fishery for Shark and Swordfish, as well as the industry's proposal for an alternative longline fishery contained within the FMP. I urge the PFMC to adopt this regulatory alternative, in lieu of its existing proposals for the DGN fishery and as most well-suited to achieve the objectives of the FMP and meet the standards and requirements of the Magnuson-Stevens Act.

I hope the PFMC will see the wisdom of adopting management measures that are more responsive to the needs of the DGN fishery.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janisse", is written over the printed name.

Chuck Janisse

Enclosure

cc:

Scott Gudes, NOAA, Deputy Under Secretary for Oceans and Atmosphere

William Hogarth, NMFS, Assistant Administrator for Fisheries

Rebecca Lent, NMFS, Deputy Assistant Administrator for Regulatory Programs

Rodney McInnis, Acting Southwest Regional Administrator

COMMENTS ON THE  
PACIFIC FISHERY MANAGEMENT COUNCIL'S  
DRAFT FISHERY MANAGEMENT PLAN AND  
ENVIRONMENTAL IMPACT STATEMENT FOR U.S.  
WEST COAST FISHERIES FOR HIGHLY  
MIGRATORY SPECIES

February 21 , 2002

Presented by Chuck Janisse,  
PFMC HMS Advisory Subpanel Drift Gillnet Representative

After careful review of the Draft Fishery Management Plan and Environmental Impact Statement (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS) supporting the regulatory proposals for the shark/swordfish drift gillnet (DGN) fishery (the fishery) contained therein, I regretfully inform the Pacific Fishery Management Council (PFMC) that the Draft FMP fails to accomplish the basic reason that DGN fishermen sought the implementation of federal fishery management of HMS for the fishery. This failure occurs despite extensive and repeated comment, analysis, and recommendations to the contrary by the Federation of Independent Seafood Harvesters (FISH), as well as by the National Marine Fisheries Service (NMFS), over the course of the development of the FMP.

On behalf of FISH, I have been an integral part of the FMP development process since the Western Pacific Fishery Management Council (WPFMC) appeared before the PFMC in 1994 to petition for sole authority to manage U.S. HMS fisheries in the Pacific. DGN fishermen opposed the petition at that time because they believed that the WPFMC was too remote from the west coast to fairly represent the fishery's regional needs or interests. After making this choice, and after supporting and working within the PFMC's FMP development process from 1998 to the present, the realization that the Draft FMP fails to fairly represent the fishery's regional needs or interests is a bitter pill for the DGN fishermen to swallow. I am reluctant to believe that this is the PFMC's intent, and I hope that the PFMC will see the wisdom of adopting management measures that are more responsive to the needs of the fishery.

DGN fishermen have supported, and still support, the development of an FMP that establishes the management flexibility that the fishery needs in order to comprehensively address the broad array of federal requirements this fishery must adhere to for the conservation of fish, seabirds, sea turtles, and marine mammals. A detailed discussion of this need, and more specific identification of how and why the FMP fails to address it, as well as suggested changes, follow.

### **1. Recognition of the Need for a Comprehensive and Flexible Management Framework.**

In the section of Chapter 1 of the Draft FMP/EIS that summarizes the history of its development (at p. 7), the need described above is concisely stated:

When the Council decision was made to develop the FMP, there was no clear and pressing need for consideration of management measures that would immediately go into effect. It was envisioned that the FMP could include some reporting requirements and perhaps some changes in permit requirements, and it would almost certainly establish framework procedures for implementing regulations in the future if new information or conditions warranted it. The FMP could conceivably incorporate under Magnuson-

Stevens Act authority a variety of regulations currently in effect under other federal law or state laws and regulations. However, the legal and programmatic environment for the FMP changed substantially as a result of the following factors:

Drift Gillnet Fishery Management: This fishery has been managed under a mix of state laws (time/area closures, limited entry, mesh size, logbooks) and federal regulations (net depth, pingers, observers) under the Marine Mammal Protection Act. As a result of a Section 7 consultation under the Endangered Species Act, NMFS required that new restrictions be imposed on the fishery by August 2001. NMFS promulgated these regulations under the authority of the ESA, but it urged the Council to include in the draft FMP an alternative under which the drift gillnet fishery would be managed through the FMP. NMFS suggested that consolidating the management program under a single authority should greatly simplify the ability of fishers and managers to adjust to changing conditions in the future.

To some if not many of the participants, the changes required under the ESA will make it very difficult to operate in the fishery in a profitable manner. This added to the feeling on the fleet's part that the FMP could potentially provide some relief, and a proposal was made to allow a limited number of drift gillnet permitted vessels to fish with longline gear subject to a variety of area closures and other measures. This was a very contentious proposal, but the drift net fleet owners definitely wanted the Council to address it in the FMP process. NMFS strongly encouraged that the FMP include a full evaluation of the pros and cons of allowing longline fishing in the EEZ, so that the final decision can be based on that evaluation.<sup>1</sup>

Similarly, in the section of Chapter 1 of the Draft FMP summarizing the FMP's purpose and need (at pp. 8 and 9), the need to establish the regulatory flexibility for the fishery is more specifically described:

Some drift gillnetters have proposed a limited longline fishery in the zone [inside of the EEZ] to target tunas and swordfish, with effort and area

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<sup>1</sup> The language regarding DGN fishery management quoted here is an edited version of a letter from NMFS to the PFMC distributed to Council members as Exhibit E.2.b, Supplemental NMFS Report, at the March 2001 meeting. A copy of this letter is included as Exhibit "A." It is my view that the edited version reproduced in the FMP softens the tone of NMFS' comments and gives them less weight. In one instance, regarding the alternative longline fishery proposal, a key reference to "an experimental fishery process" was omitted altogether in the FMP language. This is not an insignificant omission considering that an alternative calling for an experimental fishery process is not only contained in the FMP (Chapter 9, pp. 69-72), but also was selected as the preferred alternative by the HMS FMP Plan Development Team.



restrictions. The intent is to evaluate longline gear as an alternative gear type to reduce bycatch, or bycatch mortality, and to reduce protected species interactions.... An FMP provides the vehicle to address issues of regional, national, and international concern.... Within the U.S., the Magnuson-Stevens Act requires ...that conservation and management measures, to the extent practicable, minimize bycatch and to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. Finally, the Marine Mammal Protection Act, Endangered Species Act, and Migratory Bird Treaty Act provide protections for special resources. An FMP serves as a mechanism to address these critical issues in an open process and with the advice of all concerned.

In addition, in the section of Chapter 8 of the Draft FMP describing the FMP's management philosophy and approach (at p. 3), the appropriateness of creating incentives to shift from one gear to another in order to achieve reductions in bycatch is recognized.

At the same time, in the section of Chapter 8 of the Draft FMP describing the FMP's management goals and objectives (at p.6), the goals and objectives quoted below are consistent with, if not a directive to implement, the DGN fishery's expressed need for this FMP to establish a comprehensive but flexible regulatory framework:

... 8. Minimize conflicts among federal and state regulations for highly migratory species fisheries.

9. Minimize bycatch and avoid discard and implement measures to adequately account for total bycatch and discard mortalities....

17. Ensure that regulations are consistent with applicable laws and regulations to conserve and restore species (e.g., with the ESA, MMPA, and MBTA).

Finally, in the section of Chapter 8 of the Draft FMP describing actions addressing bycatch (at p. 15), a bycatch framework procedure supports the need for the FMP to provide the regulatory flexibility required to comprehensively address requirements the DGN fishery must adhere to.

## **2. The Failure of the Draft FMP to Establish the Requisite Management Framework.**

The above-cited sections of Chapters 1 and 8 of the Draft FMP clearly and concisely document that a fundamental intent is to address management of the fishery in a comprehensive but flexible way. Both NMFS and FISH have

suggested ways to achieve this objective.<sup>2</sup> Unfortunately, the PFMC's proposed action contained in section 8.5.4 of the Draft FMP (at p. 26) is not the kind of comprehensive approach that is needed. It states:

Proposed Action: Adopt under the FMP the federal conservation and management measures in place under the MMPA and ESA and selected state controls dealing with areas and times when drift gillnets may be used and with gear design and specifications; also adopt new closures off Washington and Oregon.

This proposed action does not represent a global solution to the problems in the fishery and does not provide needed regulatory flexibility. It thus falls short of achieving the stated goals of the FMP and establishing a management framework that would best benefit the participants in the fishery and further the environmental, economic and social objectives of the Magnuson-Stevens Act.

The failure of the Draft FMP is illustrated by comparing its provisions to the "no action" alternative. The environmental consequences of not regulating the DGN fishery under the FMP are described in Chapter 9 of the Draft FMP (at p. 3):

There is no reason to expect any significant increase in the fishery in the next few years, while there is reason to think the fishery will decline further. The time/area restrictions established by NMFS to protect sea turtles pursuant to the recent biological opinion dealing with this fishery will likely continue in the absence of the FMP/EIS and will place serious pressure on the fishery. Similarly, the time/area restrictions and gear requirements of the states are likely to continue under states' authorities. . . . In the absence of this FMP/EIS, the fishery will continue to be controlled by the regulations issued pursuant to the biological opinion.

The above quoted section of Chapter 9 describes the environmental and economic consequences of the "no action" baseline conditions for the DGN fishery against which the environmental and economic consequences of the proposed management action described at section 9.2.3.1 (at p. 17) are compared. Because existing state and federal regulations will remain in place under the proposed alternative, there is no substantive difference between the proposed alternative and the "no action" alternative.

If anything, the proposal before the PFMC imposes greater burdens on the fishery without concomitant benefits. This is so because the only new regulation contained in the proposed 9.3.2.1 action is to prohibit drift gillnets in the portion of

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<sup>2</sup> A summary of FISH's proposal and analysis entitled "Review and Discussion of Regulatory Alternatives Relating to the DGN Fishery for Shark and Swordfish" is included as Exhibit "B."

the Exclusive Economic Zone (EEZ) north of 45 degrees North Latitude. This is an area that comprises a good portion of the fishing grounds off of Oregon and all of the grounds off Washington State. These grounds have been historically productive during El Nino events. At best, this closure offers speculative benefits while imposing real costs on the fishery – costs that are scarcely analyzed in section 9.2.3.1 of the FMP.

Thus, the PFMC has selected a proposal to regulate the DGN fishery that does not best fulfill the philosophy, goals, objectives, or applicable federal requirements. Although FISH presented its regulatory proposal for the DGN fishery (Review and Discussion of Regulatory Alternatives Relating to the DGN Fishery for Shark and Swordfish<sup>3</sup>) to the PFMC for distribution to the HMS FMP Plan Development Team and HMS Advisory Subpanel, this proposal is not identified as an alternative in the Draft FMP. The FISH proposal recommends that the FMP consolidate and harmonize existing federal and state DGN regulations under single federal authority, including the fishery's limited entry status, to the extent that they are consistent with the provisions of the Magnuson-Stevens Act and other relevant federal law.

The PFMC's response to FISH's proposal as well as to NMFS' suggestion that the FMP consolidate DGN management under a single authority, is quoted below from the PFMC's version of FISH's proposal entitled "Alternative 3" in Chapter 9 (at p. 40), of the Draft FMP:

a) Incorporate the California limited entry program under the FMP. In this instance, persons holding California drift gillnet permits would be permitted to obtain federal limited entry permits to participate in the drift gillnet fishery under the FMP regulations. This would have the effect of ensuring that there would be no additional entry to the fishery. However, the Council has concluded that it is premature to propose any specific federal limited entry programs at this time, and this alternative is not addressed any further.

b) Incorporate, amend or supersede certain California regulations or code provisions that are obsolete or inconsistent with the intent of the FMP.... The Council considered the potential to develop federal regulations that would harmonize these or amend or supersede those that were not consistent with the intent of the FMP. The Council concluded, however, that this was not necessary and appropriate at this time and no further analysis of these regulations is conducted.

With this cursory dismissal of NMFS' suggestions, and FISH's proposal, without explanation or analysis, the Draft FMP fails to accomplish the basic

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<sup>3</sup> See Exhibit "B."

reason that DGN fishermen sought the implementation of federal fishery management of HMS for the DGN fishery. Instead of a proposed action that provides the regulatory flexibility required to comprehensively address requirements the fishery must adhere to, the PFMC's proposed action only institutes new fishery restrictions that place the fishery in more peril under the proposed federal authority that if it remained under the existing mix of federal and state authority. I cannot fathom why the PFMC would seek such an outcome. I would charitably attribute it to an oversight and urge the Council to take appropriate corrective action when it adopts the final FMP.

### **3. The Need to Revisit the Proposed Ban on Longlining in the EEZ.**

Adopting a meaningful set of management measures for the fishery would necessarily include revisiting the PFMC's proposed prohibition of longline fishing within the west coast EEZ. Concerning this particular issue, the March, 2001 letter from NMFS to the PFMC states:

...[T]he changes being required [of the DGN fishery] under the ESA will likely make it very difficult for some fishers to maintain profitable operations. This adds to the feeling on the fleet's part that there should be some form of relief, and a proposal has been made to allow the vessels to fish with longline gear subject to a variety of restrictions, possibly including an experimental fishery process. This is a very contentious proposal, but the drift net fleet owners definitely want the Council to address it in the FMP process. I would strongly encourage that the plan include a full evaluation of the pros and cons of allowing longline fishing in the EEZ so that the final decision can be based on that evaluation.

Allowing a shift from DGN to longline gear will help achieve, among other things, the objective of National Standard No. 9 of the Magnuson-Stevens Act to minimize bycatch. As documented in the Draft FMP in section 9.2.2 (at p. 14), the PFMC's proposal for the fishery is intended to satisfy the requirements of National Standard No. 9. But FISH believes the PFMC can and should go further to enhance bycatch reduction measures in the fishery without compromising its economics.

The industry proposal<sup>4</sup> for a limited longline fishery substantially documents this DGN fishery alternative as an action that is likely to achieve greater benefits in terms of reduction of bycatch, or bycatch mortality, of fish, marine mammals, and sea turtles. Consider the parts of the Draft FMP's section 9.3.2.2, alternative 3, quoted below:

This alternative would authorize a limited entry pelagic longline fishery for tunas and swordfish within the EEZ, with effort and area

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<sup>4</sup> Section 9.3.2.2, alternative 3, beginning on page 55.

restrictions, to evaluate longline gear as an alternative to drift gillnet gear to reduce bycatch, or bycatch mortality, and determine if a longline fishery is an economically viable substitute for drift gillnet gear. (Chapter 9, p.55)

In 1996, the Pacific Offshore Cetacean Take Reduction Team (POCTRT) identified conversion of swordfish drift gillnet gear to longline gear as a strategy to reduce the incidental take of marine mammals in the drift gillnet fishery. This strategy was not pursued in the Take Reduction Plan because the drift gillnet fishery was managed by California, not under a federal FMP. (Chapter 9, p.56)

In May 2000 this issue was revisited by the POCTRT. The Team stated support for the exploration of more selective gears for use by the Drift gillnet fishery that demonstrated a reduction of bycatch. On June 29, 2000, a proposal presented to the HMS Advisory Subpanel referenced the POCTRT's support for exploration of longline as an alternative to reduce bycatch in the drift gillnet fishery. (Chapter 9, p. 56)

#### Potential Impact on Marine Mammals

Gear switching from drift net to longline will likely result in a significant reduction in cetacean and pinniped takes (especially mortalities from those takes) due to the nature of the gear, to some extent, the offshore fishing location (e.g., where pinnipeds are less likely to venture). In the Atlantic swordfish fishery, observer and vessel logbook data indicated that driftnet gear results in a significantly higher rate of take of protected marine mammals relative to other gear such as pelagic longline (63 FR 55998, October 20, 1998). (Chapter 9, p.60)

#### Potential Impact on Sea Turtles

...takes [of leatherback sea turtles] with longline gear would be less likely to result in mortality compared with driftnet gear (P. Dutton, NMFS/SWFSC La Jolla, CA pers. Commun. 7/18/01)..... Loggerhead, olive ridley and green sea turtles may be the least affected, [by longline gear] considering prevailing water temperatures most of the year in the proposed fishing area and the distribution in tropical and warm temperate waters of these species.(Chapter 9, pp. 61, 62)

## Potential Impact on Seabirds

Preventative measures, such as use of blue-dyed baits, weighing of longlines, using tori lines, and strategic timing of offal discharges and set times have been shown to be effective at mitigating seabird interactions.... (Chapter 9, p. 62)

## Impact on Fish Bycatch

Blue shark will probably remain the principle bycatch species, and a catch rate of greater than 15-20 per 1,000 hooks is expected. Survivability is generally thought to be higher with hooking versus net entanglement, and with proper de-hooking procedures mortality may be significantly reduced from that currently experienced in the drift gillnet fishery. [Chapter 9, p. 64] ...[striped marlin] is taken in low numbers by the drift gillnet fishery, and would also likely be taken in low numbers by longline gear,.... If those that are taken are released alive, reports of their survival are encouraging; some specimens can survive over 12 hours on hooks (Berkley and Edwards 1988). The proposed fishing would take place mostly in cooler waters, largely outside the essential habitat of striped marlin within the EEZ (i.e., generally west of the Santa Rosa-Cortes Ridge). (Chapter 9, p.65)

Given these benefits, as documented in the Draft FMP, the rationale for adoption of this alternative is compelling.

To summarize, the PFMC is proposing an action to regulate the DGN fishery that is less preferable, from the standpoint of reducing bycatch and protected species impacts, than the alternative action for a limited longline fishery that is documented to likely accomplish this mandate. To FISH's way of thinking, this makes little sense.

It is my view that it is not the intent of the PFMC to propose regulatory measures that will burden the DGN fishery without good cause. However, I can not find good cause for the PFMC's proposed prohibition against longlining within the EEZ (Chapter 8, p. 28), especially considering the documented relationship of the proposed alternative longline fishery to the objectives of the FMP stated in Chapter 9, page 68, of the Draft FMP:

...[Longlining] is considered less dangerous in offshore waters than gillnetting. Longline vessels tend to be more stable in rougher waters than comparably sized drift gillnet vessels, which become top heavy when heavy nets are piled high on deck in between sets and during transit. This alternative is not in conflict with FMP objectives; it attempts to reduce overall bycatch and protected

species takes by reducing driftnet effort, and to minimize the effects of conservation regulations on fishing communities by providing a fishing alternative for driftnet fishers, as per National Standard 8 of Magnuson-Stevens Act. If successful, this fishery could provide a new source and a stable supply of high-quality, locally caught fresh tuna to the public (mgt goal #2) while providing a new commercial fishing opportunity for HMS in the region's ports (mgt goal #4), and minimizing bycatch and discard mortalities (mgt goal #9) and certain protected species interactions (mgt goal #17).

The only negative sentiments regarding the proposed longline fishery as an alternative for the DGN fishery that I have found within the 21-page analysis of this proposal are in Chapter 9, at the bottom of page 67, where the document states:

Sport fishers especially would be distressed if such a fishery develops. The recreational fishing community is a strong, active and highly vocal stakeholder in the HMS fisheries within the EEZ. They are concerned that any longline fishery, even though small-scale, would have significant impacts on recreational species through the targeting, incidental catch or bycatch of these species in such longlining operations.

However, at the top of page 67, the Draft FMP also states:

It is recognized, however, that the drift net fishery already catches recreational HMS incidentally, so any impact from this [longline] replacement fishery would be the result of mortality considerably above what is currently taken.

In short, the objections to a limited longline fishery within the EEZ seem to be based more on emotion and politics than objective, scientific fact.

Given this documentation, it is my view that there is not good cause for the PFMF to select management proposals for the DGN fishery at odds with the stated developmental history of this FMP, at odds with the stated purpose and need for this FMP, at odds with the stated management philosophy and approach of this FMP, at odds with the stated management goals and objectives of this FMP, at odds with specific conservation issues and federal requirements described in this FMP, and at odds with alternative proposals contained in this FMP that propose viable solutions.

From a purely objective perspective, then, the PFMF's proposed action is inexplicable. FISH understands, of course, that recreational fishing interests may favor the prohibition of longline fishing, albeit if for not what we believe to be reasons firmly grounded in science and logic. It is important to point out,

however, that the proposal to prohibit longline fishing within the EEZ had not been identified as an alternative in any of the previous HMS FMP drafts, nor was it considered in any of the HMS FMP Plan Development Team discussions prior to the PFMC's November 2001 meeting. Indeed, the HMS FMP Plan Development Team selected alternative 4 (Chapter 9, pp. 69 – 72)—“Allow Longlining After EFP Fishing to Determine Appropriate Measures”—as its preferred alternative based on its evaluation of the scientific merit of this proposal, and consistency with the stated management standards for the FMP. At the November PFMC meeting, the California-designated PFMC member moved to adopt a list of proposals that included a prohibition against longline fishing within the EEZ, even though it had not previously been an alternative that was identified, or analyzed by the Plan Development Team. I do not think that the PFMC fully realized that the proposal to prohibit longline fishing within the EEZ included in California's proposals was a brand new and unanalyzed alternative. There are thus sound procedural reasons at this juncture for the PFMC to reconsider its action.

I believe that it is also worth pointing out that the California proposal to ban longlining runs counter to the stated policies of California law. California Fish and Game Code section 7712 states:

Where a fishery is closed or restricted due to the need to protect a fishery resource, marine mammals, or sea birds, or due to a conflict with other fisheries or uses of the marine environment, it shall be the policy of the department and the commission, consistent with budgetary and personnel considerations, to assist and foster the development of alternative fisheries or alternative fishing gear for those commercial fishermen affected by the restrictions, closures, or resource losses, including, but not limited to, the issuing of experimental gear permits pursuant to Section 8606 for alternative fishing methods or fishing gear consistent with the policies set forth in this division.

California's role in seeking to eliminate the opportunity for the DGN fishery to utilize an alternative gear to address fishery resource and marine mammal protection problems is not only inconsistent with this established state policy, but also seeks to prevent a federal version of this same policy by proposing an outright prohibition against longlining within the EEZ instead of supporting the experimental fishing process alternative preferred by the HMS FMP Plan Development Team.

Lastly, the proposal to prohibit longlining is problematical under the National Standards of the Magnuson-Stevens Act, especially National Standards Nos. 4 and 5. The Chapter 9 analysis of the California Department of Fish and Game's proposal to prohibit longline fishing within the EEZ states (at p. 27) that this proposal:



Prohibits pelagic longlining within the EEZ because of perceived concerns about reduced HMS resource availability to the recreational fishery and possible protected species interactions and bycatch. This is inconsistent with policies in other areas of the U.S. EEZ where longlining is allowed.

The proposal to prohibit longline fishing within the EEZ clearly documents this action as an allocation of HMS resources in favor of the recreational fishing sector in spite of the statement contained in the Draft FMP that:

The FMP would not establish allocations of HMS to different fisheries or fishery sectors.<sup>5</sup>

This proposed prohibition is also at odds with the FMP's stated management goals and objectives (Chapter 8, p. 6):

18. Allocate harvest fairly and equitably among commercial, recreational, and charter fisheries for HMS, if allocation becomes necessary.

National Standard No. 4 requires that allocations, if they are made, be "fair and equitable," while National Standard No. 5 states that no management measure "shall have economic allocation as its sole purpose." FISH believes the application of these Standards compels rejection of the longline ban.

#### **4. Conclusion: Proposed PFMC Action.**

In conclusion, I register this comment with the belief that the PFMC was not fully aware of the management issues in the DGN fishery, the options available to the Council to comprehensively address these issues and the deficiencies in the California proposal to ban longlining in the EEZ.

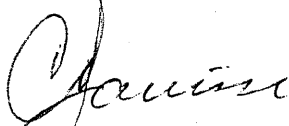
I ask the PFMC to consider closely FISH's Review and Discussion of Regulatory Alternatives Relating to the DGN Fishery for Shark and Swordfish, as well as the industry's proposal for an alternative longline fishery in the Draft FMP (Chapter 9, beginning on page 55). I urge the PFMC to adopt this regulatory alternative, in lieu of its existing proposals for the DGN fishery and the longline fishery, as in the best interests of the fishery and as most well-suited to achieve the objectives of the FMP and meet the standards and requirements of the Magnuson-Stevens Act. Any other approach will result in the alienation of the DGN fishermen who have worked so hard, and made so many sacrifices, in order to comply with the stringent conservation requirements of federal law, and

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<sup>5</sup> Quoted from Chapter 9, section 9.2.2, Environmental Consequences of the Proposed Fixed and General Provisions, p. 14.

whose livelihood should not be sacrificed to satisfy the provincial, allocation interests of the recreational fishing sector.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janisse".

Chuck Janisse,  
PFMC HMS Advisory Subpanel DGN representative



EXHIBIT A





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

Mr. Jim Lone, Chairman  
Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, Oregon 97201

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MAR 2 2001

DEPT

Dear Jim,

At the March meeting, the Pacific Fishery Management Council (Council) will have its first opportunity to review the draft fishery management plan for highly migratory species fisheries (HMSFMP) and the initial analysis of the management issues in those fisheries. I believe it is important that the National Marine Fisheries Service (NMFS) provide updated information on recent domestic HMS fisheries management that will set the stage for the team presentation on the draft FMP and subsequent Council consideration of options for the FMP, including how to proceed with the FMP.

When the decision was made to develop the FMP, there was no clear and pressing need for consideration of management measures that would immediately go into effect. It was envisioned that the FMP could include some reporting requirements and perhaps some changes in permit requirements, and it would almost certainly establish framework procedures for implementing regulations in the future if new information or conditions warranted it. The FMP also could conceivably incorporate under Magnuson-Stevens Act authority a variety of HMS fishery management regulations currently in effect under other Federal law or State laws and regulations. However, the legal and programmatic environment for the FMP has changed substantially as a result of two (and maybe three) factors:

1. Drift Gillnet Fishery Management - This fishery is managed under a mix of State laws (time/area closures, limited entry, mesh size, logbooks) and Federal regulations (net depth, pingers, observers) under the Marine Mammal Protection Act. As a result of a new Section 7 consultation under the Endangered Species Act (ESA), NMFS is requiring that new restrictions be imposed on the fishery by August 2001. NMFS will promulgate these regulations by that time under the authority of the ESA. However, I would urge the Council to be sure that the draft FMP, when cleared for public review and comment, include an alternative under which the drift gillnet fishery would be managed through the FMP rather than under the anticipated mix of State laws and regulations and Federal regulations under the MMPA and ESA. Consolidating the management program under a single authority should greatly simplify the ability of fishers and managers to adjust to changing conditions in the future.



In addition, the changes being required under the ESA will likely make it very difficult for some fishers to maintain profitable operations. This adds to the feeling on the fleet's part that there should be some form of relief, and a proposal has been made to allow the vessels to fish with longline gear subject to a variety of restrictions, possibly including an experimental fishery process. This is a very contentious proposal, but the drift net fleet owners definitely want the Council to address it in the FMP process. I would strongly encourage that the plan include a full evaluation of the pros and cons of allowing longline fishing in the EEZ so that the final decision can be based on that evaluation.

2. Hawaii Longline Fishery Restrictions - As a result of court actions, a number of restrictive regulations have been promulgated for the Hawaii-based longline fishery. In addition, NMFS prepared and distributed for public comment and hearings a Draft Environmental Impact Statement (DEIS) that reviewed the history and performance of that fishery and analyzed several alternatives for management of the fishery. I believe the Council has received a copy of that DEIS. While final action has not yet been taken, the preferred alternative would further constrain the fishery, including prohibiting a fishing strategy that targets swordfish and setting time/area closures for the fishery. NMFS also is completing a Section 7 consultation to determine if the fishery jeopardizes the continued existence of any species of sea turtle and if conditions should be set for the fishery to ensure that there will be no jeopardy and to mitigate or reduce the potential for interactions. NMFS recognizes that longline fishing in the EEZ, or on the high seas seaward of the EEZ, off the West Coast might not have the exact same impacts on fish and protected species as longlining out of Hawaii. However, NMFS also believes it would be inappropriate to allow fishing by vessels out of the West Coast in times and areas that would be closed to vessels out of Hawaii or using strategies that would not be available to Hawaii-based vessels until further information is available to indicate that the impacts would be different. At the least, the draft FMP should include an alternative that would establish the same measures for West Coast-based longliners as for Hawaii-based longliners. This also would include provisions to minimize interactions with seabirds and to authorize the Regional Administrator to require that observer accommodations be made and to require the use of automated vessel monitoring system units at vessel expense.

3. U.S.-Canada Albacore Treaty - During the scoping process for the FMP, there was sufficient force of recommendations from the public that the Council established a control date for possible use in setting up a limited entry program in the future. Most of the interest came from the troll albacore fishery which is concerned that further restrictions in other fisheries (especially groundfish) might result in vessels shifting into the albacore fishery, possibly adversely affecting present participants and exacerbating marketing problems that have sometimes occurred when catches are too high and markets are flooded with landings. Also of concern was that additional effort could result in lower catch rates for historic participants. A more recent concern, however, is that there has been a dramatic increase in the participation of Canadian vessels in U.S. waters under the Treaty, so much so that the Western Fishboat Owners Association has promoted suspension of the Treaty unless the Canadians agree to some limit on their vessels' fishing in U.S. waters. We have now scheduled a negotiating session with Canadian authorities April 10-11, 2001, in Seattle, to discuss changes in Annex A to the Treaty under which there would be a process for annually determining fleet or fishing limits and to discuss potential limits in 2001.

In discussing the matter with NOAA General Counsel and industry, we have identified a broader issue. That is, there is no statute to implement the Albacore Treaty; thus, there is no statute authorizing NMFS (or anyone else) to issue regulations to carry out the Treaty. Before we can propose legislation, however, we need to consider and agree on how the FMP and Treaty interrelate. We need to consider what kinds of measures would best be handled by different agencies and through different procedures. We will be discussing with industry and General Counsel the manner in which different possible future fishery management measures might be carried out under the FMP or under the Albacore Treaty, or even under laws implementing other future international management agreements (e.g., LATTC). For example, if there were a total allowable catch of north Pacific albacore with an allocation to the U.S., the internal allocation between sectors could be done through the Council as with Pacific halibut; or it could be done by the Secretary of Commerce in consultation with the Council and the member States. Please be assured that the Council will be involved in the discussions. With respect to the FMP, we have no immediate recommendations, but we will be working with the plan team and your staff to provide some alternatives for discussion in the draft.

One consequence of the changes in circumstances is that the Council will likely have to address with immediate HMS fishery management regulation issues in final action on the FMP later this year. It will probably not be sufficient to simply leave in place existing State or Federal regulations (under other authorities) or simply defer to State regulations. NMFS is aware that this means more time will be needed to compile information and analyze the options for management. Indeed, it is recognized that there is a lack of information to support some analyses, especially with respect to consideration of the impacts of allowing the West Coast based longline fishery to be active in the EEZ while at the same time restricting its activities on the high seas.

The Southwest Region also is aware that the increasing pressure to immediately establish management measures increases the need for Council resources to be directed to HMS fishery management and related issues. The need for complete NEPA analysis is clearly a critical issue. We will do everything we can to support the Council in this process, and we are looking to the possibility of a supplemental cooperative agreement under which the Council would administer the plan development process (e.g., team and advisors' travel, printing, and other logistics). This could be in addition to NMFS funds that might be provided to the Council to assist in meeting NEPA analytical requirements generally. I am optimistic this can be achieved fairly soon.

Finally, I want to acknowledge that the Council has participated in past discussions with NMFS and other Pacific area fishery management councils about the need for coordination of management. The issues noted with respect to the longline fishery testify to the need for that coordination. In that respect, I have had informal discussions with Western Pacific Fishery Management Council members and staff and I am optimistic that we can arrange to resume discussions in the near future. I believe the draft FMP will provide a catalyst to launch discussions. I will work with you and your Executive Director to see when discussions might resume.



4

In summary, I appreciate the Council's dedication to developing a solid and comprehensive HMS FMP and pledge the Agency's support in that process. The Southwest Region views this as one of the Council's most complex fisheries with serious management issues and we are committed to helping establish a sound management framework to conserve the species to the extent practicable and to maintain or enhance the fisheries on these species.

Sincerely,



Rebecca Lent, Ph.D.  
Regional Administrator

cc:

F/SWC - Tillman  
GCSW - Feder  
F/NWR - Robinson  
GCNW - Cooney  
WPFMC-Simonds  
NPFMC-Oliver

EXHIBIT B



## **SUMMARY:**

### **REVIEW AND DISCUSSION OF REGULATORY ALTERNATIVES RELATING TO THE DGN FISHERY FOR SHARK AND SWORDFISH**

#### ***I. MANAGEMENT AUTHORITY PROBLEM:***

Develop the FMP to implement a regulatory structure for the management of the shark/swordfish DGN fishery that is best authorized to:

1. Obtain information, and provide public inputs and advice to the Department of State regarding international management of HMS
2. Adopt consistent management measures for stocks and/or fisheries regulated under the Western Pacific Council's Pelagic Fisheries FMP.
3. Facilitate the rapid development and implementation of future management actions, as necessary, and ensure that fisheries are in compliance with the Magnuson-Stevens Act, as well as laws and regulations to conserve and restore species listed (pursuant to) the ESA, MMPA, and MBTA.

#### ***MANAGEMENT AUTHORITY RECOMMENDATION:***

Incorporate some but not all existing state regulations, consistent with the National Standards and other provisions of the MSFCMA, into the HMS FMP, and delegating authority for management of state regulations to California, Oregon, and Washington. Reasons supporting this recommendation are linked to each of the above three management authority problems:

1. This recommendation is best authorized to obtain information, and provide public inputs and advice to the Department of State regarding international management of HMS because:
  - The Pacific Council is the arm of federal authority authorized to manage HMS fisheries subject to international agreements under the oversight of the NMFS whereas States are not traditionally involved in international HMS agreements, and lack the institutional support for such activities.
  - The Department of State is structured to receive information and input from federal regulatory agencies, not state agencies.
  - Adoption of federal authority is consistent with the policy recommendation for managing HMS that calls for strong international representation and involvement with HMS species under international purview whereas reliance on state authority and management is inconsistent with this policy.
  - The NMFS is set up to provide HMS information on a west coast wide, or Pacific stock-wide basis, and is in a position to sit on a scientific committee formed pursuant to the IATTC, the Western and Central Pacific's international agreement for HMS conservation and management recently

completed through the MHLC negotiations, or the ISC whereas California, Oregon, and Washington are not.

- The Pacific Council is well positioned to obtain west coast wide public inputs regarding domestic HMS issues. They have the authority to convene a regularly scheduled west coast wide public forum to gather such inputs whereas California, Oregon, and Washington do not.
  - The Pacific Council has the authority pursuant to the MSFCMA to implement uniform data collection procedures in order to produce an accurate assessment of total shark/swordfish DGN fishery landings, and the accurate separation of such landings from other fisheries that may also land the same species whereas California, Oregon, and Washington do not.
2. This recommendation is best authorized to adopt consistent management measures for stocks and/or fisheries regulated under the Western Pacific Council's Pelagic Fisheries FMP because:
- The Pacific Council has authority to extend the Western Pacific's authority for regulation of their longline fishery to their permitted vessels that originate longline trips from a Pacific state's port and fish beyond the U.S. EEZ whereas California, Oregon, and Washington do not.
  - The Pacific Council has authority to prohibit U.S. longline vessels that fish beyond the U.S. EEZ, and that have given up their Western Pacific Council longline permit in order to avoid longline fishing restrictions west of 137° West Longitude imposed pursuant to a District court order, from landing their catch in a California, Oregon, or Washington port whereas California, Oregon, and Washington do not.
  - Through NMFS, the Pacific Council is well suited to authorize or implement a coordinated approach to the development, consistent with the draft policy recommendation for management of HMS by control rule, of Pacific wide HMS stock assessments, or regional MSY and associated control rules whereas California, Oregon, and Washington are not.
3. This recommendation is best authorized to facilitate the rapid development and implementation of future management actions, as necessary, and ensure that fisheries are in compliance with the Magnuson-Stevens Act, as well as laws and regulations to conserve and restore species listed (pursuant to) the ESA, MMPA, and MBTA because:
- The Pacific Council has the authority to directly implement federal regulations that may be promulgated pursuant to the MSFCMA, the MMPA, the ESA, the MBTA, or by resolution of the IATTC implemented by the NMFS pursuant to authority granted by the Pacific Tuna Treaty Act whereas California, Oregon, and Washington do not.
  - The Pacific Offshore Cetacean Take Reduction Team, mandated by the MMPA to recommend regulations to reduce incidental marine mammal entanglement in the DGN fishery has the greatest range of options available

for implementation under an FMP enacted by the Pacific Council whereas the POCTRT noted that the range of options available for implementation by NMFS pursuant to MMPA authority was constrained because the fishery was authorized and regulated under state authority.

- The NMFS has the greatest range of options for implementation of fishery regulations required by the ESA under an FMP enacted by the Pacific Council whereas regulations are more difficult to enact in a fishery authorized and managed by a state.
- It is a routine procedure for the Pacific Council, through existing MSFMA regulation, to authorize and administer west coast wide experimental fishery operations in an effort to mitigate conservation concerns whereas it is more complex to initiate and administer under state regulation.

## ***II. FISHERY ACCESS PROBLEM:***

Develop the FMP to implement a regulatory structure that is best able to respond to any need to adjust the level of capacity in the fishery or implement other permit related changes consistent with the management objective of establishing procedures to facilitate rapid implementation of future management actions.

### ***FISHERY ACCESS AND PERMIT RECOMMENDATION:***

Institute a federal limited access system to supplant the existing California and Oregon programs. This recommendation is not likely to present implementation difficulties because such programs already exist under state authority, and are probably consistent with MSFCMA requirements. Also, implement the following:

- Transferability of permits
- Designation of vessel associated with permit

## ***III. FISHERY CONSERVATION MEASURES PROBLEM:***

Develop the FMP to implement conservation measures enacted under state or federal law, to the extent the intent of a regulation is consistent with the objectives of the HMS FMP and MSFMCA requirements.

### ***FISHERY CONSERVATION MEASURES RECOMMENDATION:***

Implement the following conservation measures:

- Current California regulations regarding net length, net construction, amount of spare net allowed on vessel, and net marking.
- Closure within 25 miles of mainland coastline from December 15 through January 31.
- Closure within EEZ between February 1 and April 30.
- Closure within 75 miles of mainland coastline from May 1 through August 14.
- Use of pingers, and minimum depth of net.
- Closure to protect sea turtles as developed and promulgated





National Audubon Society



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PFMC

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**FAX TRANSMISSION**

Please deliver to the appropriate individual(s) below.

TO: Dr Donald McIsaacFROM: Shana BeemerDATE: 3/4/02PAGES: 9 (Including this one.)**Please Deliver Immediately — Thanks!**

Attached please find Audubon's comments on the  
Draft FMP for Pacific HMS to be distributed at  
the Council meeting next week.

Thank you,

Shana Beemer





National Audubon Society



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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.

National Audubon Society  
Comments on Draft Pacific HMS FMP

**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.**

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Comments on Draft Pacific HMS FMP

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 Tuna 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

National Audubon Society  
Comments on Draft Pacific HMS FMP

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 Survey (MRFSS) and Pacific Fisheries Information Network (PacFIN) are inadequate for accurate monitoring of HMS fisheries. As mentioned previously, we believe any logbook self-

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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.

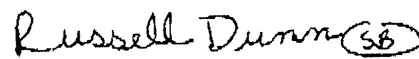
Sincerely,



Shana Beemer, M.S.  
Fisheries Policy Analyst  
Living Oceans Program  
National Audubon Society



Merry Camhi, Ph.D.  
Acting Director  
Living Oceans Program  
National Audubon Society



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March 5, 2002

PFMC

AGENDA Topic G

Dr. Donald McIsaac  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, OR 97220-1384

Dear Dr. McIsaac:

Thank you and the Council for this opportunity for The Billfish Foundation (TBF) to comment on the proposed Draft Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). We have appreciated the opportunity to interact and work with the Council and the Plan Development Team (PDT) in the very positive and transparent process of preparing this Plan.

## COUNCIL PREFERRED OPTIONS

We fully support the Council's preferred options that would:

- Prohibit the commercial harvest or sale of striped marlin,
- Establish a voluntary recreational catch-and-release program,
- Prohibit the use of longline gear within the EEZ, and
- Apply all conservation and management measures imposed upon western Pacific longline vessels (electronic vessel monitoring, observers, prohibition on fishing for swordfish north of the Equator, etc.) to west coast-based longline vessels fishing on the high seas beyond the EEZ.

These measures are firmly based on the fundamental dictates of the Magnuson-Stevens Act to prevent overfishing and eliminate or reduce bycatch. Given the paucity of scientific information on stock structure and status for most eastern Pacific HMS the Council has adopted a precautionary management approach. This approach is warranted by the history of previous national and international efforts at the management of HMS fisheries. The PFMC's decision is supported by the fact that existing pelagic longline gear used in all other jurisdictions of the U.S. has been shown to have high levels of finfish, especially billfish, bycatch and discard rates and an unacceptable take of protected and endangered species.

These documented problems have required extensive, subsequent regulatory actions, including gear modifications and long seasonal and large-scale area closures<sup>1</sup>.

No rationale exists to support increases in fishing mortality (F) beyond current levels on any of the HMS stocks. All proposals for a new EEZ longline fishery discussed during the development of this FMP would have increased F. Current levels of F are largely unknown or uncertain and the Plan acknowledges (Sections 1.3, 1.5, 3.2) the uncertain status of these stocks and the need to prevent rapid growth in fishing. Any action that would have removed a *de facto* longline-free sanctuary of more than 255,000 square miles from the eastern Pacific would certainly have generated a reckless increase in F and a dramatic increase in bycatch and waste that would have proven to be inconsistent with the substance and intent of the Magnuson-Stevens Act.

**We further urge the Council to go on record to request that any Exempted Fishing Permit issued by the NMFS for the use of longline gear be contingent on a scientifically based experimental design directed at modifying and improving existing gear and gear setting techniques and not be issued for a developmental or exploratory fishing effort.** The problems associated with longline gear are well documented in other regions. There is no logical reason for expecting this gear to behave differently in the west coast EEZ. Legitimate scientific research may find means of improving the gear or its deployment to substantially reduce bycatch. Such research needs to be encouraged. Given the extensive review of this controversial issue by the Council over the past two years we cannot anticipate that anything positive would come from reviving the debate over longlines in a different context and diminishing the conservation impacts of this present Council action.

## **OTHER OPTIONS**

**We caution the Council to make certain that the limitations on entry contained in California law relative to the drift gillnet gear will be applicable to all vessels fishing in the EEZ once the Plan is in place.** Given the complexity of the issues involved we understand the Council's decision to postpone active regulation of the drift gillnet fishery until the fishery can be addressed through the amendment process. Attempting to develop a federal proxy for California's limited entry system for this fishery would likely have delayed adoption of the plan for a considerable period of time. However, given the documented bycatch problems in this fishery and the extensive state and federal regulatory actions taken to attempt to control this indiscriminant gear we urge you to avoid any loophole that might allow additional vessels into this fishery.

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<sup>1</sup> NMFS. 1999. Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks; NMFS, 2001. Environmental Impact Statement for Pelagic Fisheries of the Western Pacific Region; Section 1.6.6 this FMP, pp 1.12 – 1.15.

**We would similarly urge the Council to maintain the 14" minimum mesh size for the drift gillnet fishery.** This large mesh size has been mandated by California regulations as a means of reducing bycatch in a fishery ostensibly targeting swordfish and tuna. All the analyses of this gear and its past and potential future impacts prepared by the PDT and included in the HMS FMP have been premised on the use of 14" mesh at a minimum. Although information arose very late in the process concerning the use of smaller mesh (6"-9" mesh) nets to target albacore, this putative fishery has not been recognized by the state of California, has not been documented by observers and seems to have somehow avoided recognizing the conservation closures and gear modification requirements currently in place for larger meshed drift nets. Any allowance for this gear to be used in targeting HMS in excess of a minimal bycatch allowance would certainly have unforeseen, negative consequences on present efforts to reduce bycatch of finfish and to conserve marine mammals and sea turtles.

## **OVERFISHING DEFINITIONS AND CONTROL RULES**

The precautionary approach reflected in the proposed overfishing definitions is a good approach and is consistent with the substance and intent of the Magnuson-Stevens Act.

**The Billfish Foundation asks the Council to adopt the proposed Optimum Yield Control Rule (Section 3.2.2) as the appropriate overfishing definition for striped marlin.** This control rule specifies the minimum biomass to which a stock can fall before triggering the Magnuson-Stevens Act definition of being overfished and the requirement for developing a recovery plan. We believe striped marlin are in need of all the protection the Plan suggests for "vulnerable" species. In support of this request we offer the following rationale.

1. The appropriate management goal for a recreational fishery is not a stock which produces maximum sustainable yield (MSY), but be a target stock biomass (B) or an optimal yield (OY) at a stock level above the  $B_{msy}$ . Stocks that have not been depressed to abundance levels conducive to maximizing production (i.e. few older slow growing fish and more small, faster growing fish) offer anglers greater probabilities of encounter and increased probabilities of encountering large fish. These attributes are valuable to recreational fishers and increase the economic value of the fisheries in which they participate. A threshold of  $1.25(B_{msst}/B_{msy})$  most closely reflects this condition.
2. The use of natural mortality (M) in the FMP calculations of MSSTs assumes that stocks can safely be reduced to 25% of their virgin level while retaining resiliency to recover quickly to larger stock sizes. In the control rule presented in Section 3.2.2 a precautionary supplement to

this assumption is set by not allowing  $M$  values  $< 0.5$ , the apparent default value applied to striped marlin. Although the best available estimate of longevity of striped marlin (9 years) is consistent with an  $M > 0.5$ , this estimate is based on a small sample of small to medium sized fish of which the largest was less than one-half the size of the current world record. It is likely an underestimate of  $M$  and thus results in a lower MSST for marlin than may be warranted by its life history traits.

3. The Plan maintains (Table 3-3) that striped marlin are likely being exploited at a level of  $F$  somewhat less than  $F_{msy}$ . Apparently  $B$  is thus assumed to be greater than  $B_{msy}$ . Nevertheless, the Plan document recognizes that striped marlin are potentially vulnerable to localized depletions and may respond as sub stocks to regional management (Section 3.3.3. p. 3-26). Data presented in the Plan indicate declining catch rates since the 1960s (Figure 2-18) and declining average weight of striped marlin since the early years of the last century (Figure 2-19). The catch data presented from southern California marlin clubs (Figure 2-18) may tend to obscure the declining trends as in recent years many anglers are members of more than one club and have tended to register the same marlin catch (most often released) with multiple clubs.<sup>2</sup>

The data included in the following graph is a subset of the data included in Figure 2-18 derived only from the Tuna Club of Avalon. The Tuna Club catch data stands as a strong proxy for catch-per-unit- effort as membership has been capped at 200 for over 100 years. The graph shows annual club marlin catches and the annual number of marlin greater than 100 pounds caught by decade. The decline in catch and average weight seems apparent and real and argues for providing the highest level of protection to this species.

This data tends to underscore anecdotal information on stock declines presented by experienced anglers during the Plan development process. We believe that striped marlin merit the extra protection afforded by the Optimum Yield Control Rule.

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<sup>2</sup> Brandon Hunt (2002), Newport Beach, CA member of the Tuna Club of Avalon and the Balboa Anglers Club, personal communication.

Average annual striped marlin catch in numbers (left) and average annual number of fish caught over 100 pounds (right) by decade, 1960s – 1990s. Tuna Club of Avalon.

## INTERNATIONAL MANAGEMENT ACTION

With the development of this FMP the Council has taken a strong step towards becoming the United States' lead policy maker for the management of eastern Pacific HMS. **We believe that the Council process manifested during the development of the FMP should provide the venue for the interaction of concerned organizations and parties, the public and agency fisheries managers during the development of U.S. policies and positions to be pursued at annual meetings of the IATTC.**

The U.S. IATTC Advisory Committee is currently being rejuvenated and the PFMC should make certain that it is granted a permanent seat on that panel. The Council should likewise become involved with the new central and western Pacific commission arising from the recent MHLC treaty.

## BYCATCH

By avoiding the creation of a new EEZ longline fishery the Council has followed the spirit of the Magnuson-Stevens Act bycatch reduction requirements. Application of all western Pacific longline regulations to the west coast based high seas longline fishery will directly reduce bycatch. Additionally, the adoption of a recreational catch-and-release program will eliminate the need to classify fish that are intentionally taken and released by that sector as bycatch. We urge the Council to make use of all available outreach resources to help educate the public on the best possible practices to employ when catching and releasing fish in order to maximize survival. TBF will be happy to assist in this effort. The FMP's mandated observer and logbook coverage should help develop the data set necessary for future bycatch reduction in all HMS fisheries. **The PFMC should seek to have the U.S. advocate for expanding the current IATTC observer program to include longline vessels fishing for HMS in the eastern Pacific.**

In April of 2001 TBF asked both the NMFS and the PFMC to conduct analyses that would provide the basis for options to reduce striped marlin bycatch in the drift gillnet fishery. Such analyses were not conducted and this Plan has no specific bycatch reduction steps applicable to that fishery. We understand the resource constraints which accompanied the development of the Plan and do not disagree with the Council's decision to defer all new regulation of this gear to the framework or amendment process. **We request that the Council address this question of bycatch reduction in the drift gillnet fishery promptly upon adoption of the HMS FMP.** Specifically we would ask for analysis of the existing observer data to look at relative catch of striped marlin (and other discarded finfish species) and targeted (retained) species by month at the closest

possible level of area definition. We would also like to see a comparative analysis of observed trip versus unobserved trip landings by time and area strata.

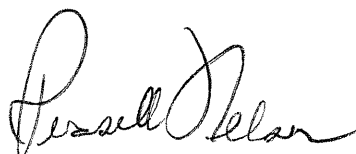
## **FUTURE STOCK ASSESSMENTS AND RESEARCH**

The adoption of this FMP will begin the process of developing SAFE Reports and stock assessments for the managed species and increased monitoring of these fisheries. At present international (IATTC) effort has been directed primarily at yellowfin and to a lesser extent bigeye tuna assessment work. Both stocks appear to be somewhat overfished. TBF believes that the NMFS must begin to conduct assessments on all the species in the Plan based on the requirements of the Magnuson-Stevens Act. Current assessment work conducted by the staff of the IATTC is not sufficient for these purposes. U.S. fisheries law mandates that stocks must not be fished below the level of  $B_{msy}$  as estimated by the best available information. The IATTC has no such policy and does in fact have some history of "experimental overfishing" as a scientific tool for evaluating stock resilience. U.S. law requires that overfished stocks be the subject of a formal rebuilding plan and that bycatch be eliminated or minimized as much as possible. Again, the IATTC has not adopted similar policies. **It will be essential that the Council remain aggressively responsive to its legal mandate and support the development of financial and personnel resources necessary to get the needed assessment work done.** As an organization, TBF intends to advocate for the resources necessary to conduct thorough observer programs and gather data needed to prepare useful stock assessments.

Again we appreciate the opportunity to work with the Council in the furtherance of the national mandate to conserve and manage these valuable marine fisheries resources. TBF looks forward to the adoption and approval of this FMP and coming years of strong conservation efforts.



Ellen Peel, LLM  
President



Russell Nelson, Ph.D.  
Fishery Scientist



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PPMC

March 4, 2002

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

Dear Dr. McIsaac:

The National Coalition for Marine Conservation (NCMC) is the nation's oldest public advocacy organization dedicated exclusively to conserving ocean fish and their environment. We are widely recognized as a leading advocate for the conservation and responsible management of highly migratory species and, as such, we appreciate the opportunity to provide comments on the draft Pacific Highly Migratory Species Fishery Management Plan (draft plan). NCMC is also a founding member of the Ocean Wildlife Campaign. The OWC submitted a letter detailing our collective comments on a number of issues in the draft plan. We fully endorse the comments submitted by the OWC and wish to supplement our comments with the following.

NCMC applauds the Council for taking action to implement management measures for Pacific HMS before a conservation crisis necessitates harsh restrictions. Modest, precautionary management measures now coupled with a framework to address future issues will hopefully prevent drastic action down the road. We are highly encouraged by the Council's proactive approach thus far and hope this attitude prevails in future decisions relating to management of Pacific HMS.

1. Longlines within the west coast EEZ

We strongly support the Council's preferred alternative to ban pelagic longlines from the entire west coast EEZ. As we have testified before Council numerous times, pelagic longlines are highly indiscriminate in the number, size and type of marine species they interact with, and also highly lethal—a combination that makes this gear especially detrimental to marine ecosystems. Pelagic longlines have repeatedly demonstrated an inability to fish in a selective manner throughout many parts of the world. Time and time again, we have found that the only way to reduce the bycatch problems of longlines is to get the gear out of the water.

The Council's preferred course of action—banning this gear before it causes a conservation problem—is laudable and we commend the Council for its foresight. **We urge the Council to finalize the ban on longline gear in the entire west coast EEZ.**

As the preferred alternative stipulates, it is extremely important that the sea turtle conservation measures applicable to Hawaii-based longline vessels also apply to vessels fishing from, or landing fish in, west coast ports. These vessels should not be able to escape measures to protect threatened and endangered species simply by using a different port. We fully support application of these measures to west coast-based vessels fishing on the high seas.

As you know, however, longlines are notorious not only for bycatch of sea turtles but also of finfish. We remain concerned about bycatch issues on the high seas, especially for juvenile swordfish, striped and blue marlin and sharks. In other parts of the world, some of these species, such as marlin, have been depleted from being caught solely as bycatch. We urge the Council to closely monitor the high seas longline fishery to better assess bycatch issues and to take additional action to reduce finfish bycatch as appropriate.

## 2. Guidelines for Exempting Fishing Permit applications

NCMC disagrees with the Council's preferred alternative not to adopt guidelines for Exempted or Experimental Fishing Permits (EFPs). In the future, the National Marine Fisheries Service (NMFS) may receive applications for EFPs to use types of fishing gear that are now either unlawful or new to the fishery. We strongly suggest the Council incorporate a set of guidelines in the FMP for use by NMFS to evaluate any EFPs it may receive. We are concerned that new types of fishing gear could be introduced under an EFP with little or no oversight available to the Council.

The burden of proof that a new type of gear can be fished with minimal bycatch rests on those proposing to use the gear. No EFP should be granted unless to specifically test bycatch reduction measures or gear modifications to minimize bycatch. Under no circumstances should an EFP be granted for "exploratory" fishing. The Council should advise NMFS to subject EFP requests for new types of fishing gear to a "cooperative research study." The components of this study would include, at a minimum:

- a) 100% observer coverage;
- b) a protocol for conducting the study, with clearly defined goals and a timetable for reporting conclusions to the Council and NMFS;
- c) an experimental design which would test the relative effectiveness of various fishing methods in order to minimize bycatch;
- d) the number and identity of participating vessels, to be determined according to the protocol;
- e) definitions of both "target catch" and "bycatch" (e.g., juveniles of the target species, non-target species, prohibited and protected species), upon which the selectivity of the gear is to be evaluated; and
- f) regular reporting of results, including bycatch rates, so that the study can be terminated if bycatch rates are unacceptably high.

NCMC supports Alternative 1, which calls for EFP procedures in the FMP. Incorporating these guidelines in the plan will ensure the Council's actions to conserve these fisheries are not unduly jeopardized by fishing activities authorized under EFPs over which the Council has little authority or control.



### 3. Cap on Commercial Landings

Due to the dearth of information about the health of Pacific stocks of HMS, we urge the Council to proceed with the utmost caution in implementing management measures. Since some fisheries may already be at or near a fully exploited condition, overfishing could result if commercial landings were to rise for one reason or another. We firmly believe that, until there is a more rigorous understanding of the status of these stocks, measures should be in place to ensure landings do not skyrocket. The draft plan would limit the recreational sector by implementing bag limits for most species, but no similar limits exist for the commercial sector. Measures should be included that would check an unanticipated rise in commercial landings. NCMC suggests capping commercial landings at current levels until a higher level of confidence can be obtained in the status of these stocks. It is imperative that we proceed with caution so as not to put ourselves into a situation that would require years of painstaking catch cuts to correct.

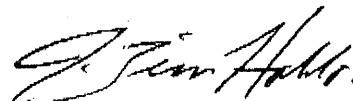
### 4. Drift Gillnets

The large-mesh drift gillnet fishery targeting swordfish and sharks has a record of high levels of bycatch. To date, much of the emphasis of management has been to reduce bycatch of threatened or endangered sea turtles. NCMC is concerned that not enough attention has been paid to bycatch of finfish, specifically marlin, sharks and juveniles of target species. We support the new closures off Oregon and Washington in the draft plan, but we believe additional action may be required to further address the bycatch problems of this non-selective gear type. At a minimum, vessels in this fishery should be subject to 100% observer coverage to document bycatch.

At this time, harvesting Pacific HMS with small mesh drift gillnets should be prohibited. Small-mesh gillnets have not traditionally been used for targeting HMS, rather fishermen using this gear have opportunistically harvested HMS. Allowing a small-mesh drift gillnet fishery could encourage additional targeting of HMS at a time when the status of these stocks is unknown, and bycatch of these nets, as with the large-mesh nets, could be a problem for several marine species.

NCMC applauds the Council for moving forward with this plan and we look forward to working with the Council on future HMS issues. Thank you for considering our suggestions.

Sincerely,



J. Tim Hobbs  
Fisheries Project Director



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MAR 05 2002

PFMC

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March 4, 2002

Dr. Donald McIsaac  
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7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384



Dear Dr. McIsaac:



We appreciate the opportunity to provide the Pacific Fishery Management Council with written comments on the *Draft Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species* (Draft HMS FMP). Please find the comments of the Ocean Wildlife Campaign (OWC) attached. The comments reflect the views of the **National Audubon Society, National Coalition for Marine Conservation, Natural Resources Defense Council, The Ocean Conservancy, Wildlife Conservation Society, and World Wildlife Fund**. In addition, individual OWC organizations will provide specific comments. If you have any questions, please feel free to contact us.



Sincerely,



David Wilmot, Ph.D.  
Campaign Director

Russell Dunn  
Assistant Director



cc: Mr. Scott Gudes  
Mr. Svein Fougner

enclosure

**Ocean Wildlife Campaign Comments**  
**On The Draft Fishery Management Plan and Environmental Impact Statement**  
**for U.S. West Coast Fisheries for Highly Migratory Species**

**Need for the Plan and Process**

The OWC strongly supports adoption of the Draft HMS FMP and supports many but not all of the Proposed Actions. The Draft HMS FMP contains a number of potentially beneficial and cautionary elements, and we encourage the Council to take final action at its March meeting without further delay. The sooner federal regulations are implemented in these fisheries the better. We congratulate the Council and the Plan Development Team on preparing the plan in an extremely transparent process and offer the following comments.

However, we remain disappointed that the Council decided to prepare a "framework" plan, and we are concerned that by relegating critical decisions to an undefined future point, both the Council and NMFS may not meet their statutory mandates.

**Species to be included in the Plan**

Management Unit Species: We can support the Preferred Action, which includes tunas, swordfish, marlin, dorado, and certain oceanic sharks, but would strongly prefer Alternative #4, which includes the sixgill shark for active management. The sixgill shark may be rarely encountered in HMS fisheries, but it is valuable and extremely vulnerable to overexploitation as are other sharks in the preferred management unit. Most importantly, we strongly oppose removing ANY of the species listed in the Preferred Action (e.g., sharks or albacore) from the FMP

Species included in the FMP for monitoring purposes: We support monitoring as many species as possible and agree with the criteria defining which species qualify. We suggest that the identified species be monitored on a consistent and routine basis to the extent practicable, rather than the suggested "periodically monitored" (Chapter 3, page 4).

Prohibited species: There is an inconsistency between this option in Chapters 3 and 8. We support Alternative 1 as described in Ch. 3, where these species are both prohibited from take and can only be donated, not sold, to appropriate institutions. With that change, we support both Alternatives 1 and 2, prohibiting the taking of white, basking, and megamouth sharks, as well as Pacific halibut and salmon unless caught with the right gear. The three rare sharks identified are particularly vulnerable and deserve special protection. In the future it may be necessary to consider additional measures to minimize the interactions and mortality of these species.

**Overfishing criteria**

We can support the proposed control rule, but would prefer to see the Optimum Yield rule used for *all* species, rather than only "vulnerable." At the very least, the definition of "vulnerable" should be expanded to include more than only a few shark species.

We support the decision to set the minimum stock size threshold at a level that is dictated by the biology of the species. As proposed, the more conservative OY rule would provide extra protection for vulnerable shark species. However, expanding the definition of "vulnerable" to include species that could not rebuild within ten years at a low level of fishing makes sense for

two reasons. First, achieving zero mortality will be a practical impossibility and therefore for many of these species rebuilding would take longer than ten years, making it more imperative to prevent overfishing before it starts. Second, higher productivity does not eliminate vulnerability to overfishing and depletion. For example, several of the species that the Draft HMS FMP identifies as less vulnerable – species that would NOT qualify for the more conservative OY control rule -- have been severely overfished in the Atlantic and/or Pacific Oceans (e.g., northern and southern bluefin tuna, bigeye tuna, albacore tuna, swordfish, marlin, and others).

#### **Unilateral management (Domestic/International interface)**

The specific language in Chapter 8.2 is much improved. However, the Draft HMS FMP seeks at every opportunity, in tone and statement, to deflect responsibility and the impetus for domestic action away from the United States and place it within the international arena (with the exception of certain shark species). For example, in Chapter 3, page 4 the Draft HMS FMP states “Since the MUS [management unit species] tunas and billfishes are fished ocean-wide and are already assessed or reviewed regularly at international forums, the Council’s main task would be to ensure that their local management is not inconsistent with international management”. We disagree with this interpretation and are concerned that this philosophy permeates the entire Draft HMS FMP. The requirements of the Magnuson-Stevens Act National Standard Guidelines Endangered Species Act, and Marine Mammal Protection Act (including appropriate consultations), and the National Environmental Policy Act must guide this HMS FMP and all subsequent management actions. The highly migratory nature of the species managed by this plan does not exempt them from the requirements of these laws. Furthermore, we believe there are domestic actions that can be taken to prevent overfishing and reduce bycatch/bycatch mortality. Domestic policy will then serve as the starting point for the U.S. government’s negotiating position in international negotiations. In other words, the U.S. government should negotiate management and conservation programs in regional fishery management bodies that meet the standards of U.S. laws and guidelines. Inaction by other nations cannot be justification for the United States to delay or reject domestic actions to halt or prevent overfishing, reduce bycatch and bycatch mortality, or begin to rebuild depleted fish populations. In addition, United States obligations to international agreements and treaties (e.g., United Nations Straddling Fish Stocks Agreement and FAO plans) must also guide U.S. actions.

We also recommend that the Council and NMFS begin a process to establish an advisory structure for regional fishery management bodies in the Pacific that is similar to the ICCAT Advisory Committee in the Atlantic, but with a balanced representation of stakeholders, including the public interest in marine conservation.

#### **Management Cycle**

We support the Proposed Action to establish a biennial management cycle.

#### **Legal Gears**

We support Alternative 1 regarding the drift gillnet definition (minimum mesh size of 14 inches). We oppose the smaller mesh fishery for several reasons. First, given the high degree of uncertainty regarding the status of many HMS species, we do not support any action that will increase targeting of HMS. Second, these fisheries are not subject to the existing restrictions placed on the larger gillnet fleet to reduce interactions with protected species. Finally, while

there is little concrete data on bycatch levels in smaller mesh net fisheries, given the history of this gear type it is likely that they may generate unacceptably high levels of bycatch. Until it can be demonstrated that the small-mesh fishery can operate without detrimental impacts on protected species and fish populations, it would be irresponsible to allow these nets in the water.

### **Incidental Catch Allowance**

We support the Proposed Action and recommend a maximum incidental catch allowance be set at no greater than 10% of the total landings by weight. While it is important to minimize discards in fisheries using gears that are not legal for HMS, it is more important to prevent targeting of high-value HMS by non-HMS fisheries.

### **Essential Fish Habitat (EFH)**

We support the Proposed Action to designate EFH and establish potential measures to minimize adverse effects. Given the dearth of information regarding habitat requirements for HMS species, the conclusion that “no clear evidence of adverse effects from any fisheries practices or gear on HMS EFH at this time” (chapter 8, page 15) should be an imperative for additional research.

### **Bycatch, Observer Authority, and Reporting Requirements**

While we support the Proposed Actions to (1) establish the authority to require commercial and charter/party boats to carry observers, and (2) require all commercial and charter HMS fishing vessels to maintain and submit log book records of catch and effort statistics for all waters fished, these actions do not go far enough. According to NMFS there are inherent problems associated with the use of self-reported data, including under reporting of incidental catch in logbooks. Given this deficiency, the HMS FMP must detail monitoring and reporting priorities and describe how the proposed actions will accomplish them. The Plan states “...it is incumbent on NMFS to develop a sampling plan ...so that priorities can be met with minimal disruption of the fisheries and the least cost to the industry” (Chapter 8, page 15). What and where are the priorities? Monitoring and reporting of bycatch is not a luxury. It is a requirement of the Magnuson-Stevens Act – a requirement that cannot be fulfilled without the appropriate use of observers (and other tools such as vessel monitoring systems). Therefore, simply authorizing observers is *not* enough. A monitoring and reporting plan providing a detailed description of the goals, objectives, and specific activities for each West Coast HMS fleet should be prepared immediately, as required by law.

The Proposed Action to adopt initial measures to minimize bycatch in pelagic longline, drift gillnet, and purse seine fisheries also does not go far enough. The majority of the measures proposed already exist in state or federal regulations and focus on non-fish species (i.e., sea turtles, birds, and marine mammals). Prohibiting longlining in the U.S. West Coast EEZ is a very positive step that will almost certainly prevent significant bycatch problems, but such action alone does not satisfy the National Standard 9 requirements all by itself. In order to achieve effective, quantifiable reductions in bycatch, it is necessary to develop policies and tools. We continue to call for development of a bycatch reduction framework that included targets and timeframes for reductions, a trajectory with milestones, and pre-defined triggers leading to concrete actions (established *a priori*) if milestones are not met. The FMP lists a number of potential tools that we endorse (we ask that species-specific bycatch quotas be added to the list);

however, we would like to see them put into action. For example, we believe that a bycatch reduction plan should include performance standards for all gears. We have previously provided detailed comments regarding how such standards could be crafted. Without identified bycatch reduction goals, performance standards will remain words on a page rather than a powerful tool to help reduce bycatch and its associated mortality.

### **Quotas and Harvest Guidelines**

We support setting quotas for all HMS species that include a “margin of safety” to account for scientific uncertainty surrounding reproductive capacity, inaccuracy in catch and discard statistics, and imprecise (or non-existent) population assessments. Given the dearth of population assessments for Pacific HMS and the current reliance on catch trends and catch per unit effort to determine the relative status of many HMS populations, a cap at or below current landings is justified to help ensure long-term sustainability of Pacific HMS. Thus, we support Alternative #2. The Council’s Proposed Action avoids quotas and rather establishes “harvest guidelines” (benchmarks for considering additional action) for shortfin mako and common thresher sharks and provides the “authority” to set establish or modify quotas and harvest guidelines in the future. This is a step in the right direction, but we would like to see even more precaution.

It is our understanding that the FMP sets bag limits on recreational fishermen for several species by adopting existing state regulations. Further, we have heard testimony that many recreational anglers and their representatives support limits for all HMS. We also support appropriate bag limits for all HMS species. Limits in the recreational sector provide yet another justification for the establishment of precautionary quotas on commercial catches.

### **Exempted Fishing**

We do NOT support the proposed action (“Do not specify exempted fishing permit (EFP) procedures in the FMP”). Rather we support Alternative #1, which calls for adoption of EFP procedures in the FMP. We believe there is benefit in the Council providing guidance to NMFS regarding the intent of EFPs.

The OWC position is that any new gear/fishery must conclusively demonstrate that it can meet stringent conservation/performance standards, with a focus on a minimum amount of bycatch and bycatch mortality, prior to being permitted in the HMS. Therefore, the burden of proof to conclusively demonstrate the appropriateness of any new gear targeting Pacific HMS rests with those proposing to engage in the fishery. If industry participants believe that a new gear can be used selectively and sustainably, and will not have adverse impact on HMS stocks or other marine wildlife, they must demonstrate this is true. We recommend that the Council not support allowing new gears into the fishery under unregulated (or lightly regulated), indefinite EFPs. The Council should advise NMFS that they want any gear requesting an EFP be subjected to what we term a “cooperative research study.”

Components of a cooperative research study would include, at a minimum:

- a) 100% observer coverage;
- b) a protocol for conducting the study, with clearly defined goals and a timetable for reporting conclusions to the Council;

- c) an experimental design which would test the relative effectiveness of various fishing methods in order to minimize bycatch
- d) the number and identity of participating vessels, to be determined according to the protocol;
- e) definitions of both "target catch" and "bycatch" (e.g., juveniles of the target species, non-target species, prohibited, and protected species), upon which the selectivity of the gear is to be evaluated; and
- f) regular report of results, including bycatch rates, so that the study can be terminated if bycatch rates are unacceptably high.

In summary, the focus of an EFP in any West Coast HMS fishery should be bycatch reduction. All EFPs should be contingent upon a cooperative research study and no EFPs should be allowed for exploratory fishing purposes only. Given the uncertainty regarding the status of Pacific HMS, and the fact that many of these same species have been severely overfished in other parts of the world, there should be no expansion in fishing effort.

#### **Prohibit the sale of certain species**

We strongly support the Proposed Action to prohibit the sale of striped marlin.

#### **Drift Gillnet Fishery Management Measures**

We support the Proposed Action including the new closures off Washington and Oregon to add extra protection for thresher sharks. We are concerned that the proposed action to defer management of the limited entry system to the State of California could potentially create a loophole that would allow vessels to avoid the California limited entry system and enter the fishery from either Washington or Oregon.

#### **Pelagic Longline Fishery Management Measures**

We strongly support the Proposed Action to prohibit the use of longline gear in the U.S. EEZ off the west coast. The Council has heard many voices from the conservation, sportfishing, and commercial fishing communities united to sound the alarm over the danger of allowing non-selective longline gear into U.S. West Coast waters. As you are well aware, longlines are widely used in many parts of the world to target tunas, and swordfish and they are notorious for having high levels of bycatch. Longlines have contributed to the demise of numerous fisheries, and kill many other types of marine life including seabirds and sea turtles (the FMP highlights the fact that in both the Atlantic and Pacific, NMFS has found that longline fisheries are likely jeopardizing the continued existence of loggerhead and leatherback turtles). In fact, large scale-closures (on the scale of millions of square miles), that prohibit longlining, in parts of the Pacific, Atlantic, and Gulf of Mexico, have been established to protect sea turtles, juvenile fish, and other marine wildlife from this indiscriminate gear.

The OWC and its member organizations have spent many years working to restore HMS populations, as well as populations of other marine wildlife, devastated by pelagic longlines. We are very encouraged that the Council has proposed a precautionary path that can avoid mistakes made elsewhere. *We call on the Council to take the final step and finalize this important and precautionary management action.*

We *oppose* Alternatives #1-4. We originated Alternative #2 and have altered the language to include all fishing gears and presented it as potential guidance for EFPs (discussed in previous section).

We have serious concerns about longlines outside the U.S. EEZ, especially considering that the Draft HMS FMP does not establish a bycatch reduction or monitoring and reporting plan. However, in order to eliminate a dangerous loophole, we can support allowing west-coast based longline vessels to fish outside the U.S. EEZ as long as they are subjected to all of the management and conservation measures applied to Western Pacific longline vessels. Nevertheless, the council should not assume that simply adopting the Western Pacific sea turtle conservation measures will sufficiently address long line bycatch on the high seas. We see these measures as the minimum required and urge the council to adopt additional conservation measures to specifically address finfish bycatch. Additionally, the National Audubon Society will be providing comments describing why the proposed measures will not effectively avoid and minimize significant adverse impacts to seabirds from interactions with longlines. We encourage you to consider these comments, and other comments you receive regarding the needed protections for turtles, to decide how to strengthen the proposed measures.

#### **Purse Seine Fishery Management Measures**

We support the Proposed Action to prohibit the use of purse seines north of 44 north.

#### **Shark Finning**

We urge the council to incorporate language consistent with the federal ban on shark finning into the HMS FMP.

Thank you for considering our comments.





CALIFORNIA AND PACIFIC OFFICE

*protecting endangered species and wild places through  
science, education, policy, and environmental law*

*via facsimile*

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PFMC

March 4, 2002

Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
Fax: 503-326-6831

Scott Gudes  
Deputy Undersecretary for Oceans and Atmosphere  
NOAA  
Fax: 202-482-1041

RE : Comments on Fishery Management Plan and Environmental Impact Statement for U.S  
West Coast Fisheries for Highly Migratory Species

Dear sirs:

On behalf of the Center for Biological Diversity and the Turtle Island Restoration Network I submit the following comments on the Fishery Management Plan and Environmental Impact Statement for U.S West Coast Fisheries for Highly Migratory Species (FMP/DEIS). As an initial matter, with regard to issues regarding finfish and sharks as well as the regulatory scheme we are in general agreement with the comments submitted by the Ocean Wildlife Campaign and will therefore not repeat those comments. Our comment specifically address the plan as it relates to management of species protected under the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA).

Numerous ESA listed species occur in the range of the fisheries covered by the FMP and are adversely impacted by it. Of particular concern are the northern right whale, the leatherback and loggerhead sea turtles, and the short-tailed albatross.

The DEIS is wholly deficient in its treatment of the northern right whale. The northern right whale in the Pacific is recognized as a distinct species from the northern right whale in the Atlantic. The right whale in the Pacific is far and away the most endangered large whale in the world with a probable basin-wide population of less than 100. Drift gillnet fisheries in the Atlantic were eliminated in part because of their impact on the right whale. The drift gillnet fishery in the Pacific should be similarly eliminated. The Council and NMFS cannot meet the ESA's mandate to ensure

that the FMP is not jeopardizing the northern right whale by allowing drift nets drift nets to operate in the range of this species. The lack of observations of northern right whales entangled in this fishery does not indicate that no entanglements are likely to occur, rather it is reflective of the extremely reduced population size of the species. In the Hawaiian HMS FMP the FWS calculated likely take of the endangered short-tailed albatross even though no actual take was observed. This FMP must do likewise for the northern right whale rather than assume that none occurs or is likely to occur. The DEIS/FMP also fails to analyze the cumulative effects of all actions in the Pacific that are likely adversely impacting this highly imperiled species

The DEIS is similarly inadequate in its analysis of the impacts of the FMP on the short-tailed albatross. There is little analysis of the impacts of the proposed FMP fisheries much less an analysis of the cumulative effects of the proposed FMP fisheries combined with other fisheries operating in the species' range. Without such analysis, the Council and NMFS have failed to meet the requirement to ensure no jeopardy to the species.

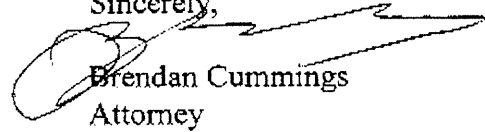
The FMP/DEIS treatment of sea turtles runs afoul of the procedural mandates of NEPA and the Magnuson Act as well as the substantive mandates of the ESA, the Magnuson act, and the Inter-American Convention for the Protection and Conservation of Sea Turtles. Again, there is inadequate analysis of the cumulative effects of FMP bycatch combined with that from other U.S. and international fisheries. With the leatherback in particular, the species is in such rapid decline that any mortality "appreciably reduces the likelihood of survival and recovery" of the species and therefore is in violation of the ESA. Approval of the drift gillnet fishery and any longline fishery as part of the final FMP would result in take above this jeopardy threshold and would therefore be unlawful.

The fisheries proposed by the FMP also violate the MMPA. The MMPA contains the unambiguous mandate that all U.S. fisheries "shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after the date of enactment of this section." 16 U.S. C. § 1387(b)(1). The seven year deadline for reaching this zero mortality rate goal came and went on April 30, 2001. Neither the drift gillnet fishery nor the currently operating high seas longline fishery have met this substantive goal and are therefore in violation of the MMPA. If the FMP approves and adopts these fisheries (or a longline fishery within the EEZ) the Council and NMFS will also be in violation of the MMPA. While the take reduction plan for the drift gillnet fishery has arguably reduced bycatch for some species of marine mammals, it has not reduced such bycatch to "insignificant levels approaching a zero mortality and serious injury rate" and is therefore inadequate. The FMP contains no direction as to how these fisheries will be brought into compliance with the law and the DEIS provides no analysis of these impacts.

The FMP also violates the MBTA. The Department of Interior recently issued a Solicitor's Opinion that the MBTA applies to U.S. vessels fishing extraterritorially and to all vessels in the EEZ. The D.C. Circuit Court of Appeals also has recently ruled that the MBTA applies to federal agencies. Various fisheries proposed in the FMP are known killers of migratory birds. Longline fisheries in particular kill numerous albatrosses and fulmars. None of these fisheries currently have permits pursuant to the MBTA. If the FMP approves these fisheries without MBTA permits the Council and NMFS will be in violation of the MBTA. In addition to the unlawful nature of the fisheries the FMP proposes to authorize, the DEIS inadequately analyzes impacts to seabird from the fisheries.

In sum, the Center for Biological Diversity and the Turtle Island Restoration Network are opposed to any alternative that does not provide the protections to sea turtles, marine mammals and sea birds to the extent required by science and mandated by law. We believe that the approval of an FMP that allows the continuation of drift gillnetting and provides for longline fishing (either within or outside of the EEZ) cannot meet the requirements of the ESA, MMPA and MBTA.

Sincerely,

A handwritten signature in black ink, appearing to read "Brendan Cummings", is written over the printed name. The signature is stylized with a large, looping initial "B".

Brendan Cummings  
Attorney

March 1, 2002

Don McIsaac  
Executive Director  
Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, OR 97201

MAR 01 2002

Dear Dr. McIsaac,

I support efforts to improve protection for migrating fish off the Pacific coast, and I specifically urge you to adopt the proposed management measures in the highly migratory species fisheries management plan at your March meeting. These measures are the minimum needed to help keep these fish populations healthy and ensure the survival of seabirds, marine mammals, and turtles.

In particular, I support prohibiting longlines in the "exclusive economic zone" within 200 miles of shore and enacting strict guidelines, including 100 percent observer coverage, for any experimental longlining programs. The council should also adopt the conservative harvest guidelines and control rules for sharks, and advocate for similar measures with other fishery management councils and in international forums.

Please take these important steps \*now,\* while these fish and other marine life still have a chance to remain healthy.

Sincerely,

Jennifer Gale  
pob 1265  
Gualala, CA 95445  
USA

***Between February 22, 2002 and March 5, 2002, 769 copies of this e-mail/fax were received.***

2/27/2002

Via Fax 503-326-6831

The Honorable Donald McIsaac  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220

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MAR 05 2002

PFMC

Dear Dr. McIsaac:

I value the fish in our Pacific waters and strongly urge the Council to adopt the Draft Fishery Management Plan for Highly Migratory Species at the March 2002 Pacific Council meeting. The management measures included in the plan are the minimum needed to protect the future of tunas, billfish, and sharks in the Pacific.

Among the most important elements of the draft plan is the proposed prohibition on destructive longline gear in U.S. Pacific waters. As you know, this gear is already prohibited in the waters off of California and Washington, and it should be banned coastwide. I strongly support this alternative as a necessary means to prevent indiscriminate killing of protected sea turtles, seabirds, and marine mammals, as well as fish. Because bycatch?the catching and discarding of undersized and non-targeted species?contributes to waste and raises mortality levels in nearly all fisheries, the plan should also include a comprehensive bycatch reduction plan for all fishing gears.

Given our lack of knowledge about the fisheries and biology of the species included in the plan, I also advocate establishing precautionary catch limits to prevent overfishing of these fish, as has occurred else in the U.S. To ensure that we can determine the efficacy of the proposed regulations, the Council should develop a detailed strategy for increased monitoring of the fishery.

It's hard to imagine the oceans without giant sharks and leaping billfish. The Council has the opportunity, and responsibility, to take action NOW to ensure that future generations will be able to enjoy these magnificent creatures.

Thank you for considering my comments.

Sincerely,

Dana Wullenwaber  
705 Florence Street  
Redding, CA 96001-1236

*Between February 22, 2002 and March 5, 2002, 37 copies of this fax were received.*



National Audubon Society



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MAR 6 2002

PFMC

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1 March 2002

Dr. Rod McInnis  
Acting Regional Administrator  
U.S. National Marine Fisheries Service  
Southwest Region  
501 W. Ocean Blvd., Suite 4200  
Long Beach, CA 90802-4213

Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

Dear Dr. McInnis and Dr. McIsaac,

**Comments on Draft Fishery Management Plan and EIS for U.S. West Coast Fisheries for Highly Migratory Species--Interactions between seabirds and longline vessels**

Thank you for the opportunity to comment on the draft Fishery Management Plan and Environmental Impact Statement for US West Coast Fisheries for Highly Migratory Species (Draft FMP and EIS). The National Audubon Society's Living Oceans Program offers the following comments on the Draft FMP and EIS related to seabird mortality in U.S. West coast longline fisheries. The Living Oceans Program will be submitting a separate letter with broader comments. The Pacific Fishery Management Council and National Marine Fisheries Service are to be commended for taking substantive actions to address the mortality of seabirds in U.S. west coast-based longline fisheries.

The Draft FMP and EIS explains that the Pacific Fishery Management Council is planning to adopt the following measures to avoid and minimize the mortality of seabirds in U.S. west coast-based longline fisheries:

- a. Prohibit pelagic longlining in the US EEZ off of west coast states. (Pelagic longline gear is currently prohibited in the US EEZ off California and Washington. Oregon permits pelagic longlining outside of 25nm for swordfish and blue sharks as a developmental fishery, however, negligible landings have occurred in this fishery to date);
- b. Prohibit shallow-set pelagic longlining to target swordfish when fishing north of the equator;
- c. Prohibit longline fishing south of the Hawaiian Islands and north of the equator, between 145° and 180° W longitude, in April and May;
- d. Prohibit longline vessels from possessing light sticks;
- e. Require vessel operators to attend an annual protected species workshop;
- f. Require compliance with specified measures to properly handle and release seabirds caught by longline vessels;
- g. Require the use of thawed, blue-dyed bait according to NMFS specifications when fishing north of 23° N latitude;
- h. Require compliance with NMFS specifications for strategic offal discharge when fishing north of 23° N latitude;
- i. Require employment of a line-setting machine and weighted branch lines, in accordance with NMFS specifications, when fishing north of 23° N latitude; and

- j. Permit basket-style longline gear as an alternative to employing a line-setting machine with weighted branch lines when fishing north of 23° N latitude (the Draft FMP and EIS did not mention this measure, however it is part of the 10 December 2001 Federal Register Notice, which extended the expiration date of the NMFS emergency interim rule on Hawaii-based longline fisheries. Currently only one Hawaii-based vessel uses this gear type).

In light of the changes to the Hawaii longline fishery as a result of the US National Marine Fisheries Service's extended emergency interim rule (10 December 2001, FR 66(237): 63630-2), the US National Marine Fisheries Service has reinitiated consultation with the US Fish and Wildlife Service to amend the Biological Opinion for the effects of the Hawaii-based longline fleet on the short-tailed albatross, however the US Fish and Wildlife Service does not expect to significantly change the Biological Opinion's terms and conditions.

In sum, the Draft FMP and EIS proposes to adopt seabird avoidance measures currently in place to control bycatch of sea turtles and seabirds for vessels registered for use under a Hawaii longline limited entry permit, and to prohibit pelagic longline fishing in the US EEZ off of west coast states. The National Audubon Society's Living Oceans Program believes that these measures will not adequately avoid and minimize adverse effects on seabirds, and recommends that the Draft FMP and EIS be amended as follows in order to effectively avoid and minimize significant adverse impacts to seabirds from interactions with the US west coast longline fisheries:

- (a) Adopt performance standards, such as setting species-specific thresholds for seabird bycatch in US west coast longline fisheries and in combined US North Pacific Ocean longline fisheries. Gradually decrease thresholds to minimize seabird mortality to encourage improvements in seabird avoidance technology and compliance. Require employment of additional seabird deterrent measures if annual thresholds are exceeded for non-federally listed endangered species;
- (b) Fund requisite research to establish empirically-based thresholds to ensure that seabird bycatch does not adversely effect seabird populations or species;
- (c) Prescribe seabird deterrent measures;
- (d) Prohibit discharge of spent bait and offal during setting and hauling, and require hooks to be removed from residual bait and offal before discharging at sea;
- (e) Conduct research to identify effective fixed gear seabird avoidance methods (e.g., underwater setting techniques and weighted branchlines) that enable longline fisheries to meet performance standards (thresholds or bycatch rates), minimize seabird mortality, do not require active participation by crew to employ and do not disrupt the crew's longstanding fishing practices, are enforceable, promote voluntary compliance, and do not reduce target catch or increase bycatch of other non-target species;
- (f) Implement other provisions of the US National Plan of Action, including providing adequate onboard observer coverage;
- (g) The National Marine Fisheries Service should initiate formal Endangered Species Act §7 consultation with the US Fish and Wildlife Service to assess the effects of the US west coast longline fishery on the federally listed endangered short tailed albatross, estimate the level of incidental take, identify reasonable and prudent measures, and specify non-discretionary terms and conditions to minimize the adverse impact on the short tailed albatross;
- (h) Manage the cumulative effects of individual adverse impacts to seabirds; and
- (i) Clarify MBTA implications for US longline fisheries.

I offer the following detailed comments regarding managing seabird mortality in US west coast longline fisheries to support the above list of recommendations.

**1. Adopt performance standards to evaluate regulation effectiveness:** Managers should have a means to evaluate the effectiveness of US west coast longline fisheries regulations promulgated to minimize the mortality of seabirds. The Draft FMP and EIS does not recommend measurable performance standards for US west coast longline fisheries seabird avoidance measures to provide managers with a basis for assessing if the regulations create sustainable seabird impacts and minimize seabird mortality. The two goals of seabird regulations should be to (a) prevent seabird mortality in longline fisheries from having an adverse effect on seabird populations, and (b) avoid and minimize

seabird mortality to the maximum extent practicable. Australia employs a target seabird bycatch rate as their performance standard. I do not recommend this approach because, unless fishing effort is capped and bycatch rates are set for each affected seabird species, this tool will not directly manage total seabird mortality and may not allow managers to ensure that seabird mortality levels are sustainable for all affected species. For instance, attaining a target bycatch rate that equates to a 90 percent reduction in seabird bycatch in US west coast longline fisheries might be achievable, but might not decrease bycatch of a particular seabird species or population, and if US west coast-based longline fishing effort increases, total seabird mortality may increase despite the lowered bycatch rate.

If adequate seabird population data were available, the preferred performance standard would be empirically-based thresholds specifying maximum allowable levels of mortality of specific seabird populations and species, established to ensure that seabird bycatch in US west coast longline fisheries do not adversely affect populations and species. In the absence of sufficient understanding of seabird populations, New Zealand is proposing to set annual maximum catch limits for seabird species, based initially on current fishery capture levels. Limits will be gradually lowered to continually decrease seabird bycatch. Known effective and practicable seabird avoidance measures will be required. If a bycatch limit is exceeded, the government will require an additional seabird avoidance measure.

In the absence of adequate seabird population data excluding the short-tailed albatross, I recommend that the U.S. adopt the New Zealand model for US west coast longline fisheries. This approach provides a performance standard that is measurable and can be monitored, provides industry with an incentive to find and employ effective solutions, and encourages industry to find ways to reduce seabird bycatch if they wish to increase fishing effort and remain within established limits. Thresholds would not be implemented as a quota, as efforts would be made to minimize seabird mortality by gradually reducing the threshold and by requiring employment of known effective avoidance measures. Establishing thresholds and making gradual reductions will need to account for the significant inter-annual variation in seabird presence around fishing vessels, attacks on baits, and bycatch, as demonstrated in Melvin et al.'s research.

Adequate evaluation of the effectiveness of US west coast longline fisheries' seabird regulations against the proposed performance standard will require accurate observer program data to estimate if established thresholds are being exceeded.

However, evaluating the effectiveness of specific seabird avoidance measures will either require multiple-year data sets from an observer program or results from directed research because there are numerous confounding factors that effect seabird bycatch rates. For example, the U.S. National Marine Fisheries Service reports that there has not been a large decrease in seabird bycatch rates in Alaska-based groundfish longline fisheries since the adoption of seabird avoidance regulations, but is unable to determine the cause for this lack of a large decrease. Without knowing if the changes in bycatch rates are statistically significant, it is still clear that there has not been a significant decrease in seabird mortality rates as was hoped would be the result of implementation of the 1997 seabird avoidance regulations. It is unclear if this is a result of ineffective regulations, due perhaps to ineffective mitigation measures, ineffective employment of required measures, inadequate surveillance and enforcement, habituation of seabirds to employed measures, temporal changes in oceanographic conditions and concomitant changes in seabird behavior, or other confounding factors. The Melvin et al. study found that there were significant differences (up to a threefold difference) in catch of seabirds in controls between years, indicating that inter-annual variation is a large confounding factor, making assessments of changes in seabird bycatch rates over short time periods a poor indicator of the effectiveness of specific seabird avoidance measures. Hence, evaluating the effectiveness of specific seabird deterrents will require either directed research or multiple year data sets from observer programs.

At a minimum, the Draft FMP and EIS would be improved if amended to include in the alternatives analysis a review of other longline fishing nations' regulatory frameworks to manage seabird and longline interactions.

**2. Conduct population research:** Prioritize research to produce requisite information for managers to establish population-specific thresholds to ensure that seabird bycatch in US west coast longline longline fisheries, and cumulative from all US North Pacific Ocean longline fisheries, does not adversely effect seabird populations or species.



**3. Prescribe seabird deterrent measures:** As proposed in the Draft FMP and EIS, as an interim measure, until results of research on seabird avoidance measures are obtained, prescribe the employment of seabird deterrent measures thought to be effective in the Hawaii swordfish and tuna longline fisheries, which operate in the same fishing grounds as the US west coast longline fleet.

Once results of research on the effectiveness of seabird mitigation measures are obtained in US west coast longline fisheries, in order to minimize seabird mortality, seabird avoidance measures that have been shown to effectively reduce seabird mortality and that are practicable (they can be feasibly employed by crew, can be designed to work in the entire fleet, are affordable, are safe for the crew to operate, and do not reduce target catch or increase bycatch of other species) should be required.

**4. Proscribe offal discharge during setting and hauling:** Prohibit the discharge of spent bait and offal during setting and hauling to avoid and minimize seabird bycatch. There are mixed evaluations of the effectiveness of strategic offal discharge. While results of research on the short-term effectiveness of strategic offal discharge, as conducted by Garcia and Associates for the Western Pacific Regional Fishery Management Council, may show reduced seabird interactions after offal is thrown overboard to distract birds from baited hooks, the best available information indicates that, in the long-term, this measure likely reinforces the association that birds make that longline boats are a source of food. For instance, Commission for the Conservation of Antarctic Marine Living Resources studies have shown that vessels consistently discharging offal attract larger numbers of birds to the vessels and likely creates increased seabird bycatch rates. Also, a high proportion of bird specimens killed in New Zealand fisheries, studied in a 5-year autopsy program, were found to contain fisheries offal waste and discards, suggesting a need to investigate mitigation measures for waste disposal as a means of reducing seabird bycatch. If offal must be discharged at sea, then a single discharge event at night, not during setting or hauling, with all hooks removed from bait and offal, is preferable.

**5. Research fixed gear seabird avoidance measures:** Managers and stakeholders should support research to identify effective fixed gear seabird avoidance methods (e.g., underwater setting techniques and weighted branchlines) that enable longline fisheries to meet performance standards (thresholds or bycatch rates), minimize seabird mortality, do not require active participation by crew to employ and do not disrupt the crew's longstanding fishing practices, are enforceable, promote voluntary compliance and thus reduce the need for enforcement and oversight, and do not reduce target catch or increase bycatch of other non-target species. Enforcement is significantly less feasible and crew compliance is likely not as high for operational measures, seabird avoidance measures that require the crew to spend time and energy and change their behavior and habits to employ (e.g., tori line and other towed deterrents). In other words, the crew is more likely to effectively deploy seabird avoidance measures that are not difficult or time consuming to operate and allow them to continue their traditional fishing practices, and voluntary compliance with regulations requiring seabird avoidance measures will be highest for such fixed gear measures.

**6. Implement the US National Plan of Action, including providing adequate observer coverage:** The United Nations Food and Agriculture Organization's International Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries and the U.S. National Plan of Action -- Seabirds both call for data collection programs to collect reliable data to determine the incidental catch of seabirds in longline fisheries and the effectiveness of mitigation measures. The U.S. Plan specifically calls for an expansion of the National Marine Fisheries Service Observer Program to include detailed data on seabird interactions. Furthermore, the U.S. Fish and Wildlife Service, in their 1998 Pacific halibut biological opinion, states that they strongly discourage the use of self-reporting of short-tailed albatross interactions as a sole method for monitoring the fishery, and strongly encourages the use of onboard observers. Consistent with this international and national guidance, the government should establish an observer program for the US west coast longline fishery. The government should require the level of onboard observer coverage to enable collection of statistically reliable data that leaves little uncertainty regarding the rate of interactions with seabirds. Observer coverage at a level that generates point estimates with small confidence intervals, which could be a requirement of a U.S. Fish and Wildlife Service short-tailed albatross Biological Opinion, will provide accurate data to help managers determine the effectiveness of seabird regulations and required seabird deterrent measures. Technological monitoring alternatives,

such as video systems, may provide a cost-effective and viable replacement for human at-sea observers, especially for smaller vessels that may not be capable of accommodating onboard observers.

The Biological Opinion of the US Fish and Wildlife Service for the effects of the Hawaii-based longline fleet on the short-tailed albatross includes provisions for the level of onboard observer coverage, calls for an observer whose primary duty will be to observe short-tailed albatross and other endangered species interactions during setting and hauling on a specified percentage of longline trips, and includes other provisions. The provisions of this Biological Opinion may change as a result of the current consultation reinitiation. It is unclear if the Draft FMP and EIS proposes to adopt these observer coverage provisions.

**7. Short tailed albatross biological opinion:** The National Marine Fisheries Service should initiate formal Endangered Species Act §7 consultation with the US Fish and Wildlife Service to assess the effects of the US west coast longline fishery on the federally listed endangered short tailed albatross, estimate the level of incidental take, identify reasonable and prudent measures, and specify non-discretionary terms and conditions to minimize the adverse impact on the short tailed albatross. The incidental take statement will serve as a performance standard, as defined in comment #1 above, for the US west coast longline fishery for interactions with the short-tailed albatross, such that if the US Fish and Wildlife Service's threshold for the number of short-tailed albatrosses permitted to be taken in the fishery is exceeded, consultation will be required to be reinitiated and more conservative terms and conditions might be deemed necessary.

The Draft FMP and EIS mentions a 6 July 2000 notification of intent to file a lawsuit against the National Marine Fisheries Service over Endangered Species Act violations. Section 6.1.2 would be improved if it is amended to provide the status of this lawsuit.

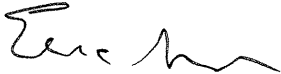
**8. Consider cumulative effects on seabirds:** The cumulative effects analysis contained in section 9.5 is inadequate and should be amended to include a comprehensive discussion of the contribution of the US west coast longline fisheries' contribution to the cumulative adverse effects to North Pacific seabirds. The US west coast longline fisheries likely contributes to cumulative anthropogenic sources of mortality of seabirds that combined may threaten the sustainability of some seabird populations and species. The cumulative effects on the black-footed and Laysan albatrosses in particular, and other seabird species killed in US west coast longline fisheries, from interactions with fisheries, climate change, pollution, and the myriad of additional causes of mortality, may be significant. For instance, available information indicates that anthropogenic sources of mortality of the black-footed albatross results in a significant adverse cumulative effect. Based on available information and numerous assumptions, it is estimated that the total albatross bycatch in all pelagic longline fisheries operating in the North Pacific Ocean is roughly 35,000 per year. Currently there are no estimates available for total albatross bycatch in North Pacific demersal longline fisheries. Population modeling experiments indicate that, due in part to interactions with longline vessels, the current mortality rates of juvenile black-footed albatrosses likely exceed that required to maintain stable populations. The mortality of this species in US west coast longline fisheries contributes to this cumulative significant adverse effect. Another conclusion from the modeling exercises is that the black-footed albatross can withstand no more than a loss of 10,000 birds per year to all mortality sources (combined natural and anthropogenic sources) for the population to be stable. In summary, estimated bycatch rates most likely justify the concern that combined mortality in North Pacific longline fisheries threatens the sustainability of black-footed albatrosses. Cumulative adverse effects may be significant for additional seabird species that interact with US west coast longline fisheries, because, as is expected of long-lived species with low reproductive rates, albatrosses and other pelagic seabirds are particularly vulnerable to changes in survival rates. A consideration of the cumulative effects from all sources of seabird mortality supports establishing seabird bycatch limits as a performance standard to sustainably manage US west coast longline fisheries.

**9. Clarify MBTA implications for US longline fisheries:** The Draft FMP and EIS is ambiguous regarding the implications of the Migratory Bird Treaty Act over management of interactions between seabirds and US longline fisheries. Sections 6.1.3 and section 10.9 could be improved if the management implications of the MBTA are clarified. How do the Department of Commerce and Department of the Interior interpret the jurisdiction of the Act? The description in section 10.9 is unclear, first stating that the, "MBTA prohibits, through criminal sanctions, the taking...etc., of birds protected by

the," Act, and then stating that the Draft FMP attempts to minimize the taking of migratory birds. Does the MBTA prohibit the taking of covered birds, or as the FMP proposes, allow for the minimization of take?

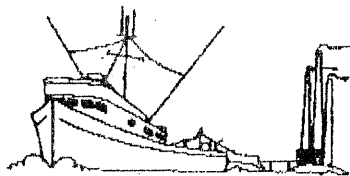
Thank you again for the opportunity to comment on proposed seabird avoidance measures for US west coast longline fisheries included in the Draft Fishery Management Plan and Environmental Impact Statement for US West Coast Fisheries for Highly Migratory Species.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Gilman", with a stylized flourish at the end.

Eric Gilman

C: Kim Rivera, National Seabird Coordinator, US National Marine Fisheries Service  
Ann Badgley, Regional Director, US Fish and Wildlife Service  
Stanley Senner, Audubon Alaska  
Daniel Taylor, Audubon California



PO Box 44  
Moss Landing, CA 95039

# Fishermen's Association of Moss Landing

March 5, 2002

Pacific Fishery Management Council  
2130 SW Fifth Avenue, Suite 224  
Portland, Oregon 97201-4934

RECEIVED

MAR 06 2002

PFMC

Dear Council Members:

I would like to comment on the necessity of FMP regulation:

National Standards. The FMP must be consistent with the ten (10) national standards for fishery conservation and management set forth in the Magnuson Act. 16 U.S.C. 1851 National Standard seven (7) states that "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. " 16 U.S.C. 1851 (a) (7)

Under the Magnuson Act, the Secretary of Commerce must establish advisory guidelines based on the national standards "to assist the development of fishery management plans." 16 U.S.C. 1851. The criteria in deciding whether a fishery needs management through regulations implementing an FMP is set forth in 50 CFR 600.340(b) (2). The FMP is inconsistent with national standard seven (7) of the Magnuson Act in that the FMP is unnecessary for the regulation of two commercial west coast fisheries primarily engaged in fishing the tunas and using the fishing gear described in FMP, at Ch. Pg. 3, as tuna (Albacore) surface hook and line and tuna purse seine, herein referred to as the "two fisheries." The reasons in support of this position, is set forth as follows: An Existing Tuna Regulatory Regime. These "two fisheries" are already adequately managed by federal regulations that implement the (Pacific Tuna Act). The legislative and regulatory history of the Pacific Tuna Act shows the extent to which the two fisheries are subject to a very comprehensive conservation and management regime.<sup>1</sup>

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<sup>1</sup> For instance: On March 30, 2001, NMFS published a proposed rule (66 FR 17387) to implement two recommendations that were agreed to by the IATTC and approved by the Department of State in accordance with the Pacific Tuna Act. "The first recommendation would establish measures implementing a 1-year pilot program to reduce bycatch in the tuna purse seine fisheries from members in the IATTC. The second would require commercial fishermen who fish in the convention area (set forth 50 CFR part 300, subpart C) to report certain information about their vessels to a regional vessel register being developed by the IATTC." (66 FR 20129, April 19, 2001)

.....  
*Fishermen feed the world!*

March 6, 2002

Page 2

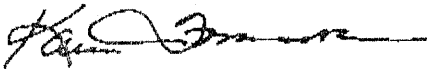
A history of 30 plus years of what, when where and how conservation and management measures were and are presently applicable to these two fisheries is available from the IATTC, the Federal Register, and the Code of Federal Regulations. This history requires a finding that there is no necessity for a duplicative or additional federal management under a FMP for these two fisheries.

Additional FMP Regulation Not Needed for the Two Fisheries.

Tropical tunas migrating within the EEZ and harvested by these two fisheries are not significantly abundant and available within the EEZ to support a need for PFMC, scientific investigations and recommendations in addition to those conducted by the IATTC and required of the Secretary of Commerce are under the Pacific Tuna Act.<sup>2</sup>

These observations indicate U.S. tuna fisheries, regarding the H.M.S. FMP, point to duplicating regulation of tunas to vessels operating in the EEZ at a disadvantage. Albeit conservation is the goal, major H. M. S. producing nations who take the majority of the fish are not in agreement with the UNIA. U.S. fishermen will be disadvantaged.

Thank you,  
Sincerely,



Kathy Fosmark  
Vice president

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<sup>2</sup> The Secretary can request the Scientific Advisory Subcommittees to the U.S. Commissioners to the IATTC to perform a number of functions, including review data, make recommendations on research needs, scientific reviews and assessments, and provide advise on "(1) the conservation of ecosystems; (ii) the sustainable uses of living marine resources related to the tuna fishery in the EPO, and (iii) the long term conservation and management of stocks of living marine resources in the EPO." 16 U.S.C. 953.

COMMENTS TO AGENDA ITEM G.2.b., HIGHLY MIGRATORY SPECIES MANAGEMENT (HMS), PRESENTED TO THE PACIFIC FISHERIES MANAGEMENT COUNCIL (PFMC) BY ORLANDO AMOROSO, PRESIDENT OF THE SOUTHERN CALIFORNIA COMMERCIAL FISHING ASSOCIATION (SCCFA), ALSO KNOWN AS THE SAN PEDRO PURSE SEINE VESSEL ASSOCIATION.

Mr. Chairman and Members of the PFMC:

I will be brief and to the point. Thank you for the opportunity to address you on behalf of the twenty plus long line vessel owners that are presently operating out of the port of Los Angeles.

As you know, I am the president of the SCCFA, a San Pedro based organization that represents thirty purse seine vessel owners and a member of the Coastal Pelagic Species (CPS) Advisory Sub-panel.

Less than a month ago, I was contacted by a group of long line vessel owners and asked to give advice on "how they could best influence the HMS Fishery Management Plan (FMP), now in draft form. Although their concerns falls outside the interests of my association, I agreed to conduct a cursory analysis and to get back to them.

I was struck by the apparent lack of any factors and/or analysis that would support the recommendations and the preferred position taken by the plan. More specifically, the plan lacks a "Regulatory Flexible Analysis and a Regulatory Impact Review".

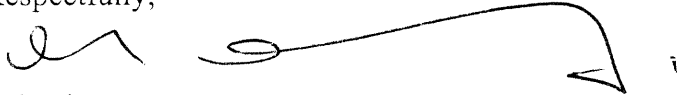
It has become clear to me that the public at large and the HMS advisory body have limited knowledge of this fishery, the face behind the industry, and their impact on state and national economy. Let me highlight what I have learned:

- All the operators and owners are US citizens of Vietnamese origin.
- All of their vessels are U.S documented.
- All of their vessels comply with Coast Guard Fishing Safety Regulations and are suited to have observers aboard.
- Harvesting is already being done in the U.S. Exclusive Economic Zone (EEZ).
- Each vessel is a legitimate and thriving small business making a significant contribution to the local economy and to the tax revenue.
- More significantly, these vessels are a small group of twenty (vessels) out of more than five thousand long liners from Pacific Rim countries fishing outside of the EEZ.

As I am addressing you, these vessel owners are forming a corporation that will be based in San Pedro. Their attorney will soon make available to the council the particulars of this new association.

Having reviewed the draft of the HMS FMP, I cannot but conclude that the long line fishery has not been adequately addressed in the planning process and I urge the council to take the necessary action to correct this deficiency. It is my opinion that the plan is not ready for implementation and should not be adopted in its present form.

Respectfully,

A handwritten signature in black ink, consisting of a stylized 'O' followed by a long horizontal stroke that curves upwards and ends in a small arrowhead pointing to the right.

Orlando Amoroso.

HMS FISHERY MANAGEMENT PLAN PUBLIC HEARING SUMMARY

Date:	January 29, 2002	Hearing Officer:	Dr. Hans Radtke
Location:	Astoria, OR  Red Lion Inn Pacific Room 400 Industry Astoria, OR 97103	Other Council Members:	
Attendance:	7	NMFS:	
Testifying:	4	HMSPTD:	Mr. Jean McCrae
		Council Staff:	Mr. Dan Waldeck
<u>Organizations Represented:</u> <ul style="list-style-type: none"><li>• United Anglers of Southern California</li><li>• U.S. Coast Guard</li><li>• Washington Trollers Association</li></ul>			

**Synopsis of Testimony**

Of the 4 people testifying, generally:

- 2 represented the recreational fishery.
- 2 represented the commercial fishery.

**Commercial Comments**

One speaker remarked about the proposed management cycle, commercial permits, and drift gillnet closures. He suggested the Council refrain from HMS management decisions during the July-September period, as this is the peak of the West Coast-based albacore fishery. Relative to commercial fishing permits, he suggested permits be issued to a person or entity, because if limited entry is developed it will be necessary to tie catch history to an individual, which reduces problems in identifying who can claim past participation during the qualifying period. Also relative to permits, he questioned whether Canadian albacore fishers in U.S. waters should be required to hold U.S. HMS permits. He contended that if U.S. HMS fishers are required to hold permits, Canadian fishers in U.S. waters should also be required to hold permits. Relative to the proposed drift gillnet closed area, he asked for clarification as to the bounds of the closed area. He concluded by complimenting the Council process.

The second speaker was a drift gillnet fisherman who commented on the proposed management action that would close waters north of 45° N latitude to drift gillnet gear. He is one of a small number of fishermen who fish with drift gillnet gear in this area. He opposes the proposed closure, noting the area from 36° N latitude to 45° N latitude is already closed to drift gillnet gear. His fishery takes less than 100,000 pounds of swordfish and thresher shark per year and the shark resource is apparently healthy. He encouraged the use of bycatch avoidance devices rather than a closed area.

**Recreational Comments**

A charter boat operator noted his preference for logbooks rather than observers. However, he would support both observers and logbooks if all operators were affected equally.

The second recreational representative noted strong interest in the FMP by recreational anglers in Oregon and Washington. He expressed interest in including a harvest guideline for bluefin tuna.

**Number of Written Statements Submitted at the Hearing = 1**



Dr. Don McIsaac, Executive Director  
PFMC  
7700 NE Ambassador Place  
Portland, OR 97220

1/28/02

Douglas Fricke  
Commercial At-Large HMS A/P  
110 Valley Road  
Hoquiam, WA 98550

Subject: Testimony to 1/28/02 PFMC Hearing on HMS at Olympia, Wa.

I do have three short comments on the "Draft Fisheries Management Plan and ESI for U. S. West Coast Fisheries for Highly Migratory Species". However my main propose as the Northern at-large commercial representative to the PFMC HMS Advisory Panel is to listen to the comments of area industry individuals in order to relate their concerns to the PFMC through the HMS Advisory Panel.

My comments follow:

- Paragraph 8.3.5 Management Cycle - Please do not schedule any of the HMS decision making or review requirements during July through the end of September as that is the middle of the albacore tuna fishermen's season for the U. S. West Coast.
- Paragraph 8.5.1 Permits - There needs to be clarification that the HMS fishing vessel permit is issued to a person or entity that can retain a clear right to the catch history. If limited entry comes in the future, we need to avoid the problem of who can claim the catch history. Also, for the purpose of control and management, shouldn't there be a requirement for Canadian vessels to obtain a similar permit to fish albacore in the U.S. EEZ?
- Paragraph 8.5.4 Drift Gillnet Fishery Management Measures - there needs to be clarification of the new closures off of Washington and Oregon. The "proposed action" talks about new closures but there is no description of the closures.

I would like to conclude by complimenting the PFMC process for recognizing suggestions by industry in the past and correcting inaccuracies that were included in past draft documents.

HMS FISHERY MANAGEMENT PLAN PUBLIC HEARING SUMMARY

Date:	January 30, 2002	Hearing Officer:	Mr. Ralph Brown
Location:	Coos Bay, OR  Red Lion Hotel South Umpqua Room 1313 N Bayshore Drive Coos Bay, OR 97420	Other Council Members:	
Attendance:	26	NMFS:	
Testifying:	7	HMSPDT:	Ms. Jean McCrae
		Staff:	Mr. Kit Dahl
<u>Organizations Represented:</u> <ul style="list-style-type: none"><li>• United Anglers of Southern California</li><li>• Ocean Wildlife Campaign</li></ul>			

**Synopsis of Testimony**

Of the 7 people testifying, generally:

- 2 represented the recreational fishery
- 4 represented the commercial fishery
- 1 represented conservation groups

**Commercial Comments**

It was noted that foreign vessels should be regulated before U.S. vessels are. Foreign vessels compete with U.S. vessels during good fishing years. U.S. fishermen are over regulated and are being squeezed out by foreign competitors. It was suggested that, because albacore stocks are healthy and albacore trollers do not have bycatch impacts, the troll fishery did not need to be included in the FMP. There was strong opposition to new regulations.

One speaker stated the HMS Advisory Subpanel is not representative of fishermen.

One speaker noted concern about the March 9, 2000 control date. Albacore trolling is an intermittent fishery and some participants may not qualify.

Concern was expressed about the migration of Hawaii-based longliners to the West Coast.

Concern noted about a provision in the FMP that makes halibut and salmon prohibited species in the albacore fishery since many fishermen engage in mixed trips. (This was apparently a misunderstanding on FMP provisions in this regard.)

**Recreational Comments**

Concern was expressed the FMP does not take into account Oregon coast communities' special characteristics.

There was concern the FMP will prevent catching other species (halibut and salmon) during albacore trips.

One speaker stated that existing state regulations should be recognized in the plan; the plan should contain more information on the recreational fisheries; and the option that specifies a 14" stretched mesh

gillnet regulation should be adopted.

**Conservation Group Comments**

This speaker supported the prohibited species list in the FMP. He preferred Management Unit Species (MUS) Alternative 4, which includes sixgill shark. He stated his belief the FMP does not go far enough in monitoring and minimizing bycatch and stressed observers should be placed on vessels. He also believes the bycatch reduction plan in the FMP is inadequate.

The plan should also contain “target milestones” for each element.

He does not support the exempted fishery permit alternative, because it does not specify what fisheries will be exempted. Exploratory fishing should not be allowed under this exemption. Relative to exempted fishing, he prefers Alternative 1.

An informal question and answer period was held after the hearing concluded.

**Number of Written Statements Submitted at the Hearing = 1**

PFMC  
02/27/02

**Capt. Richard J. Oba**  
**Pacific Pioneer Charters**  
**PO Box 1266**  
**Winchester Bay, OR 97467-0813**  
**January 30, 2002**

Pacific Fishery Management Council  
7700 NE Ambassador Pl.  
Portland, OR

RE: Comments on the Highly Migratory Species Fisheries Management Plan

I am the owner/operator of the only HMS charter boat out of Winchester Bay, OR. I chose Winchester Bay to fish for albacore tuna and other HMS species as there were no charter boats to give the people of the South Central Oregon coast a chance to catch these fish. In my first year of operation I ran over a dozen 12 hr. trips for tuna. I averaged over six tuna per passenger and plan to expand my charter service in 2002. My passengers were mostly working class or retirees. As such they can not afford to go fishing lightly. They only go if there are fish to catch. I am concerned about several of the proposals in the FMP that would affect my business. As I am running only a six pack operation, several of the proposals work an undue hardship on my business. More management or added fees would only make it harder to make a living running a six pack operation. I want to provide my customers with the best experience fishing and not overcapitalize in a cattle boat to take dozens of anglers out. I would ask that the PFMC consider the nature of the Oregon coastal communities when they promulgate the FMP. We are small towns that depend on the day and overnight fleet out of our harbors. The one size fits all management plans will result in harming the economies of the coast.

Although I would like to comment on all the proposals, I have selected the ones that have a direct impact on my business.

8.3.4.2 I support the adoption of the HMS FMP with the point of concern mechanism. This provides means by which new information can be incorporated into the FMP. It also allows for action if there is a determination that overfishing is occurring.

8.3.5 I support the biennial management cycle. But I would add that the public review process occur in the Winter. Most of the people involved in the HMS fishery are out to sea during the Summer months and it would be difficult to get input with many participants at work.

8.4.1 I support alternative 2 to ban pelagic longline gear. Pelagic longline gear is currently the subject of legal action. Also under recreational gear, I would make a better definition of hook and line gear. Most recreational anglers call these non-reel lines attached to the boat; jig lines, meat lines or boat lines.

8.4.2 I support the no action alternative. I believe that having a quota for incidental catch merely makes catching fish illegally legal.

Page two, Comments on HMS FMP

8.43 I support Alternative 2. If we are trying to protect the fish with a EFH definition, then we should include meaningful EFH habitat.

8.4.4 Although I feel the same way about "bycatch" as I do "incidental catch" I strongly support catch and release for all participants in the fishery.

8.4.5 I support this proposal. This allows the PFMC to act to protect endangered species.

8.4.6 At this time I can not support an observer program on my boat. I am running a six pack operation and legally can not carry extra passengers. If I carried an observer, it would cost me a paying passenger and could mean the difference between making a living or losing money.

8.4.7 I support alternative 2 to protect the shark species. To ban participation in other legal fisheries would work an undue hardship on my business. The statement in the FMP does not mention Sebastes as an excluded fishery. Sebastes is also an overcapitalized and overfished fishery. Halibut and salmon should not be the only fisheries targeted for exclusion. Salmon and halibut have their own FMP's and are subject to state and international regulation already. There is no need to single out these two fisheries for inclusion in this FMP.

8.4.8 I support the proposal as written. Better data is needed to determine if the shark population is in trouble.

8.411 I support alternative 1. I believe that the PFMC should have oversight on Exempted Fishing Permits. These are merely a legal way to test illegal gear.

8.5.4 I oppose any form of drift gillnet fishing for HMS species. Although the proposal claims to adopt new closures off Oregon, it leaves the majority of the offshore waters off Oregon open to drift gillnets. The majority of Oregon HMS commercial fishermen are day or overnight boats. To allow drift gillnets off Oregon would impact the coastal fishing communities as most of the drift gillnet boats land their fish other than at the small local ports.

8.5.5 I strongly support the banning of longline gear. Longline gear has had a detrimental effect on oceanic wildlife and its use is currently the subject of litigation.

Thank You,

A handwritten signature in black ink, appearing to read 'Richard Oba', with a stylized flourish at the end.

Capt. Richard Oba  
50 ton USCG licensed master  
Owner/operator, SYDNEY MAE

**PROPOSED ACTIONS AND ALTERNATIVES IN THE DRAFT FMP FOR HIGHLY MIGRATORY SPECIES**

FMP Element	Proposed Action	Alternatives
1. Species in the management unit (Ch.3 Pg.2-5)	<u>Alternative 2</u> Tunas: albacore, bigeye, bluefin, yellowfin, skipjack Sharks: blue, bigeye thresher, common thresher, pelagic thresher, shortfin mako Others: dorado, striped marlin, swordfish	<u>Compared to proposed action</u> 1: Drop dorado. 3: Drop bigeye and pelagic thresher sharks. 4: Add sixgill shark. 5: Drop all sharks.
2. Monitored species (Ch.3 Pg.4,8)	Include species to be monitored, but not actively managed (see table Ch.3 Pg.8) and use SAFE process to monitor these species.	No alternatives presented.
3. Overfishing criteria (Ch.3 Pg.7-12)	Establish MSY and OY control rules; use derived OY for vulnerable species.	No alternatives presented.
4. SAFE Report (Ch.3 Pg.35-36)	Prepare annual stock assessment and fishery evaluation (SAFE) report.	No alternatives presented.
5. Management objectives (Ch.8 Pg.5-6)	Adopt 18 goals and objectives as listed in section 8.3.3.	No alternatives presented.
6. Framework procedures (Ch.8 Pg.6-10)	Adopt framework procedures with point-of-concern mechanism.	1: No framework procedures included. All changes would require plan amendments. 2: Adopt framework procedures without point-of-concern mechanism.
7. Management cycle (Ch.8 Pg.10-11)	Establish a biennial management cycle.	1: No cycle established. 2: Adopt an annual cycle. 3: Adopt a multi-year cycle.
8. Definition of legal gear (Ch.8 Pg.13-14)	Commercial: harpoon, surface hook and line, drift gillnet, purse seine, pelagic longline Recreational: rod and reel, spear, hook and line	1: No legal gears specified. 2: Pelagic longline would not be legal gear. Longline landings in west coast ports prohibited.
9. Drift gillnet mesh size restriction (Ch.8 Pg.13)	Preferred alternative not specified.	1: Minimum stretched mesh size of 14 inches. 2: No mesh size restriction.
10. Incidental catch allowance for non-HMS gears (Ch.8 Pg. 14)	Allow HMS landings in non-HMS fisheries, up to a maximum of 10-30 % of the total landing by weight. (Preferred allowance percentage not specified.)	1: No incidental landings by non-HMS gears would be allowed. 2: No incidental catch limits would be established. Any amount of HMS allowed.
11. Essential fish habitat (EFH) (Ch.8 Pg.14-15;Ch.4 Pg.30-32)	Adopt species-specific and life stage-specific definition of EFH as described in Chapter 4 and authorize the adoption of management measures to minimize adverse effects on EFH from fishing.	1: EFH would not be designated. 2: Adopt a broad designation which would apply to all management unit species collectively: all surface waters of the ocean in the EEZ down to 1000 m.
12. Bycatch (Ch.8 Pg.15-16)	Authorize future measures to be adopted to minimize bycatch; adopt a voluntary catch-and-release program for recreational	1: Do not adopt bycatch measures. 2: Do not adopt catch-and-release program.

FMP Element	Proposed Action	Alternatives
	HMS fisheries; and implement initial measures for pelagic longline, drift gillnet and purse seine fisheries (see specific fishery measures below).	3: Establish catch-and-release program for striped marlin only.
13. Protected Species (Ch.8 Pg.16-17)	Authorize adoption of future protected species conservation measures and implement initial measures for drift gillnet, pelagic longline and purse seine fisheries (see specific fishery measures below).	No measures would be implemented with FMP. NMFS would continue to promulgate such measures under separate authorities.
14. Observer authority (Ch.8 Pg. 17)	Authorize the Regional Administrator of NMFS to require commercial and charter vessels to carry observers when and if warranted.	The FMP would not contain authority to establish observer programs for HMS fisheries.
15. Prohibited species (Ch.8 Pg.17-18)	Prohibit retention of great white, basking and megamouth sharks; Pacific salmon; and Pacific halibut. (Retention of salmon and halibut with authorized gear during open seasons allowed.)	1: No species would be prohibited. 2: Prohibit retention of white, basking and megamouth sharks. 3: Prohibit retention of Pacific salmon and Pacific halibut.
16. Quotas or harvest guidelines (Ch.8 Pg.18-19)	Authorize establishment or modification of quotas or harvest guidelines and adopt initial harvest guidelines as follows:  common thresher shark      390-510 mt shortfin mako shark      200 mt	1: No quotas or harvest guidelines would be established initially. 2: Establish initial quotas or harvest guidelines for additional species.
17. Allocation (Ch.8 Pg.19-20)	Authorize establishment or modification of allocations among domestic HMS fisheries, but make no initial allocations.	Establish initial allocations (criteria and process needed).
18. Treaty Indian fishing (Ch.8 Pg.20-21)	Include a process to accommodate treaty fishing rights in the implementing regulations.	1: Do not establish a process to accommodate treaty Indian fishing rights. 2: Include a process in the FMP.
19. Exempted fishing permits (EFP) (Ch.8 Pg.21-22)	Do not specify EFP procedures and objectives in the FMP; defer to regulations at 50 CFR 600.745.	Adopt specific procedures and objectives for HMS EFPs in the FMP.
20. Procedures for reviewing state regulations for consistency (Ch.8 Pg.22)	Include procedures in FMP for determining consistency of state regulations with FMP.	No alternatives presented.
21. Permits (Ch.8 Pg.23-24)	Require federal permits for all commercial vessels harvesting HMS, with an endorsement for the gear used.	1: No new federal permits required. 2: Require commercial vessel permits with no gear endorsements. 3: Require commercial vessel permits for selected HMS fisheries only. 4: Require recreational vessel permits for HMS fisheries. 5: Require charter vessel permits for HMS fisheries. 6: Require a federal or state permit for recreational vessels.
22. Reporting requirements (Ch.8 Pg.24-25)	Require all commercial and charter HMS vessels to maintain and submit logbooks; eliminate the California far offshore fishery declarations requirement for the troll albacore fishery.	1: No new federal reporting requirements 2: Limit new federal logbook requirements to commercial vessels not covered under existing laws. 3: Eliminate far offshore declarations for all fisheries.
23. Prohibit sale (Ch.8 Pg.25-26)	Prohibit the sale of striped marlin.	Do not prohibit the sale of striped marlin.
24. Drift gillnet fishery management measures (Ch.8 Pg.26-27)	Adopt current federal restrictions promulgated under MMPA and ESA; adopt selected state regulations including time/area	1: Management would remain under current state and federal authorities.

FMP Element	Proposed Action	Alternatives
	closures; and adopt new closure in EEZ north of 45 ° N. lat.	2: Adopt only existing federal regulations. 3: Adopt additional state regulations. 4: Implement federal time/area closures in the biological opinion to protect turtles.
25. Pelagic longline fishery management measures (Ch.8 Pg.28-29)	Prohibit the use of pelagic longlines in the EEZ; allow landings of HMS caught with pelagic longlines outside the EEZ, and apply western Pacific management measures to protect turtles and birds.	<u>Inside EEZ</u> 1: Management would remain under current state and federal authorities. 2: Impose an indefinite moratorium on pelagic longlining with re-evaluation following completion of a bycatch reduction research program.. 3: Authorize a limited entry pelagic longline fishery for tunas and swordfish with effort and area restrictions to evaluate longlines as alternative to drift gillnets to reduce bycatch. 4: Prohibit pelagic longlining with re-evaluation following a tuna-swordfish bycatch experiment.  <u>Outside EEZ</u> 1: Management would remain under current state and federal authorities. 2: Adopt selected turtle and bird protective measures tailored to west coast fishery.
26. Purse seine fishery management measures (Ch.8 Pg.30)	Prohibit use of purse seines to harvest HMS in EEZ north of 44° N. lat.	1: Management would remain under current authorities. 2: Close the EEZ off Washington. 3: The entire EEZ would be open to purse seine fishing.

PFMC  
2/20/02



### HMS FISHERY MANAGEMENT PLAN PUBLIC HEARING SUMMARY

Date:	January 30, 2002	Hearing Officer:	Mr. Ralph Brown
Location:	Coos Bay, OR  Red Lion Hotel South Umpqua Room 1313 N Bayshore Drive Coos Bay, OR 97420	Other Council Members:	
Attendance:	26	NMFS:	
Testifying:	7	HMSPDT:	Ms. Jean McCrae
		Staff:	Mr. Kit Dahl
<u>Organizations Represented:</u> <ul style="list-style-type: none"><li>• United Anglers of Southern California</li><li>• Ocean Wildlife Campaign</li></ul>			

### Synopsis of Testimony

Of the 7 people testifying, generally:

- 2 represented the recreational fishery
- 4 represented the commercial fishery
- 1 represented conservation groups

### Commercial Comments

It was noted that foreign vessels should be regulated before U.S. vessels are. Foreign vessels compete with U.S. vessels during good fishing years. U.S. fishermen are over regulated and are being squeezed out by foreign competitors. It was suggested that, because albacore stocks are healthy and albacore trollers do not have bycatch impacts, the troll fishery did not need to be included in the FMP. There was strong opposition to new regulations.

One speaker stated the HMS Advisory Subpanel is not representative of fishermen.

One speaker noted concern about the March 9, 2000 control date. Albacore trolling is an intermittent fishery and some participants may not qualify.

Concern was expressed about the migration of Hawaii-based longliners to the West Coast.

Concern noted about a provision in the FMP that makes halibut and salmon prohibited species in the albacore fishery since many fishermen engage in mixed trips. (This was apparently a misunderstanding on FMP provisions in this regard.)

### Recreational Comments

Concern was expressed the FMP does not take into account Oregon coast communities' special characteristics.

There was concern the FMP will prevent catching other species (halibut and salmon) during albacore trips.

One speaker stated that existing state regulations should be recognized in the plan; the plan should contain more information on the recreational fisheries; and the option that specifies a 14" stretched mesh

gillnet regulation should be adopted.

**Conservation Group Comments**

This speaker supported the prohibited species list in the FMP. He preferred Management Unit Species (MUS) Alternative 4, which includes sixgill shark. He stated his belief the FMP does not go far enough in monitoring and minimizing bycatch and stressed observers should be placed on vessels. He also believes the bycatch reduction plan in the FMP is inadequate.

The plan should also contain “target milestones” for each element.

He does not support the exempted fishery permit alternative, because it does not specify what fisheries will be exempted. Exploratory fishing should not be allowed under this exemption. Relative to exempted fishing, he prefers Alternative 1.

An informal question and answer period was held after the hearing concluded.

**Number of Written Statements Submitted at the Hearing = 1**

PFMC  
02/27/02

Christine Ambrose  
P.O. Box 818, Arcata, CA 95518  
Phone: 707-822-1343, email: [nymph@humboldt1.com](mailto:nymph@humboldt1.com)

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January 31, 2002

Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

**Re:** Draft fishery management plan (FMP) for West Coast highly migratory species (HMS) fisheries.

Dear Council:

I support the proposed reductions on pelagic longline fisheries in US Pacific waters. Longlines are among the biggest culprits when it comes to bycatch. I do not support all the waste associated with pelagic longline fisheries, where half the catch is routinely thrown back to sea, unwanted or illegal, and usually dead. It is time this unnecessary waste is stopped.

I encourage the PFMC to adopt the following:

- **US unilateral action.**  
Some have argued that the US should not unilaterally try to manage fish that cross international boundaries without a Pacific-wide management regime because the fish we save will just be caught in other nation's waters. However, the US is mandated under the Magnuson-Stevens Act to manage fisheries in federal waters. US action could also serve to spearhead the formation of a basin-wide management plan.
- **Quotas for common thresher (390-510 mt) and shortfin mako (200 mt) sharks.**
- **Prohibition on the sale of striped marlin.**
- **Prohibition on the retention of white, basking and megamouth sharks.**

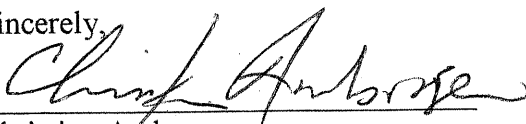
I also support the following:

- **Precautionary quotas.**  
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, especially for Pacific bluefin tuna and swordfish. These quotas could be set at historic or current catch rates to prevent vast fleet expansion.
- **Bycatch reduction measures.**  
Incorporate a more comprehensive bycatch reduction plan as mandated by National Standard #9.
- **Monitoring & observer coverage.**  
Encourage mandatory vessel monitoring systems (VMS) for the pelagic longline fishery to ensure they are fishing outside of US waters. The plan needs higher observer coverage to ensure compliance and to validate logbooks for increased confidence in catch data (which are used in stock assessments). The plan currently authorizes the Regional Administrator of the National Marine Fisheries Service to regulate the observer program but does not provide any details. A minimum coverage should be set (~10%).

Please send me an electronic (pdf format on CD) copy of the draft HMS FMP. *(she picked up a CD at the hearing)*

Thank you for the opportunity to comment.

Sincerely,

  
Christine Ambrose

HMS FISHERY MANAGEMENT PLAN PUBLIC HEARING SUMMARY

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An informal question and answer period was held after the hearing concluded.

**Number of Written Statements Submitted at the Hearing = 1**

PFMC  
02/27/02

Subj: **200 mile limit**  
Date: 2/1/02 5:26:28 AM Pacific Standard Time  
From: [bigjohn@cwnet.com](mailto:bigjohn@cwnet.com)  
To: [Pescaman@aol.com](mailto:Pescaman@aol.com)  
*Sent from the Internet (Details)*

John Wadden  
24954 State Hwy. 49  
Auburn, CA 95602

To: Pacific Fishery Management Council

I am opposed to any reduction to the 200 mile limit now in effect on longlineing and gill netting. My reasons are very simple, I do not want to see the rape of our albacore fishery that has just started to come back after so many years. We all know that with modern technology this type of fishing is too efficient and if allowed within our 200 mile limit it would devastate our fishery.  
Thank you, John

Subj: **pfmc Letter**  
Date: 2/1/02 8:42:09 AM Pacific Standard Time  
From: [dan.rmorrison@attbi.com](mailto:dan.rmorrison@attbi.com)  
To: [pescaman@aol.com](mailto:pescaman@aol.com)  
*Sent from the Internet (Details)*

Dear Sirs,

I'm writing in response to your proposed plan to allow Long lining and Gill netting for Albacore within the "200 Mile Limit" of the California coast. It is a well know fact that this type of indiscriminate "fishing" (for lack of a better term) does an enormous amount of damage to non targeted species of fish commonly referred to as "by-catch" or "incidental catch" by the commercial industry, not to mention Sharks, bird life, Whales, Dolphins or any other mammals that attempt to swim freely off of our coast.

As a longtime saltwater sport fisherman I am personally outraged that such a proposal would even be considered!

It is obvious to any reasonably intelligent person that this type of "fishing" is incredibly destructive and harmful in general to our sensitive oceanic environment, how many tons of "incidental catch" are killed, discarded and wasted on a yearly basis by these methods?? Are you going to stand up, look me in the eye and tell me that your data on these methods does not clearly point that out??

The ocean and it's inhabitants were put there for all of us to enjoy on an equal basis, not just so a select few may rape and pillage a resource at will only to cart off the "targeted" species to some high paying fish market in another country.

Other parts of the world have allowed these practices to all but destroy the fisheries that they once had, why do you think they come thousands of miles to the California coast to employ these ecologically unsound techniques?? Could it be that they have depleted the resources that they once had?? Maybe they just like our weather, it's not rocket science is it!

I urge you to not only do your job and protect our fragile fisheries but also to do the right thing, let your conscience be your guide, not political influence.

sincerely,

Dan Morrison  
976 Camino Dr.  
Santa Clara, CA. 95050

Subj: **PFMC Meeting**  
Date: 2/1/02 9:19:14 AM Pacific Standard Time  
From: [leslevi@earthlink.net](mailto:leslevi@earthlink.net)  
To: [pescaman@AOL.com](mailto:pescaman@AOL.com)  
*Sent from the Internet (Details)*

2/1/02

Hi Dave,

I was planning to attend the PFMC, 2/1/02, meeting but regrettably my presence will be necessary elsewhere. In that regard please express my opinion that the only place gillnets should presently be hanging is in museums so as to illustrate the tools we used to use to rape the environment. Further, please inform the committee that I am in full support of any and all of your ideas which will help to ensure the future of healthy fish populations along our central and northern California Coast.

Have a prosperous and productive evening.

Your friend,

Les Levi



Subj: **PFMC**  
Date: 1/31/02 11:34:40 AM Pacific Standard Time  
From: [dwlepenske@ucdavis.edu](mailto:dwlepenske@ucdavis.edu)  
To: [pescaman@aol.com](mailto:pescaman@aol.com)  
*Sent from the Internet (Details)*

As recreational anglers, we are specifically concerned with over fishing by commercial interests as has happened in very recent history. We ask commercials be kept on a par with sport fishing anglers. Sport fishing anglers deplore the use of drift nets and multiple hook gear, not just because of unintended bycatch but the effect on protected species such as turtles and mammals. As a sport fishing angler I would like to see every one have the same rules, being single hook ect.

Dennis LePenske  
Fleet Services  
University of California Davis  
Davis Calif. 95616  
Seabreeze

Subj: **PFMC Letter, HELP, HELP, HELP, HELP, Yes I am begging**  
Date: 1/31/02 11:13:56 AM Pacific Standard Time  
From: [chutton@foothill.net](mailto:chutton@foothill.net)  
To: [Pescaman@aol.com](mailto:Pescaman@aol.com), [Fishin\\_Machine@yahoogroups.com](mailto:Fishin_Machine@yahoogroups.com)  
CC: [chutton@foothill.net](mailto:chutton@foothill.net)  
*ent from the Internet (Details)*

COME ONE GUYS lets show our support. This took me 12 minutes to write. Everyone has at least 12 minutes. Copy mine if you dont want to write your own, but please lets suport this effort. I never have begged but I am begging you now to help.

Curtis Hutton  
13640 Moss Rock Drive  
Auburn Ca. 95602

To: Pacific Fishery Management Council

I am greatly opposed to the idea of of allowing Longlineing and Drift Gillnetting inside the 200mile limit. We have historical data that clearly shows the negitive impact to the fishery when this type of fishing is allowed. It is beyond my understanding that anyone/group whom is even slightly aware of the impacts to the fisheries could consider allowing this in our waters. I do question the data gathering process. I am and have been a technical person for many years and cannot understand this process. The bottom line here is if this does not impact the fishery, then there would be no reason for a request of this type as the boats would not need to find additional locations. Additionally, I also strongly believe that allowing Purse seining of Bluefin Tuna also falls into the this catagory.

I have my own boat and have fished albacore offshore for years and want to ensure that my children have that option. Do you have children?

Curtis Hutton

Subj: **Re: [Fishin\_Machine] pfmc letters keep them coming**  
Date: 2/1/02 9:49:57 AM Pacific Standard Time  
From: [RBeach@RHLDdesign.com](mailto:RBeach@RHLDdesign.com)  
Reply-to: [Fishin\\_Machine@yahooogroups.com](mailto:Fishin_Machine@yahooogroups.com)  
To: [Fishin\\_Machine@yahooogroups.com](mailto:Fishin_Machine@yahooogroups.com)  
*Sent from the Internet (Details)*

I feel very strongly that the stance that the governing bodies in California, neighboring states and at the federal level has in the past taken on the side of commercial fisherman has been detrimental to the environment and to the fish. In every other fishing endeavor crabbing, salmon, halibut near shore live trapping has or is currently threatened most of our fish population. The ruination of habitat by bottom dragging beyond the 3-mile line and stripping the reefs with modified crab traps used for live rockfish on near shore reefs. Now, you propose to decimate the migratory tuna and endanger countless other mammals and birds in the process. Many of these creatures which already suffer from loss of habitat or other environmental pressures that have brought them to the point of near extinction by man. Allowing the practice of gillnetting maybe the final blow and from a historical standpoint the pillage of the albacore population by the high seas gillnets has been devastating. In 1986, 1989, and 1990 you will note that there were "token" albacore runs in San Diego. Many of the albacore caught during those years bore the scars and the marks of encounters with gillnets. For a number of those years at least, the albacore migration was simply intercepted before they got to us. For about 10 years the North Pacific Albacore stock was almost fished into extinction by Japan, North Korea, and Taiwan. They were using 30-mile long mono drift gill nets. They had a close to 3000 ships fishing or close to 30,000 miles of net set every night. By the way NOAA publicly would not acknowledge the damage to the fishery. Through constant pressure put on by fishing groups. But mostly by Capt. Paul Watson and the Sea Shepherd's Group the United Nation banned that fishery in most Albacore Waters. You would be amazed at the amount of Salmon & Steelhead that was also taken. Yes, Albacore populations do go up and down in cycles, but nothing like we experienced in the past. It was so bad the San Diego based sport-fishing boats hardly saw any Albacore for 10 years. Finally, we have the fish showing up again in sufficient numbers to enjoy some decent fishing only to find your ready to wipe them out one more time. I would also like to remind you of the damage done to the Atlantic and gulf fishery after the introduction of gillnetting and long line for tuna and swordfish. The by-catch rate and damage to juvenile non-targeted species is staggering. Doesn't historical evidence of how destructive or effective from your perspective these types of fishing are lead you to the conclusion that the same result will occur in the Pacific? Anytime you are throwing away 90+% of the raw product. Whether it's on the end of the line, in the net, out in an oilfield or in the garden has to be considered excessive to my way of thinking. When you go to harvest a type of tree in the forest do you wreck 90% of the vegetation and trees to get the one type of tree? You'd be living in a desert pretty quick and this is exactly what you're going to allow offshore if you proceed with implementing either of these commercial fishing programs along our coastline.

Just this last week the Excel, a long-range boat out of San Diego happened upon a whale enveloped in a net near death. At personal risk to themselves due to the presence of aggressive sharks in the water the crew after several attempts was unable to completely free the mammal but was successful in getting most of the net off the whale. While no one can say for certain what type of net it was we can all agree that nets have a habit of breaking away. This is exactly kind of indirect impact will grow exponentially with introduction of more nets into the ocean right along the migratory path of the Grey, Blue and Humpbacked whales.

The economic benefits from sport fishing is equal to the economic gain from commercial fishing the impact on the fish is a tenfold difference. If you were to impose limits on the commercial take of other types of fish equal to what is imposed on the recreational fisherman while also promoting recreational fishing for the tourist industry you'd quickly find yourself with more money in the coffers with very little commercial fishing. Several states and other countries around the world have discovered how lucrative sport fishing can be. There would be plenty of on the water employment to absorb the crews looking for work and you'd now be paid for fishing not catching. As a final plea if you must allow an even larger take of fish by the commercial industry make the method be the least harmful to non-targeted species by permitting more jig boats instead of gill nets and long lines.

Respectfully submitted,

Roger Beach  
100 Goodwin Lane  
Penngrove, CA 94951

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Monitoring Service trial  
[Click Here!](#)

# *Coastside Fishing Club*

TO: PFMC Members and Concerned Individuals

This letter is in response to meetings and pending regulation of HMS (highly migratory species) fishing off the California coast.

The past two decades have penalized fishermen and sportsmen with continuously shorter season, area and size restrictions. Whether discussing salmon or rockcod, rules and legislation have been introduced restricting the average fisherman's time and harvest on the water. As a user group, those who fish are environmentally conscious and sensitive. Any effort to preserve and enhance time and harvest fishing is embraced by the fishing community.

Lately, fishing is coming under attack by supposed 'environmental groups' using voodoo science. These groups do not understand the reproductive capability of various fish species. The fishing community, both sport and commercial have seen fish stocks rise and fall cyclically. El Nino has temporarily changed local kelp beds. We deplore regulation that restricts fishing that does not take real science and cause and effect into consideration. As if seasons and bag limits are not enough to scientifically manage fishing, the public is being force fed ideas about reserves and preserves for fish. One euphemism goes along the lines "People were against National Parks when they were created. No take zones are needed like national parks." The difference is the public can fish in a national park.

On the economic side of fishing, information from the National Marine Fishery Service (NMFS) and California Department of Fish & Game (CDFG) shows that recreational fisherman catch 7% of the fish off California waters. The commercial fishing industry catches 93%. The recreational saltwater anglers of California pay 93% of the CDFG monies for enforcement and studies of marine life. Commercial fishing pays roughly 7%. Recreational fishermen in California spend over \$2.5 Billion a year on the sport to include: rods & reels, hotels, food and drink, gas, bait, RV's and vehicles, electronics, appropriate clothing. The saltwater angler spends over \$1 a pound for the fish they catch. The commercial fisherman pays about \$.01 per pound. Additional supporting documentation is available from NOAA or UASC/Nearshore Chapter ([www.oceanoracle.com](http://www.oceanoracle.com))>

It's no wonder there is confusion. This is a direct quote from the Pacific Fishery Management Council (PFMC) Fishery Management Plan (FMP):

"Within the U.S. West Coast based fishers, Highly Migratory Species (HMS) are harvested by five major (and one minor) commercial gear groups and various recreational fisheries. The commercial gears include surface hook and line, pelagic drift gillnet, pelagic longline, purse seine and harpoon, and are used in the [Exclusive Economic Zone] EEZ, in state waters and on the high seas. Anglers pursue Highly Migratory Species from commercial passenger fishing vessels as well as private boats. There are no quotas or allocations among gear groups, however user conflicts have arisen, particularly in California, where state regulations prohibit longlining within 200 miles and control time and area for the drift gillnet fishery.

## *Coastside Fishing Club*

Representatives of the drift gillnet fishery have proposed a limited longline fishery in the EEZ to target tunas and swordfish. Longliners currently may land [Highly Migratory Species] in California if the fish are harvested outside 200 miles. The proposers' intent is to convert some drift gillnet effort to a longline fishery without increasing effort, to minimize interaction with striped marlin and other recreational fisheries for [Highly Migratory Species], and to reduce impacts on protected species. The recreational community, particularly in southern California, is concerned about the status and availability of tunas and billfish and the impacts of the commercial fisheries on the recreational fisheries for these species. Anglers oppose a longline fishery in the EEZ [Exclusive Economic Zone] off California targeting tunas and swordfish. They are concerned about increased commercial effort in general and increased bycatch of striped marlin, in particular.

In addition, a growing conservation community is concerned about the management of the HMS [Highly Migratory Species], including sharks, which are vulnerable to overfishing, and other species of fish which are bycatch in the HMS fisheries. Longline and drift gillnet gears targeting HMS also capture protected species such as marine mammals, seabirds and turtles. There is substantial information on the catch and bycatch of fish and the capture of protected species in the West Coast gillnet fishery, which has been observed since 1990 under auspices of the Marine Mammal Protection Act. This fishery is subject to a Take Reduction Plan, and more restrictive gear measures have been in effect since 1997 to reduce the take of marine mammals."

As recreational anglers, we are specifically concerned with overfishing by commercial interests as has happened in very recent history. We ask commercials be kept on a par with sportfishing anglers. Sportfishing anglers deplore the use of drift nets and multiple hook gear, not just because of unintended bycatch but the effect on protected species such as turtles and mammals.

The near shore fishery to 50 fathoms has been hurt by over exploitation due to improvements and developments in commercial fishing, by developments in electronics and larger vessels and their extended stay capabilities. Within 100 miles of shore, restrict commercial to single hook and line – on a par with sport fisherman.

We ask for your support for:

- no drift gillnet and no longlines in the EEZ or 200 miles for HMS.
- No days off the water that are not evenly and directly shared. On days that recreational cannot fish, commercial should not fish.

Sincerely,



Bob Franko  
President & Executive Director  
Coastside Fishing Club

Pacific Marine Fisheries

2/1/02

Dear Sirs:

In response to your proposed plan to allow longline and driftnet boats to operate within 200 miles of the California coast fishing for Albacore.

I have lived in California all my life (52 yrs.) and have fished here for 46 years. As a young man I had the pleasure of being introduced to salt water fishing by my father and grandfather. I sincerely hope I have the opportunity to do the same with my grandchildren.

I operated sportfishing boats for 15 years always adhering to limits and regulations. Always encouraging folks to keep only what they could use. I also spent a number of years on small hook and line commercial fishing boats (Albacore, rockcod, swordfish) but we sold everything we caught. There was no "by catch or incidental catch" so no WASTE.

If plans such as this to allow fishing machines to take huge amounts of fish and needlessly kill and discard as trash, sharks, birds and mammals, I feel I will not have that chance.

I urge you to carefully consider all the negative effects that allowing this fishery will have on the state of California and it's hard working people. If we lose our sportfishing opportunities to reckless plans allowing destruction of our sport fish there are many businesses and individuals that will suffer the obvious revenue loss but even more importantly will be the loss of everyone's chance to go fishing, relax and maybe catch a fish.

Sincerely,

Paul Lynch  
2411 Brian Road  
San Pablo, Ca.  
94806  
(510) 724-8584

To PFMC

I consider myself to be a reasonable, open-minded person and as a business owner I have a fair understanding of economics. My problem is this: I am unable to discern ANY reasonable benefit to our country or ANY reasonable logic for allowing either long lining or high seas drift nets ANYWHERE in the Pacific.

Furthermore, I find it UNCONSCIONABLE that you are even CONSIDERING proposals for allowing these murderous practices to be legally pursued.

AM I MISSING SOMETHING?

Is there some unspoken goal here? Are we trying to balance the trade deficit? Do we owe some Congressman's son-in-law a plum ripe for the picking?

WHERE IS THE LOGIC in allowing the STRIP-MINING of the Pacific fish stocks?

WHAT HAPPENED TO THE LEARNING CURVE?

SHOULD WE PRETEND THAT THE DEVASTATION in the Atlantic never occurred?

WHAT IS GOING ON?

WHY IS IT NECESSARY for sportsmen and the concerned public to rally together against this THREAT to migratory fish as well as wildlife?

WHO'S GUARDING THE CHICKEN COOP?

IS IT NOT YOUR JOB to PROTECT our fishery resources or are they just for sale to the highest bidder?

PLEASE DO YOUR JOB.

LET'S HOPE it won't be necessary for fishermen and environmentally conscious people to TAKE TO THE STREETS to prevent this TRAGEDY from occurring.

PLEASE REALIZE that Americans are fed up with Government agencies operating as FEUDAL BARONS wasting our public resources by portioning them out to ROBBER BARONS who know when and whom to lobby in order to in effect STEAL them!

Thank you in advance for using your conscience in this matter.

Sincerely,

Gary Foster

# Bay Area Tuna Club

## Discussion Boards

Our discussion boards and servers are back online after they were damaged when PG&E (Our local utility company) worked on our power lines.

**Show Message**

**Name:** bat

**Subject:** re:Highly More Longline Info.

**Date:** 1/29/2002 6:50:23 AM

## CALIFORNIA-BASED LONGLINE FISHING FLEET THREATENS ENDANGERED SEA TURTLES AND OTHER SPECIES

### Environmental Groups Sue Federal Fisheries Service to Close Regulatory Loophole

SAN FRANCISCO, CA - Facing new restrictions in the waters of Hawaii, a fleet of longline fishing vessels are relocating to California to avoid a federal judge's decision to enforce protections for the endangered leatherback sea turtle. In response, Turtle Island Restoration Network and the Center for Biological Diversity working with attorneys from Earthjustice Environmental Law Clinic filed suit in the US District Court here today asking the National Marine Fisheries Service to close this regulatory loophole and enforce the Endangered Species Act.

The California-based pelagic longline fleet fishes primarily for tuna and swordfish using monofilament lines up to 30 miles long and carrying thousands of hooks. In addition to the fish they target, these are known to ensnare the critically endangered leatherback turtle, as well as loggerhead, olive ridley, and green turtles. Each year the longliners also entangle thousands of seabirds, such as albatross, and tens of thousands of sharks. "The giant, Pacific leatherback is on the verge of extinction due to commercial fishing operations," explained Todd Steiner, director, Turtle Island Restoration Network. "If we don't modify our fishing activities, the ancient leatherback, which out-survived the dinosaurs, may be the first of many species to disappear forever, including the many overfished species of fish on which we depend on for food."

Scientific data shows that the leatherback sea turtle is in imminent danger of extinction in the Pacific. A recent paper in Nature (June 2000) predicts the species will go extinct in 5-10 years without reductions in adult mortality from fishing activities.

"The National Marine Fisheries Service must follow the law and consider the impacts of this fishery on protected species under the Endangered Species Act," said Deborah Sivas of Earthjustice. "The agency should also move quickly to come into compliance with the High Seas Fishing Compliance Act of 1995 which prohibits permitting of activity that 'undermines the effectiveness of international conservation and management measures'."

In April 2001, Hawaii federal district court Judge David A. Ezra, ordered the closure of the Hawaii-based longline swordfish fleet and reduced fishing of the tuna fleet to reduce the longliners' impacts on threatened and endangered sea turtles. Judge Ezra had previously issued an injunction closing millions of miles of Pacific Ocean to longline fishing, noting, "the harm to the turtles is incalculable" based on a lawsuit filed on behalf of Turtle Island Restoration Network and another plaintiff.

"Rather than comply with the Hawaiian injunction, the longliners have chosen to move their operations to California, where they can operate free of environmental review," said Brendan Cummings, an attorney for the



Center for Biological Diversity. "The time has come for the National Marine Fisheries Service to close this loophole and help save the leatherbacks from extinction."

Leatherbacks nest in Mexico and Costa Rica in the eastern Pacific, and, in the western Pacific, in Malaysia and Irian Jaya. Although in 1980 it was estimated that there were 126,000 adult female leatherbacks in the eastern Pacific alone, scientists estimate that there are less than 3,000 leatherbacks of both genders left in the eastern Pacific. The western Pacific nesting populations have also been devastated, and are near extinction.

The following additional INFORMATION and IMAGES are available on the web or by contacting Turtle Island Restoration Network:

The Lawsuit Complaint can be emailed to you at your request

Longline issue briefing

[http://www.seaturtles.org/issue\\_briefings2.cfm?issueBriefID=3](http://www.seaturtles.org/issue_briefings2.cfm?issueBriefID=3)

Turtle Island Restoration Network  
POB 400, Forest Knolls, CA 94933

Ph: 415-488-0370

Fax: 415-488-0372

Contact:

Todd Steiner, Turtle Island Restoration Network,  
415-488-0370

Deborah Sivas, Earthjustice Environmental Law Clinic,  
Stanford, 650-725-8571

Brendan Cummings, Attorney, Center for Biological  
Diversity, 510-848-5486

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● Highly Migratory Species Meeting....1/29/2002 6:00:36 AM....bat

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↳re:Carpool from Los Banos - **Goose** 1/30/2002 4:50:43 PM

# Bay Area Tuna Club

## Discussion Boards

Our discussion boards and servers are back online after they were damaged when PG&E (Our local utility company) worked on our power lines.

### Show Message

**Name:** bat

**Subject:** re:Highly (BATS VIEWS)

**Date:** 1/29/2002 6:09:21 AM

**To:** Pacific Management Council,

I as the founder of the largest West Coast Albacore Fishing Club, the Bay Area Tuna Club, have a great deal of apprehension over the Highly Migratory Species plan that the Pacific Management Council is purposing.

We the sport angler have been made to suffer detrimental sport-fishing regulations before, because of the different government or government appointed agencies using the sport angler as the last ditch effort to repair a damage caused by other user groups, ie. Logging, Agriculture Water Districts, Commercial fishing interest. I must state we haven't any problem with the commercial Salmon or Albacore trolling and live bait fleets, also with local crab fisherman. And I have to emphasize local fleets.

Recreational and commercial fishing made nearly equal contributions to the national economy in 1997. 24.4 billion dollars for the commercial heries and 25.1 billion dollars for the recreational angler. But sport ,glers landed only 234 million pounds of fish compared to 9.8 billion pounds taken by the commercial sector. A pound of sport-caught fish, therefore, produced 40 times the economic benefit of a pound of commercially caught fish. The California Recreational Angler provides 92.8 percent of the California Department of Fish and Games revenue, Commercial Fishing provides 7.2 percent. Californian recreational anglers spend about 2.6 billion dollars on sport fishing, that creates a lot of jobs. We are the economic super man of the fishing community. With these figures in mind it is beyond my poor reasoning why the recreational angler keeps getting the dirty end of the stick. I will warn you of this, we are now getting organized and this type of treatment has awaking a powerful sleeping giant, we are not going to take it any more.

### Long Lines:

I am very disappointed in the Pacific Management Council for their part in allowing Long Line Vessels that have decimated Atlantic Ocean Bill Fish Stocks and doing the same on the Gulf Coast to move and fish out of California and Oregon Ports. These fleets have taken large numbers of sharks that only the fin in most has been taken the rest discarded as by-catch. Large numbers of Marlin, large numbers of turtles, and because they are fished deep the albacore and tuna they catch are the large ones going into the spawning stock. The California and Oregon based fleet was being allowed to fish and area that was closed by a U.S. Court to the Hawaiian Long Line fleet due to the damage they inflicted on the Logger head Turtle, a turtle that is real danger of going extinct. It amazes me that ur so called fishery management experts cannot see that if you take a destructive fishing practice out of one Ocean that it has almost ruined and put it to work in another Ocean you will more than likely have the same damaging results. We as sport fishers are being told that they will be

fishing outside our Exclusive Economics Zone (EEZ). Well most our Highly Migratory Species swim through that zone to reach where we can fish them along our coastline. Here again the sport angler and the fish have lost out to the almighty dollar. I really hope you'll be able to look your grandchildren in the eyes.

#### Pelagic Drift Gill Nets and other Gill Nets:

Pelagic Drift Gill Nets are another ecology disaster; the throw away by catch is tremendous and includes turtles, mammals, birds, and even whales. Currently the Sword Fish Drift Net Fleet has been fishing Tuna with White Sea Bass sized nets instead of the 14-inch mesh they are suppose to be fishing with. If this fishery is allowed to continue it must be with a lot more monitoring and controls that it has had in the past. It currently and has been for years an environmental disaster. If not cleaned up we are going to go after it tooth and nail.

#### High Seas Pelagic Drift Nets:

These are such a disaster and everyone knows it that they cannot for the good of the marine environment be allowed to exist. This type of fishery just about whipped out our Albacore Fishery back in the late 80's early 90's. Damaged the West Coast Salmon Fishery. Finally stopped in 1993 by a United Nation Decree We cannot standby and let that ugly head of greed get strong again. We will not let that disaster happen again.

#### Inshore Gill Nets:

By California Fish and Game agreement inshore gill nets were to be moved out to 60 fathoms, at the last minute they were allowed to move into 30 fathoms. Finally our Halibut and White Sea Bass fisheries were showing vast improvements. Are we going to let greed again ruin these fisheries again? We cannot and will not allow that to happen.

#### Creel Census & HMS Sport Permit Fee:

Come on guy's lets quite trying to create another bureaucratic department with more cost for the recreational angler so that someone's brother in-law can have a job. State Fish and Game Wardens and Biologist take creel census now how hard is it for them to add Highly migratory Species to their count? As far as a 30 dollar permit fee, you want a real bare knuckled fight try pulling that little bit of recreational angler rip off, off. We sport angler's pay 92.8 percent of fish and game cost now in the State of California. We pay more than our share thank you. Our club the Bay Area Tuna Club gladly offer our boats and crews completely free of any charge to Barbara Block and her group who are in charge of the Satellite Pop Up Tag Program at Hopkins Marine Station in Pacific Grove, to try and tag Pacific Blue Fin Tuna and Large Albacore to aid in better understanding their migrations and habits. So as you can see we are not afraid to spend a dollar or two on a good legitimate cause. But a HMS sport fishing permit fee sounds a bit like carpet bagging to us.

#### Purse Seiners:

I cannot describe to you the rage that I feel after scouting and finding in the Monterey National Marine Sanctuary schools of large Blue-Fin Tuna, that we all have been waiting to arrive every year. Just starting to fish them and having Super Seiners show up and wrap them all within a couple of days. Those fish are ours to fish also, and more important they are for future generation to. We return the most money to fish & game, and dollars returned into the economy, we are the largest user group. Seiners should not be allowed to fish inside a Marine Sanctuary. To be very blunt we are quite tired of the attitude that the sport fishermen gets what's left over. We

urge the PMC and the PFMC to do something about this or we will use some of our member lawyers and take this issue to court. Not a threat just a promise

Finally what is not listed in HMS  
Trawlers:

How can the PMC, or PFMC allow the bottom trawlers to continue to rip up the ocean bottom making it useless for marine life, shovel tons of crushed by-catch fishes over the side making it a wasteful commodity, they have been observed coming inside and loading up on the once abundant amount of Halibut in the Halfmoon Bay area. Now very few are being taken by sport anglers. This fishery is one of the most wasteful to our marine resources, and to the environment of the seabed. They are virtually strip-mining the ocean floor leaving vast areas of dead ocean beds in its wake, and the dead area is getting bigger every day. Again seems like its time for some serious management decisions, like are we going to have a sustainable Marine Environment or not.

I do want to thank you for lending me your eyes and ears to hear and read my concerns.

Bat Batsford, Founder of the Bay Area Tuna Club

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1/30/2002

Hello Gentlemen, My name is David Clutts. I am a member of **The Bay Area Tuna Club, The Coastside Fishing Club, Cencal**(Central California Division of Divers, **The Richmond Pelican Skin-divers** and a citizen of the United States and California. I am here representing these organizations numbering over 2000 fishermen and women.

I started fishing as lad at the age of 4 years with my Grandpa. Those were the old days. Fish were plenty and there was no way that we could catch them all. Then in 1990 after taking up spear fishing around the area of Fort Ross in Sonoma County these large boats were showing up in the kelp beds. When we found out they were long lining for Rockfish we all knew what was to come. We formed groups and started warning the Department of fish and game. Of course it would be almost 10 years later before those boats went away. Why? Because the DF&G were too slow to react. Now because of this every user group has had to take massive reductions and season closures. Rockfish are on the brink of collapse. All this because a few bucks were to made by a very few individuals.

Why am I telling this story? Well because these and other known destructive fishing practices have been allowed to exist. Even when these fishermen using fishing methods such as Longlining, Gillnetting & Purse seining have proven time and again that they can catch all the fish. They then move to a new species or area and do the same over and over. The Oceans are not endless as was once thought.

So Scientists and Biologists can crunch a bunch of numbers and tell us how much fish can be caught and still leave enough to carry over for the next generation. Wrong! They have failed miserably. One reason is the data they collect is only a miniscule amount representing only a drop in a very huge bucket. They don't see the big picture. Their data only represents a small window of time and trends that has taken billions of years to evolve. We are changing the oceans at an alarming rate. For what a few dollars?

Sport-fishermen make up the huge majority of people fishing on the West coast. We take the least amount of fish; we spend around 8 to 1 in dollars per fish caught. We provide most of the money spent on fishery management.

Yet when the allotment of available fish is divided up we get very little consideration. The Lions share goes to those who fish for profit. They are only concerned with numbers and the more the better. They don't worry about tomorrow's fish. They only care about today.

We have been warning the DF&G and PFMC for many years about the destruction of fish stocks by commercialization. Just recently have they started listening? Were not just asking for our share of the fish but to keep our waters healthy by penalizing those who over-fish, not those who fish responsibly

Recently we have discovered that small mesh 6-7 inch that were fishing for White-Sea bass and Halibut have switched to Albacore. When I questioned the DF&G specialist on highly migratory fish, I was told the only regulations to this fishery was that they had to be outside of 3 miles or 60 fathoms. No limits or quotas were in place and that California has a permissive policy. He explained that “ if it's not in the current regulations then it's open to do as they please. **Wow!**

I am calling on the PFMC,FMC,DF&G, The State and Federal governments to wake up and see how taking a reactive approach to managing the fisheries has led to seriously depleted fish stocks. Killing innocent marine mammals and Sea turtles. Throwing away huge amounts of unwanted bycatch.

The time has come to act proactively. To realize that we have look at what the real culprits are. They are people who use fishing practices that have been proven time and again to be destructive to our environment.

I am asking the PFMC to recommend that all Longlines, Gillnets & Purse-seiners be eliminated inside the 200 mile EEZ zone and beyond.

I am also opposed to any kind of addition fee or stamp for sport fishermen to buy for fishing for Tuna or other pelagic species. We have paid the brunt of management costs any they have been fruitless to date.

The Sportfishing movement is growing. Remember one adage.  
” It's better for many people to catch a few of the fish than a few of the people to catch all off the fish”

Thank you, David Clutts ( Sport-fisherman )

Members of the Council:

In regards to measures to effectively manage Highly Migratory Species off the West Coast, I would suggest you pay attention to facts, and not be motivated by the greed of special interest groups, specifically, commercial fishing interest. In addressing proper resource management practices, it would appear that the ultimate goal should be to manage the resource in such a way that all user groups are valued equally. The draft plan places further unwarranted and unsustainable burdens upon already overburdened resources. Secondly, the plan places additional unnecessary restrictions upon the greatest ally of highly migratory species, the recreational angler.

Somewhere, somebody must apply common sense to this matter, I challenge you to overlook the special interests of greed and use common sense here.

My point is this, if a resource is abused, reduced or damaged, or if one's activities cause that resource, or a secondary resource to be abused, reduced or damaged, does it not make sense to severely restrict (my desire would be to eliminate) the primary factor causing the damage? On the surface it would seem to be a very easy question to answer.

Lets address a few specific issues here:

Me, the recreational angler: It is unfair for you to place any additional burdens upon me. Believe me I carry the burdens of the entire fishing industry on my back. When quotas are established, limits reduced, gear restriction imposed, they are always placed on me, the recreational angler. This seems backwards to me since by the Government's own records, the recreational angler only takes 2% - 3% of the total of all fish taken.

Bottom Line: don't place any new restrictions or fees upon the recreational angler, they have been shown to have no effect on the overall management of an HMS fish resource.

Gill Nets: Put the gillnets to 60 fathoms or deeper! Or remove them! Period!

Bottom Line: Two of our local fisheries are beginning to thrive again, white sea bass and halibut. Do not allow the gill-netters to return. Lets not be foolish enough to reinstate the same or similar practices that nearly eliminated the fishery!

Long Lines in the North Pacific: Lets call these things what they are. Indiscriminate killing machines of anything that swims be it fish, mammal or reptile. We are all aware of the fisheries decimation in the Atlantic. Do not allow that to happen here! By order of US court, the Hawaiian based long line fleet was prohibited from fishing in the north pacific. So we allow the fleet to move its base to our northwest coast and the killers go back and fish the same waters they were prohibited from fishing when they were based in Hawaii. Doesn't make a whole lot of sense, does it.

Bottom Line: Long lines kill everything they come into contact with and call it "bycatch". Lets define "bycatch" for what it really is: the killing of a creature that does not have commercial value to the long liner. Long lines destroy fisheries, contribute to the extinction of species (sea turtles, for example), and are a killing tool, not a management tool. What is the name of your organization? The Pacific Management Council. Manage this problem by eliminating it!

Purse Seiners: I've watched these ships destroy our bluefin resource for the last 4 years, and unload the thousands of fish they have killed for \$450 a ton to be sold for cat food. Then listened to them laugh on the VHF about how the "took" those fish away from the recreational guys. Keep them out of our local waters!

Bottom Line: Seiner ships are very efficient killing machines. In 1999, I watched as bluefin schools from horizon to horizon were wrapped up and gone in 1 day, eliminated from our fishery. Bluefin are in my opinion the most valuable HMS resource on the West Coast, and I have been fortunate enough to experience them. To see this resource sold off for \$450 a ton should truly be an embarrassment to you. It is to me. Eliminate the Seiners from our waters; my suggestion is no Seiners within 60 miles of our coast.

Money: The fact here is that both commercial and recreational fishing contribute essentially the same in terms of dollars to our economy, however, commercial fishing interests are awarded by quota or by other means (which nobody can figure out) the ability to take 97% - 98% of all fish removed from our oceans. This is a grossly discriminatory position (looks like I just found another lawsuit angle) which needs to stop, and stop here.

Bottom Line: By my letter, you would infer that I am against all commercial fishing. You would be wrong. If you can earn a living, fishing with a hook, line, and pole, subject to the exact same regulations and restrictions that I am. Then, I honor your abilities as fishermen, and solute you for your efforts, congratulations. If it cannot be done without the use of nets, long lines, seine nets, etc., then it should not be done! Period! Why, because commercial fishermen are the primary abusers of our resource and any management efforts to conserve the resource placed upon the commercial fishing industry first. Period!

This is the counter argument to my letter you will receive from the special interest group i.e., the commercial fishermen.

"Commercial fishing is my life, its how I put food on the table, its how I pay my bills. I can't do anything else. If you are going to eliminate my ability to make a living, you should compensate me."

Here is the response: "Mr. Commercial fishermen, while it is true that you used to make your living from the ocean, recent fishing practiced employed by you and others involved in the same industry have decimated, or will soon decimate the very resource you are claiming you need to make a living. Therefore, we will offer this in response. We have not eliminated your ability to go to sea and reap its harvest. You will, however, be subject to the same rules, regulations and restrictions as are recreational anglers. If you find that you are unable to sustain your standard of living due to these new regulations, you should seek other employment. In response to your comment that we should compensate you for your lost income, we would ask why? Why should you be treated any differently than: The owner of a construction company who mortgages all that he owns for his business only to loose it all when we, a governmental body decide to place into effect a no-building ordinance. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and usually succeeds. A logger who looses his job when all of the trees in Northern California have been harvested, or defined as sanctuary. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and usually succeeds.

The military weapons engineer who looses his job when the Federal government reduces its military spending budget. This man files bankruptcy



if necessary, recovers his losses, retrains himself to do something else, and succeeded wonderfully. (This person is now my immediate supervisor.)

The bottom line is you shouldn't be treated any differently, you abused the resource and now you have to take the responsibility for your actions. That responsibility should not be placed on the recreational angler or the general public."

Sincerely,

John Boseman,  
A concerned and informed recreational angler

Subj: **Highly Migratory Species Plan Meeting Feb 1st -Public Input**  
Date: 1/31/2002 12:18:10 AM Pacific Standard Time  
From: BilltheGil  
To: david.au@noaa.gov, norm.bartoo@noaa.gov, scrooke@dfg.ca.gov, Sam.herrick@noaa.gov,  
jean.mccrae@hmsc.orst.edu, robinmkr@dfw.wa.gov, dale.squires@noaa.gov, susan.smith@noaa.gov  
CC: **PESCAMAN**

Dear Council Members,

I wish to offer my input on the HMS Development plan regarding the use of Gillnets, Purse Seines(Bluefin) and Pelagic Longlines. I strongly wish to voice my opinion that the use of the above fishing methods is not in the best interests of the economy, of the resource, of endangered species or of the fishing public. It is wasteful and is clearly against the wishes of the general public, who support responsible fishing techniques and abhor the destruction caused by gillnets and longlines. They just don't know about the proposed plan to introduce these destructive fishing techniques within the 200 mile zone.

There is so much more money to be made by the resource through sportfishing and responsible jig boat commercial operations. I am living proof to the dollars-spent-per-fish being the highest on earth as a sport fisherman with my own boat. My Visa, West Marine Products and fuel dock bills are evidence of this. With a healthy resource, the money to be made from Sportfishing alone will be gargantuan compared to the commercial value. Your own studies prove this. And the personal quality of life improvements for the many should outweigh the commercial profit motives of the few.

Please do not screw up our tuna fishing. Please do not burden the public who take so few overall fish with additional rules and regulations. The natural push to exploit a profitable resource has in the past led to the decimation of rockfish, steelhead, white sea bass and a host of other species. This is no different! Please leave the fishery alone so that I may enjoy my remaining years doing what I truly love, and can teach to my son offshore sportfishing for him to enjoy.

Sincerely yours,

Bill Gilchrist  
Pillar Point Sportfisherman  
55 Commons Lane  
Foster City, CA 94404  
BILLtheGIL@aol.com

Thursday, January 31, 2002 America Online: PESCAMAN

Subj: **[Fishin\_Machine] Letter to the PFMC**  
Date: 1/31/2002 7:25:54 PM Pacific Standard Time  
From: [danharsch@yahoo.com](mailto:danharsch@yahoo.com)  
Reply-to: [Fishin\\_Machine@yahooogroups.com](mailto:Fishin_Machine@yahooogroups.com)  
To: [Fishin\\_Machine@yahooogroups.com](mailto:Fishin_Machine@yahooogroups.com)  
*Sent from the Internet (Details)*

Mr. Clutts, please present this letter to the PFMC on my behalf, thank you for your effort.

Dear Sirs,

I'm writing in response to your proposed plan to allow Long lining and Gill netting for Albacore within the "200 Mile Limit" of the California coast. It is a well know fact that this type of indiscriminate "fishing" (for lack of a better term) does an enormous amount of damage to non targeted species of fish commonly referred to as "by-catch" or "incidental catch" by the commercial industry, not to mention Sharks, bird life, Whales, Dolphins or any other mammals that attempt to swim freely off of our coast.

As a longtime saltwater sport fisherman I am personally outraged that such a proposal would even be considered!

It is obvious to any reasonably intelligent person that this type of "fishing" is incredibly destructive and harmful in general to our sensitive oceanic environment, how many tons of "incidental catch" are killed, discarded and wasted on a yearly basis by these methods?? Are you going to stand up, look me in the eye and tell me that your data on these methods does not clearly point that out??

The ocean and it's inhabitants were put there for all of us to enjoy on an equal basis, not just so a select few may rape and pillage a resource at will only to cart off the "targeted" species to some high paying fish market in another country.

Other parts of the world have allowed these practices to all but destroy the fisheries that they once had, why do you think they come thousands of miles to the California coast to employ these ecologically unsound techniques?? Could it be that they have depleted the resources that they once had?? Maybe they just like our weather, it's not rocket science is it!

I urge you to not only do your job and protect our fragile fisheries but also to do the right thing, let your conscience be your guide, not political influence.

sincerely,

Daniel A. Harsch  
2012 Denton ct.  
Rocklin, CA  
95765

=====  
;^)\_~~~~~

Dan

Thursday, January 31, 2002 America Online: PESCAMAN

Subj: **Re: [Fishin\_Machine] Letters to the PFMC come on Guys**  
Date: 1/31/2002 5:36:09 PM Pacific Standard Time  
From: [Bstnwaler@aol.com](mailto:Bstnwaler@aol.com)  
Reply-to: [Fishin\\_Machine@yahoogroups.com](mailto:Fishin_Machine@yahoogroups.com)  
To: [Fishin\\_Machine@yahoogroups.com](mailto:Fishin_Machine@yahoogroups.com)  
[Sent from the Internet \(Details\)](#)

Pacific Fisheries Management Council

Dear Sirs:

I'm writting in response to your plan to allow Longlining and Gillnetting for Albacore within the 200 Mile Limit.As an ex-commercial hook and line rock fisherman I can understand and sympathize with Commercial Fishermen..however most of the boats that will be involved in the Fishery that you propose are no longer the small guy just trying to make a living.The majority of these boats are often owned by out of staters and companies.We all remember the years when commercial halibut dragging was allowed right off our Coast..there was money made...for the few that had a permit...since the dragging was stopped there is money being made by whole communities..bait shops,hotels,eateries..etc.

In closing let's not forget the major damage done to non-targeted fish and birdlife..does the Fishing Community need any more negative publicity...please think before you allow this slaughter to happen right off of our coast..in full view of the non-fishing Whale Watching boats.

Thank you for your consideration..may your vote be in the best interest of the majority and the enviroment..not a select few.

Mark Capra  
2743 Barlow Drive  
Castro Valley,Ca  
94546

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Subj: **DFG Letter**  
Date: 1/31/2002 6:04:20 PM Pacific Standard Time  
From: [michael@silcon.com](mailto:michael@silcon.com)  
To: [Pescaman@aol.com](mailto:Pescaman@aol.com)  
*Sent from the Internet (Details)*

January 31, 2002

To Whom It May Concern at DFG and/or PFMC:

I strongly oppose Long-lining and Drift Gillnetting inside the 200 mile EEZ. These methods kill indiscriminately whatever crosses their path. The by-catch is "waste" and represents a substantial destruction of oceanic biosystem. The true "cost" of the retained catch is nearly impossible to ascertain in view of this "collateral damage".

In spite of the line in the movie "Wall Street", GREED is not necessarily good. But it exists and when unbounded is a fundamental human flaw and as a rational society we must all learn to deal with it as rationally as we can. Natural resources have long appealed to the most greedy of us as a "free" commodity, an opportunity to make a lot of money by harvesting an existing "asset" that is there for the taking, a "freebie", if you will. When there are no constraints placed on this greed, the results are often nearly catastrophic. Witness the buffalo, cod, tuna, Atlantic swordfish, orange ruff, Alaskan salmon, other salmon, coal, iron, timber, ad nauseum. In the case of pelagic species especially, the temptation for unconstrained greed (pronounced overkill, under-reporting) is greater than usual simply because no one is there to see what actually happens.

What is the compelling need to loose long-lining and gillnetting operations on the EEZ? One likely effect in the middle run will be to substantially diminish sportfishing enthusiasm because of the negative impact on the sportsman's catch which is inevitable. It is my understanding that recreational sportfishing expenditures in California are estimated to be between \$2.5 and 3 Billion Dollars a year. There is a potential here to "grow" and manage this resource and the vast numbers of sportsfisher-people into a symbiotic relationship with resulting high and healthy fish populations, increased enthusiasm for sportfishing with concomitant contributions to the economy, increased revenues to DFG, etc. And more people would be a lot happier doing what they love to do in their spare time! And...there would be very little, if any, fatal bycatch. Just think of that!

Michael L. Preisler  
Coastside Fishing Club

Subj: **PFMC Letter**  
Date: 1/31/2002 12:53:44 PM Pacific Standard Time  
From: [chall@coastsidefishingclub.com](mailto:chall@coastsidefishingclub.com)  
To: [PESCAMAN@aol.com](mailto:PESCAMAN@aol.com)  
*Sent from the Internet (Details)*

Dear Pacific Fishery Management Council

California's Sportfishing Industry is starting to make a comeback. The dollars spent and fed back into the economy are extremely important to California's and our nation's recovery. Allowing long-lining for Albacore within the proposed area, and purse seining for Bluefin Tuna is a no win situation for everyone. Sure, the commercial fisherman will increase their catch, reduce their expenses, but I don't think that will be passed on to the consumer. Is a can of Tuna going to go down by 2 pennies? I really don't think so.

The only thing that will happen is the Commercial Fishing Industry will put more boats out there to capitalize on the new rules. Fish populations will decrease, the pressure will increase on certain popular areas frequented by private boaters.

My friends and family are counting on your wise decision too keep things as they are. The future of our fishery is counting on it.

Christopher Hall  
Fishing Luhrs – San Leandro CA

Subj:	<b>Pacific Fishery Management</b>
Date:	1/31/2002 6:10:59 PM Pacific Standard Time
From:	<u>MHF2467</u>
To:	<u>PESCAMAN</u>

Matthew Fisher  
201 Farrelly Dr.  
San Leandro, Ca. 94577

To: Pacific Fishery Management Council

I am opposed to allowing Longlining and Drift Gillnetting inside the 200 mile limit. It appears once again that you, the Management Council, got it wrong once again. How you can even consider allowing a already depleted resource, the coastal marine fisheries, to be further devastated by miles of nets and longlines. We know from past experiance and data that the destruction of some many non target fish,by catch, is detrimental to the Fishery. I find it disturbing that the sportfishing industry continues to see a yearly decline in bag limits and multi month closures, but out and out raping of the oceon by huge nets and lines with thousands of hooks is somehow seen as ok. I find it appauling that this could even be considered by the Management Council. Lets act now to save our fishery and answer this request with a resounding NO WAY NOT IN OUR BACKYARD!

Matthew Fisher

Attn: Pacific Management Council

I am a member of the two largest West Coast albacore fishing clubs, the Bay Area Tuna Club and the Coast Side Fishing Club. I am very concerned over the migratory Species plan that the Pacific Management Council is purposing.

I am a sportsman who would take two to three albacore fishing trips a year on local Bay Area charter boats. I have enjoyed this fishery so much that this past year I went out and purchased my own boat. I did this so I could enjoy more of this fishery and share that love with my children, grandchildren and friends. I made this commitment at a time when the economy is slowing and many are tightening their belts. I intend to support my local economy by buying fuel, boating supplies, bait, tackle, food at restaurants, and overnight stays in motels. All to enjoy this hobby. Yes it is a hobby, but it does a lot to aid the local economy. I have concerns that your plan will wipe out this fishery and only the large commercial operations will benefit from this plan and I can tell you that this will be short lived. The local population will be wiped out just as it has in the past with the sardine and squid fishery many years ago in Monterey.

My parents live in Florida and I have fished those waters with my father and my sons for over twenty years. I can remember large schools of kingfish, mackerel, and bluefish. We never had a problem catching fish and my sons grew up learning catch and release and a love of the marine life. Years of commercial fishing have wiped out these schools, today it is very hard to catch fish, and many people including my Dad have sold their boats because they get very little rewards for their time and money spent on the water. I know Florida has gotten the message and tighten up this commercial fishery. More needs to happen there, but please don't let this happen on our coast. I now have Grandchildren and I would love to introduce them to the thrill of fishing. Please consider this when making your decisions.

Sincerely,

Paul Rowles  
346 East E St.  
Benicia, Ca. 94510  
707/ 747-5363  
paul.rowles@star buildings.net



Subj: **Fish Management**  
Date: 1/31/2002 7:08:35 PM Pacific Standard Time  
From: ReelResult  
To: PESCAMAN  
CC: [chutton@foothill.net](mailto:chutton@foothill.net)

To: Pacific Fishery Management Council

## **Do not allow Gillnetting or Longliners inside the two hundred mile limit**

How many times do we have to read about these nets killing everything at gets close. According to the Environmental News Network (Feb 2002 Sport Fishing Magazine) there are hundreds of ton of derelict nets out there. Use your heads.

John David Fisher  
10407 Heney Creek Place  
Cupertino, CA 95014

Home phone (650) 964-2397 email [ReelResult@aol.com](mailto:ReelResult@aol.com)

Subj: letter  
Date: 2/1/02 4:12:45 AM Pacific Standard Time  
From: Btu205  
To: PESCAMAN

Dear Sirs,

I'm writing in response to your proposed plan to allow Long lining and Gill netting for Albacore within the "200 Mile Limit" of the California coast. It is a well know fact that this type of indiscriminate "fishing" (for lack of a better term) does an enormous amount of damage to non targeted species of fish commonly referred to as "by-catch" or "incidental catch" by the commercial industry, not to mention Sharks, bird life, Whales, Dolphins or any other mammals that attempt to swim freely off of our coast.

As a longtime saltwater sport fisherman I am personally outraged that such a proposal would even be considered!

It is obvious to any reasonably intelligent person that this type of "fishing" is incredibly destructive and harmful in general to our sensitive oceanic environment, how many tons of "incidental catch" are killed, discarded and wasted on a yearly basis by these methods?? Are you going to stand up, look me in the eye and tell me that your data on these methods does not clearly point that out??

The ocean and it's inhabitants were put there for all of us to enjoy on an equal basis, not just so a select few may rape and pillage a resource at will only to cart off the "targeted" species to some high paying market in another country.

Other parts of the world have allowed these practices to all but destroy the fisheries that they once had, why do you think they come thousands of miles to the California coast to employ these ecologically unsound techniques?? Could it be that they have depleted the resources that they once had?? Maybe they just like our weather, it's not rocket science is it!

I urge you to not only do your job and protect our fragile fisheries but also to do the right thing, let your conscience be your guide, not political influence.

sincerely,  
Michael Johnson  
1375 montecito ave #42  
Mountain View, Ca 94303

1/30/2002 6:35:54 PM

Pacific Management Council,

I as the founder of the largest West Coast Albacore Fishing Club, the Bay Area Tuna Club, have a great deal of apprehension over the Highly Migratory Species plan that the Pacific Management Council is purposing.

We the sport angler have been made to suffer detrimental sport-fishing regulations before, because of the different government or government appointed agencies using the sport angler as the last ditch effort to repair a damage caused by other user groups, i.e. Logging, Agriculture Water Districts, Commercial fishing interest. I must state we haven't any problem with the commercial Salmon or Albacore trolling and live bait fleets, also with local crab fisherman. And I have to emphasize local fleets.

Recreational and commercial fishing made nearly equal contributions to the national economy in 1997. 24.4 billion dollars for the commercial fisheries and 25.1 billion dollars for the recreational angler. But sport anglers landed only 234 million pounds of fish compared to 9.8 billion pounds taken by the commercial sector. A pound of sport-caught fish, therefore, produced 40 times the economic benefit of a pound of commercially caught fish. The California Recreational Angler provides 92.8 percent of the California Department of Fish and Games revenue, Commercial Fishing provides 7.2 percent. Californian recreational anglers spend about 2.6 billion dollars on sport fishing, that creates a lot of jobs. We are the economic super man of the fishing community. With these figures in mind it is beyond my poor reasoning why the recreational angler keeps getting the dirty end of the stick. I will warn you of this, we are now getting organized and this type of treatment has awaking a powerful sleeping giant, we are not going to take it any more.

Long Lines:

I am very disappointed in the Pacific Management Council for their part in allowing Long Line Vessels that have decimated Atlantic Ocean Bill Fish Stocks and doing the same on the Gulf Coast to move and fish out of California and Oregon Ports. These fleets have taken large numbers of sharks that only the fin in most has been taken the rest discarded as by-catch. Large numbers of Marlin, large numbers of turtles, and because they are fished deep the albacore and tuna they catch are the large ones going into the spawning stock. The California and Oregon based fleet was being allowed to fish an area that was closed by a U.S. Court to the Hawaiian Long Line fleet due to the damage they inflicted on the Logger Head Turtle, a turtle that is real danger of going extinct. It amazes me that our so called fishery management experts cannot see that if you take a destructive fishing practice out of one Ocean that it has almost ruined and put it to work in another Ocean you will more than likely have the same damaging results. We as sport fishers are being told that they will be fishing outside our Exclusive Economics Zone (EEZ). Well most our Highly Migratory Species swim through that zone to reach where we can fish them along our coastline. Here again the sport angler and the fish have lost out to the almighty dollar. I really hope you'll be able to look your grandchildren in the eyes.

Pelagic Drift Gill Nets and other Gill Nets:

Pelagic Drift Gill Nets are another ecology disaster; the throw away by catch is tremendous and includes turtles, mammals, birds, and even whales. Currently the Sword Fish Drift Net Fleet has been fishing Tuna with White Sea Bass sized nets instead of the 14-inch mesh they are suppose to be fishing with. If this fishery is allowed to continue it must be with a lot more monitoring and controls that it has had in the past. It currently and has been for years an environmental disaster. If not cleaned up we are going to go after it tooth and nail.

High Seas Pelagic Drift Nets:

These are such a disaster and everyone knows it that they cannot for the good of the marine environment be allowed to exist. This type of fishery just about whipped out our Albacore Fishery back in the late 80's early 90's. Damaged the West Coast Salmon Fishery. Finally stopped in 1993 by a United Nation Decree

We cannot standby and let that ugly head of greed get strong again. We will not let that disaster happen again.

#### Inshore Gill Nets:

By California Fish and Game agreement inshore gill nets were to be moved out to 60 fathoms, at the last minute they were allowed to move into 30 fathoms. Finally our Halibut and White Sea Bass fisheries were showing vast improvements. Are we going to let greed again ruin these fisheries again? We cannot and will not allow that to happen.

#### Creel Census & HMS Sport Permit Fee:

Come on guy's lets quite trying to create another bureaucratic department with more cost for the recreational angler so that someone's brother in-law can have a job. State Fish and Game Wardens and Biologist take creel census now how hard is it for them to add Highly migratory Species to their count? As far as a 30 dollar permit fee, you want a real bare knuckled fight try pulling that little bit of recreational angler rip off, off. We sport angler's pay 92.8 percent of fish and game cost now in the State of California. We pay more than our share thank you. Our club the Bay Area Tuna Club gladly offer our boats and crews completely free of any charge to Barbara Block and her group who are in charge of the Satellite Pop Up Tag Program at Hopkins Marine Station in Pacific Grove, to try and tag Pacific Blue Fin Tuna and Large Albacore to aid in better understanding their migrations and habits. So as you can see we are not afraid to spend a dollar or two on a good legitimate cause. But a HMS sport fishing permit fee sounds a bit like carpet bagging to us.

#### Purse Seiners:

I cannot describe to you the rage that I feel after scouting and finding in the Monterey National Marine Sanctuary schools of large Blue-Fin Tuna, that we all have been waiting to arrive every year. Just starting to fish them and having Super Seiners show up and wrap them all within a couple of days. Those fish are ours to fish also, and more important they are for future generation to. We return the most money to fish & game, and dollars returned into the economy, we are the largest user group. Seiners should not be allowed to fish inside a Marine Sanctuary. To be very blunt we are quite tired of the attitude that the sport fishermen get what's left over. We urge the PMC and the PFMC to do something about this or we will use some of our member lawyers and take this issue to court. Not a threat just a promise

#### Finally what is not listed in HMS Trawlers:

How can the PMC, or PFMC allow the bottom trawlers to continues to rip up the ocean bottom making it useless for marine life, shovel tons of crushed by-catch fishes over the side making it a wasteful commodity, they have been observed coming inside and loading up on the once abundant amount of Halibut in the Halfmoon Bay area. Now very few are being taken by sport anglers. This fishery is one of the most wasteful to our marine resources, and to the environment of the seabed. They are virtually strip-mining the ocean floor leaving vast areas of dead ocean beds in its wake, and the dead area is getting bigger every day. Again seems like its time for some serious management decisions, like are we going to have a sustainable Marine Environment or not.

I do want to thank you for lending me your eyes and ears to hear and read my concerns.

Bat Batsford, Founder of the Bay Area Tuna Club

Subj: **My letter**  
Date: 2/1/02 7:23:14 AM Pacific Standard Time  
From: [john.boseman@us.pwcglobal.com](mailto:john.boseman@us.pwcglobal.com)  
To: [pescaman@aol.com](mailto:pescaman@aol.com), [fscultra@pacbell.net](mailto:fscultra@pacbell.net)  
*Sent from the Internet (Details)*

Mike & Dave,

I can't make it to the meeting tonight. (But I did make the MPLA and the HMS scoping meeting) I hope this meeting tonight goes better than those other meeting did. But here is my letter to the council, please feel free to use it. But I will caution, my letter does have some teeth in it specifically intended to point out the essential "ownership" of the council by commercial fishing and what I consider to be the unfair preferences given to the commercial fishing special interests.

I can always be reached by e-mail. If you need, just let me know and I'll give my number.

Thanks,

John

Here it is.

Members of the Council:

In regards to measures to effectively manage Highly Migratory Species off the West Coast, I would suggest you pay attention to facts, and not be motivated by the greed of special interest groups, specifically, commercial fishing interest. In addressing proper resource management practices, it would appear that the ultimate goal should be to manage the resource in such a way that all user groups are valued equally. The draft plan places further unwarranted and unsustainable burdens upon already overburdened resources. Secondly, the plan places additional unnecessary restrictions upon the greatest ally of highly migratory species, the recreational angler.

Somewhere, somebody must apply common sense to this matter, I challenge you to overlook the special interests of greed and use common sense here.

My point is this, if a resource is abused, reduced or damaged, or if one's activities cause that resource, or a secondary resource to be come abused, reduced or damaged, does it not make sense to severely restrict (my desire would be to eliminate) the primary factor causing the damage? On the surface it would seem to be a very easy question to answer.

Lets address a few specific issues here:

Me, the recreational angler: It is unfair for you to place any additional burdens upon me. Believe me I carry the burdens of the entire fishing industry on my back. When quotas are established, limits reduced, gear restriction imposed, they are always placed on me, the recreational angler. This seems backwards to me since by the government's own records, the recreational angler only takes 2% - 3% of the total of all fish taken.

· Bottom Line: don't place any new restrictions or fees upon the recreational angler, they have been shown to have no effect on the

Gill Nets: Put the gillnets to 60 fathoms or deeper! Or remove them! Period!

Bottom Line: Two of our local fisheries are beginning to thrive again, white sea bass and halibut. Do not allow the gill-netters to return. Lets not be foolish enough to reinstate the same or similar practices that nearly eliminated the fishery!

Long Lines in the North Pacific: Lets call these things what they are. Indiscriminate killing machines of anything that swims be it fish, mammal or reptile. We are all aware of the fisheries decimation in the Atlantic. Do not allow that to happen here! By order of US court, the Hawaiian based long line fleet was prohibited from fishing in the north pacific. So we allow the fleet to move its base to our northwest coast and the killers go back and fish the same waters they were prohibited from fishing when they were based in Hawaii. Doesn't make a whole lot of sense, does it.

Bottom Line: Long lines kill everything they come into contact with and call it "bycatch". Lets define "bycatch" for what it really is: the killing of a creature that does not have commercial value to the long liner. Long lines destroy fisheries, contribute to the extinction of species (sea turtles, for example), and are a killing tool, not a management tool. What is the name of your organization? The Pacific Management Council. Manage this problem by eliminating it!

Purse Seiners: I've watched these ships destroy our bluefin resource for the last 4 years, and unload the thousands of fish they have killed for \$450 a ton to be sold for cat food. Then listened to them laugh on the VHF about how the "took" those fish away from the recreational guys. Keep them out of our local waters!

Bottom Line: Seiner ships are very efficient killing machines. In 1999, I watched as bluefin schools from horizon to horizon were wrapped up and gone in 1 day, eliminated from our fishery. Bluefin are in my opinion the most valuable HMS resource on the West Coast, and I have been fortunate enough to experience them. To see this resource sold off for \$450 a ton should truly be an embarrassment to you. It is to me. Eliminate the Seiners from our waters; my suggestion is no Seiners within 60 miles of our coast.

Money: The fact here is that both commercial and recreational fishing contribute essentially the same in terms of dollars to our economy, however, commercial fishing interests are awarded by quota or by other means (which nobody can figure out) the ability to take 97% - 98% of all fish removed from our oceans. This is a grossly discriminatory position (looks like I just found another lawsuit angle) which needs to stop, and stop here.

Bottom Line: By my letter, you would infer that I am against all commercial fishing. You would be wrong. If you can earn a living, fishing with a hook, line, and pole, subject to the exact same regulations and restrictions that I am. Then, I honour your abilities as fishermen, and solute you for your efforts, congratulations. If it cannot be done without the use of nets, long lines, seine nets, etc., then it should not be done! Period! Why, because commercial fishermen are the primary abusers of our resource and any management efforts to conserve the resource placed upon the commercial fishing industry first. Period!

This is the counter argument to my letter you will receive from the special interest group i.e., the commercial fishermen.

"Commercial fishing is my life, its how I put food on the table, its how I pay my bills. I can't do anything else. If you are going to eliminate my ability to make a living, you should compensate me."

Here is the response: "Mr. Commercial fishermen, while it is true that you used to make your living from the ocean, recent fishing practiced employed by you and others involved in the same industry have decimated, or will soon decimate the very resource you are claiming you need to make a living. Therefore, we will offer this in response. We have not eliminated your ability to go to sea and reap its harvest. You will, however, be subject to the same rules, regulations and restrictions as are recreational anglers. If you find that you are unable to sustain your standard of living due to these new regulations, you should seek other employment. In response to your comment that we should compensate you for your lost income, we would ask why? Why should you be treated any differently than:

- The owner of a construction company who mortgages all that he owns for his business only to loose it all when we, a governmental body decide to place into effect a no-building ordinance. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and usually succeeds.
- A logger who looses his job when all of the trees in Northern California have been harvested, or defined as sanctuary. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and usually succeeds.
- The military weapons engineer who looses his job when the Federal government reduces its military spending budget. This man files bankruptcy if necessary, recovers his losses, retrains himself to do something else, and succeeded wonderfully. (This person is now my immediate supervisor.)

The bottom line is you shouldn't be treated any differently, you abused the resource and now you have to take the responsibility for your actions. That responsibility should not be placed on the recreational angler or the general public."

Sincerely,

John Boseman,  
A concerned and informed recreational angler

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## Fishing Report



Pat Cavanaugh

EXCEL

2838 Garrison St.  
San Diego CA 92106  
Ph 619.223.7493  
FX 619.223.1292

January 28, 2002



Hi angler's

We are still traveling south. As of now I think we are going to start at Roca Partida. Its been a few weeks since anyone has given the Rock a check. A sad thing happened today that I thought would make a interesting story to tell. At about 1045 this morning I spotted a fairly small hump back whale acting a little strange. Once we got close enough it was obvious that the whale was in trouble. As it turned out the whale had a substantial amount of nylon drift net all over its body. It was draped over its head and in its mouth. The net was all the way down the length of the whale's body, pinning his pectoral fin's to its side. I think that may be why he couldn't dive. He also had a fair amount of the webbing and some poly propylene rope wrapped tightly around his tail. It looked as though he had been in this condition for at least several days. His fin's were not in good shape at all. It was a sad sight.

As bad as the animal looked, and as hopeless as it seemed, we decided it was defiantly worth a try. The whale seemed to be tired enough to allow us to get close. So we dropped a skiff in the water, and three crew members headed off to try to cut some of the net free. The crewmembers were Mike Pritchard, Justin Fleck and Adam Griffith. The crew spent about an hour and a half trying to stay close enough to cut some of the net free. At times they were able to gaff a small piece of webbing and pull it close enough to cut. They did manage to get most of the net off the whale's back which seemed to give him some renewed strength. Because soon after the guys got that portion of the net off the whale, he started to make small dives. This made it more difficult for the guys to stay close..

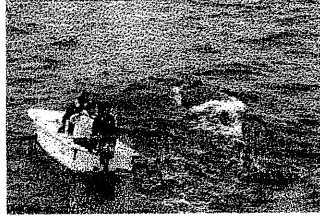
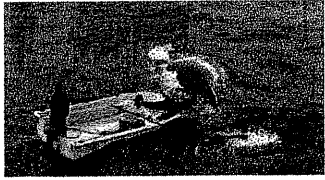
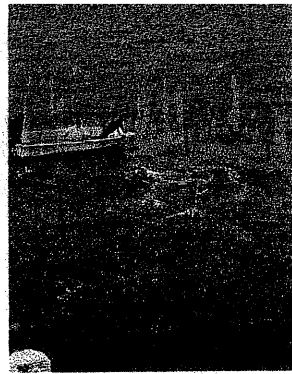
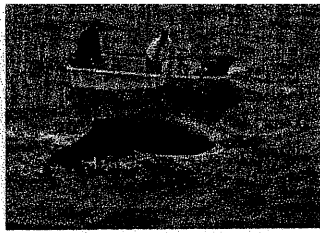
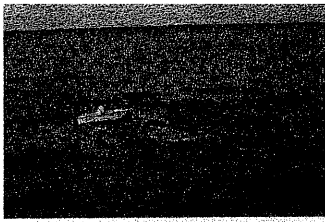
At one point Justin was able to gaff the net just behind the whale's tale, and actually hold on enough to almost stop the whale. At that time Adam was able to cut a big portion of net off the tale. Then we decided that the only way to get the rest would be from the water. And it looked as though the whale was calm enough to allow us to get in and work in the water safely. Mark Marcias, (a passerger), and I were the two who went in the water. Mark is a water rescue fireman from the bay area, so I thought he would be a good man for the job. Once Mark and I were in the water, it didn't take long to see that the job we set out to do was near impossible. We had Adam gaff the net near the whale's tail. That seemed to slow him down. Then Mark and I jumped in to see what it looked like under water. First of all their was a lot more net than we originally thought. It was all over the under side of the whale. The other , more important factor was the sharks. Almost as soon as I got in the water I had a pelagic white tip behind me. I tried to swim after it to scare it away but it didn't work. He kept coming right up behind my fins. Soon their was a hammerhead along with the white tip. I quickly swam back to the skiff and got out of the water, then we ran over to Mark and got him out of the water. I decided it was just to risky to do the job we had to do with the sharks the way they were. You could not concentrate on cutting the ropes off the whale, keep from getting caught in the net and look over your shoulder for aggressive sharks. It was just too much.

So I am very sorry to say we had to leave the whale. All we can do is hope he doesn't suffer too much longer. This is the first time I have ever seen anything like this, andI hope it will be the last. I have sent a few pictures taken when the crew were trying to cut some of the webbing. In a couple of the shots you can see the green webbing around the whale's tail.

Hoping for a little happier report tomorrow.

Pat Cavanaugh









HMS FISHERY MANAGEMENT PLAN PUBLIC HEARING SUMMARY

Date:	February 2, 2002	Hearing Officer:	Ms. Marija Vojkovich
Location:	San Pedro, CA  Hilton Port of Los Angeles/San Pedro Terrasini Room 2800 Via Cabrillo Marina San Pedro, CA 90731	Other Council Members:	Mr. Don Hanson
Attendance:	65	NMFS:	Mr. Svein Fougner
Testifying:	24	HMSPDT:	Dr. Norm Bartoo Ms. Susan Smith Dr. Dave Au
		Staff:	Mr. Jim Morgan
<u>Organizations Represented:</u> <ul style="list-style-type: none"><li>• Avalon Tuna Club</li><li>• Southern California Tuna Club</li><li>• United Anglers of Southern California</li><li>• Inland Saltwater Fishing Club</li><li>• Light Tackle Marlin Club</li><li>• Sportfishing Association of California</li><li>• Ocean Wildlife Campaign</li><li>• Harbor Rod and Reel Club</li><li>• Izaak Walton League of America</li><li>• Los Angeles Rod and Reel Club</li><li>• The Billfish Foundation</li><li>• Chark Bait Saltwater Fishing Club</li><li>• Balboa Angling Club</li><li>• Western Fishboat Owners Association</li></ul>			

**Synopsis of Testimony**

Of the 24 people testifying, generally:

- 17 represented the recreational fishery
- 5 represented the commercial fishery
- 1 represented conservation groups
- 1 represented the general public

**Commercial Comments**

Some believed limited entry is not necessary for the albacore fishery. There was some support for small mesh (albacore) gillnets, because there are so few vessels and the number of vessels is not likely to increase. There was some support for experimental longline fishing north of Point Conception.

**Recreational Comments**

Some speakers urged a precautionary approach to stocks of unknown status, encouraged a catch and release program, and opposed longlines in the EEZ and drift gillnets. There was some support for observers, and monitoring and reporting provisions.

**Conservation Group Comments**

Some speakers urged no exploratory fishing through Exempted Fishing Permits (EFPs). Some recommended the use of EFPs to reduce bycatch. Generally, this group supported use of the precautionary approach.

**Other Testimony**

None.

**Written Statements Submitted at the Hearing = 3**

PFMC  
02/27/02

RECEIVED



FEB 11 2002

SOUTHERN CALIFORNIA TUNA CLUB  
6289 E. PACIFIC COAST HWY.  
LONG BEACH, CALIFORNIA 90803

PFMC

February 1, 2002

To: Pacific Fishery Management Council (PFMC)  
Fm: Southern California Tuna Club (SCTC)

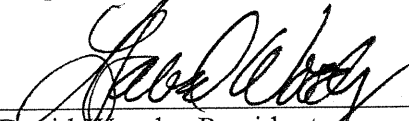
Re: HMS Plan

Dear Council Members,

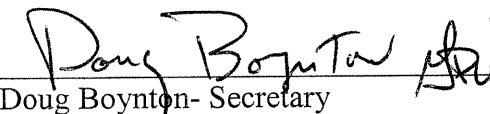
On behalf of the 238 members in good standing of the Southern California Tuna Club, the Board of Directors unanimously supports PFMC's adoption of the "preferred option" currently described as the Highly Migratory Species Plan.

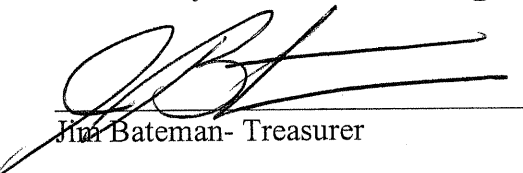
SCTC is opposed to allowing longline fishing within the 200 mile EEZ.

Respectfully Submitted,

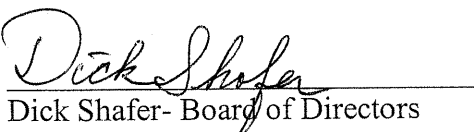
  
David Woody- President

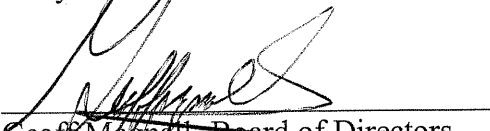
  
Dan Mundy- Vice President

  
Doug Boynton- Secretary

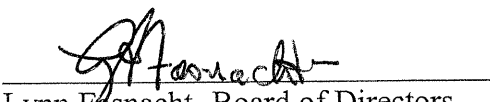
  
Jim Bateman- Treasurer

ON VACATION  
Terry Krauss- Board of Directors

  
Dick Shafer- Board of Directors

  
Geoff Magnall- Board of Directors

ON VACATION  
Joel Babic- Board of Directors

  
Lynn Fasnacht- Board of Directors

  
Lyle Wright- Board of Directors

**ADDRESS TO THE FEBRUARY 2<sup>ND</sup> 2002 MEETING OF THE  
PACIFIC FISHERIES MANAGEMENT COUNCIL**



GENTLEMEN:

MY NAME IS ERIC ROGGER AND I REPRESENT THE LOS ANGELES ROD AND REEL CLUB. I ALSO SERVE ON THE BOARD OF DIRECTORS OF UNITED ANGLERS OF CALIFORNIA. LOS ANGELES ROD AND REEL CLUB HAS A 52 YEAR TRADITION IN THE SOUTHLAND AND BOASTS A NON-PROFIT ARM WHICH TAKES UNDERPRIVILEGED KIDS FISHING AND MAKES GRANTS TO ORGANIZATIONS INVOLVED IN THE PERPETUATION OF OUR MARINE RESOURCES.

THE MEMBERS OF YOUR GROUP ARE ASKED TO MAKE SOME VERY SERIOUS DECISIONS WHICH WILL NO DOUBT ALSO IMPACT OTHER AMERICAN COASTAL FISHERIES. AT ISSUE ARE THE LONG LINERS' EFFORTS TO OPERATE WITHIN THE EEZ AND THEIR CONSEQUENT INDISCRIMINATE DISASTEROUS EFFECT ON HIGHLY MIGRATORY SPECIES, MAMMALS AND BIRDS..

THIS PUBLIC HEARING GIVES US THE OPPORTUNITY TO TELL YOU THAT WE SUPPORT THE BILLFISH FOUNDATION AND UNITED ANGLERS IN THEIR OPPOSITION TO OPENING UP OUR COASTAL WATERS. NOTE THAT MOST OF OUR CONSTITUENTS HOWEVER, ARE NOT PRIVATE BOATERS BUT AVERAGE RECREATIONAL FISHERMEN INVOLVED IN TAKING THEIR FAMILIES ON PARTY BOATS OR CHARTERS. MENTION LONGLINES AND IT CONJURES UP THE ISSUE OF THE DREADFUL BYCATCH PROBLEM CREATED BY MILES OF HOOKS.

YOU KNOW BETTER THAN WE DO WHAT SPECIES ARE BEING MOST IMPACTED. IN SOUTHEAST AND CERTAIN GULF WATERS 133,000 SQUARE MILES OF OCEAN HAVE BEEN PLACED OFF LIMITS TO LONGLINES FOR THE HIGHLY MIGRATORY SPECIES BY THE NMFS. VAST AREAS OF THE PACIFIC OUT OF HAWAII ARE ALSO OFF LIMITS. OUR RESTRICTIONS SHOULD BE SIMILAR.

THE LATEST REAUTHORIZATION OF THE SUSTAINABLE FISHERIES ACT (1996) REQUIRED AN ECONOMIC ANALYSIS OF FISHING PARTICIPANTS AND THEIR EFFECTS ON COASTAL COMMUNITIES. THE NMFS STUDY CITES THE 1999 STATISTICS SHOWN IN THE NEXT PARAGRAPH.

RECREATONAL SALTWATER FISHERMEN NUMBER 10.4 MILLION. THE RECREATIONAL FISHING INDUSTRY GENERATES \$20.7 BILLION IN RELATED ACTIVITIES. THE COMMERCIAL INDUSTRY, WHICH IS RESPONSIBLE FOR 97% OF THE FINFISH CAUGHT GENERATES \$1.6 BILLION IN LANDING VALUES. THE RECREATONAL INDUSTRY TAKES 3% YET GENERATES 13% OF THE ECONOMIC ACTIVITY.

CONCLUDING, WE ASK MEMBERS OF THIS PANEL TO NOT ONLY LOOK AT THE IMPACTED SPECIES- SOME ENDANGERED - CAUSED BY INDISCRIMINATE GEAR, BUT ALSO THE ECONOMIC AND SOCIAL RESULTS TO BE CONTEMPLATED.

WE ASK THAT THIS GROUP DO THE **RIGHT** THING AND THANK YOU FOR LETTING US BE HEARD.

**RECEIVED**

FEB 11 2002

*Prepared on behalf of LARod & Reel Club by Eric Rogger - 310 476-5936*

**PFMC**

RECEIVED

FEB 11 2002

PFMC

JOHN H. HENSLEY  
P.O. BOX 506  
SAN PEDRO, CA 90733-0506  
(310) 710-0523

COPY

January 12, 2002

(503) 326-6352

Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 220  
Portland, Oregon 97220

RE: Highly Migratory Species Draft Plan

Dear Dr. McIsaac

I acknowledge receipt of the Pacific Fishery Management Council's Draft Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species hereinafter referred to as the "Plan" that, frankly speaking, seems to favor certain fishers and therefore can only be interpreted as prejudicial to fishers, such as the undersigned.

For your consideration, I am a California Drift Gill-Netter for shark and swordfish. That there is a potential due to this "heavily regulated fishery" (Plan @ ES-4) that I could be out of business should this highly charged political-environmental trend continue.

There is every indication this trend will continue as evidenced by California Proposition 132 in 1990 putting the inshore gill netter who traditionally fished just off the beach out 3 miles from Point Conception to the Mexican border and locally in the Los Angeles and Orange County area out 12 miles effectively placing their target species out of reach and out of business.

Further evidencing the "trend" the National Marine Fisheries Service relative to the California Drift Net Fishery implemented gear restrictions, e.g., six fathom suspenders, and the use of pingers with the Marine Mammals Protection Act; and prohibited taking and zero tolerance of endangered species and most recently (August 2001) limiting fishing grounds above Pt. Conception by implementing the Pacific Leatherback Conservation Area. It is my understanding the NMFS now proposes in El Nino years limiting the fishing grounds from Pt. Conception to the Mexican border relative to the sea turtle.

It is clear the California Drift Net fishery is politically and environmentally charged and those fishers, such as myself, are in danger of being legislated out of business.

COPY



Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
January 12, 2002  
Page 2

RE: Highly Migratory Species Draft Plan

Should this happen, and like most fishers, I have all my monies invested in my boat and gear, after all it's been my living for many years, as in any business. Consequently, my only alternative would be to continue in the highly migratory species by supporting my family in the albacore surface hook and line fishery.

Unfortunately, the Highly Migratory Species Draft Plan proposes a limited entry plan with a control date of March 9, 2000. (Plan @ ES-11)

I am very concerning with the Council's position relative to albacore and related species that it is accepting a "plan" that "Some individuals from this fishery expressed concern to the Council that a limited entry program may be necessary to control excess capacity." (Plan @ ES-11).

That "In response to this concern" those individuals and **not** based upon scientific studies which clearly indicate there is no over fishing of the albacore as evidenced by the participation of vessels "peaking at more than 2,000 in the mid 1970's. In 1999, 775 troll vessels landed albacore." (Plan @ ES-3). In fact the number of vessels has sharply declined.

That the Status of Fish Stocks as mandated by the Magnuson-Stevens Act, and implemented by the IASTTC assessments which states "Presently the albacore stock is healthy, and stock and catches are both increasing . . . no regional harvest guideline is recommended"; Eastern Pacific Yellowfin Tuna "no regional harvest guideline is recommended"; Bigeye Tuna "no regional harvest guideline is recommended"; Skipjack Tuna "no regional harvest guideline is recommended and Northern Bluefin Tuna "no regional harvest guideline is recommended". (Plan @ ES-6--ES-7)

It seems the Council is favoring a certain group of fishers who want to eliminate any and all other fishers in the obvious hope they can drive the price of albacore up being the "only" ones fishing albacore. That knowingly or unknowingly the Council's proposed draft plan is creating a commodity (albacore) that is being controlled by one group of fishers, effectively, creating a monopoly that in all likelihood would be thrown into the judicial system for resolution.

I propose the Council give consideration to those fishers who are already in the California Drift Gill Net fishery being able to change over to the Albacore Fishery without being sanctioned by a control date of March 9, 2000.

COPY

Dr. Donald McIsaac, Executive Director  
Pacific Fishery Management Council  
January 12, 2002  
Page 3

RE: Highly Migratory Species Draft Plan

I will be attending the February 2, 2002 public hearing in San Pedro, California and request that I am placed on the list of speakers as well.

Further that my letter be circulated to all members of the Council for the March 2002 Council meeting and that I am placed on the list of speakers as well.

Thank you for your courtesy and cooperation.

Very truly yours,

**JOHN H. HENSLEY**

cc: Congresswoman Jane Harman

COPY

### HMS FISHERY MANAGEMENT PLAN PUBLIC HEARING SUMMARY

Date:	February 4, 2002	Hearing Officer:	Mr. Don Hansen
Location:	San Diego, CA	Other Council Members:	Mr. LB Boydston
	Hubbs-Sea World Rsrch Inst. 2595 Ingraham Street San Diego, CA 92109	NMFS:	Mr. Svein Fougner
Attendance:	60	HMSPDT:	Dr. David Au Dr. Norm Bartoo Mr. Steve Crooke Ms. Susan Smith Dr. Dale Squires
Testifying:	13	Staff:	Mr. Larry Six
<u>Organizations Represented:</u> <ul style="list-style-type: none"><li>• Southwestern Yacht Club Anglers</li><li>• Sportfishing Association of California</li><li>• The Marlin Club of San Diego</li><li>• San Diego Rod and Reel Club</li><li>• Ocean Wildlife Campaign</li><li>• The Billfish Foundation</li><li>• United Anglers of Southern California</li></ul>			

### Synopsis of Testimony

Of the 13 people testifying, generally:

- 9 represented the recreational fishery
- 3 represented the commercial fishery
- 1 represented conservation groups

### Commercial Comments

One vessel owner who fishes for albacore noted the albacore stock is doing well after being impacted in the 1980's by the high seas driftnet fishery. He expressed some concern about the small-mesh gillnet fishery and its potential to impact the market, because product quality is inferior. He asked the Council to consider this issue carefully before expanding this fishery.

A gillnet vessel owner spoke in favor of the small-mesh fishery, and he opposed the 14-inch mesh restriction. He stated that most of the albacore and bluefin taken in this fishery go into a special sushi market (not in the troll market), and product quality is high. He asked the Council to make a decision based on science, not public opinion. He estimated that 40 vessels are using small mesh to target tuna.

Another vessel owner stated there is enough fish for all groups and no need to shut down commercial fisheries when there is a market for these fish, and especially given the lack of data.

### Recreational Comments

Representatives of United Anglers of Southern California supported the preferred alternatives and complimented the Council on the excellent process of plan development. They supported the 14-inch mesh size option and a low incidental catch rate.

The representative of the San Diego Rod and Reel Club supported no longlining in the EEZ, but felt the Council should go further in restricting use of longlines and drift gillnets beyond the EEZ, because of the impact on striped marlin. He supported the 14-inch mesh size restriction.

The representative of The Billfish Foundation concurred with the preferred alternatives and thanked the Council for the opportunity for the southern California sport fishing community to become involved in the Council process. The recreational fishery is a legitimate economic activity which supports many jobs.

Other anglers generally expressed support for the FMP and the preferred alternatives.

### **Conservation Group Comments**

The representative of the Ocean Wildlife Campaign stated that the FMP was a good first step. He supported most of the preferred alternatives. He recommended the Council develop its own guidelines for EFPs with an emphasis on bycatch reduction not exploratory fishing. He supports authority to establish observer programs, but suggested the FMP should go further and specify numbers of observers needed across the fleet. He supported the harvest guidelines for thresher and mako sharks, but would prefer that the Council cap catches of all HMS at current levels.

### **Other Testimony**

None.

At the end of formal testimony, there was an informal discussion about the small-mesh gillnet fishery and the lack of data on this fishery.

**Number of Written Statements Submitted at the Hearing = 0**

PFMC  
02/27/02

HMS FISHERY MANAGEMENT PLAN PUBLIC HEARING SUMMARY

Date: January 28, 2002	Hearing Officer: Mr. Bob Alverson
Location: Olympia, WA  Natural Resources Building 1111 Washington Street NE, Rm. 172 Olympia, WA 98501	Other Council Members: Mr. Phil Anderson
Attendance: 9	HMSPDT: Ms. Michele Robinson
Testifying: 3	Council Staff: Mr. Dan Waldeck Mr. Kit Dahl
<u>Organizations Represented:</u> <ul style="list-style-type: none"><li>• Washington Trollers Association</li><li>• Westport Charterboat Association</li><li>• Northwest Indian Fisheries Commission</li><li>• US Coast Guard</li><li>• Washington Department of Fish and Wildlife</li><li>• National Marine Fisheries Service-Northwest Regional Office</li></ul>	

**Synopsis of Testimony**

Of the 3 people testifying, generally:

- 1 represented the recreational fishery
- 2 represented the commercial fishery

**Commercial Comments**

The first commentator was not in favor of limited entry for the albacore troll fishery. He noted that salmon trollers, at times, depend on access to albacore fishery. He also asked about how expensive licenses would be if licenses would be required even if a fisher did not participate in the albacore fishery and where the license fee would go.

The hearing panel responded that National Marine Fisheries Service (NMFS) would administer permits, and they would determine license fees. The intent would be for permit fees to be determined by administrative costs.

The second speaker remarked about the proposed management cycle, commercial permits, and drift gillnet closures. He suggested the Council refrain from HMS management decisions during the July-September period, as this is the peak of the West Coast-based albacore fishery. Relative to commercial fishing permits, he suggested permits be issued to a person or entity, because if limited entry is developed, it will be necessary to tie catch history to an individual which reduces problems in identifying who can claim past participation during the qualifying period. Also relative to permits, he questioned whether Canadian albacore fishers in U.S. waters should be required to hold U.S. HMS permits. He contended that if U.S. HMS fishers are required to hold permits, Canadian fishers in U.S. waters should also be required to hold permits. Relative to the proposed drift gillnet closed area, he asked for clarification as to the bounds of the closed area. He concluded by complimenting the Council process.

**Recreational Comments**

This representative from the charterboat sector noted a desire to be accounted for in HMS management,

especially the albacore fishery. He is opposed to the small mesh drift gillnet fishery targeting albacore and the use of pelagic longlines with the U.S. exclusive economic zone (EEZ). He does not support federal permits for individual recreational anglers, but would support federal licenses and logbooks for the charterboat sector.

**Number of Written Statements Submitted at the Hearing = 2**

PFMC  
02/26/02

Dr. Don McIsaac, Executive Director  
PFMC  
7700 NE Ambassador Place  
Portland, OR 97220

1/28/02

Douglas Fricke  
Commercial At-Large HMS A/P  
110 Valley Road  
Hoquiam, WA 98550

Subject: Testimony to 1/28/02 PFMC Hearing on HMS at Olympia, Wa.

I do have three short comments on the "Draft Fisheries Management Plan and ESI for U. S. West Coast Fisheries for Highly Migratory Species". However my main propose as the Northern at-large commercial representative to the PFMC HMS Advisory Panel is to listen to the comments of area industry individuals in order to relate their concerns to the PFMC through the HMS Advisory Panel.

My comments follow:

- Paragraph 8.3.5 Management Cycle - Please do not schedule any of the HMS decision making or review requirements during July through the end of September as that is the middle of the albacore tuna fishermen's season for the U. S. West Coast.
- Paragraph 8.5.1 Permits - There needs to be clarification that the HMS fishing vessel permit is issued to a person or entity that can retain a clear right to the catch history. If limited entry comes in the future, we need to avoid the problem of who can claim the catch history. Also, for the purpose of control and management, shouldn't there be a requirement for Canadian vessels to obtain a similar permit to fish albacore in the U.S. EEZ?
- Paragraph 8.5.4 Drift Gillnet Fishery Management Measures - there needs to be clarification of the new closures off of Washington and Oregon. The "proposed action" talks about new closures but there is no description of the closures.

I would like to conclude by complimenting the PFMC process for recognizing suggestions by industry in the past and correcting inaccuracies that were included in past draft documents.

# **W**ESTPORT CHARTERBOAT ASSOCIATION

P. O. BOX 654 • WESTPORT, WASHINGTON 98595

January 28, 2002

**To: Pacific Fishery Management Council**

**From: Mark Cedergreen, Executive Director**

**Re: Highly Migratory Species Fishery Management Plan (HMSFMP)**

The Westport Charter boat Association is comprised of the 30 charter vessels fishing out of Westport, Washington. Approximately half of these vessels participate in the albacore fishery off southwest Washington during the time period from late July through early October. Our fishery is dependent upon albacore migrating to within one hundred miles of port, which has occurred in most years since the mid-1960's.

Virtually all of the recreational trips taken in Washington are on vessels out of Westport. Westport is the only port on the Washington coast that fishes with live bait. Our catch averages about 2 percent of the Washington landings (commercial and recreational) of Albacore Tuna. We are a very small part of the overall HMSFMP proposal and we are concerned that we could be "lost in the shuffle" so to speak.

We generally support the position of the Western Fishboat Owners Association (WFOA).

More specifically, we are strongly opposed to the use of small mesh nets for catching albacore and the use of pelagic longlines within the EEZ. We are also opposed to a federal individual recreational fishing license. We believe that state licensing systems are the vehicle by which to license recreational fishers. We support a charter boat logbook program and a Federal license of charter boats for the purpose of monitoring and record keeping so long as the cost of a license is not excessive. We support an annual or a bi-annual process for specific regulations and reserve our comments on those issues until that system is in place.

Thank you for considering our views.



## HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN

**Situation:** The Council is scheduled to take final action on the fishery management plan (FMP) for West Coast highly migratory species (HMS) fisheries. The FMP, with the Draft Environmental Impact Statement (DEIS), was distributed for public review beginning January 5, 2002. From January 28-February 4, seven public hearings were held to provide interested individuals opportunity to comment on the FMP and DEIS; summaries from these hearings are included as attachments (Exhibit G.2, Attachment 2.a-g).

At this meeting, the Highly Migratory Species Plan Development Team (HMSPDT) will review the proposed management actions and alternatives. The HMS Advisory Subpanel (HMSAS) will provide their comments.

In the draft plan, the Council has specified preferred options in some cases, and not specified preferences in others. At this meeting, the Council is scheduled to select options for final recommendation to the National Marine Fisheries Service. Attachment 1 summarizes the necessary decisions and the Council's preferred options to date.

Public comments on the draft FMP are enclosed (Exhibit G.2.d). As of February 22, 2002, the Council received approximately 1,112 pieces of correspondence (email, fax, mail) related to the draft FMP. 1,074 of these were from mass mail campaigns (983 and 91, respectively). 38 individual letters or emails make up the balance of comments received. Generally, the majority of the comments support adoption of the FMP and the current preferred alternatives. Many comments specifically call for prohibition of the use of pelagic longline gear within the U.S. exclusive economic zone. There are also many comments calling for conservative management. In contrast, several comments question the need for further restrictions on commercial fisheries; including longline gear prohibition, minimum drift gillnet mesh restrictions, and purse seine area closures. One very detailed set of comments was received. This commentator questioned the need for a Federal FMP and several of the management restrictions in the draft FMP.

Previously (September 2000-November 2001), the Council received approximately 5,760 letters specifically in opposition to the use of pelagic longline gear.

### **Council Action:**

- 1. Consider final adoption of FMP. Select preferred alternatives and provide guidance to the HMSPDT and HMSAS for finalizing the FMP, where necessary.**

### **Reference Materials:**

1. Draft Highly Migratory Species Fishery Management Plan, Including Draft Environmental Impact Statement and Regulatory Impact Review (**please bring your copy with you**).
2. Outline of proposed actions and alternatives (Exhibit G.2, Attachment 1).
3. Public hearing summaries (Exhibit G.2, Attachment 2.a-g).
4. Exhibit G.2.d, Public Comment.
5. Exhibit G.2.c, Supplemental HMSPDT Report.
6. Exhibit G.2.c, Supplemental HMSAS Report.

### **Agenda Order:**

- a. Agendum Overview
- b. Draft FMP and EIS
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Adopt HMS FMP for Implementation

Dan Waldeck  
Dale Squires/Steve Crooke

PPMC  
02/26/02

Law Office  
of

ILSON W. NEW  
1801 Van Ness Avenue, Suite 350  
The California Federal Bldg.  
San Francisco, California 94109  
Tel. (415) 567-7595 Fax (415) 567-7594

March 13, 2002

Hand Delivered March 14, 2002

PACIFIC FISHERY MANAGEMENT COUNCIL  
c/o Don O. McIsaac, Executive Director  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220

RE: Pacific Fishery Management Council  
December 2001

**DRAFT**  
**Fishery Management Plan**  
and  
Environmental Impact Statement  
**for**

- U.S. West Coast Fisheries for Highly Migratory Species
1. Chap. 8 Sec. 8.4.1 Legal Gear and Gear Restrictions
  2. Chap. 8.4.2 Incidental Catch Allowance
  3. Chap. 8. Sec. 8.4.4 Bycatch

Dear Executive Director McIsaac and Members of the Council:

I am writing in behalf of approximately sixty-five (65) Offshore and Near Shore Gillnet fishermen whose Ports are in Central and Southern California.

We have the following objections and support as to certain "Alternatives" and parts of the above-referenced Sections of the Pacific Fishery Management Council's (PFMC) DRAFT Fishery Management Plan and Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species:

1. Chap. 8 Sec. 8.4.1 Legal Gear and Gear Restrictions
- 
- a. We support Alternative 2.

Reasons:

- (1) The population biomass of blue fin and albacore tuna are generally reported to be healthy, and by some exceptionally strong, which reports are supported by recent and current substantially above average sport fishing annual catch.

- (2) The absence of a minimum net mesh size will allow the Small Mesh Gillnet Fishery for blue fin and albacore tuna to continue and thereby will provide a significant source of income to coastal gillnetters who have experienced severe restrictions and diminution of their fishery, and its participants' income, over the last fifteen years.
- (3) The Small Mesh Gillnet Fishery for albacore and tuna provides a benefit and resource to the ~~officiating~~ <sup>FISH EATING</sup> consumer in providing a substantially increased supply of fresh tuna to the California fresh fish market.
- (4) The Small Mesh Gillnet Fishery provides a method of catching fish that would otherwise not "bite", i.e., hook and line, such as very large albacore, blue fin tuna, and Pomfrett.
- (5) The Small Mesh Gillnet Fishery provides a method of exploring the existence and the feasibility of catching new species such as Pomfrett. Many of such new species swim through large 14" mesh gillnets.
- (6) The Small Mesh Gillnet Fishery has no "Bycatch" as to the definition of that word in the FMP as to their marketability; *all fish* that are caught in the Small Mesh Gillnet Fishery are sold at market.
- (7) Field evidence shows that the smaller mesh gillnets have de minimus interactions with marine mammals and birds.

b. We oppose Alternative 1:

Reasons:

- (1) We oppose Alternative 1 because it eliminates the Small Mesh Gillnet Fishery for blue fin and albacore tuna and the benefits thereof as set forth in 1.a above.
- (2) This Alternative/proposed *ruling* is not supported by any *findings* which were based upon factually, logically and legally valid and supporting *facts*; absence of such *findings* upon which the ruling ("Alternative") is based renders the ruling unconstitutionally *arbitrary* and *capricious*.
- (3) We posit that the Alternative being "consistent" with the "historic consideration..." to be, if it is offered as such, an invalid *finding* to support the Alternative/*ruling*, and further to be an unconstitutionally *vague* and *ambiguous* basis for the Alternative/*ruling*.
- (4) There is no scientific information or basis for the selection of Alternative 1.

## 2. Chap. 8. Sec. 8.4.2 Incidental Catch Allowance

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- a. In the event that Chap. 8. Sec. 8.4.1 Alternative in 2 is not the adopted Alternative, we propose a maximum Incidental Catch Allowance of Fifty Percent (50%) of the total landing weight.

Reasons:

- (1) This would allow an *additional source of income* to the Small Mesh Gillnet Fishery (on days when the incidental catch happened to be large) which has suffered severe financial setbacks the last fifteen years.
- (2) This would *eliminate* substantial amounts of *waste* that would otherwise occur due to the incidental catch by Small Mesh Gillnet Fishers.
- (3) This incidental catch allowance amount poses *no biological danger* to the biomass. The population biomass of bluefin and albacore tuna are generally reported to be healthy, and by some exceptionally strong, which reports are supported by recent and current substantially above average sport fishing annual catch.

## 3. Chap. 8. Sec. 8.4.4 Bycatch

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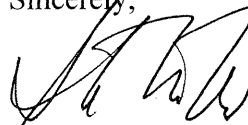
- a. We generally support the principle of status quo and more specifically Chapter 8 Sec. 8.5.4 Alternative 2.

Reasons:

- (1) Based upon the superior importance of the MMPA and the ESA and their legal authority, it appears logical that the drift gillnet fishery federal regulations continue under those two major Acts.

We wish to take this opportunity to request the Council's documentations/data/research information on all of the Alternatives contained in the above-referenced three (3) Chap.8 Sections.

Sincerely,



ILSON W. NEW

IWN:rf