

## DRAFT

SUMMARY REPORT OF THE INFORMAL CONSULTATION **FOR** THE  
NORTHERN COMMITTEE OF WCPFC  
(*Tokyo, Japan 12-13 September 2005*)

The Informal Consultation for the Northern Committee of WCPFC took place at Tokyo, Japan from 12 to 13 September 2005. The Consultation was attended by representatives from Canada, China, Japan, Republic of Korea, Philippines, Chinese Taipei and the United States of America. The Secretariat of the WCPFC, also attended. The list of meeting participants is included at Attachment 1.

Agenda 1. Opening

1. The meeting was opened by Mr. Akira NAKAMAE, Deputy ~~Director General~~, Fisheries Agency of Japan. Participants noted the importance and usefulness of this informal consultation and expressed their appreciation to Japan for hosting the meeting.

Agenda 2. Election of Chair

2. Mr. Masanori MIYAHARA, Japan, was elected as the Chair.

Agenda 3. Adoption of Agenda

3. The agenda was adopted as amended (Attachment 2).

Agenda 4. ~~Process~~ toward the initiation of the Northern Committee

4. The following works and schedule were suggested to start the function of the Northern Committee;
- a. Preparatory meeting for the Northern Committee on Saturday, December 10, 2005 in Pohnpei, Federated States of Micronesia.
  - b. Formal establishment of the Northern Committee by the Commission on Monday, December 12.
  - c. First meeting of the Northern Committee on Monday or Tuesday in the same week to formalize the outcomes of the above preparatory meeting.
  - d. The results of the first Northern Committee meeting will be sent to the Commission for its consideration and appropriate actions.
5. The above will be communicated to the Commission Chair and under his ruling the schedule will be finalized. All the process of the above preparatory and Northern Committee meetings should be open to any member of and observer to the Commission.

6. The following issues are suggested for the preparatory meeting of the Northern Committee;
  - a. Secretarial functions, costs, costs sharing and other logistical issues associated with the function of the Northern Committee
  - b. Relationship of the Northern Committee with the ISC, **IATTC** and other subsidiary bodies of the Commission
  - c. **Conservation** and management **measures** for northern albacore
  - d. Data needs for assessments of the northern stocks
  - e. Future work program
  - f. Election of Chair and other officers, if necessary
  - g. Rules of Procedure
7. Participants supported an idea to nominate Mr. Masanori **MIYAHARA**, Japan, as a candidate for the chair of the Northern Committee. It was noted that the chair will be formally elected at the first meeting of the Northern Committee.
8. It was noted that the Commission has a full agenda and that it would be difficult to have the Northern Committee meeting in association with the Commission meetings in 2006 and thereafter. It was **suggested** to have the Northern Committee meetings in early September in the future. The period of Northern Committee meeting should be decided in accordance with the workload each year.
9. Regarding the meeting venue, Japan expressed its willingness to host the Northern Committee meeting every year unless any other offer was made by other member of the Northern Committee. Participants appreciated Japan's offer, and some also expressed interest in hosting future meetings.
10. It was noted that transparency of the Northern Committee was important and that, even though any member of the Commission may participate in meeting of the Northern Committee as an observer, further effort should be made to ensure that all issues discussed at the Northern Committee are reported to all members of the Commission.

Agenda 6. Formulation of the rules and regulations for the Northern Committee

a) Rules of Procedure

11. Following the **suggestion** by Chair, **Chinese** Taipei presented its draft Rules of Procedure for the Northern Committee (Attachment 3).
12. The following format was suggested for formulation of the Rules **of Procedure**:

It was noted that the Rules of Procedure for the Commission should be applied, *mutatis mutandis*, to the Northern Committee except for the following rules:

.  
.  
.

13. Those exceptional rules to be applied to the Northern Committee will be discussed at the preparatory meeting.

b) Costs and Budget

14. Japan presented the document on the Northern Committee of WCPFC and explained its ideas to enable the Committee to perform its functions well and effectively with minimum cost (Attachment 4). In addition to the proposal by Japan, the possibility of having a Northern Committee liaison officer at the Secretariat headquarter will be considered further. Extraordinary cost for the Northern Committee will also be discussed further at the preparatory meeting.
15. Regarding contribution formula showed in attachment 4, China preferred the option three and other participants preferred to open all of the options.
16. The costs of the Northern Committee should be born by **its** members but be a part of Commission budget as a whole. The participants showed strong preference for payment of the Northern Committee costs as a part of their assessed contributions to the **Commission** in accordance with the formula to be agreed in future.

Agenda 6. Cooperation with the ISC

17. Japan introduced the Draft Memorandum of Understanding (MOU) between WCPFC and the International Scientific Committee for Tuna and **Tuna-like** Species in the North Pacific Ocean (ISC) (Attachment 5). In relation to the role of ISC for the future work of Northern Committee, it was suggested that the participants should review the draft MOU for the discussion at the preparatory meeting of the Northern Committee in December 2005. It was also suggested that data gap issue for assessment of northern stocks should be discussed at the preparatory meeting.

Agenda 7. Future work plan for management of northern **stocks**

18. Japan presented the recent stock status of northern albacore based on the assessment conducted by ISC (Attachment 6).

19. The meeting noted that the IATTC has adopted management measures for the northern albacore and that the IATTC has asked the WCPFC to take similar measures (Attachment 7).
20. It was suggested that this matter should be discussed at the preparatory meeting of the Northern Committee with the view toward adopting a recommendation on northern albacore for consideration by the Commission at the WCPFC2.

Agenda 8. Others

21. The outcomes of this consultation will be reported promptly to all the members of the WCPFC.

Agenda 6. Adoption of ~~summary~~ report

22. The Consultation adopted the summary report.

# Marine Turtle Research Program

## NOAA Fisheries

### Southwest Fisheries Science Center

#### La Jolla, CA



Agenda Item C.1.b  
Supplemental Power Point Presentation 2  
September 2005









# Marine Turtle Research Program

- Background of NOAA Fisheries Marine Turtle Research Program
- Discuss current research focusing on Pacific Leatherback turtles







# Current Status Listings Pacific Marine Turtles

(Red List)



(ESA)



Leatherback

critically endangered

endangered

Green turtle

endangered

threatened\*

Loggerhead

endangered

threatened

Olive ridley

endangered

threatened

Hawksbill

critically endangered

endangered

*\* ESA lists East Pacific Green Turtle as Endangered*







# Priority Actions

## Pacific Marine Turtle Recovery Plan

- Census and protect nesting populations
- Eliminate incidental take in fisheries
- Determine movement patterns, habitat needs, and primary forage areas
- Determine abundance in US waters
- Identify stock ranges





# Primary Activities to Address Recovery Plan Goals

- Study marine turtle life-history parameters
  - Establish population genetic structure
  - Determine population abundance trends
  - Collaborate with international partners
- to collect nesting beach data and reduce marine turtle bycatch





**Know a lot about turtles on nesting beaches**





...But very little about turtles  
in the open ocean







# Importance of Leatherbacks to the U.S.

- Listed as Endangered under the ESA
- U.S. waters serve as important foraging habitat for leatherbacks
- U.S. fisheries interact with leatherbacks
- Leatherbacks strand on U.S. beaches
- Decreasing trends at key nesting beaches





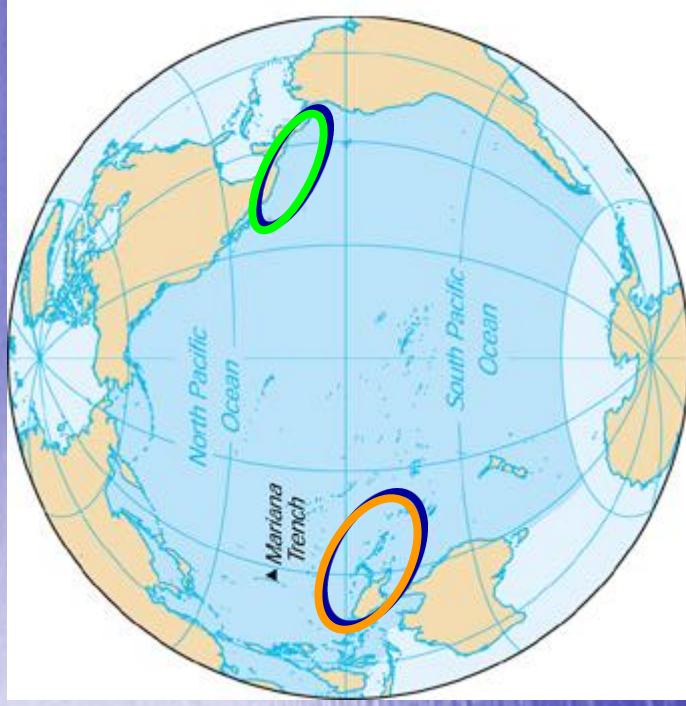
# Research Tools

- Molecular markers to determine baseline nesting beach stock structure and stock origin of by-catch and stranded animals
- Satellite telemetry to determine migratory routes, habitat use, and diving behavior
- Aerial surveys to determine nesting beach abundance and presence/absence of animals
- Isotope analysis to determine habitat use and foraging ecology





# Pacific Leatherback Population Structure



**Western Pacific:** Indonesia, Papua New Guinea, and Solomon Islands

**Eastern Pacific:** Mexico, Costa Rica and Nicaragua

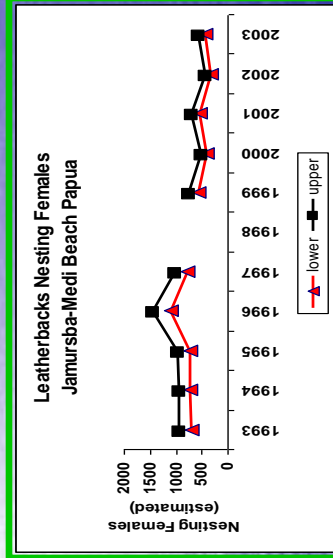
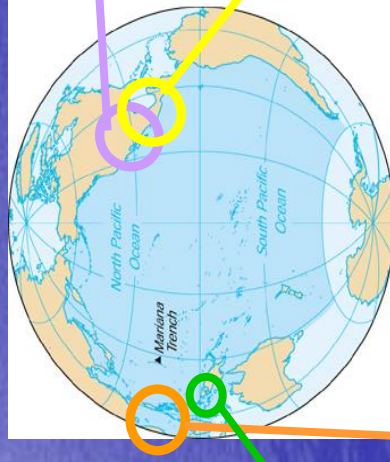
## Sources of information

- Genetics
- Satellite telemetry

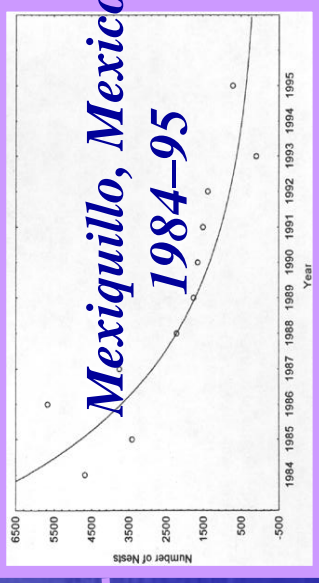
# Marine Turtle Program

## Nesting Population Assessments

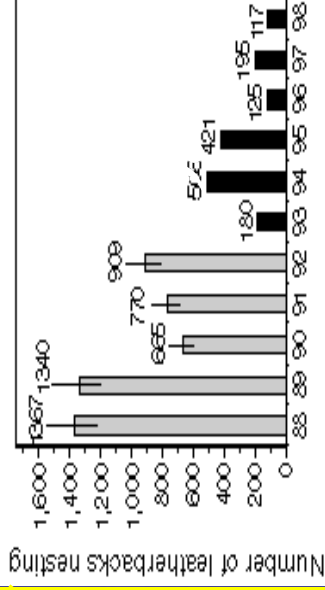
### Decline of Pacific Leatherback Turtles



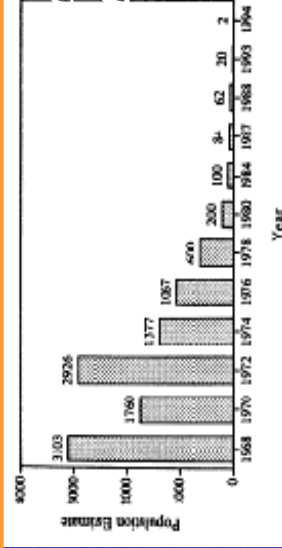
Source: Hittapew et al. 2002



Source: Sarti et al. 1996



Source: Spotila et al. 1996



Source: Spotila et al. 2000



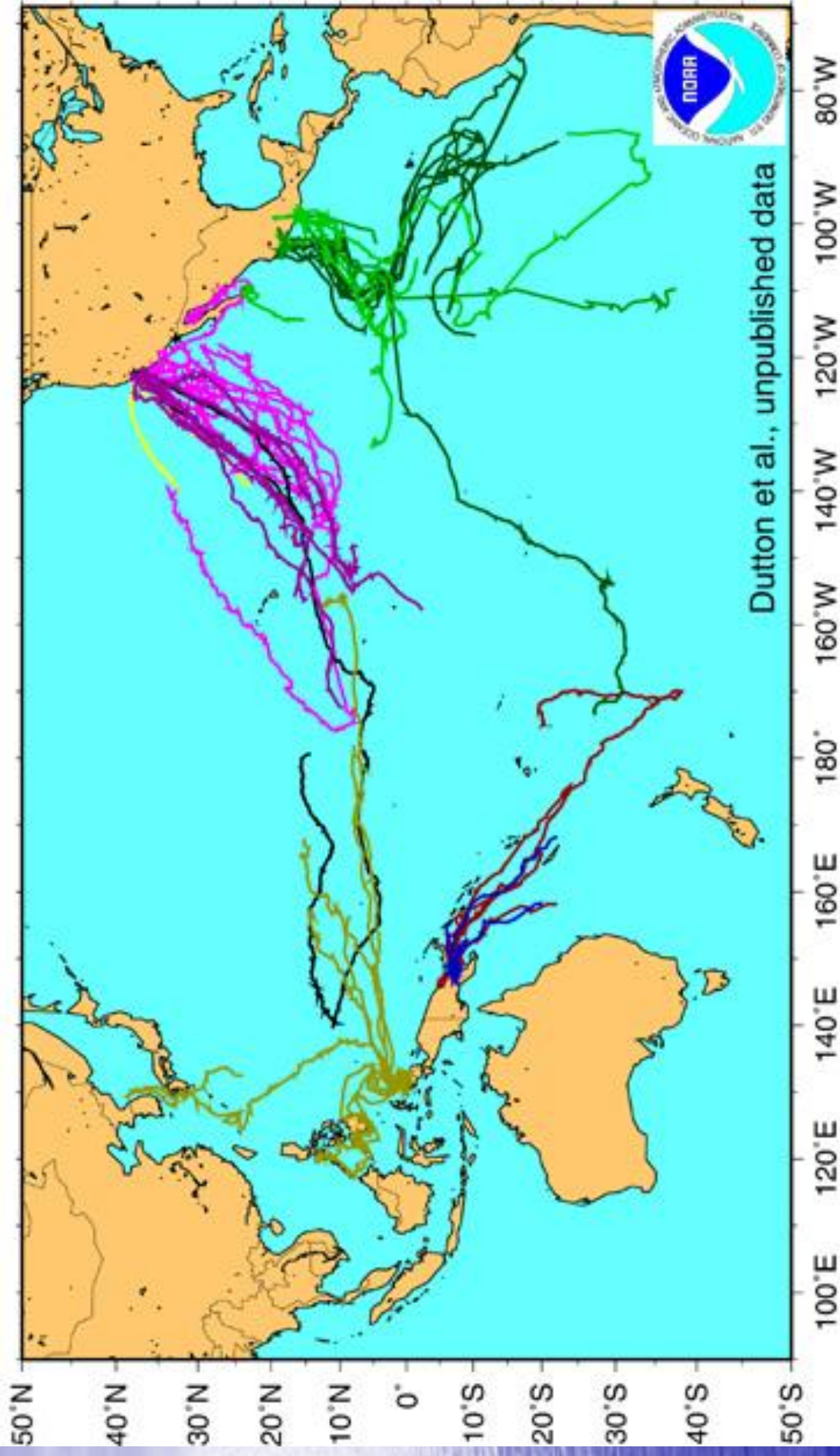


# Use of Satellite Telemetry to determine migratory routes and diving behavior

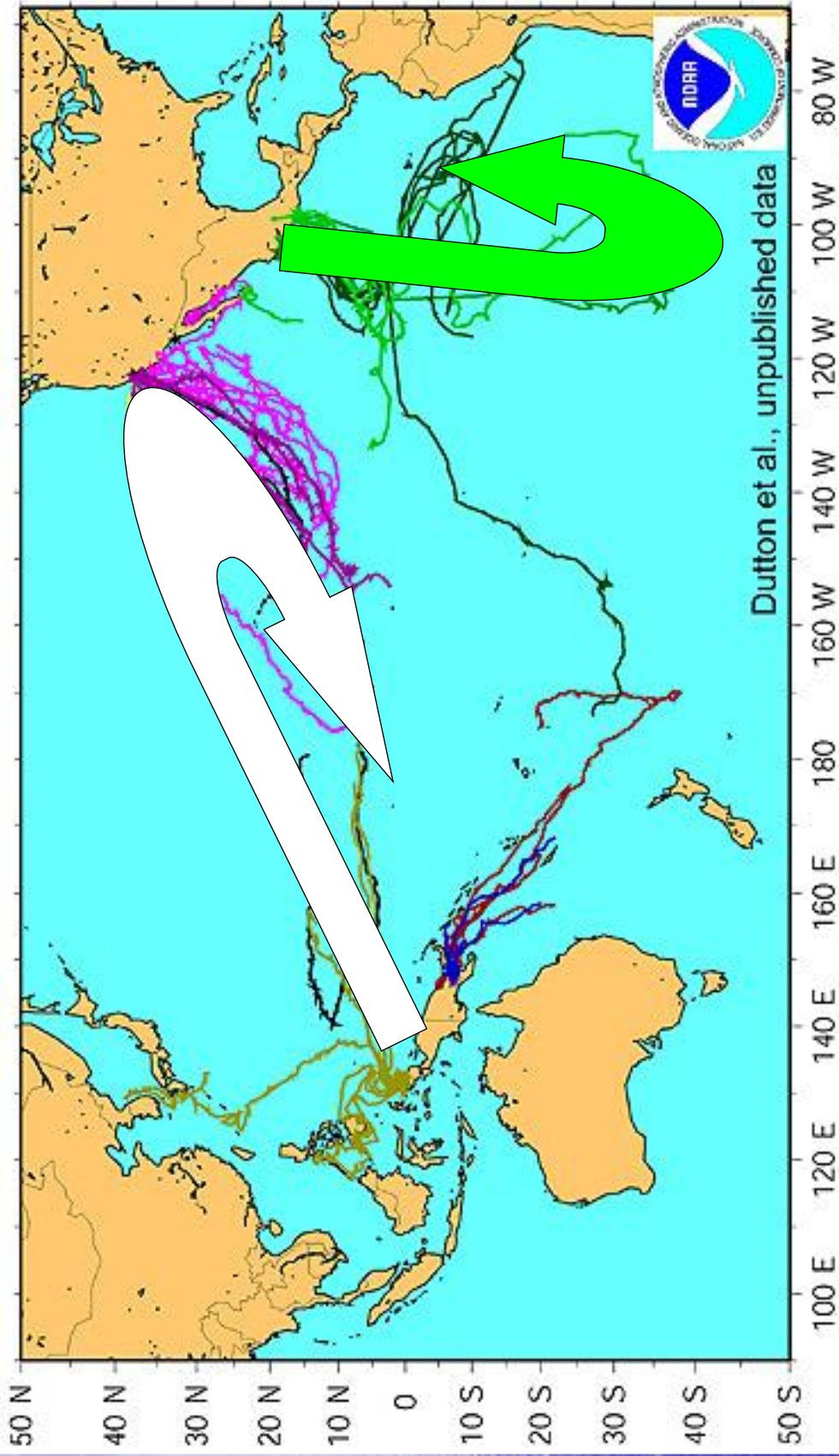




## Satellite-tracked movements of Leatherbacks in 2000-2004



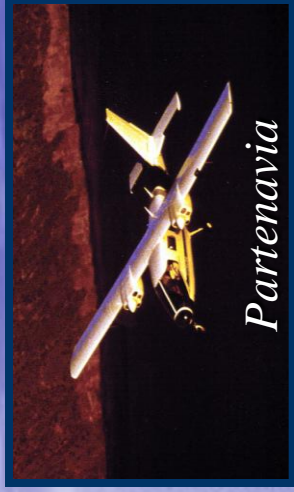
# Satellite-tracked movements of Leatherbacks in 1993-2004



Dutton et al., unpublished data

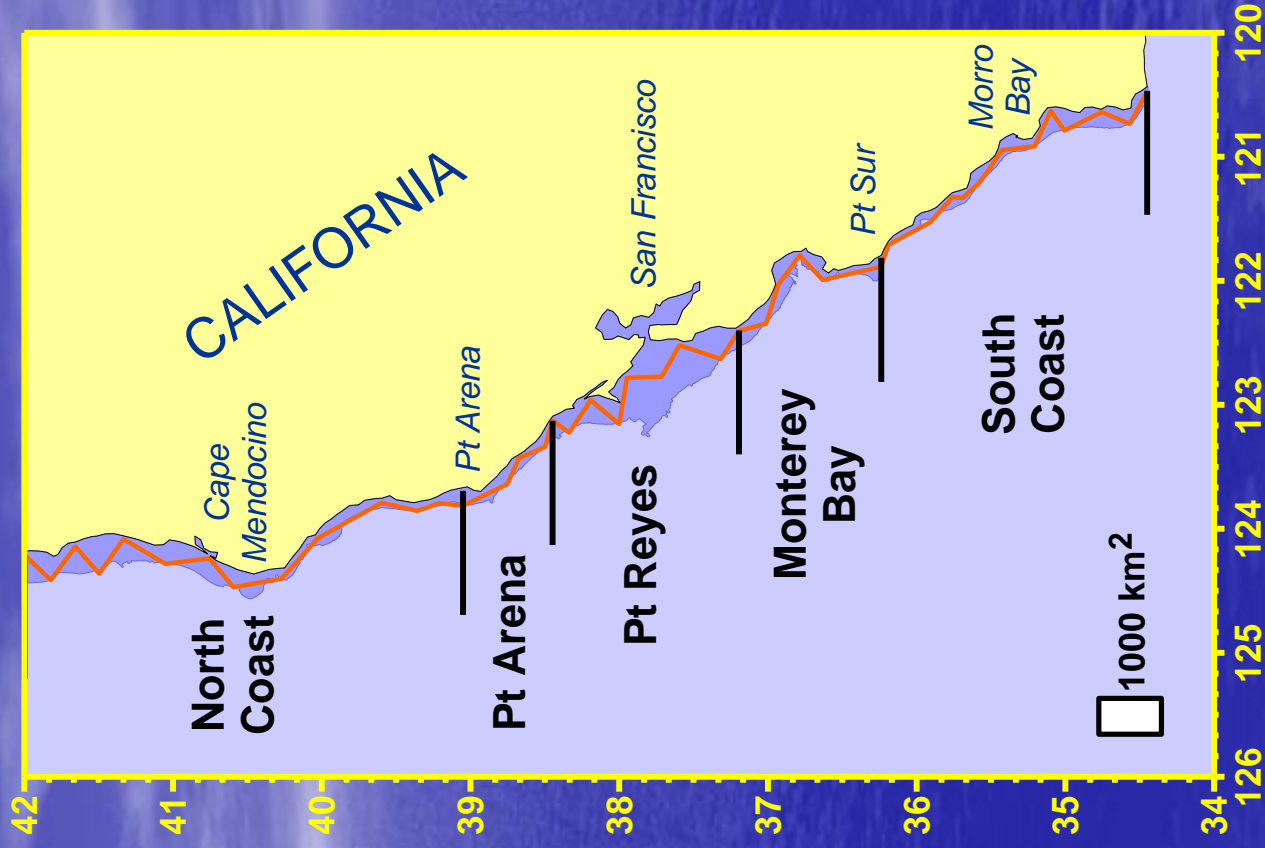


# Central & Northern California Nearshore Aerial Surveys



- Systematic surveys for harbor porpoise (Forney et al. 1991).
- Coast to 90-m isobath.
- Summer / Fall 1990-2002
- Line-transect analysis performed to estimate leatherback abundance

✓ **Effort corrected**

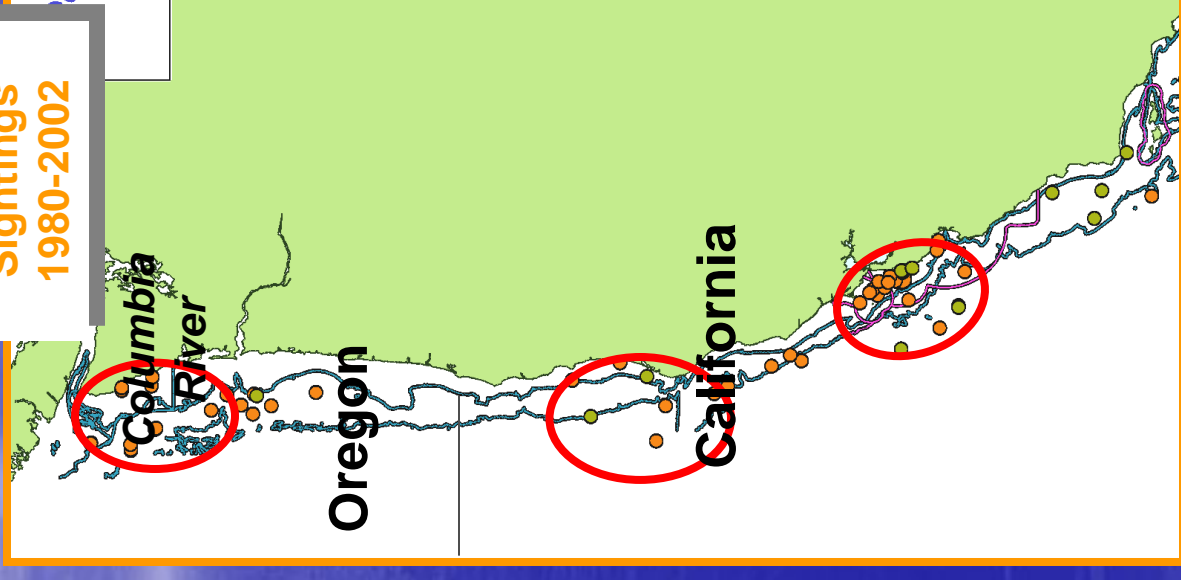




# Distribution patterns of leatherbacks: Pacific coast - USA

- Central California
- Cape Mendocino
- Adjacent to Columbia River

Leatherback  
Sightings  
1980-2002





# Significance of Research Findings

- Tens to hundreds of turtles forage off coastal California each summer / fall
- Upwelling shadows and relaxation events appear linked to leatherback turtle occurrence
- Leatherbacks appear to be associated with *Chrysaora fuscescens*, their preferred food source
- U.S. Fisheries interact with leatherbacks from the western Pacific population

Best interest to have healthy populations, but recovery won't occur just by decreasing mortality in fisheries so...

Focusing on conservation of international nesting beaches and foraging areas







# Future Research

- Leatherback distribution and abundance through continued nesting beach surveys and in-water work
- Expand aerial survey efforts to include California, Oregon, and Washington
- Expand aerial surveys of nesting beaches in western Pacific
- More emphasis on seasonality of leatherback occurrence
- Integrate oceanographic features





# Long-term Goal

Modeling may be used to help predict the probability of marine turtle - fisheries interactions by incorporating data on oceanography, gear types, seasonality, and satellite tracks.

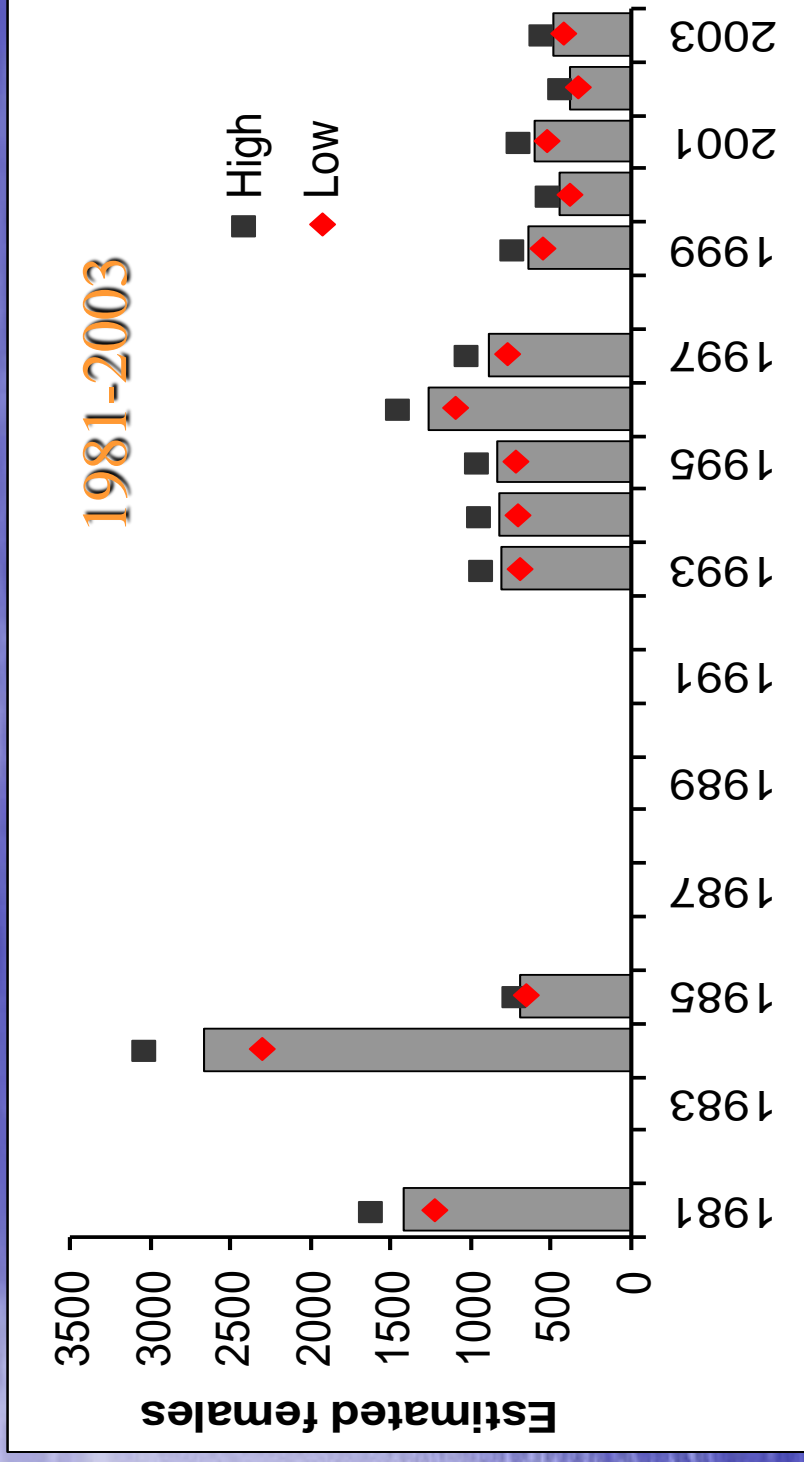






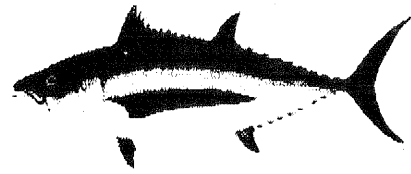
Thank You...

# Jamursba Medi, Papua, Indonesia



## Data

- 1981 Salm et al.
- 1984-1985 WWF-Bhaskar
- 1993- 1996 WWF Bakarbessy
- 1997 WWF-Lamuasa
- 1999 WWF-Teguh
- 2000 KSDA - YAL
- 2001 WWF-Wamafma
- 2002-2003 WWF-Thebu



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August 17, 2005

RECEIVED

AUG 17 2005

PFMC

Mr. Donald K. Hansen, Chair  
Pacific Fishery Management Council  
7700 N.E. Ambassador Place, Ste 200  
Portland, Oregon 97220-1384

BY FACSIMILE ONLY TO 503-820-2299 - NO ORIGINAL TO FOLLOW

Dear Don:

I have recently received a copy of Rod McInnis' July 22nd letter to you as Chair of the PFMC. As the Executive Director of the Western Fishboat Owners Association, I thought it would be important for you and the Council to know the views of our albacore fishermen concerning the Resolution on albacore passed by the Inter American Tropical Tuna Commission at their June 2005 annual meeting. I have attached a copy of the Resolution for your information.

As you can see from the Resolution, there has been no Pacific wide total allowable catch (TAC) set by the IATTC, nor even one for that part of the North Pacific east of 150 degrees west, (the general area of the IATTC's management concerns having to do with albacore.) Likewise, there has been no international agreement as to whether to approach a cap on effort with effort or catch controls, (although the resolution talks about effort remaining at current levels, not necessarily catch). We were concerned that the statements in Rod McInnis' letter that "As the Council begins to address how to maintain North Pacific albacore fishing levels, it will need to determine how best to achieve this by use of either effort or catch controls. It is my understanding that Canada may be looking at total allowable catch as the mechanism they will use for implementing the resolution," might be misinterpreted as a call to the Council for some action in this regard.

Since the letter was written we have received assurances from Rod that his letter was not a call to action, but only meant to have the Council begin to think "about how they will be engaged in shaping the domestic management measures by which NOAA will implement the IATTC agreements." He did not believe his letter could be interpreted "as directing the Council to consider a limit on albacore catch for the US vessels to the exclusion of other means of capping participation in that fishery. Also, I did not set a timeline for Council actions."

WFOA explained to the U.S. Delegation that we did not want specific control language set forth in the IATTC Resolution. This was also reflective of the similar concerns expressed by the Council, the



HMS-AS, and the General Advisory Committee to the U.S. Section of the IATTC, that the U.S. albacore troll fleet might be limited before those of other nations were similarly regulated. We also explained to the U.S. Delegation and the U.S. Section why we did not think it necessary or advisable to put any Council imposed cap on U.S. albacore troll fishing effort whether it be a limited entry system or some self imposed TAC. To reiterate, the U.S. Pacific albacore troll fleet is contracting, not expanding. Older fishermen are leaving the fishery or dying, with no younger replacements such as their sons. It has been ten years since a new albacore troll vessel has been built. The price for troll caught albacore has hardly increased over the last 15 years (adjusted for inflation), and yet the cost of fuel and liability insurance for the vessels has doubled and tripled. Economic studies done in preparation of the HMS FMP tell the same story. The U.S. fleet is contracting when it should be expanding to maintain the traditional U.S. share of any TAC based on historic catch levels.

Finally, as was testified to both the Council and the HMS-AS, the problem we were and are attempting to fix --- that of the Asian fleets hitting the albacore stocks too hard in the western north Pacific before the fish get to the eastern north Pacific where the U.S. effort is concentrated --- has a few more steps to be taken. Primarily, (1) the U.S. becoming a member of the Western and Central Pacific Fisheries Commission; (2) the WCPFC establishing the Northern Committee; and (3) some agreement among the members of the Northern Committee to not expand effort and/or curtail effort, in the western North Pacific.

Given the other HMS issues the Council has on its plate such as the drift gill net fishery and off-shore long line fishery, we at this time see no need for Council action on the albacore fishery

Sincerely



Wayne Heikkila  
Executive Director

cc Dr. Fox  
Mr. McInnis  
Mr. Helvey  
Mr. Gibbons-Fly.

## Highly Migratory Species (HMS) Management NMFS Report

### 1. Regulatory Activities

**Status of Proposed Rule for Vessel Identification:** A proposed rule package has been submitted to the Federal Register requiring U.S. West Coast HMS fishing vessels to display their official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The official number must be affixed to each vessel in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background. Once the proposed rule publishes in the Federal Register, a 30-day public comment period will follow proceeding publication of the final rule. The action will take effect 60 days after the final rule publishes in the Federal.

**Status of Recreational Charter Logbook Distribution:** A pilot Recreational Charter logbook has been developed in collaboration with the Council's HMS Management Team and the State Fisheries Representatives from Oregon and Washington. The logbooks, along with an instructional cover letter, have been distributed to permitted HMS Recreational Charter vessels by the respective State Fisheries Department representatives. To date, approximately 73 Recreational Charter vessels from Oregon and 39 vessels from Washington have been issued permits and logbooks (August 10 database query).

**Status of Application by a Foreign Flag Vessel to Tranship Live Bluefin Tuna within the US EEZ:** The NMFS International Fisheries Division received an application from a foreign flag fishing vessel to receive and tranship live bluefin tuna caught by US flag purse seine vessel(s) for transport to Mexico. If and when a permit is issued under Section 204D of the Magnuson-Stevens Act, the Council will be notified in writing of the decision. A notice will be prepared and sent to US purse seine vessel owners advising them of the permit requirements including, among other things, reporting deliveries of bluefin tuna to the permitted vessel. According to NMFS records, there has been no activity recorded on any of the five previous foreign fishing permits that have been issued.

**Inter-American Tropical Tuna Commission (IATTC) Tuna Conservation Measures:** The U.S. tuna purse seine fishery in the eastern tropical Pacific Ocean (EPO) will close November 20 through December 31 for 2005 and 2006. The U.S. longline fishery for bigeye tuna will close in 2006 when the U.S. catch reaches the 2001 catch level of 150 metric tons. NMFS currently has a proposed rule open for comments regarding this action. The comment period closes September 14, 2005. The U.S. longline fishery for



bigeye tuna was to be closed in early September through December 31, 2005. NMFS has filed an emergency rule for this action.

**IATTC Resolution on VMS for US Flag Tuna Vessels over 24 meters:** The IATTC passed a Resolution at the 72<sup>nd</sup> meeting in Lima, Peru that directs member nations to place a Vessel Monitoring System (VMS) on tuna fishing vessels greater than 24 meters in length. U.S. domestic regulations to implement this Resolution have not been prepared. NMFS seeks Council guidance on the matter.

**IATTC:** The IATTC held its 73<sup>rd</sup> annual meeting, June 20-24, 2005, in Lanzarote, Spain. Resolutions adopted are listed in the attachment and potential Council and NMFS roles are listed in the attachment. In addition, tuna conservation measures for 2004, 2005, and 2006 pertaining to yellowfin tuna and bigeye tuna expire in 2006. Council input and recommendations on future measures will be requested prior to the IATTC 2006 meetings.

**HMS Fisheries - Observer Coverage Levels:** The HMS Observer Coverage Plan Report has not yet been adopted as final by the Council. NMFS Headquarters requires an approved final HMS observer coverage plan for observer budget requesting purposes. NMFS requests Council advice on this issue.

Funding levels available for increased observer coverage of the commercial North Pacific Albacore Troll fishery are far below the amount required to achieve the desired HMS Observer Coverage Plan Report recommendations. Approximately \$1 million would be required to approach the 5% observer coverage recommended by the Plan. NMFS requests Council advice on this issue.

HMS FISHERIES	Observer Coverage Plan Recommends	NMFS Coverage Level (by Priority or Funding Availability)	Coverage Achieved Aug. 1- July 31, 2005
Pelagic Drift Gillnet - swordfish/sharks	20%	20%	20%
Pelagic Longline – tuna only	20%	100%	50%
CA Purse Seine – tuna	100%	33% (Pilot Level))	33%
North Pacific Albacore Troll	5%	<1% (Pilot Level)	<<1%
Southern California Rec. Charter – HMS	10%	5% planned 2005 (Pilot Level)	Pending Activity
Albacore Rec. Charter (N. of Pt Conception)	20%	Pending Funding	None
Private Vessels - HMS	Undetermined	Undetermined	None

**Improved communications with States:** NMFS is aware of many State observer programs, especially in the area of HMS recreational charter vessels and their associated Recreational Fisheries Surveys. The SWR Observer Program is committed to a cooperative approach to observer sampling aboard HMS recreational charter fleets of California, Oregon, Washington. NMFS has been in contact with each representative State Observer Coordinator and essential meetings to collaborate fleet observer coverage are planned prior to the November Council meeting.

## **2. Science Center Activities**

**North Pacific Albacore Archival Tagging Project.** A cooperative albacore archival tagging project was started in 2001 by the SWFSC and the American Fishermen's Research Foundation with deployment target of 120 tags per year. During the start-up years, deployment fell well short of the target. However for 2005, the project is on target of deploying 120 tags on two tagging cruises. The first of the planned cruises occurred in an area off the coast of Oregon-Washington, southwest of Westport, WA from August 1 through 10. A total of 74 albacore were successfully tagged and released with implanted archival tags. Tagged fish averaged 75 cm fork length (FL; 20 lbs) and ranged from 62 cm to 85.5 cm FL. The second cruise is planned for September and will deploy the remainder of the 120-tag target in approximately the same area.

Since 2001, this project has tagged and released 350 albacore off the U.S. West Coast with archival tags. A total of 14 tags have so far been returned. Valuable information collected by each tag provides for determining daily position, time, water temperature, depth and internal body temperature is being analyzed by scientists for studies ranging from understand the stock structure and movements to developing habitat-based assessment models.

**Marine Turtle Program.** There are seven species of marine turtles that occur in tropical and subtropical regions throughout the world's oceans. All seven species are currently listed as threatened or endangered according to the Endangered Species Act, six are considered endangered or critically endangered by the World Conservation Union (IUCN) Red Data Book (Hilton-Taylor 2000) and are included in Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Despite a worldwide increase in research and conservation of marine turtles, their biology, stock structure, and habitat requirements remain poorly understood. This lack of understanding has, in many cases, precluded effective recovery efforts.

To achieve recovery of depleted marine turtle stocks, the SWFSC Marine Turtle Program carries out research and facilitates conservation programs throughout the world. Focusing mainly on marine turtles in the Pacific, this program implements the actions outlined in the USFWS/NOAA-Fisheries Marine Turtle Recovery Plans. Best multidisciplinary science practices and information generated by the program are applied to support NOAA's mandates at regional, national and international levels using innovative approaches that build and promote diverse and dynamic partnerships among stakeholders including local communities, governmental and nongovernmental



organizations, and international organizations. Results of the program also supports the information requirements of the PPMC and the Western Pacific Fisheries management Council (WESTPAC) to assess and implement fishing practices that avoid incidental capture and mortality of marine turtles.

Since its inception, our program has made a concentrated effort to increase the knowledge of leatherback turtles (*Dermochelys coriacea*) in the Pacific. This highly vulnerable and inadequately understood marine turtle has a distribution spanning tropical, temperate, and sometimes sub-arctic waters. Leatherbacks are declining in many parts of the world and it has been suggested that these declines are the result of decades of egg poaching at nesting beaches coupled with a more recent bycatch problem associated with artisanal and commercial marine fisheries. In the Pacific, the depletion has been so extreme that leatherbacks have been considered in imminent danger of extinction. The species is currently listed as Critically Endangered by IUCN, Endangered under the ESA, and is included in Appendix 1 of the CITES. Unfortunately, the development of appropriate management strategies has been hindered by a lack of empirical information on the distribution and demography of leatherbacks, particularly in marine habitats of the Eastern Pacific Ocean.

Current research on leatherbacks includes aerial surveys and in-water capture efforts near Monterey Bay, California, and nesting beach and aerial surveys in the Western and Eastern Pacific. These efforts have revealed that leatherbacks occur seasonally along the US Pacific coast and that their presence is at least partially influenced by a relaxation of coastal upwelling and consequential occurrence of high densities of jellyfish, *Chrysaora* spp. Through the use of satellite telemetry and genetic analysis on marine turtles found both in the foraging and nesting areas, it has been determined that leatherbacks foraging off the US Pacific coast originate from nesting beaches in the Western Pacific.

Inter-American Tropical Tuna Commission (IATTC) Resolutions				
2005 Resolution Action Items	PFMC Role	U.S. Role	Status	
<b>Seabirds</b>				
1. Nations inform the Commission of the status of their National Plan of Action for reducing incidental catches of seabirds in longline fisheries.		Yes. NMFS Regional and National Seabird Coordinators. Status Report of the National Plan of Action for Annual Report to Congress.	Due to IATTC May 2006	
2. Nations provide the Commission with all available information on interactions with seabirds, including incidental catches in all fisheries under the purview of the IATTC.	No			
<b>Northern Albacore Tuna</b>				
Total level of fishing effort for north Pacific albacore tuna in the eastern Pacific Ocean not be increased beyond current levels.	No	Yes	Due to IATTC May 2006	
1. Nations take the necessary measures to ensure that the level of fishing effort by their vessels fishing for north Pacific albacore tuna is not increased.	potential HMS FMP amendment	Yes	No due date given	
2. Nations report catches of north Pacific albacore tuna, by gear type, to the IATTC every 6 months.	No	Yes	Report to IATTC every 6 months	
3. Each nation to consider future actions with respect to north Pacific albacore tuna.	advisory	Yes		
4. Each nation to call upon the Western and Central Pacific Ocean Commission (WCPFC) to take such action as may be necessary to ensure the effective conservation and management of north Pacific albacore tuna throughout its range.	No	Yes	No due date given	
<b>Sharks</b>				
1. Nations establish and implement a National Plan of Action for the conservation and management of sharks.	No	Yes	Yes. National Plan of Action for Sharks	
2. National scientists to cooperate with the IATTC and WCPFC to provide preliminary advice on the stock status of key shark species and propose a research plan for a comprehensive assessment of these shark stocks (2006).	No	Yes	Due to IATTC May 2006	
3. Each nation shall require its vessels to fully utilize any retained catches of sharks. (Landing of whole fish)	Yes	Yes	Yes. Shark Finning Prohibition Act	
4. Each nation shall require its vessels to have onboard fin that total no more than 5% of the weight of sharks onboard. Prohibit retaining, transshipping, landing or trading of shark fins harvested in contravention of this Resolution.	Yes	Yes	Yes. Shark Finning Prohibition Act	
5. Research fishing gears that are more selective.	No	Yes. NMFS National and Regional Shark Coordinators. Annual Report to Congress.	Due to IATTC May 2006	



Inter-American Tropical Tuna Commission (IATTC) Resolutions				
2005 Resolution Action Items	PFMC Role	U.S. Role	Status	
6. Report annually to the IATTC, data for catches, effort by gear type, landing and trade of sharks by species, including available historical data.	review	Yes. NMFS National and Regional Shark Coordinators. Annual Report to Congress.	Due to IATTC May 2006	
7. This resolution applies only to sharks caught in association with fisheries managed by the IATTC.				
<b>Trade Measures to Promote Compliance</b> (this resolution was agreed to <i>ad referendum</i> by El Salvador, to date this is the current status)				
1. If this resolution comes into force, NMFS will have to analyze this resolution in further detail. For most of this resolution, NMFS currently is collecting and administering under the Tuna Tracking and Verification Program, International Trade Permits, and the International Tuna Tracking and Verification Program under the Agreement on the International Dolphin Conservation Program. Reporting and compliance issues should be explored by the NMFS SWR Tuna Tracking and Verification Group.	No	Yes	NMFS will need to evaluate	
<b>Bycatch</b> (this resolution has been extended until January 1, 2007)				
1. The full retention of juvenile tunas continues. This applies to purse seine gear.	Yes	Yes	No. Regulations need to be updated to reflect extension	
2. In the IATTC Permanent Working Group on Compliance, compliance with this full retention of juvenile tunas will be reviewed.	No	Yes	June 2006	
<b>2004 Resolutions</b>				
<b>Tuna Conservation Measures</b>				
1. Tuna conservation measures for the 2004, 2005, and 2006 expire in 2006. Council input on identifying future measures will be sought.	advisory	Yes	Ongoing	
<b>Vessel Monitoring Systems (VMS)</b>				
This resolution requires that VMS be installed on tuna fishing vessels 24 meters or more in length operating in the eastern Pacific Ocean by January 1, 2005, or as soon as possible thereafter. This resolution mandated reports from nations regarding VMS compliance. At the recent IATTC annual meeting a summary of these reports was reviewed, and it was agreed to that the current VMS resolution continue in force.	advisory	Yes	No	



**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

JUL 22 2005

F/SWR2:MH

Mr. Donald K. Hansen  
Chairman, Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, Oregon 97220-1384

RECEIVED

JUL 25 2005

PFMC

Dear Mr. Hansen: *Don*

I am taking this opportunity to inform you of some of the key issues discussed at the 73<sup>rd</sup> annual meeting of the Inter-American Tropical Tuna Commission (IATTC) held in Lanzarote, Spain, June 20-24, 2005. A number of fishery management and conservation topics were on the agenda and several were adopted as resolutions that both directly and indirectly affect the Pacific Fishery Management Council (Council). A summary of these resolutions is enclosed for your information.

Of specific interest to the Council is the resolution on North Pacific albacore requiring each IATTC member, cooperating non-member, fishing entity or regional economic integration organization (collectively "CPCs") to ensure that the level of fishing effort by their vessels fishing for North Pacific albacore tuna would not be increased beyond current levels. The resolution is not much different than the one in the Council's June briefing book except that the provision exempting fishing caps on vessels where the incidental catch of albacore does not exceed 15 percent of the total catch on a given trip was omitted in the final U. S. version. Further, a new section was added to the final resolution that acknowledges the development of North Pacific albacore fisheries in countries where such a fishery is currently limited. I have enclosed a copy of the resolution for your information.

The key intent of the North Pacific albacore resolution is to reduce fishing mortality. Specifically, the resolution calls for the total level of fishing effort for North Pacific albacore not be increased beyond current levels. As the Council begins to address how to maintain North Pacific albacore fishing effort at current levels, it will need to determine how best to achieve this by use of either effort or catch controls. It is my understanding that Canada may be looking at total allowable catch as the mechanism they will use for implementing the resolution.

Other resolutions adopted at IATTC included one on shark conservation calling for CPCs to establish and implement national plans of action for conserving shark stocks in accordance with the FAO International Plan of Action for the Conservation and Management of Sharks. Also, a resolution on the incidental mortality of seabirds



supports that all CPCs inform the IATTC of the status of their national plans for reducing incidental catches of seabirds in longline fisheries and, if appropriate, implement the International Plan of Action for Reducing Incidental Catches of Seabirds in Longline Fisheries if they have not yet done so.

The resolutions pertaining to sharks and seabirds have been addressed in other forums including the U.S. National Plan of Action for the Conservation and Management of Sharks in 2001, the Shark Finning Prohibition Act, the U. S. National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries, and the longline seabird mitigation measure contained in the regulations implementing the West Coast Highly Migratory Species Fishery Management Plan. Consequently, I do not foresee the need for any additional action by the Council regarding sharks and seabirds at this time.

I also wanted to mention that the effort by the U. S. Delegation to increase the bigeye tuna longline catch limit from the current 150 mt per year level to 250 mt for U. S. fishermen was unsuccessful.

In closing, please be assured that the National Marine Fisheries Service remains available to assist the Council in addressing the North Pacific albacore fishery issue as well as other highly migratory species issues. Please feel free to contact me or Mark Helvey at 562-980-4040 if you have questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Rod", with a stylized flourish at the end.

Rodney R. McInnis  
Regional Administrator

Enclosures (2)

cc: William Robinson - PIRO  
William Fox - SWFSC



## **Summary – Inter-American Tropical Tuna Commission’s 73<sup>rd</sup> Annual Meeting**

The Inter-American Tropical Tuna Commission (IATTC) held its 73<sup>rd</sup> annual meeting, June 20-24, 2005, in Lanzarote, Spain. Subsidiary meetings also conducted included the Joint Working Group on Fishing by Non-Parties, the Permanent Working Group on Compliance, and the Permanent Working Group on Fleet Capacity. (Current IATTC resolutions may be found on the Commission’s website at: [www.iattc.org](http://www.iattc.org).)

### **Resolutions Adopted at the June 2005 IATTC Meeting:**

- Resolution on Northern Albacore Tuna – requires that the total level of fishing effort for North Pacific albacore tuna in the eastern Pacific Ocean (EPO) not be increased beyond current levels. In addition Contracting Parties, cooperating non-Parties, fishing entities and regional economic integration organizations (collectively CPCs) are asked to report all catches of North Pacific albacore tuna by gear type to the IATTC every six months. The resolution also calls upon the Western and Central Pacific Ocean Commission (WCPFC) to consider taking such action as may be necessary to ensure the effective conservation and management of North Pacific albacore tuna throughout its range and to work in close concert with the IATTC.
- Consolidated Resolution on Bycatch – extends the requirements of the resolution until January 2007. The resolution requires full retention of juvenile tunas and non-target species of fish, and provides for a review of compliance on the full retention measure (by flag state or entity) to take place in the Permanent Working Group on Compliance in 2006.
- Resolution on the Conservation of Sharks Caught in Association with Fisheries in the Eastern Pacific Ocean - bans shark finning and also aims to improve information about sharks in EPO fisheries. The Shark Resolution mandates much needed shark data collection and assessment programs while encouraging research into shark nursery areas and ways to avoid incidental bycatch of sharks. This resolution, co-sponsored by the United States, the EU, Japan and Nicaragua, calls upon IATTC members to implement National Plans of Action for Shark Conservation in accordance with the United Nations Food and Agricultural Organization 1999 International Plan of Action for Sharks. The IATTC is to work cooperatively with WCPFC to provide preliminary advice on the status of sharks and to propose a research plan.
- Resolution on Incidental Mortality of Seabirds – requires all CPCs to implement the United Nations Food and Agricultural Organization International Plan of Action for Reducing Incidental Catches of Seabirds in Longline Fisheries if they have not yet done so. All CPCs are encouraged to collect and voluntarily provide the IATTC with all available information on interactions with seabirds, including incidental catches in all fisheries under the purview of the IATTC. The Working Group on Stock Assessment will present to the IATTC an assessment of the impact of incidental catch of seabirds resulting from the activities of all the vessels fishing for tunas in the EPO.
- Resolution Concerning the Adoption of Trade Measures to Promote Compliance - adopted ad referendum (El Salvador must have approval from their legislature). The resolution establishes criteria and procedures for trade measures to promote compliance and allows multilateral trade actions against non-complying nations. First proposed last

year, the resolution was finally adopted with the addition of the following statement added: "The Commission recognizes the importance of market access, consistent with national legislation, for fish and fish products caught in conformity with the conservation and management measures of IATTC, to promote compliance with such measures."

- Resolution on Financing – adopted for FY2006. The resolution included approval of the IATTC operating budget for FY 2006. The finance resolution itemizes what each member is to pay for FY 2006, but again does not include the formula that was developed by the Finance Working Group and which is contemplated as part of the new Antigua Convention.
- Resolution to Establish a List of Vessels Presumed to Have Carried Out Illegal, Unreported and Unregulated (IUU) Fishing Activities in the Eastern Pacific Ocean – sets criteria for listing and de-listing of vessels on an IATTC IUU vessel list and establishes reporting requirements. A list of IUU vessels fishing in the EPO was also adopted. This vessel list stems from the 2004 resolution addressing IUU fishing and for 2005 includes longline vessels from Belize, Georgia, Indonesia, Cambodia, Taiwan, and several vessels of unknown flag. Colombian purse seine vessels were also included in this list of IUU vessels.

#### **Other Recommendations and Accomplishments**

- A Plan for Regional Management of Fishing Capacity was adopted. This is a general plan which does not set any actual capacity limits. It is based on the FAO's regional plan of action on capacity.
- A list of cooperating parties was adopted. Cooperating parties must request to be listed as a cooperating party annually. For 2005, the cooperating parties are Canada, China, the European Union, Honduras, and Chinese Taipei (Taiwan).
- It was agreed to amend the rules of procedure to allow a two-year chairmanship of the IATTC meetings. Nominations will be requested and a mail vote will occur before the next meeting in 2006.
- Korea joined the IATTC and the 74<sup>th</sup> annual meeting of the IATTC will be held in Pusan, Korean. It is an IATTC tradition that the new member host the upcoming annual meeting and Korea offered to sponsor the next meeting. The Agreement on the International Dolphin Conservation Program (AIDCP) and working groups meetings will be held June 19-23, and the IATTC meeting June 26-30, 2006.

#### **Other Discussions and Unresolved Issues:**

- Sea Turtles - Amendments to the Consolidated Resolution on Bycatch to further elaborate sea turtle interaction requirements was discussed but not adopted. Spain and France discussed their concerns regarding circle hooks. Japan offered to host the next Bycatch Working Group in January or February of 2006 where, it is hoped, the issue will be resolved so that a resolution can be adopted at the next IATTC meeting.
- Longline Bigeye Quota – The fact that some nations have only very small longline catches of bigeye was discussed. A subsequent U.S. proposal to exempt nations with a

total catch of 250 mt or less from the quota system for one year was blocked by Korea. Individual purse seine vessel quotas were also discussed but no consensus was reached.

- VMS: The Secretariat recommendations for changes in VMS reporting system and voluntary use of VMS. The 2004 Resolution on Vessel Monitoring Systems (VMS) were reviewed. This resolution requires that VMS be installed on tuna fishing vessels 24 meters or more in length operating in the EPO by January 1, 2005, or as soon as possible thereafter. This resolution mandated reports from members regarding VMS compliance. At the recent annual meeting a summary of these reports was reviewed, and it was agreed to that the current resolution continue in force.
- Capacity Amendments: Amendments to The Revised 2002 Resolution on the Capacity of the Tuna Fleet Operating in the EPO were discussed. Several members presented proposals for changes in their capacity limits. Two amendments of importance to the United States continue to be bracketed in the amended document. The United States will revisit these two issues at the next Working Group on Fleet Capacity to be held prior to the next annual IATTC meeting in 2006.

**Issues Introduced but not Fully Discussed or Decided:**

- Ecosystem approach to management: The United States proposed that all decisions take into account the effect on associated ecosystems.
- Bigeye: Proposals to reduce the bycatch of bigeye tuna by FADs (including the prohibition on the use of FADs).
- Transshipments: Proposals to regulate, ban and/or limit transshipment on the high seas.
- Conservation of tunas: Extension of program past the current 2006 recommendations.



INTER-AMERICAN TROPICAL TUNA COMMISSION  
COMISIÓN INTERAMERICANA DEL ATÚN TROPICAL

**73<sup>RD</sup> MEETING**

LANZAROTE (SPAIN)  
20-24 JUNE 2005

**PROP IATTC-73-C1**

**PROPOSAL BY JAPAN AND THE UNITED STATES**

**RESOLUTION ON NORTHERN ALBACORE TUNA**

*The Inter-American Tropical Tuna Commission (IATTC)*, having responsibility for the scientific study of tunas and tuna-like fishes of the eastern Pacific Ocean, and for the formulation of recommendations to the Contracting Parties, cooperating non-Parties, fishing entities and regional economic integration organizations (CPCs) with regard to the conservation and management of these resources,

*Observing* that the best scientific evidence on North Pacific albacore tuna from the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean indicates that the species is either fully exploited, or may be experiencing fishing mortality above levels that are sustainable in the long term, and

*Taking note* that the IATTC staff has said that the stock assessment for Northern Pacific albacore tuna suggests a need for management measures to avoid increases in fishing mortality, and

*Recognizing* the importance of working with the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC), as provided for in Article XXIV of the Antigua Convention, in order to manage North Pacific albacore tuna throughout its migratory range, and

*Recalling further* Article 22(4) of the WCPFC Convention that provides for cooperation with the IATTC regarding fish stocks that occur in the convention areas of both organizations;

*The IATTC therefore resolves that:*

1. The total level of fishing effort for North Pacific albacore tuna in the Eastern Pacific Ocean not be increased beyond current levels.
2. The CPCs shall take necessary measures to ensure that the level of fishing effort by their vessels fishing for North Pacific albacore tuna is not increased;
3. All CPCs shall report all catches of North Pacific albacore tuna by gear type to the IATTC every six months.
4. The Director shall, in coordination with other scientific bodies conducting scientific reviews of this stock, monitor the status of North Pacific albacore tuna and report on the status of the stock at each annual meeting;
5. The CPCs shall consider future actions with respect to North Pacific albacore tuna as may be warranted based on the results of such future analysis.
6. The CPCs call upon the members of the WCPFC to consider, at the earliest opportunity, taking such action as may be necessary to ensure the effective conservation and management of North Pacific albacore tuna throughout its range including, in particular, measures to ensure that fishing effort on the stock in the WCPFC area does not increase and, as necessary, measures to reduce fishing effort to levels commensurate with the long-term sustainability of the resource.
7. The Commission through the Director shall communicate with the WCPFC and request them to take

similar measures.

8. The provisions of paragraph 2 shall not prejudice the rights and obligations under international law of those coastal CPCs in the EPO whose current fishing activity for northern Pacific albacore tuna is limited, but that have a real interest in, and history of, fishing for the species, that may wish to develop their own fisheries for northern Pacific albacore tuna in the future.

## NMFS REPORT

Mr. Mark Helvey and Mr. Craig Heberer will discuss the information provided in Attachment 1 on recent NMFS activities related to highly migratory species (HMS) management and international activities, including the results of the June 20-24, 2005, meeting of the Inter-American Tropical Tuna Commission (IATTC) and the September 12-13 informal Northern Committee meeting of the Western and Central Pacific Fisheries Commission. Attachment 2 summarizes the resolutions adopted at the IATTC meeting. The letter from Mr. McInnis (Attachment 3), who is a U.S. Commissioner to the IATTC, provides NMFS' perspective on the meeting, focusing on the adoption of a resolution regarding northern albacore tuna (attachment to the McInnis letter).

Dr. Gary Sakagawa will brief the Council on Science Center activities.

### **Council Task:**

### **Discussion.**

### **Reference Materials:**

1. Agenda Item C.1, Attachment 1: HMS Management, NMFS Report
2. Agenda Item C.1, Attachment 2: IATTC Resolutions
3. Agenda Item C.1, Attachment 3: Letter from Mr. Rod McInnis to Mr. Donald Hansen
4. Agenda Item C.1.d, Letter from Mr. Wayne Heikkila, Western Fishboat Owners Association, to Mr. Donald Hansen

### **Agenda Order:**

- a. Regulatory Activities
- b. Science Center Activities
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. Council Discussion

Mark Helvey/Craig Heberer  
Gary Sakagawa

PFMC  
08/31/05





**Western  
Pacific  
Regional  
Fishery  
Management  
Council**

Agenda Item C.2.a  
Attachment 1  
September 2005

**RECEIVED**

**AUG 18 2005**

**PFMC**

August 12, 2005

Bill Robinson  
National Marine Fisheries Service  
Pacific Islands Area Office  
1601 Kapiolani Blvd. #1110  
Honolulu, HI 96814

Dear Bill:

On behalf of the Western Pacific Fishery Management Council (Council), thank you for the opportunity to review and provide comments on NMFS's draft paper entitled "*Strategy to end overfishing of bigeye tuna in the Pacific Ocean, Draft May 19, 2005.*" The Council has presented its comments in the form of proposed revisions to the draft paper, which are attached. Following is a summary of the major points addressed through the Council's proposed revisions.

#### **Overview of Council Comments**

The Council generally agrees with the approach taken in the draft strategy and the emphasis placed on the need for international cooperation to resolve the Pacific-wide overfishing problem. The Council believes, however, that the paper could be strengthened and clarified with respect to the underlying legal requirements and the respective roles of the Department of State (DOS), the National Marine Fisheries Service (NMFS), and the Council in meeting those requirements. The Council also believes that the Magnuson-Stevens Fishery Conservation and Management Act's (MSFCMA) goals and objectives should be more clearly set forth and incorporated into the proposed strategy. Accordingly, the Council's proposed revisions are generally aimed at clarifying three issues: (1) the governing legal requirements as set forth in the MSFCMA; (2) the roles of DOS, NMFS, and the Council;<sup>1</sup> and (3) the goals and objectives of the MSA as they apply both domestically and in the international forums.

#### **Controlling Legal Requirements**

It is the Council's understanding that the primary impetus for the proposed bigeye strategy is NMFS's determination, made pursuant to § 304(e) of the MSFCMA, that the bigeye species is subject to overfishing. The requirements of the MSFCMA therefore provide the underlying basis for the proposed strategy and should be clearly stated.

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<sup>1</sup> References to the Council are intended to include the Pacific Fishery Management Council where appropriate.

Pursuant to the MSFCMA, NMFS's overfishing designations should pertain to "fisheries within each Council's geographical area of authority." When overfishing is found to be occurring, the relevant council's obligation is to end overfishing "in the fishery" – that is, the fishery under council jurisdiction. In this regard, the Council believes that an important – and legally required – component of the proposed strategy should be Council action to determine whether and to what extent the fisheries under its jurisdiction are causing or contributing to the Pacific-wide overfishing problem and considering whether remedial actions are appropriate. The Council also fully supports and intends to pursue efforts to end overfishing Pacific-wide, so as to further the MSFCMA's objective of achieving the optimum yield from Council-managed fisheries. However, the Council does not believe that the MSFCMA imposes on either it or NMFS a legal *obligation* to end overfishing in fisheries that are not under U.S. jurisdiction.

The Council's proposed revisions to the strategy are intended to clarify the legal basis for the proposed actions and the mandates of the MSFCMA. An example is the suggested change to the strategy objective on page 1. Other suggested minor revisions (e.g., deletion of references to yellowfin and to rebuilding schedules) are intended to enhance the clarity of the strategy by keeping the focus on the strategy's primary purpose and objectives.

### **Roles of DOS, NMFS, and the Council**

The Council has proposed revisions to the bigeye strategy intended to emphasize the complementary roles of DOS, NMFS, and the Council in addressing overfishing. Because bigeye in the Pacific are subject to a patch-work of domestic laws and international agreements, collaboration among policy-makers and management authorities is critical to implementing a comprehensive strategy. As you are aware, at its 127<sup>th</sup> meeting (June, 2005), the Council recommended amending the Pelagics FMP to include a non-regulatory protocol describing the Council's role in the international management of Pacific highly migratory stocks, which includes a specific process for addressing the Pacific-wide bigeye overfishing issue. As stated in the protocol, the Council intends to actively participate with DOS and NMFS in working toward international solutions to this international problem. The Council has made suggested revisions to the draft strategy to highlight this course of action. This complements the actions proposed in the white paper.

### **Goals and Objectives of the MSFCMA**

The underlying basis for the overfishing strategy is National Standard 1 of the MSFCMA, which requires that the Council manage its fisheries to achieve optimum yield while preventing overfishing. Engaging in multi-lateral efforts to end Pacific-wide overfishing will further both of these goals. The proposed strategy should emphasize this important objective.

The MSFCMA also contains objectives relevant to international fishery agreements that should be stated. For example, international agreements should provide equitable opportunities for fishery participants and should take historical participation into account. The U.S. has a long-term bigeye catch history that must be considered in the context of any proposed catch-reduction strategies. Equitable treatment of U.S. fishery participants can also be furthered by encouraging the spread to foreign fleets of the bycatch reduction and species conservation measures used by U.S. fishermen. Participation in the WCPFC and IATTC provides an

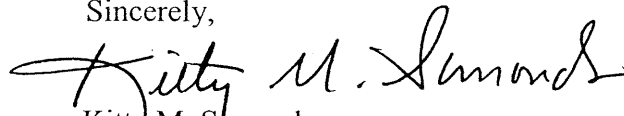
opportunity to seek Pacific-wide use of the innovative gears and technologies used domestically to meaningfully further conservation of sea turtles, seabirds, and other species.

Finally, the Council suggests that scientists from the Pacific Islands Fisheries Science Center be asked to review the paper's Appendices A and B for accuracy, and notes that Appendix C seems unclear in its intent, for example several existent management measures are missing and others are wrongly classified.

In summary, the Council supports the comprehensive approach set out in the draft strategy and commends NMFS and its staff for their thorough review of the overfishing problem. With the minor clarifications and revisions suggested, the Council believes that the strategy will provide a scientifically and legally sound framework for future action.

The Council appreciates this opportunity to assist in formulating a comprehensive strategy to address Pacific-wide overfishing of bigeye tuna and looks forward to working cooperatively with NMFS to implement this strategy.

Sincerely,



Kitty M. Simonds  
Executive Director

enc: Proposed revisions to May 19, 2005 draft white paper

cc: Council Members  
Bill Hogarth, NMFS  
Rebecca Lent, NMFS  
Dave Balton, Department of State  
Don McIsaac, Pacific Council



# Strategy to address overfishing of bigeye tuna in the Pacific Ocean

Draft August 12, 2005

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## 1. Introduction

The bigeye tuna is a highly migratory species that occurs throughout the Pacific Ocean and is targeted by the fishing fleets of many nations. It has recently been determined by NMFS to be subject to overfishing on a Pacific-wide basis. Because bigeye tuna and other highly migratory species (HMS) do not recognize the boundaries that management, policy, and science have established, reducing Pacific-wide fishing mortality of bigeye tuna will take coordination and cooperation among the many entities charged with responsibility for conservation and management of bigeye tuna, both domestically and internationally, through and across the Pacific Ocean. This document provides an outline of U.S. strategy for bigeye tuna conservation and management in the Pacific Ocean. The objectives are to ensure that fisheries under U.S. jurisdiction do not cause or significantly contribute to the overfishing problem and to achieve implementation of multi-lateral conservation and management measures to eliminate overfishing Pacific-wide. The strategy describes how the Department of State (DOS), the relevant domestic fishery management authorities, including the NOAA Fisheries Service (NMFS), the Western Pacific Fishery Management Council (WPFMC), and the Pacific Fishery Management Council (PFMC) (collectively, Councils), as well as other stakeholders, will work cooperatively with regional fishery management organizations (RFMOs) to achieve these goals.

Several recent institutional developments are of special importance with respect to multi-lateral conservation and management of bigeye tuna in the Pacific Ocean. The Inter-American Tropical Tuna Convention (IATTC), which covers tuna fishing activities in the eastern Pacific Ocean, was recently renegotiated (resulting in the 2003 Antigua Convention) and the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) entered into force in June 2004, forming the Commission by the same name (WCPFC).<sup>1</sup> Also, the NMFS offices in Honolulu have been raised to Regional status, enhancing the agency's ability to represent the particular interests of the U.S. fisheries in the western and central Pacific Ocean (WCPO), along with the WPFMC and the PFMC, in these conventions.

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<sup>1</sup> Neither of these conventions (Antigua Convention and the WCPFC) have been cleared and approved by the Senate or Administration, nor have the respective acts appeared in Congress.

To provide the context for this strategy, the stock status, the contribution of U.S. fisheries to Pacific-wide fishing mortality, the sources of U.S. fishing mortality, the current regulatory framework for HMS in the Pacific, and existing conservation and management measures relevant to bigeye tuna are described in appendices to this document. The action items identified at NMFS' HMS Summit in August 2004 are provided in a final appendix.

## **2. Strategy to address overfishing**

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the WPFMC and the PFMC must take action to address overfishing in the fisheries under their respective jurisdictions. At the same time, they must promote conservation and management measures that will result in the optimum yield (OY) from the domestic fisheries. The Pacific-wide distribution of bigeye tuna and the scope of the fisheries (international and domestic) exploiting this important species dictate that the U.S. have a Pacific-wide strategy to address overfishing that can be effectively implemented at the international level in order to achieve these objectives. Because U.S. vessels are responsible for only a small portion of stock-wide bigeye fishing mortality (approximately 2% of the Pacific-wide total catch), unilateral measures cannot remedy the overfishing problem. Also, unilateral restrictions on domestic bigeye catch would likely result in increased bigeye imports rather than an overall reduction in bigeye mortality. This reinforces the need for the U.S. to work with its international partners if there is to be improvement in the status of bigeye tuna.

The current governance structures established under the Antigua Convention and the WCPFC provide the vehicles and rationale for the strategy. Although the U.S. has not yet formally ratified these conventions, the Magnuson-Stevens Act confers on DOS and NMFS authority to engage in negotiations to achieve international fishery agreements for the conservation and management of HMS and confers on the WPFMC and the PFMC broad authority to undertake activities necessary to further the Magnuson-Stevens Act's objective of achieving OY while preventing overfishing. Also, legislation implementing the original IATTC convention provides authority for regulatory implementation of measures agreed to under the IATTC's auspices. Given the nature and composition of the relevant RFMOs in the Pacific Ocean, the U.S. will need to be flexible in order to be successful in its efforts to have these bodies adopt conservation and management measures that will help ensure the long-term sustainability of bigeye tuna. This strategy could have implications beyond the specifics of the Pacific bigeye tuna resource and ideally will provide a template for other trans-boundary species. The strategy is deliberately intended to be flexible and subject to modification as time and events progress.

The strategy to address Pacific-wide overfishing of bigeye tuna is to work through the relevant RFMOs, to develop and implement conservation and management measures throughout the Pacific Ocean to reduce fishing mortality. Specifically, the U.S. will seek from the RFMOs, particularly the IATTC and the WCPFC: 1) continued improvement in the utility of stock assessments, including the establishment of programs to collect catch and effort data from all tuna fishing fleets operating in the Pacific Ocean, 2) the adoption of appropriate reference points and associated control rules, 3) the adoption and effective implementation of appropriate conservation and management measures, and 4) adequate monitoring, control, and surveillance

(MCS) to ensure an adequate degree of compliance with conservation and management measures.

The U.S. will develop its proposals to the RFMOs through a collaborative process involving NMFS, DOS, the Councils, commercial and artisanal tuna fishing and processing interests, recreational fishing interests, environmental interests, and other stakeholders. Finally, NMFS and the Councils will work together to ensure that internationally agreed upon measures for bigeye tuna are implemented domestically, and that any other necessary and appropriate actions are taken to ensure that the domestic fisheries do not cause or significantly contribute to Pacific-wide bigeye overfishing.

**Stock Assessments:** The U.S. will promote and support efforts to conduct pan-Pacific stock assessments that provide appropriate region-specific information. More generally, the U.S. will support efforts to determine the most appropriate units for both stock assessment and management (given the population structure of bigeye tuna in the Pacific, the institutional structure of HMS management in the Pacific, and other relevant factors). The U.S. will promote and support efforts to improve the quality and timeliness of fisheries data collection by IATTC and WCPFC member states and cooperating non-parties throughout the Pacific in order to improve the quality and timeliness of stock assessments. The U.S. will also work to ensure that stock assessment results are expressed using the same measures as the reference points established by the RFMOs, or lacking such reference points, the reference points established in the relevant fishery management plans (FMPs) established under the Magnuson-Stevens Act.<sup>2</sup>

**Reference Points:** The national standards established in the Magnuson-Stevens Act are important principles in developing U.S. proposals to the RFMOs. With respect to preventing and ending overfishing of stocks managed by the RFMOs, the U.S. will seek RFMO decisions and resolutions that, to the extent practicable, are consistent with National Standard 1 of the Magnuson-Stevens Act and its guidelines as codified in 50 CFR Part 600 Subpart D. In particular, the U.S. will continue to promote the establishment and application of consistent reference points and associated control rules.<sup>3</sup> These include limited reference points (such as minimum stock size thresholds and maximum fishing mortality thresholds) as well as target and/or warning reference points that incorporate the need to be risk averse with respect to overfishing. The U.S. will seek to ensure that these reference points are accompanied by control rules calling for prompt and sufficient remedial action when needed.

**Conservation and Management Measures:** With respect to the IATTC, the U.S. will fulfill its obligation to implement the conservation resolution adopted at the IATTC June 2004 meeting (Resolution C-04-09) while taking further actions to assure that catch restrictions are both necessary and equitable to U.S. fishers. The resolution includes two conservation measures, both of which are applicable in the years 2004, 2005 and 2006. The first measure offers each Party a

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<sup>2</sup> The Standing Committee on Tuna and Billfish started including the relevant measures ( $B/B_{MSY}$  and  $F/F_{MSY}$ ) in its assessment reports in 2003, coincident with the adoption of the current stock status determination criteria in the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region.

<sup>3</sup> Although there is little contention about the utility of adopting and applying reference points and control rules, there is considerable debate within the scientific community about the appropriateness for HMS stocks, of functionally basing reference points on MSY.



choice for closing its purse seine fishery in the convention area: a six-week closure beginning either August 1 or November 20 (in 2004 the U.S. chose the November 20 start date). The closure is intended to target fishing activity that results in relatively high catches of juvenile bigeye tuna. The second measure limits each nation's annual longline bigeye tuna catch in the convention area to the 2001 national catch level (for the U.S., NMFS determined this to be 150 mt, and in 2004 the fishery was closed on December 13 for the remainder of the year). The resolution also includes a compliance measure that prohibits making landings, transshipments, or commercial transactions involving tunas caught in contravention of either of the two conservation measures.

In the course of the 2004 stock assessment for the eastern Pacific Ocean (EPO) simulations were used to make projections of bigeye tuna biomass with and without the two conservation measures (Harley and Maunder 2004).<sup>4</sup> It was found that even if fully implemented for ten years, the measures would have little effect on spawning biomass in the EPO: spawning biomass would remain well below the level associated with average MSY. The U.S., therefore, will continue to work multi-laterally to devise and promote appropriate conservation and management measures that would, in tandem with measures adopted by the WCPFC, reduce bigeye tuna fishing mortality to the extent needed in the appropriate areas and sectors to address overfishing in the Pacific Ocean.

In December 2004, the WCPFC parties agreed that analyses will be completed prior to the December 2005 Commission meeting that will consider several potential conservation and management measures to reduce fishing mortality on bigeye tuna. The measures considered will be based upon those suggested by the U.S. at the first session of the WCPFC which have been identified by the Scientific Coordinating Group as being feasible (i.e., adequate data are available to assess the results on the stocks), and will also incorporate protocols developed by the Councils for addressing international management issues. The preliminary results will be presented at the WCPFC's first Science Committee meeting, in August 2005, and then given to the WCPFC at its second annual session, in December 2005, at which point the Commission may adopt one or more of the measures. The analysis will include:

- Five- and ten-year projections of total biomass and spawning stock biomass for bigeye tuna under 2003 catch and effort levels and under various possible scenarios of changes in catch and effort (i.e., separate analyses of catch limits and effort limits) in the Convention Area for the purse seine, longline and other surface fisheries that have an impact on bigeye tuna (both separately and combined), including the effects on bigeye tuna stocks of possible time/area closures by fishing method.
- The effects on the stocks of measures to mitigate the catch of juvenile bigeye tuna, including controls on setting on floating objects.

The U.S. will continue its support of these and future evaluations commissioned by the WCPFC, with the aim of refining the range of promising management alternatives and eventual adoption

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<sup>4</sup> More recent but still preliminary simulations are available in: Maunder, M.N. and S.D. Hoyle. 2005. Evaluation of the Effect of Resolution C-04-09. Working Group on Stock Assessments, 6th Meeting, La Jolla, California (USA), 2-6 May 2005, Document SAR-6-08a. Inter-American Tropical Tuna Commission.

of effective management measures for bigeye tuna by the WCPFC. Absent the completion of the analysis cited above it is premature for the U.S. to consider recommendation or endorsement of any specific conservation and management measure. In accordance with the principles set forth in the Magnuson-Stevens Act, the U.S. will work to ensure that any measures proposed for domestic implementation reflect the historic participation of the U.S. in the bigeye tuna fishery and also take into account the bycatch reduction measures employed by U.S. fishers and seek to establish comparable measures internationally.

**Monitoring, Control, and Surveillance (MCS):** In order to ensure that conservation and management measures adopted by the Pacific HMS RFMOs are as effective as possible, the U.S. will, where appropriate, support the adoption of such MCS measures as regional observer programs, boarding and inspection regimes, nondiscriminatory trade measures, port state sampling and monitoring programs, trade documentation programs, and real-time vessel electronic reporting systems.

### **3. Roles of the regional fishery management councils**

The WPFMC and the PFMF are charged by the Magnuson-Stevens Act with developing management measures for the fisheries within their jurisdictions that will prevent overfishing while achieving the optimum yield from each fishery on a continuing basis (National Standard 1). They are thus important partners in developing recommendations and in implementing the domestic component of any comprehensive international program.

Although the specific management measures contained in the Councils' FMPs are limited to application in the domestic fisheries under the authority of the respective Councils, the FMPs also can provide a foundation for the development of U.S. positions with respect to international management by the RFMOs. For example, the WPFMC has recently recommended a non-regulatory amendment to the Pelagics FMP that sets forth a protocol describing the WPFMC's role in the international management of Pacific highly migratory fish stocks, including bigeye tuna. Pursuant to the protocol, the WPFMC will directly participate in U.S. delegations to the RFMOs and will work cooperatively with NMFS and DOS to develop multi-lateral management measures consistent with international agreements and the Magnuson-Stevens Act. The protocol contains general principles, objectives, standards, and approaches for the international conservation and management of the HMS resources covered by the FMP. By continuing to work collaboratively with NMFS and DOS to develop such principles and recommendations, the Councils can help ensure that any U.S. proposals for ending overfishing of bigeye tuna in the Pacific in the context of the IATTC and the WCPFC are consistent with the Magnuson-Stevens Act's objective of achieving the optimum yield from domestic fisheries. Council participation in the U.S. delegations to RFMO meetings and their membership in advisory bodies to the U.S. sections of the RFMOs will further ensure consistency with the goals and objectives of the Magnuson-Stevens Act and the relevant FMPs and facilitate domestic implementation of any necessary and appropriate management measures.

In addition to working cooperatively with NMFS and DOS in international frameworks, the PFMF and WPFMC should continue to consider appropriate management responses for bigeye tuna, both domestically and for international application. On the domestic level, the Councils





$F(B) = \frac{F_{MSY} B}{cB_{MSY}} \text{ for } B \leq cB_{MSY}$ $F(B) = F_{MSY} \text{ for } B > cB_{MSY}$	
where $c = \max(1-M, 0.5)$	

Bigeye tuna in the Pacific has been assessed using two approaches. The most common approach (the two-stock or two-region approach) has been to conduct an assessment for the WCPO, generally corresponding to the area of interest of the Secretariat of the Pacific Community (SPC), and now the WCPFC, and another assessment for the EPO, corresponding to the area of authority of the IATTC. The most recent stock assessments continued the two-region approach used by IATTC and the SPC: an assessment for the WCPO was completed in July 2004<sup>7</sup> and an assessment for the EPO was completed in May 2004.<sup>8</sup>

The second approach (the single-stock approach) treats bigeye tuna as a single Pacific-wide stock. A Pacific-wide stock assessment, including comparisons with results from separate-region assessments, was completed in July 2003.<sup>9</sup> This assessment was initiated by the SPC in collaboration with the IATTC and other Pacific fishery science groups, including NMFS's Pacific Islands Fisheries Science Center. The IATTC has initiated another Pacific-wide assessment in collaboration with the same groups, with results expected in the summer of 2005. Table 2 summarizes the status of bigeye tuna in the Pacific Ocean using both the 2003 single-stock and 2004 two-region assessment results.

**Table 2. Pacific bigeye tuna stock status based on 2003 single-stock and 2004 two-region assessments**

M	MSST (B/B <sub>MSY</sub> )	MFMT (F/F <sub>MSY</sub> )	B/B <sub>MSY</sub>			F/F <sub>MSY</sub>		
			EPO (2004)	WCPO (2002)	Pacific (2001)	EPO (2001-02)	WCPO (2002)	Pacific (2001)
0.4	0.60	~ 1.00	.057	1.75	1.26	1.61	0.98	1.72

- Value of M is from the WC HMS FMP and the WPFMC's Pelagic Fisheries of the Western Pacific Region 2004 Annual Report.
- Note that the MFMT is dependent on F; the MFMT is at F/F<sub>MSY</sub> – only as long as B is greater than or equal to the MSST (B/B<sub>MSY</sub> ≥ 0.60).

<sup>7</sup> Hampton, J., P. Kleiber, A. Langley, and K. Hiramatsu. 2004. Stock assessment of bigeye tuna in the western and central Pacific Ocean. SCTB17 Working Paper SA-2. 17th Meeting of the Standing Committee on Tuna and Billfish, Majuro, Marshall Islands, 9-18 August 2004. July 2004.

<sup>8</sup> Harley, S.J. and M.N. Maunder. 2004. Status of Bigeye Tuna in the Eastern Pacific Ocean in 2003 and Outlook for 2004, Working Group on Stock Assessments, 5th Meeting, La Jolla, California (USA), 11-13 May 2004, Document SAR-5-05 BET. Inter-American Tropical Tuna Commission.

<sup>9</sup> Hampton, J., P. Kleiber, Y. Takeuchi, H. Kurota, and M. Maunder. 2003. Stock assessment of bigeye tuna in the western and central Pacific Ocean, with comparisons to the entire Pacific Ocean. SCTB16 Working Paper BET -1. Sixteenth Meeting of the Standing Committee on Tuna and Billfish, Mooloolaba, Queensland, Australia, 9-16 July 2003.

- Estimates of  $B/B_{MSY}$  and  $F/F_{MSY}$  for the EPO, WCPO, and Pacific are from Harley and Maunder (2004), Hampton et al. (2004), and Hampton et al. (2003), respectively.
- The 2003 assessment, being more dated than the 2004 assessments in terms of model development and available data, is weaker than the 2004 assessments.
- There is considerable uncertainty in these assessment results; the full assessment reports include the result of sensitivity analyses using alternative assumptions, as well as expressions of the uncertainty associated with the results; the results presented here are for the base case scenarios and do not indicate levels of uncertainty.
- The biomass-related results for the EPO are actually in terms of the biomass of fish 1+ years old.

Based on results from these three assessments, NMFS, relying on the expertise and advice of its regional fisheries science centers, determined that overfishing was occurring Pacific-wide on bigeye tuna. This determination relied on the assessment results from both the single-stock and two-region approaches but it did not rely on any assumptions or conclusions about stock structure. This determination was presented in NMFS's 2003 Report to Congress: The Status of the U.S. Fisheries (transmitted to Congress on June 14, 2004), copies of which were transmitted to the regional fishery management councils. Subsequently, the PFMC and WPFMC were directly notified of the overfishing determination in a letter sent on December 15, 2004, by the regional administrators of NMFS's Southwest Regional Office and Pacific Island Regional Office. The letter was published in the Federal Register on December 30, 2004 (69 FR 78397).

As shown in Table 2, the 2003 pan-Pacific assessment found that the ratio of the "current" (2001) fishing mortality rate to the fishing mortality rate associated with MSY ( $F/F_{MSY}$ ) was 1.72. In order to reduce the fishing mortality to the MFMT (where  $F/F_{MSY} = 1.00$ ) – that is, to end overfishing, fishing mortality in the Pacific Ocean as a whole would thus have to be reduced by 42 percent.<sup>10</sup> The 2004 separate-region assessments (which are stronger than the 2003 assessments in terms of available data and model development) were somewhat more optimistic in terms of the extent of overfishing, with comparable figures of 38 percent for the EPO and 0 percent for the WCPO.

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<sup>10</sup> It should be noted that neither of the two FMPs includes target reference points for fishing mortality; that is, the FMPs do not specify fishing mortality targets that are more conservative than the MFMT. The WC HMS FMP establishes an OY control rule (or "management control rule") that is identical to the MSY-based limit control rule (i.e., the MFMT) (the FMP also notes that OY reference points are to be decided at international for a). The WP Pelagics FMP does not establish any OY or other target references points or control rules.

## B. Sources of bigeye tuna fishing mortality in the Pacific Ocean

The total Pacific-wide fishing mortality of bigeye tuna is associated with recent reported annual landings of roughly 200,000 mt per year. U.S. fisheries in the Pacific land approximately 10,000 mt of bigeye tuna per year, or about five percent of total Pacific-wide landings. The U.S. fisheries that contribute to bigeye fishing mortality in the Pacific are summarized in Table 3.

**Table 3. U.S. sources of bigeye tuna fishing mortality in the Pacific Ocean**

<b>Fishery</b>	<b>Authorities</b>	<b>2003 Reported Landings (mt)</b>
California recreational fishery	Magnuson-Stevens Act (WC HMS FMP)	--
California longline fishery (high seas fishing only)	Magnuson-Stevens Act (WC HMS FMP) Tuna Convention Act (IATTC)	*30
Hawaii recreational pelagic fisheries	Magnuson-Stevens Act (WP Pelagics FMP) State of Hawaii	unknown
Hawaii longline fishery (including high seas fishing)	Magnuson-Stevens Act (WP Pelagics FMP) South Pacific Tuna Act (SPTT) Tuna Conventions Act (IATTC)	*3,620
Hawaii commercial handline fishery	Magnuson-Stevens Act (WP Pelagics FMP) State of Hawaii	180
Hawaii commercial troll fishery	Magnuson-Stevens Act (WP Pelagics FMP) State of Hawaii	
American Samoa longline fishery (including high seas fishing)	Magnuson-Stevens Act (WP Pelagics FMP) South Pacific Tuna Act (SPTT) Territory of American Samoa	*240
U.S. Pacific purse seine fishery (EPO)	Tuna Conventions Act (IATTC)	2,600
U.S. Pacific purse seine fishery (WCPO)	South Pacific Tuna Act (SPTT)	3,580
<b>Total</b>		<b>10,250+</b>

\* indicates that the estimates is preliminary.

-- indicates that the date are not readily available but landings are believed to be less than 10 mt.

FMP = Fishery Management Plan



### C. Management authorities and measures relevant to bigeye tuna in the Pacific Ocean

Management authorities that are relevant to bigeye tuna in the Pacific Ocean include:

- Magnuson-Stevens Act, which among things, provides for the conservation and management of marine fishery resources under U.S. jurisdiction, supports and encourages the implementation and enforcement of international fishery agreements for the conservation and management of HMS, establishes the regional fishery management councils, and provides for the preparation and implementation of fishery management plans, two of which are:
  - WC HMS FMP, developed by the PFMF
  - WP Pelagics FMP, developed by the WPFMC
- Inter-American Tropical Tuna Commission (IATTC), implemented via the Tuna Conventions Act and implementing regulations
- Western and Central Pacific Fishery Commission (WCPFC), to be implemented via the anticipated Western and Central Pacific Fishery Convention Act and implementing regulations<sup>11</sup>
- Treaty on Fisheries between Certain Pacific Island States and the Government of the United States of America, or “South Pacific Tuna Treaty,” implemented via the South Pacific Tuna Act of 1988 and implementing regulations
- High Seas Fishing Compliance Act (HSFCA)
- Endangered Species Act (ESA)
- Marine Mammal Protection Act (MMPA)
- State and territorial governments

For the purpose of managing HMS stocks, the IATTC and WCPFC collectively cover the entire Pacific Ocean, and their respective areas of application or competence overlap in the central Pacific.<sup>12</sup> The SPTT area covers a broad expanse of the 16 Pacific Islands Exclusive Economic Zones (EEZ) and high seas areas straddling the equator in the WCPO. Although most of the SPTT area is within the WCPFC area of competence, it does overlap the IATTC area of competence on the SPTT area’s eastern boundary.

Both the IATTC (actually the Antigua Convention, which has not yet entered into force) and WCPFC, as well as the SPTT, include language calling for cooperation with other regional bodies in order to establish compatible conservation and management measures.<sup>13</sup>

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<sup>11</sup> Although the Convention went into effect in June 2004, the U.S. has not yet ratified the Convention. The DoS has sent the ratification package to the White House.

<sup>12</sup> Essentially this overlap covers portions of the EEZs of Kiribati and French Polynesia, along with high seas areas also found to be included in the area of the IATTC’s revised convention. The eastern boundary of the WCPFC area in the North Pacific moves south along the 150° meridian of west longitude to the 4° parallel of south latitude where it jogs east to the 130° meridian of west longitude south to the 60° parallel of south latitude.

<sup>13</sup> In the Antigua Convention, see Article XXIII relating to technical and other forms of assistance, and Article XXIV relating to cooperation with other organizations, including the need to consult with other organizations to harmonize management measures in areas of overlap. In the WCPFC, see Article 22-2 on cooperation, consultation and collaboration with other relevant RFMOs, including the IATTC, Article 22-3 on avoiding duplication of effort among RFMOs with respect to areas of overlap, and Article 22-4, which calls for consultations between the WCPFC and the IATTC. In the SPTT, see Article 7 on the need for consistency with measures adopted under the WCPFC and cooperation on matters of common concern.

Under the authority of the legal mandates listed above, a variety of conservation and management measures that are relevant to the bigeye tuna in the Pacific Ocean have been established. They include the following:

### ***West Coast Highly Migratory Species FMP***

Existing:

- No longline fishing within the EEZ
- No swordfish-directed longline fishing on the high seas west of 150° W longitude and north of the equator, unless operating under a western Pacific longline permit (complemented by an ESA-promulgated prohibited east of 150° W)
- Port sampling and catch reporting, vessel observer and vessel monitoring systems (VMS) requirements
- Vessel permits required for vessels that engage in commercial fishing or recreational charter fishing for HMS: (1) inside the EEZ off the U.S. west coast; or (2) if HMS are landed in Washington, Oregon or California regardless of where the harvest occurred
- Time/area closures for longline and drift gillnet
- Sea turtle and seabird bycatch measures

Under consideration by the PFMFC:

- Limited entry permit program for the California longline fishery

### ***Western Pacific Pelagics FMP***

Existing:

- Limited access permit program for the Hawaii longline fishery
  - 164 permits available
  - vessel length limit of 101 feet
- Non-competitive limit on Hawaii shallow-set (swordfish) longline effort of 2,120 sets per year
- Competitive annual limits on leatherback (16) and loggerhead (17) turtle interactions with Hawaii-based shallow-setting longline vessels
- Longline closed areas around Hawaiian Islands, Guam, and American Samoa
- Catch reporting, gear marking and vessel identification, vessel observer, and VMS requirements for longline vessels
- Permit and catch reporting requirements for longline vessels in areas other than Hawaii (American Samoa, Guam, and Northern Mariana Islands)
- Permit and catch reporting requirements for pelagic troll and handline fisheries in the Pacific Remote Island Areas
- Permit and reporting requirements for vessel transshipping/receiving pelagic species

In progress:

- Limited access permit program for the American Samoa longline fishery (pending)
  - approximately 138 permits available, divided among four vessel size classes

- vessel observer requirement for vessels longer than 50 feet, VMS requirement for vessel longer than 40 feet

### ***South Pacific Tuna Treaty (via the South Pacific Tuna Act)***

#### **Existing:**

- Limited access by U.S. purse seine vessels in Treaty area (40, plus 5 joint venture)
- Catch reporting, vessel observer, and VMS requirements

### ***IATTC (via the Tuna Conventions Act)***

#### **Existing:**

- Conservation of Tuna in the Eastern Tropical Pacific, a multi-year Resolution for 2004, 2005, 2006
  - Closure of the tuna purse seine fishery for a six week period (20 November - 31 December 2004)
  - Closure of the bigeye tuna longline fishery when the annual bigeye catch reaches the catch level in 2001 (150 mt) (December 2004)
- Bigeye tuna statistical document program (final rule published in concert with the ICCAT requirement for reporting and permitting)
- At-sea reporting
- Provision of data
- Positive list of longline vessels
- Fleet capacity limits
- Bycatch
  - Conservation of non-target species, including juvenile tunas (e.g., minimum size limits and full retention requirements). Bycatch includes, but is not limited to, sea turtles and sharks.

#### **In progress:**

- Monthly catch report of bigeye tuna to the IATTC
- VMS on all vessels fishing for tuna 24 meters in length or greater, all gear types

### ***WCPFC (via the anticipated Western and Central Pacific Fishery Convention Act)***

- Potential measures area to be considered at the 2005 annual meeting

### ***High Seas Fishing Compliance Act***

The High Seas Fishing Compliance Act (HSFCA) and its implementing regulations require, among other things, that any U.S. vessel operating on the high seas be authorized via a permit. Recently NMFS has required, as agency policy, that all fisheries operating on the high seas be in compliance with the National Environmental Policy Act, the Endangered Species Act, and the Marine Mammal Protection Act prior to providing new (or renewed) HSFCA permits. Most U.S. fisheries operating on the high seas area of the Pacific Ocean have the required analysis and

documentation because they are managed under the Magnuson-Stevens Act. For those few that are currently outstanding it is expected that these will be completed by the end of 2005.

Existing:

- Permits, vessel marking, and catch reporting for all U.S. vessels fishing on the high seas

### ***Endangered Species Act***

Existing:

- No swordfish-directed longline fishing on the high seas east of 150° W and north of the equator, unless operating under a western Pacific longline permit (complemented by a Magnuson-Stevens Act-promulgated prohibition west of 150° W)

### ***Marine Mammal Protection Act***

- Marine Mammal Protection Act Certificate required for vessels in Category I fisheries (Hawaii longline fishery) and Category II fisheries (west coast longline fishery)

### ***State and territorial authorities***

- Catch reporting requirements for commercial pelagic fishermen in Hawaii
- Creel surveys in American Samoa, CNMI, Guam, and Hawaii



#### **D. Action items from HMS Summit**

Coordination between the Southwest Region, the Pacific Islands Region, and Headquarters will be improved through implementation of the action items identified during the HMS Summit in Long Beach in August 2004:

##### **Capacity:**

- Form a subgroup task force for capacity control issues – Southwest Region, Pacific Island Region, Headquarters

##### **Illegal unregulated and unreported fishing and monitoring, control and surveillance:**

- Employ/task a contractor to compile the RFMO vessel lists to facilitate global assessment and comparison of regional fishing fleets (potential follow-up is discussion of this at the UN Food and Agriculture Organization Committee on Fisheries meeting – if our internal analysis indicates necessity); this is currently in process
- Trade measures task force to discuss status and development of tuna trade measures – including tracking and remedial actions (e.g., trade sanctions)
- Status of the national policy of the use of international VMS data – NOAA Office of Law Enforcement

##### **Inter- and intra-agency effectiveness and efficiency:**

- Provide all Summit participants with access to the International Intranet website (<https://ia.nmfs.intranets.com/login.asp?link=>) to enhance internal communication and efficacy of finding information on each of the tuna RFMOs
- Improve intelligence gathering function – enhances preparedness at RFMO meetings and limits incidence of blind-siding
- Free trade acts – involvement of NMFS in the development of these to ensure proper attention to and inclusion of fisheries trade issues (also topic for discussion with DOS)
- Region-wide internal meetings prior to various RFMO meetings to discuss policy development – NMFS coordination on issues and protocols
- Compare rulemaking processes at both the international and national RFMO level and seek simplicity
- Identify ways to address non-governmental organization influence on functioning of fisheries (e.g., Earth Island Institute driven consumer boycotts of tuna – per the tuna - dolphin issue)
- Have “cross-cutting RFMO tuna issues” summit with DOS to discuss emerging issues, process issues (to be dealt with by each of the RFMO leads), and exchange views and assess where both NMFS and DOS stand on those issues

## **Bigeye Tuna Overfishing Response Update NMFS Report**

**FMP Amendment:** The SWR hired a recent graduate from the Environmental Sciences and Policy program at Johns Hopkins University who is preparing the draft amendment to the WC HMS to Pacific bigeye tuna overfishing. A draft plan amendment is expected to be available for Council review at the November meeting.

The SWR provided comments on the draft internal copy of the Western Pacific Fishery Management Council's draft Amendment 14 to the Pelagics Fishery Management Plan entitled "Management Measures for Bigeye Tuna in the Pacific Ocean." The proposed actions include a suite of non-regulatory measures for the international management of bigeye tuna, as well as several data collection initiatives for small-boat pelagic fisheries in Hawaii. Comments centered on management and monitoring, recommendations for research, and WPFMC management protocol for international management of Pacific HMS (WCPO and EPO management measures).

## BIGEYE TUNA OVERFISHING RESPONSE UPDATE

National Marine Fisheries Service (NMFS) notified the Council that it must take action to address overfishing of bigeye tuna by June 14, 2005. A similar notification was given to the Western Pacific Fishery Management Council (WPFMC). At the June 2005 meeting, the Council was briefed on both the WPFMC's proposals to develop a fishery management plan (FMP) amendment to address bigeye tuna overfishing and on a strategy put forward by NMFS. (The WPFMC's proposed revisions to the NMFS strategy are contained in Attachment 1.) In response, the Council moved to begin work on an amendment to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) addressing this issue. NMFS Southwest Region agreed to take lead responsibility on developing the amendment package for Council consideration.

Mr. Mark Helvey will provide an update on the development of the amendment package (Exhibit C.2.b, NMFS Report).

### **Council Task: Council Discussion and Guidance on Response to Overfishing of Bigeye Tuna.**

#### Reference Materials:

1. Agenda Item C.2.a, Attachment 1: Letter from Ms. Kitty Simonds, WPFMC Executive Director, to Mr. Bill Robinson, NMFS with proposed revisions to NMFS strategy.
2. Agenda Item C.2.b, NMFS Report.

#### Agenda Order:

- a. Agenda Item Overview
- b. NMFS Report
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. Council Discussion and Guidance on Response to Overfishing of Bigeye Tuna

Kit Dahl  
Mark Helvey

PFMC  
08/30/05

Draft for Public Review  
**INTERIM Protocol for Consideration of Exempted Fishing Permits for HMS Fisheries  
(Proposed Effective Dates of November 2005-April 2006)**

**DEFINITION**

An exempted fishing permit (EFP) is a federal permit, issued by the National Marine Fisheries Service, which authorizes a vessel to engage in an activity that is otherwise prohibited by the Magnuson-Stevens Fishery Conservation and Management Act or other fishery regulations for the purpose of collecting limited experimental data. EFPs can be issued to federal or state agencies, marine fish commissions, or other entities, including individuals. An EFP applicant need not be the owner or operator of the vessel(s) for the EFP is requested.

**PURPOSE**

The specific objectives of a proposed exempted fishery may vary. The Pacific Fishery Management Council's fishery management plan (FMP) for West Coast HMS fisheries provides for EFPs to promote increased utilization of underutilized species, realize the expansion potential of the domestic HMS fisheries, and increase the harvest efficiency of the HMS fisheries consistent with the Magnuson-Stevens Act and the management goals of the FMP. However, EFPs are commonly used to explore ways to encourage innovation and efficiency in the fisheries, measure bycatch associated with different fishing gears and/or fishing strategies (e.g., during certain times or in certain areas), and to evaluate current and proposed management measures.

**PROTOCOL**

A. Submission

1. The Pacific Fishery Management Council and its advisory bodies [HMS Management Team (HMSMT), HMS Advisory Subpanel (HMSAS) and Scientific and Statistical Committee (SSC)] should review EFP proposals prior to issuance; the advisory bodies may provide comment on methodology and relevance to management data needs and make recommendations to the Council accordingly. The public may also comment on EFP proposals.
2. Completed applications for EFPs from individuals or non-government agencies for Council consideration must be received by the Council for review, at least two weeks prior to the November 2005 Council meeting.
3. Applications for EFPs from federal or state agencies must meet the briefing book deadline for the November 2005 Council meeting.

B. Proposal Contents

1. EFP proposals must contain sufficient information for the Council to determine:
  - a. There is adequate justification for an exemption to the regulations;
  - b. The potential impacts of the exempted activity have been adequately identified;
  - c. The exempted activity would be expected to provide information useful to management and use of HMS fishery resources.



2. Applicants must submit a completed application in writing that includes, but is not limited to, the following information:
  - a. Date of application
  - b. Applicant's names, mailing addresses, and telephone numbers
  - c. A statement of the purpose and goals of the experiment for which an EFP is needed, including a general description of the arrangements for the disposition of all species harvested under the EFP
  - d. Valid justification explaining why issuance of an EFP is warranted
  - e. A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals
  - f. An expected total duration of the EFP (i.e., number of years proposed to conduct exempted fishing activities)
  - g. Number of vessels covered under the EFP
  - h. A description of the species (target and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment; this description should include harvest estimates of overfished species and protected species
  - i. A description of a mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for
  - j. A description of the proposed data collection and analysis methodology
  - k. A description of how vessels will be chosen to participate in the EFP
  - l. For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used
  - m. The signature of the applicant
  - n. The HMSMT, HMSAS, SSC, and/or Council may request additional information necessary for their consideration

### C. Review and Approval

1. The HMSMT and SSC will review EFP proposals in **November 2005** and make recommendations to the Council for action; the Council will consider those proposals for preliminary action. Final action on EFPs will occur at the **March 2006** Council meeting. Only those EFP applications that were considered in **November 2005** may be considered in **March 2006**; EFP applications received after the **November 2005** Council meeting for the following calendar year will not be considered.
2. EFP proposals must contain a mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for. Also, EFP proposals must include a description of the proposed data collection and analysis methodology used to measure whether the EFP objectives will be met.
3. The Council will give priority consideration to those EFP applications that:
  - a. Emphasize resource conservation and management with a focus on bycatch reduction (highest priority)
  - b. Encourage full retention of fishery mortalities
  - c. Involve data collection on fisheries stocks and/or habitat
  - d. Encourage innovative gear modifications and fishing strategies to reduce bycatch
  - e. Encourage the development of new market opportunities
  - f. Explore the use of incentives to increase utilization of underutilized species while reducing bycatch of non-target species and/or interactions with protected species

4. The HMSMT review will consider the following questions:
  - a. Is the application complete?
  - b. Is the EFP proposal consistent with the goals and objectives of the West Coast HMS FMP?
  - c. Does the EFP account for fishery mortalities, by species?
  - d. Can the harvest estimates of overfished species and/or protected species be accommodated?
  - e. Does the EFP meet one or more of the Council's priorities listed above?
  - f. Is the EFP proposal compatible with the federal observer program effort?
  - g. What infrastructure is in place to monitor, process data, and administer the EFP?
  - h. How will achievement of the EFP objectives be measured?
  - i. Is the data ready to be applied? If so, should it be used, or rejected? If not, when will sufficient data be collected to determine whether the data can be applied?
  - j. What are the benefits to the fisheries management process to continue an EFP that began the previous year?
  - k. If propose integrating data into management, what is the appropriate process?
  - l. What is the funding source for at-sea monitoring?
  - m. Has there been coordination with appropriate state and federal enforcement, management and science staff?
5. SSC Review:
  - a. All EFP applications should first be evaluated by the HMSMT for consistency with the goals and objectives of the HMS FMP.
  - b. When a proposal is submitted to the HMSMT that includes a significant scientific component that would benefit from SSC review, the HMSMT can refer the application to the SSC's HMS subcommittee for comment.
  - c. In such instances, the HMS subcommittee will evaluate the scientific merits of the application and will specifically evaluate the application's (a) problem statement; (b) data collection methodology; (c) proposed analytical and statistical treatment of the data; and (d) the generality of the inferences that could be drawn from the study.

#### D. Other considerations

1. EFP candidates or participants may be denied future EFP permits under the following circumstances:
  - a. If the applicant/participant (fisher/processor) has violated past EFP provisions; or has been convicted of a crime related to commercial fishing regulations punishable by a maximum penalty range exceeding \$1,000 within the last three years; or within the last three years assessed a civil penalty related to violations of commercial fishing regulations in an amount greater than \$5,000; or, has been convicted of any violation involving the falsification of fish receiving tickets including, but not limited to, mis-reporting or under-reporting of HMS. Documented fish receiving tickets indicating mis-reporting or under-reporting of HMS will not qualify for consideration when fish reporting documents are used as part of the qualifying criteria for EFPs.

#### E. Report Contents

1. The EFP applicant must present a preliminary report on the results of the EFP and the data collected (including catch data) to the HMSMT at the **March 2007** Council meeting.

2. A final written report on the results of the EFP and the data collected must be presented to the HMSMT, SSC, and the Council at the **April 2007** Council meeting.
3. The final report should include:
  - a. A summary of the work completed
  - b. An analysis of the data collected
  - c. Conclusions and/or recommendations
  - d. Timely presentation of results is required to determine whether future EFPs will be recommended

Draft for Public Review  
Protocol for Consideration of Exempted Fishing Permits for HMS Fisheries  
(Proposed Effective Date of April 2006)

**DEFINITION**

An exempted fishing permit (EFP) is a federal permit, issued by the National Marine Fisheries Service, which authorizes a vessel to engage in an activity that is otherwise prohibited by the Magnuson-Stevens Fishery Conservation and Management Act or other fishery regulations for the purpose of collecting limited experimental data. EFPs can be issued to federal or state agencies, marine fish commissions, or other entities, including individuals. An EFP applicant need not be the owner or operator of the vessel(s) for the EFP is requested.

**PURPOSE**

The specific objectives of a proposed exempted fishery may vary. The Pacific Fishery Management Council's fishery management plan (FMP) for West Coast HMS fisheries provides for EFPs to promote increased utilization of underutilized species, realize the expansion potential of the domestic HMS fisheries, and increase the harvest efficiency of the HMS fisheries consistent with the Magnuson-Stevens Act and the management goals of the FMP. However, EFPs are commonly used to explore ways to encourage innovation and efficiency in the fisheries, measure bycatch associated with different fishing gears and/or fishing strategies (e.g., during certain times or in certain areas), and to evaluate current and proposed management measures.

**PROTOCOL**

A. Submission

1. The Pacific Fishery Management Council and its advisory bodies [HMS Management Team (HMSMT), HMS Advisory Subpanel (HMSAS) and Scientific and Statistical Committee (SSC)] should review EFP proposals prior to issuance; the advisory bodies may provide comment on methodology and relevance to management data needs and make recommendations to the Council accordingly. The public may also comment on EFP proposals.
2. Completed applications for EFPs from individuals or non-government agencies for Council consideration must be received by the Council for review, at least two weeks prior to the June Council meeting.
3. Applications for EFPs from federal or state agencies must meet the briefing book deadline for the June Council meeting.

B. Proposal Contents

1. EFP proposals must contain sufficient information for the Council to determine:
  - a. There is adequate justification for an exemption to the regulations;
  - b. The potential impacts of the exempted activity have been adequately identified;
  - c. The exempted activity would be expected to provide information useful to management and use of HMS fishery resources.

2. Applicants must submit a completed application in writing that includes, but is not limited to, the following information:
  - a. Date of application
  - b. Applicant's names, mailing addresses, and telephone numbers
  - c. A statement of the purpose and goals of the experiment for which an EFP is needed, including a general description of the arrangements for the disposition of all species harvested under the EFP
  - d. Valid justification explaining why issuance of an EFP is warranted
  - e. A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals
  - f. An expected total duration of the EFP (i.e., number of years proposed to conduct exempted fishing activities)
  - g. Number of vessels covered under the EFP
  - h. A description of the species (target and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment; this description should include harvest estimates of overfished species and protected species
  - i. A description of a mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for
  - j. A description of the proposed data collection and analysis methodology
  - k. A description of how vessels will be chosen to participate in the EFP
  - l. For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used
  - m. The signature of the applicant
  - n. The HMSMT, HMSAS, SSC, and/or Council may request additional information necessary for their consideration

### C. Review and Approval

1. The HMSMT and SSC will review EFP proposals in June and make recommendations to the Council for action; the Council will consider those proposals for preliminary action. Final action on EFPs will occur at the September Council meeting. Only those EFP applications that were considered in June may be considered in September; EFP applications received after the June Council meeting for the following calendar year will not be considered.
2. EFP proposals must contain a mechanism, such as at-sea fishery monitoring, to ensure that the harvest limits for targeted and incidental species are not exceeded and are accurately accounted for. Also, EFP proposals must include a description of the proposed data collection and analysis methodology used to measure whether the EFP objectives will be met.
3. The Council will give priority consideration to those EFP applications that:
  - a. Emphasize resource conservation and management with a focus on bycatch reduction (highest priority)
  - b. Encourage full retention of fishery mortalities
  - c. Involve data collection on fisheries stocks and/or habitat
  - d. Encourage innovative gear modifications and fishing strategies to reduce bycatch
  - e. Encourage the development of new market opportunities
  - f. Explore the use of incentives to increase utilization of underutilized species while reducing bycatch of non-target species and/or interactions with protected species



4. The HMSMT review will consider the following questions:
  - a. Is the application complete?
  - b. Is the EFP proposal consistent with the goals and objectives of the West Coast HMS FMP?
  - c. Does the EFP account for fishery mortalities, by species?
  - d. Can the harvest estimates of overfished species and/or protected species be accommodated?
  - e. Does the EFP meet one or more of the Council's priorities listed above?
  - f. Is the EFP proposal compatible with the federal observer program effort?
  - g. What infrastructure is in place to monitor, process data, and administer the EFP?
  - h. How will achievement of the EFP objectives be measured?
  - i. Is the data ready to be applied? If so, should it be used, or rejected? If not, when will sufficient data be collected to determine whether the data can be applied?
  - j. What are the benefits to the fisheries management process to continue an EFP that began the previous year?
  - k. If propose integrating data into management, what is the appropriate process?
  - l. What is the funding source for at-sea monitoring?
  - m. Has there been coordination with appropriate state and federal enforcement, management and science staff?
5. SSC Review:
  - a. All EFP applications should first be evaluated by the HMSMT for consistency with the goals and objectives of the HMS FMP.
  - b. When a proposal is submitted to the HMSMT that includes a significant scientific component that would benefit from SSC review, the HMSMT can refer the application to the SSC's HMS subcommittee for comment.
  - c. In such instances, the HMS subcommittee will evaluate the scientific merits of the application and will specifically evaluate the application's (a) problem statement; (b) data collection methodology; (c) proposed analytical and statistical treatment of the data; and (d) the generality of the inferences that could be drawn from the study.

#### D. Other considerations

1. EFP candidates or participants may be denied future EFP permits under the following circumstances:
  - a. If the applicant/participant (fisher/processor) has violated past EFP provisions; or has been convicted of a crime related to commercial fishing regulations punishable by a maximum penalty range exceeding \$1,000 within the last three years; or within the last three years assessed a civil penalty related to violations of commercial fishing regulations in an amount greater than \$5,000; or, has been convicted of any violation involving the falsification of fish receiving tickets including, but not limited to, mis-reporting or under-reporting of HMS. Documented fish receiving tickets indicating mis-reporting or under-reporting of HMS will not qualify for consideration when fish reporting documents are used as part of the qualifying criteria for EFPs.

#### E. Report Contents

1. The EFP applicant must present a preliminary report on the results of the EFP and the data collected (including catch data) to the HMSMT at the June Council meeting of the following year.

2. A final written report on the results of the EFP and the data collected must be presented to the HMSMT, SSC, and the Council at the September Council meeting.
3. The final report should include:
  - a. A summary of the work completed
  - b. An analysis of the data collected
  - c. Conclusions and/or recommendations
  - d. Timely presentation of results is required to determine whether future EFPs will be recommended

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM (HMSMT)  
REPORT ON HMS EXEMPTED FISHING PERMIT PROTOCOL

The Highly Migratory Species Management Team (HMSMT) finalized the proposed Exempted Fishing Permit (EFP) protocol at its August 3-5, 2005, meeting (see Agenda Item C.3.a, Attachment 1), and recommends that the Council approve it for public review, with final consideration scheduled in November.

With regard to the schedule to consider EFPs for the following fishing year that is proposed in the protocol, the HMSMT recommends an annual two-meeting process at the Council's June and September meetings. The HMSMT notes that the HMS fishing year is from April 1 through March 31. Having final approval scheduled in September of the previous year will allow the National Marine Fisheries Service staff time to review the application and do applicable protected species analyses, as needed, prior to the following scheduled fishing year. For Example:

June 2006	Draft HMS EFP applications for Council consideration to approve for public review.
Sept 2006	Final consideration of approval of HMS EFP applications
Oct 2006 – Feb 2007	NMFS protected species analysis/BiOp development (if needed).
Apr 2007	EFP effective date (or later that year, depending on fishery and season).

The HMSMT's August meeting focused on the discussion and development of alternatives to allow a limited amount of drift gillnet fishing within the area that is currently closed. Because fishing effort will likely need to be limited based upon anticipated levels of leatherback sea turtle mortalities, the HMSMT is recommending that an EFP be the implementing mechanism for the drift gillnet fishery within the currently closed area. In other words, the current closed area would remain in place, and, if approved, a limited number of participants could access the closed area through an EFP.

Given this recommendation, the HMSMT notes that this action cannot be accommodated with the schedule outlined in the proposed protocol and provide a drift gillnet fishery in the late summer/fall of 2006. Therefore, the HMSMT recommends that the effective date of the protocol be April 2006 (which is the beginning of the HMS fishing year); in the interim, the HMSMT recommends the Council consider the drift gillnet EFP application for 2006 through a two-meeting process, scheduled for November 2005 and March 2006.

**HMSMT Recommendations:**

1. Approve EFP protocol and schedule (Exhibit C.3.a, Supplemental Revised Attachment 1) for public review, which would be effective in April 2006.
2. Approve interim EFP protocol and scheduled (Exhibit C.3.a, Supplemental Attachment 2) for public review, which would be effective from November 2005 until April 2006.
3. Consider approval of the drift gillnet EFP through a two-meeting process tentatively scheduled for initial council review of EFP alternatives at the November 2005 Council meeting and guidance to the HMSMT to proceed with NEPA. Selection of a preferred alternative will be done at the March 2006 Council meeting.

SCIENTIFIC AND STATISTICAL COMMITTEE REPORT ON  
PROPOSED COUNCIL OPERATING PROCEDURE (COP)  
FOR APPROVING EXEMPTED FISHING PERMITS FOR HIGHLY MIGRATORY SPECIES

The Scientific and Statistical Committee (SSC) discussed the proposed Protocol for Consideration of Exempted Fishing Permits (EFP) for Highly Migratory Species (HMS) Fisheries. The SSC supports the proposed protocol but suggests its review be limited to EFPs with a significant scientific component. We recommend the following changes in the draft document prior to public review.

- 1) Section C.1: change “The HMSMT and SSC will review” to “The HMSMT will review.”
- 2) Section C.5.b: change “the HMSMT can refer the application to the SSC’s HMS subcommittee for comment” to “the HMSMT can refer the application to the SSC for comment.”
- 3) Section C.5.c: change “the HMS subcommittee” to “ the SSC”.
- 4) Section E.2: change “A final written report on the results of the EFP and the data collected must be presented to the HMSMT, SSC and Council at the September meeting” to “A final report on the results of the EFP and the data collected must be presented to the HMSMT and the Council at the September meeting. Those EFPs containing data analysis that could benefit from a scientific review may be forwarded to the SSC for comment.”

## Ocean Pacific Seafood

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Mr. Phil Anderson  
Washington Department of Fish & Wildlife  
Special Assistant to the Director  
600 Capital Way N.  
Olympia, WA 98501-1091

RECEIVED

July 24, 2005

JUL 27 2005

PFMC

Dear Mr. Anderson,

I want to thank you for the kind words; I wish you could have voted for my E.F.P. I'm sure if you knew all the facts it would have made it easier for you.

You commented Dr. Squires said my E.F.P. had nothing to do with Gillnets. You must not have understood him, (or he didn't understand your question); on the contrary, it has a lot to do with it. Of the 131 HMS permit Drift Gillnet endorsements, 54% (71) also have longline endorsements. Clearly, Drift Gillnet fishermen are very interested in pelagic longlining, and my E.F.P. has everything to do with Gillnets. Anyone with knowledge of Pelagic fishing, (like Dr. Fox and Dr. Rebecca Lent), know longlining is a much cleaner and safer fishery than Gillnetting. Having fished both fisheries, I changed my F/V Ventura II from a Gill-netter to a Longliner having experienced the difference in bycatch between the two fisheries.

You would think if a Gill-netter wanted to change to a longliner you would want to encourage it, not make a law against it. I listened to the reasons for the NO votes and none of them made any sense to me. Evidently they had inaccurate facts. The environmental, scientific and commercial communities and N.M.F.S. did not speak against my E.F.P. The only people who spoke against it were the rich and powerful sport fishermen and sport entities on the Council. They have their own selfish reasons that don't do justice to the American people.

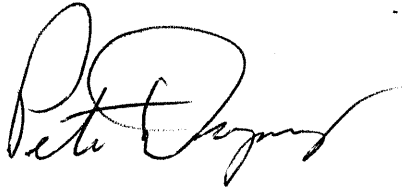
Between the Council and NMFS being influenced by the environmentalists and sport fishermen there is virtually no renewable pelagic fishery left. They have given them all to foreign nations. NMFS has finally started to realize this but the Council still has its head in the sand.

After hearing what you and Marija Vojkovich said I felt that if you had all the information it could have gone the other way.



I'm just a small, poor fisherman with no clout, but I have a good plan. Maybe you can tell me where I went wrong.

Thank you,

A handwritten signature in black ink, appearing to read "Pete Dupuy". The signature is fluid and cursive, with a large loop at the top and a long, sweeping tail.

Pete Dupuy

cc: Dale Squires  
Bill Fox  
Rebecca Lent  
Marija Vojkovich  
Donald McIsaac  
Rod McInnes  
Michelle Culver

**Subject:** No Exemptions to the CA Gillnet Closures  
**From:** clschubert@speakeasy.net  
**Date:** Thu, 08 Sep 2005 12:40:57 -0800  
**To:** donald.mcisaac@noaa.gov, Kit.Dahl@noaa.gov  
**CC:** robert@seaturtles.org

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

PH: (503)820-2280  
Fax: (503) 820-2299

CC: Dr. Kit Dahl  
[Kit.Dahl@noaa.gov](mailto:Kit.Dahl@noaa.gov)

Dear Dr. McIsaac and Dr. Dahl:

On September 20th, the Pacific Fisheries Management Council will be considering a proposal to grant exemptions to a small number of gillnet fishers to a measure that closes a large area of the California coast to gillnet fishing that injures and kills large numbers of endangered sea turtles, sharks, billfish and marine mammals. Most at risk is the leatherback sea turtle which now teeters on the brink of extinction in the Pacific Ocean. I urge you to reject this proposal.

Most at risk from this proposal is the critically endangered leatherback sea turtle. Estimated to be 100 million years old, scientists now warn that it could go extinct in the Pacific in the next 5-30 years unless efforts are made to reduce the threat of being injured or killed by longlines and gillnets. The number of female nesting Pacific leatherbacks has declined by 95% since 1984. The US Pacific Coast is an important migratory route and foraging area for leatherback sea turtles.

These rules are crucial for protecting the leatherback and other marine species from being injured or killed by gillnets and longlines. Eliminating rather than strengthening protections for these critically endangered turtles would be a huge and possibly irreversible mistake.

In 2001, NOAA Fisheries also closed waters off Monterey Bay, California, and in the vicinity north to the 45½° N latitude intersect with the Oregon Coast from August 15 through November 15 in response to the threat of a lawsuit. The region north of Point Conception had recently been closed during El Nino years as the result of another lawsuit in 2002 to protect loggerhead turtles, another species facing threat of extinction due to mortality caused by industrial fishing.

Known as "curtains of death" because they catch and kill everything in their path, large gillnets (also known as driftnets) were banned by the United Nations on the high seas in 1991. Along with sea turtles, gillnets also injure or kill sperm whales, humpback whales, fin whales, Steller sea lions and other threatened and endangered species.

This year, 1,007 scientists from 97 countries and 281 non-governmental organizations from 62 countries delivered a letter to the United Nations urging it to implement a moratorium on industrial longline and gillnet fishing in the Pacific.

There is no excuse for taking a step back on restricting the use of gillnets or longlines. The first ones to pay the price for allowing more of these curtains of death will be sea turtles and other endangered marine wildlife. I urge you to reject this proposal to grant exemptions to the closures and maintain existing protections for sea turtles in place.

Candice Schubert 350 Harbour Cove Drive Sparks, NV 89434 [clschubert@speakeasy.net](mailto:clschubert@speakeasy.net)



CALIFORNIA AND PACIFIC OFFICE

*protecting endangered species and wild places through  
science, education, policy, and environmental law*

**Via Electronic Mail**

September 13, 2005

Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384  
E-mail: Donald.McIsaac@noaa.gov  
pfmc.comments@noaa.gov

**RE: Agenda Item C-3: Proposed Council Operating Procedure (COP) for Approving Exempted Fishing Permits for Highly Migratory Species**

Dear Mr. McIsaac:

On behalf of the Center for Biological Diversity and the Turtle Island Restoration Network I submit the following comments regarding Agenda Item C-3 of the September 2005 meeting of the Pacific Fishery Management Council ("PFMC" or "Council"), the Proposed Council Operating Procedure ("COP") for Approving Exempted Fishing Permits for Highly Migratory Species ("HMS"). Pursuant to PFMC policy as articulated on its website, we request that this letter be distributed to the Council at or before the onset of the September meeting.

While the agenda item before the Council refers only to the proposed adoption of a Council operating procedure ("COP") for approving HMS exempted fishing permit applications, it is clear from the agenda summary as well as the comments of the Highly Migratory Species Management Team ("HMSMT") that the driving force for the proposed action is a desire by the HMSMT to reestablish the California/Oregon Drift-Gillnet Fishery in areas in which the fishery is currently precluded. Similarly, although not specifically mentioned in the Council's briefing book documents, there is ample evidence in the record that a further purpose of the COP is to develop a mechanism that would allow the reopening of the California-based longline fishery for swordfish. By linking the proposed COP to specific exempted fishing proposals, particularly proposals as legally problematic as those for the drift-gillnet and longline fisheries, the Council has rendered what could have been a relatively straightforward procedural rulemaking into one that is fundamentally flawed and will almost certainly result in legal challenge. We believe that the only lawful course for the Council to follow if it chooses to pursue adoption of a COP for HMS exempted fishing permits is to reject the draft COP as developed by the HMSMT and restart the procedure independent of any pending proposals or plans to reopen all or portions of

**Tucson • Phoenix • Silver City • Joshua Tree • San Diego • San Francisco**

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the drift-gillnet and longline fisheries. Moreover, the Council should not adopt any “interim” procedure as proposed by the HMSMT to allow the more rapid approval of exempted fishing permits for the drift-gillnet fishery. To continue on the present course would render the Council’s actions, and any National Marine Fisheries Services (“NMFS”) approval and implementation of the Council’s decisions, highly unlawful in violation of the procedural and substantive mandates of the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) (16 U.S.C. § 1801 *et seq.*), the National Environmental Policy Act (“NEPA”) (42 U.S.C. § 4321 *et seq.*), the Endangered Species Act (“ESA”)(16 U.S.C. § 1531 *et seq.*), the Marine Mammal Protection Act (“MMPA”)(16 U.S.C. § 1361 *et seq.*), and the Migratory Bird Treaty Act (“MBTA”)(16 U.S.C. § 706 *et seq.*).

As the Council is, or should be aware, the California/Oregon Drift-Gillnet Fishery is currently operating in violation of the ESA, MMPA and MBTA. Any decisions by the Council and/or NMFS that result in the expansion of this fishery into currently closed areas will be met by litigation seeking not just to prevent the expansion of the fishery, but likely also the complete closure of the fishery until and unless it can be operated in a manner consistent with applicable law.<sup>1</sup>

The California/Oregon Drift-Gillnet Fishery entangles and kills ESA-listed marine mammals and sea turtles. It must therefore be operated in a manner consistent with the procedural and substantive mandates of the ESA or not at all. This fishery is currently operating without any take authorization for ESA-listed marine mammals. Take can be authorized via a biological opinion issued pursuant to the ESA only if such take is also authorized pursuant to Section 101 of the MMPA. On October 30, 2000, NMFS issued a three-year take authorization pursuant to Section 101(a)(5)(E) of the MMPA, 16 U.S.C. § 1371(a)(5)(E), to the Drift-Gillnet Fishery allowing the take of ESA listed marine mammals, specifically sperm, fin, and humpback whales and the eastern stock of Steller sea lion. 65 Fed. Reg. 64670. While we believe this permit was improperly issued in the first instance, regardless of the infirmities of this permit, it is now expired and no take of any ESA-listed marine mammal is authorized for the Drift-Gillnet Fishery, or for that matter any fishery under the HMS FMP. Unfortunately, the Drift-Gillnet Fishery continues to entangle ESA-listed marine mammals. For example, observer data from the 2004-2005 fishing season shows the entanglement of a humpback whale. This take was not authorized under the ESA or the MMPA and therefore occurred in violation of Section 9 of the ESA. Continued operation of the Drift-Gillnet Fishery, and certainly any expansion of the fishery into currently closed areas, violates the provisions of the ESA prohibiting such take. Until and unless the fishery as a whole (including any proposed exempted fishing) receives a lawful Section 101 authorization pursuant to the MMPA, we believe that the fishery must be suspended.

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<sup>1</sup> It is our understanding that the California-based longline fishery is currently non-operational. The shallow set component of the fishery was closed via the final HMS FMP in conjunction with a NMFS ESA rulemaking (69 Fed. Reg. 18444 and 69 Fed. Reg. 11540) while the small remaining tuna component of the fishery was closed due to overfishing concerns regarding the bigeye tuna (70 Fed. Reg. 52324). Needless to say, we believe that any reopening of the longline fishery via exempted fishing permit or otherwise would also violate the ESA, MMPA and MBTA.

Any proposal to allow the Drift-Gillnet Fishery into areas occupied by the critically endangered leatherback sea turtle would violate Sections 7 and 9 of the ESA. In the original Drift-Gillnet biological opinion, NMFS had the following to say about any further mortality to the leatherback:

Therefore, any additional impacts to the western Pacific leatherback stocks are likely to maintain or exacerbate the decline in these populations. This would further hinder population persistence or attempts at recovery as long as mortalities exceed any possible population growth, which appears to be the current case, appreciably reducing the likelihood that western Pacific leatherback populations will persist. Additional reductions in the likelihood of persistence of western Pacific leatherback stocks are likely to affect the overall persistence of the entire Pacific Ocean leatherback population by reducing genetic diversity and viability, representation of critical life stages, total population abundance, and metapopulation resilience as small sub-populations are extirpated. These effects would be expected to appreciably reduce the likelihood of both the survival and recovery of the Pacific Ocean population of the leatherback sea turtle.

Biological Opinion at 94. (Emphasis added). NMFS then concluded that the estimated annual mortality of leatherbacks from the Drift-Gillnet Fishery would likely jeopardize the species. NMFS therefore proposed as a Reasonable and Prudent Alternative (“RPA”) a seasonal closure to the Drift-Gillnet Fishery in the waters off the Central and Northern California and Southern Oregon Coasts. NMFS adopted a variant of this RPA via an ESA rulemaking and instituted the current closure. 66 Fed. Reg. 44549. The closure was then reaffirmed by NMFS when it adopted the HMS FMP under its authorities under the MSA. 69 Fed. Reg. 18444; 50 C.F.R. § 660.713.<sup>2</sup> Since the October 2000 biological opinion for the Drift-Gillnet Fishery, the status of the leatherback in the Pacific has further declined. We believe, as NMFS stated in 2000, that authorization of any leatherback take in the Pacific would violate the requirement to avoid jeopardy to the species.

Fortunately, the seasonal closure to the Drift-Gillnet Fishery for the protection of the leatherback sea turtles appears to be effective. The past three years of observer data show no bycatch of leatherback sea turtles.<sup>3</sup> It would be criminal for the Council and NMFS to undo this apparently successful management measure and allow drift-gillnet vessels to set their nets in areas where they are likely to entangle and kill this critically endangered species.

The continued authorization of the Drift-Gillnet Fishery under the FMP (and under any proposed exempted fishing permit) also violates the unambiguous command of the MMPA that all fisheries “shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate” by April 30, 2001. 16

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<sup>2</sup> Similar closures were required south of Pt. Conception in El Nino years to avoid loggerhead sea turtles. NMFS has yet to actually invoke these closures even when other branches of the agency have declared the existence of El Nino conditions.

<sup>3</sup> We hope this does not simply reflect the unfortunate fact that there so few leatherback sea turtles left in the Pacific.



U.S.C. § 1387(b)(1). NMFS has defined ZMRG by regulation as ten percent of Potential Biological Removal (“PBR”). The fishery’s take of marine mammal species remains above this threshold. For example, in the most recent Draft Pacific Stock Assessment Reports (dated May 2005) the fishery was estimated to kill 23 northern right whale dolphins each year, in excess of a ZMRG level of 16. Similarly, take of the short-finned pilot whale is not just above ZMRG, but almost at PBR. Take of sperm, humpback and fin whales also remains well above 10% of PBR, thereby exceeding the definition of ZMRG. Because April 30, 2001 has come and gone without the Drift-Gillnet Fishery reaching ZMRG, the continued authorization, or any expansion, of this fishery violates the MMPA.<sup>4</sup>

As mentioned above, we believe that the Drift-Gillnet Fishery as currently authorized is violating the MBTA. Obviously, any exempted fishing permit allowing an expansion of the fishery would likewise violate the MBTA. Section 2 of the MBTA provides that “it shall be unlawful at any time, by any means or in any manner,” to, among many other prohibited actions, “pursue, hunt, take, capture, [or] kill” any migratory bird included in the terms of the treaties. 16 U.S.C. § 703 (emphasis added). The term “take” is defined as to “pursue, hunt, shoot, wound, kill, trap, capture, or collect.” 50 C.F.R. § 10.12 (1997). The primary species taken by the Drift-Gillnet Fishery, the northern fulmar, is included in the list of migratory birds protected by the MBTA. See 50 C.F.R. § 10.13 (list of protected migratory birds). Other MBTA protected species such as the Cassin’s auklet are also taken by the fishery. The MBTA imposes strict liability for killing migratory birds, without regard to whether the harm was intended. Its scope extends to harm occurring “by any means or in any manner,” and is not limited to, for example, poaching. See e.g., U.S. v. Moon Lake Electric Association, 45 F. Supp. 2d 1070 (1999) and cases cited therein. Indeed, the federal government itself has successfully prosecuted under the MBTA’s criminal provisions those who have unintentionally killed migratory birds. E.g., U.S. v. Corbin Farm Service, 444 F. Supp. 510, 532-534 (E. D. Cal.), affirmed, 578 F.2d 259 (9<sup>th</sup> Cir. 1978); U.S. v. FMC Corp., 572 F.2d 902 (2<sup>nd</sup> Cir. 1978). The MBTA applies to federal agencies such as NMFS as well as private persons. See Humane Society v. Glickman, No. 98-1510, 1999 U.S. Dist. LEXIS 19759 (D.D.C. July 6, 1999), affirmed, Humane Society v. Glickman, 217 F.3d 882, 885 (D.C. Cir. 2000)(“There is no exemption in § 703 for farmers, or golf course superintendents, or ornithologists, or airport officials, or state officers, or federal agencies.”). Following Glickman, FWS issued Director’s Order No. 131, confirming that it is FWS’s position that the MBTA applies equally to federal and non-federal entities, and that “take of migratory birds by Federal agencies is prohibited unless authorized pursuant to regulations promulgated under the MBTA.” MBTA Section 3 authorizes the Secretary of the Interior to “determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, take, capture, [or] killing . . . of any such bird.” 16 U.S.C. § 704. FWS may issue a permit allowing the take of migratory birds if consistent with the treaties, statute and FWS regulations. The Council and NMFS however have not obtained, much less applied for such a

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<sup>4</sup> Because levels of marine mammal take violate the MMPA, the fishery cannot be considered “otherwise lawful” as required to receive incidental take authorization under the ESA. Similarly, the fishery’s take of the northern elephant seal, a species listed as “fully protected” under California law, a status that precludes the authorization of incidental take under state law, also renders the fishery unlawful and ineligible for ESA take authorization.

permit authorizing any take by the Drift-Gillnet Fishery (or any other fishery under the HMS FMP).

NMFS and the Council cannot dispute that the Drift-Gillnet Fishery kills birds protected under the MBTA. We believe that until such take is permitted, NMFS cannot lawfully allow any fishing that is likely to result in death of such species. In its response to comments on the FMP, NMFS claimed that the MBTA does not apply beyond the 3 nautical mile territorial sea and therefore it need not comply. This is simply wrong. As NMFS is or should be aware, in 2001 an Interior Solicitor's Opinion concluded that the MBTA does in fact apply in the U.S. EEZ. NMFS's conclusions to the contrary will not survive legal scrutiny.

As the above makes clear, we believe that the current Drift-Gillnet Fishery is operating in violation of the ESA, MMPA and MBTA. If the Council and NMFS wish to reopen the regulatory process for the Drift-Gillnet Fishery in an attempt to allow fishing in areas in which it is currently prohibited, we believe that the likely result will be something quite different- a court ruling suspending the entire Drift-Gillnet Fishery until the fishery complies with all applicable laws.

While we believe that any exempted fishing permit for the Drift-Gillnet Fishery would be legally untenable because of the substantive requirements of the ESA, MMPA, MBTA, and MSA, we also believe that the adoption of the draft COP and any interim procedures for approval of any exempted fishing permits for drift-gillnets, would also violate the environmental review provisions of NEPA. NEPA's fundamental purposes are to guarantee that: (1) agencies take a "hard look" at the environmental consequences of their actions before these actions occur by ensuring that the agency has, and carefully considers, detailed information concerning significant environmental impacts; and (2) agencies make the relevant information available to the public so that it may also play a role in both the decisionmaking process and the implementation of that decision. See, e.g. 40 C.F.R. § 1500.1. In this instance, the Council and NMFS have completely reversed this process. The Council, or at least the HMSMT, has decided it wishes to allow drift-gillnet fishing in the area currently closed to such fishing to protect leatherback sea turtles. The record on this point is undisputable. The Council now is going through the charade of a public process to set up procedures to allow this to happen. Yet the outcome is apparently predetermined; regardless of what the draft COP procedures will be, exempted fishing permits for drift-gillnets will be rushed through the approval process in an attempt to allow such fishing by next season. Such prejudging of the outcome completely taints the NEPA process and is unlawful (see Metcalf v. Daley, 214 F.3d 1135, 1143 (9<sup>th</sup> Cir. 2000)). The Council and NMFS must prepare an Environmental Impact Statement ("EIS") that analyzes the proposed COP and any alternatives, prior to any decision to adopt the COP, or reopen the fishery. Additionally, because the reopening of the Drift-Gillnet Fishery is a stated purpose of the draft COP and any interim protocol, any environmental review document for the COP and interim protocol must analyze the entire action, including the environmental effects of the Drift-Gillnet Fishery. To approve the draft COP and any interim protocol without such analysis would result in the illegal segmentation of the action in violation of NEPA.

In sum, we believe that the path the Council has embarked upon is improper and unlawful, and if pursued will only result in litigation and likely further limitations on the current Drift-Gillnet Fishery. We believe that the Council should reject the draft COP submitted by the HMSMT, and direct the HMSMT to re-draft the COP independent of any plans to authorize the Drift-Gillnet Fishery as an exempted fishery in the current closed areas. The Council should refrain from approving any interim protocol to accommodate the HMSMT's stated goal of reopening the existing closures. Only when a lawful COP is approved and in effect (following proper NEPA compliance) should the Council and NMFS consider any applications for exempted fishing. We believe that neither drift-gillnet nor longline fishing could lawfully be approved as exempted fishing under any rational procedure consistent with the requirement of the MSA, ESA, MMPA, MBTA and other applicable law.

Thank you for the opportunity to comment.

Sincerely,

/s/

Brendan Cummings  
Marine Biodiversity Program Director  
Center for Biological Diversity

cc Dr. William Hogarth, NMFS

**PROPOSED COUNCIL OPERATING PROCEDURE (COP) FOR APPROVING  
EXEMPTED FISHING PERMITS FOR HIGHLY MIGRATORY SPECIES**

Section 8.4.12 of the August 2003 Fishery Management Plan and Final Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) states that the HMS Management Team (HMSMT) will develop a protocol for submission and Council review of exempted fishing permits (EFPs), which will be adopted as a Council Operating Procedure (COP). The HMSMT has provided a draft protocol (Attachment 1) and report (Agenda Item C.3.b) for this agenda item. In their report, the HMSMT recommends that the protocol become effective as of April 2006 for EFP applications applicable to the April 1, 2007–March 31, 2008, fishing year. An interim protocol would apply for applications submitted for EFPs that would be prosecuted before April 1, 2007. Specifically, the HMSMT is developing alternatives for the HMS drift gillnet fishery involving an EFP occurring in 2006, to which this interim protocol would apply.

The Council may wish to provide recommendations on the draft protocol and proposed timeline, which will be circulated for public review. At the November 2005 meeting the Council would take final action to adopt the protocol as a COP with any recommended changes.

**Council Action: Adopt a Draft COP for Public Review.**

**Reference Materials:**

1. Agenda Item C.3.a, Attachment 1: Draft for Public Review: Protocol for Consideration of Exempted Fishing Permits for HMS Fisheries.
2. Agenda Item C.3.b, HMSMT Report.
3. Agenda Item C.3.c, Public Comment.

**Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Adopt a Draft COP for Public Review

Kit Dahl

PPMC  
08/30/05