

## FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

This agenda item will appear on the Council floor in two parts. The first time will be on the initial Council meeting day to gather input from the Council, advisory bodies, and the public for discussion and preliminary guidance. The second time will be near the end of the meeting (on Friday) to allow for final input and Council guidance.

Specifically, this item is intended to refine planning on the following four matters:

1. The Council three-meeting outlook (June, September, and November 2008).
2. The draft agenda for the June 2008 Council meeting in Foster City, California and preliminary agendas for the September and November meetings.
3. Council staff workload priorities through the time of the next Council meeting.
4. Identification of priorities for advisory body consideration at the next Council meeting.

On Monday, the Executive Director will review the three-meeting outlook (Attachment 1), June through November 2008 preliminary proposed Council meeting agendas (Attachments 2 through 4), any written public comments, and respond to any questions the Council may have regarding these initial planning documents. After hearing any reports and comments from advisory bodies or the public, the Council may provide guidance to staff to help prepare for Part II of the agenda item.

On Friday, with the inclusion of any input gathered during the Monday session or other Council actions during the week, the Executive Director will review supplemental proposed drafts of the items listed above and discuss any other matters relevant to the Council meeting agendas and workload. After considering any reports and comments from advisory bodies and public, the Council will provide guidance for future agenda development. The Council also has the opportunity to identify priorities for advisory body consideration for the June 2008 Council meeting.

### **Council Tasks:**

#### **Monday:**

- 1. Receive information and provide initial guidance on potential agenda topics for the next three Council meetings in preparation for final guidance for this agenda item on Friday.**

#### **Friday:**

- 1. Review supplemental information and provide further guidance on potential agenda topics for the next three Council meetings.**
- 2. Provide final guidance on a draft agenda for the June Council meeting.**
- 3. Provide guidance on Council staff workload.**
- 4. Identify priorities for advisory body considerations at the next Council meeting.**

Reference Materials:

**Monday:**

1. Agenda Item C.1.a, Attachment 1: Draft Preliminary Three-Meeting Outlook for the Pacific Council.
2. Agenda Item C.1.a, Attachment 2: Draft Preliminary Proposed Council Meeting Agenda, June 6-13, 2008, Foster City, California.
3. Agenda Item C.1.a, Attachment 3: Draft Preliminary Proposed Council Meeting Agenda, September 7-12, 2008, Boise, Idaho.
4. Agenda Item C.1.a, Attachment 4: Preliminary Proposed Council Meeting Agenda, November 2-7, 2008, San Diego, California.

**Friday:**

5. Agenda Item C.1.a, Supplemental Attachment 5: Preliminary Three-Meeting Outlook for the Pacific Council.
6. Agenda Item C.1.a, Supplemental Attachment 6: Preliminary Proposed Council Meeting Agenda, June 6-13, 2008, Foster City, California.
7. Agenda Item C.1.a, Supplemental Attachment 7: Council Workload Priorities, April 14 through June 13, 2008.

Agenda Order:

- a. Agenda Item Overview
  - b. Reports and Comments of Advisory Bodies
  - c. Public Comment
  - d. Council Discussion and Guidance of Future Council Meeting Agenda and Workload Planning
- Don McIsaac

PFMC

03/19/08

# Draft Preliminary Three-Meeting Outlook for the Pacific Council

(Contingent Items are Shaded and Counted in Time Estimate)

<b>June</b> Foster City, CA (6/6-13/2008) Estimated Hours of Council Floor Time = 44.0	<b>September</b> Boise, ID (9/7-9/12/08) Estimated Hours of Council Floor Time = 34.5	<b>November</b> San Diego, CA (11/2-11/7/2008) Estimated Hours of Council Floor Time = 45.8
<b><u>Administrative</u></b> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments to Advisory Bodies (& EFH) MSA Reauthorization Implementation 3 Mtg Outlook, Drft Sept Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items Research & Data Needs: Adopt for Pub Rev	<b><u>Administrative</u></b> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Nov Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items Research & Data Needs: Adopt Final	<b><u>Administrative</u></b> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Mar Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items
<b><u>Coastal Pelagic Species</u></b> Pac. Mackerel Harvest Guideline 2008-2009: Adopt Final Guideline and Mgmt Measures	<b><u>Coastal Pelagic Species</u></b>	<b><u>Coastal Pelagic Species</u></b> STAR Panel 2008 TOR: Adopt for Pub Rev Pac. Sardine: Approve Stk Assmnt & Mgmt Measures Amendment 11: Review Sardine Allocation
<b><u>Ecosystem FMP</u></b>	<b><u>Ecosystem FMP</u></b>	<b><u>Ecosystem FMP</u></b>
<b><u>Enforcement Issues</u></b>	<b><u>Enforcement Issues</u></b> State Activity Rpt	<b><u>Enforcement Issues</u></b>
<b><u>Groundfish</u></b> NMFS Report 2008 Inseason Management (2 Sessions) Trawl Rationalization: Preliminary DEIS--Adopt Pref. Alt.  Stock Assessments: Adopt Final TOR, List of Stocks to be Assessed, & Review Schedule for 2009 EFH 5 year Review: Appt. Committee for 5-Year Review (May require subcommittees as well) 2009-2010 Mgmt Recommendations: Adopt 1) Tentative Final Spx, RB Plans, & Mgmt Measures 2) Clarification to Tentative Adoption if Nec 3) Final EFPs for 2009: Preliminary Rev & Comment	<b><u>Groundfish</u></b> NMFS Report 2008 Inseason Management (2 Sessions)  Open Access License Limitaton: Adopt Preferred Alt for Public Review  EFH 5 Year Review: Approve Outside Proposals for Inclusion in Review  [Nonagenda item: If Nec, SSC may review certain EFPs for 2009]	<b><u>Groundfish</u></b> NMFS Report 2008 & 2009 Inseason Management (2 Sessions) Trawl Rationalization: Adopt Final for DEIS         EFPs for 2009: Adopt Final Recommendations

Agenda Item C.1.a  
Attachment 1  
April 2008

**Draft Preliminary Three-Meeting Outlook for the Pacific Council**  
(Contingent Items are Shaded and Counted in Time Estimate)

<b>June</b> Foster City, CA (6/6-13/2008) Estimated Hours of Council Floor Time = 44.0	<b>September</b> Boise, ID (9/7-9/12/08) Estimated Hours of Council Floor Time = 34.5	<b>November</b> San Diego, CA (11/2-11/7/2008) Estimated Hours of Council Floor Time = 45.8
<b><u>Habitat Issues</u></b> Habitat Committee Report	<b><u>Habitat Issues</u></b> Habitat Committee Report	<b><u>Habitat Issues</u></b> Habitat Committee Report
<b><u>Highly Migratory Species</u></b> NMFS Rpt Routine Mgmt Meas.: Identify any Proposed Changes WCPFC Northern Committee Actions: Provide Recom.	<b><u>Highly Migratory Species</u></b> NMFS Rpt Routine Mgmt Meas.: Adopt Proposed Changes for Analysis	<b><u>Highly Migratory Species</u></b> NMFS Rpt Routine Mgmt Meas.: Adopt Final Council Recommendations for WCPFW Mtg
	High Seas Shallow-set Longline Amendment: Adopt Final Preferred Alternative	
<b><u>Marine Protected Areas</u></b> New MPA's: Comment on New Proposals by MBNMS	<b><u>Marine Protected Areas</u></b> MPA Issues	<b><u>Marine Protected Areas</u></b> MPA Issues
<b><u>Pacific Halibut</u></b>	<b><u>Pacific Halibut</u></b> Changes to 2009 CSP & Regs: Adopt for Pub Rev Halibut Bycatch Est for IPHC: review Halibut Abundance Estimation for 2009	<b><u>Pacific Halibut</u></b> Changes to 2009 CSP & Regs: Adopt Final Halibut Abundance Estimation for 2009
<b><u>Salmon</u></b>	<b><u>Salmon</u></b> 2008 Methodology Review: Select Final Rev Priorities Workgroup Rpt on Causes of Salmon Failure Mitchell Act EIS: Provide Council Comments	<b><u>Salmon</u></b> Preseason Salmon Mgmt Sched for 2008: Approve 2007 Methodology Review: Adopt Final Changes
<b><u>Information Reports</u></b> Salmon Fishery Update	<b><u>Information Reports</u></b> Salmon Fishery Update Final SAFE Rpt (HMS)	<b><u>Information Reports</u></b> Salmon Fishery Update
<b><u>Special Sessions</u></b> None	<b><u>Special Sessions</u></b> None	<b><u>Special Sessions</u></b> Joint Session Mon Night--Trawl Rationalization

# DRAFT PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, JUNE 6-13, 2008, FOSTER CITY, CALIFORNIA

	Jun 6-7	Sun, June 8	Mon, Jun 9	Tue, Jun 10	Wed, Jun 11	Thu, Jun 12	Fri, June 13
<b>Day-Time Council Floor Matters</b>	<p><b>FRI, JUN 6</b> No Council Floor Session. See Advisory Body meetings below held in the Hilton and Crowne Plaza Hotels.</p> <p><b>SAT, JUN 7</b> No Council Floor Session. See Advisory Body meetings below held in the Hilton &amp; Crowne Plaza Hotels.</p> <p><b>Note: HC meets week prior to Council Mtg</b></p>	<p><b><u>HILTON OR CROWNE PLAZA HOTEL</u></b></p> <p><b><u>CLOSED SESSION 9 AM</u></b></p> <p><b><u>OPEN SESSION 10 AM</u></b></p> <p>1-4. Opening (15 min)</p> <p><b><u>ADMINISTRATIVE</u></b></p> <p>1. Future Agenda Pln (15 min) 2. Minutes (15 min)</p> <p><b><u>OPEN PUBLIC COMMENT</u></b></p> <p>Comments on Non-Agenda Items (45 min)</p> <p><b><u>HABITAT</u></b></p> <p>1. Current Issues (45 min)</p> <p><b><u>HIGHLY MIGRATORY SPECIES</u></b></p> <p>1. Routine Mgmt Meas.: Identify Changes (1 hr 30 min)</p> <p>2. WCPFW N. Committee: Provide Recom. (1 hr)</p> <p><b><u>GROUNDFISH</u></b></p> <p>1. NMFS Rpt (45 min)</p> <p><b><u>ADMINISTRATIVE</u></b></p> <p>3. Res &amp; Data Needs: Adopt for Pub Rev (1 hr 30 min)</p>	<p><b><u>CROWNE PLAZA HOTEL</u></b></p> <p><b><u>GROUNDFISH</u></b></p> <p>2. Stk Assessments: Adopt Final TOR, Stocks, &amp; Sched for 2009 (1 hr)</p> <p>3. Preliminary Review of EFPs for 2009 (2 hr)</p> <p><b><u>COASTAL PELAGIC SPECIES</u></b></p> <p>1. Pacific Mackerel Stk Assessment &amp; HG: Adopt 2008-2009 Final (1 hr)</p> <p><b><u>ADMINISTRATIVE</u></b></p> <p>4. Implement MSRA (ACL's etc.) (4 hr)</p>	<p><b><u>GROUNDFISH</u></b></p> <p>4. Tentative Adoption of 2009-10 GF Biennial Harvest Specs &amp; Mgmt Measures (6 hr)</p> <p>5. GF EFH 5 Year Rev: Scope Issues &amp; Appt Committee (2 hr)</p>	<p><b><u>GROUNDFISH</u></b></p> <p>6. Inseason Adjustments (2 hr)</p> <p>7. Amendment 20: Trawl Rationalization Alts: Adopt Prelim DEIS (6 hr)</p>	<p><b><u>GROUNDFISH</u></b></p> <p>7. A-20 (cont) (2 hr)</p> <p>8. Clarify Tent Adoption if Nec (1 hr 30 min)</p> <p><b><u>MARINE PROTECTED AREAS</u></b></p> <p>1. Comment on New Proposals by MBNMS (2 hr)</p> <p><b><u>GROUNDFISH</u></b></p> <p>9. Final Inseason Adjustments (1 hr)</p> <p><b><u>ADMINISTRATIVE</u></b></p> <p>5. Leg Matters (30 min)</p> <p>6. Fiscal Matters (15 min)</p> <p>7. Appointments &amp; COP (15 min)</p> <p>1. Future Agenda, Planning &amp; Wrkld (30 min)</p>	<p><b><u>GROUNDFISH</u></b></p> <p>10. 2009-10 GF Mgmt Spx &amp; Measures: Final Adoption (4 hr)</p>
		<b>8 hr</b>	<b>8 hr</b>	<b>8 hr</b>	<b>8 hr</b>	<b>8hr</b>	<b>4 hr</b>
<b>Committees</b>	<p><b>Fri-Sat, Jun 6-7 Crowne Plaza</b> 8:00 am GAP 8:00 am GMT</p> <p><b>Sat, Jun 7 Hilton Hotel</b> 1:00 pm SSC 1:30 pm BC 2:30 pm LC 4:00 pm ChrBr</p>	<p>8:00 am GAP 8:00 am GMT 8:00 am SSC 5:00 pm EC</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SSC 4:30 pm EC</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT</p>	8:00 am GMT

Council-sponsored evening sessions: Monday Evening--6:00 pm Chairman's Reception

Total Floor Hours = 44 hr

3/24/2008 2:32 PM

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Agenda Item C.1.a  
 Attachment 2  
 April 2008

# DRAFT PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, SEPTEMBER 7-12, 2008, BOISE, IDAHO

	Sun, Sept 7	Mon, Sept 8	Tue, Sept 9	Wed, Sept 10	Thu, Sept 11	Fri, Sept 12
<b>Day-Time Council Floor Matters</b>		<u><b>CLOSED SESSION 8 AM</b></u> <u><b>OPEN SESSION 9 AM</b></u> 1-4. Open & Approve Agenda (15 min) <u><b>ADMINISTRATIVE</b></u> 1. Future Agenda & Workload Planning (15 min) <u><b>PACIFIC HALIBUT</b></u> 1. Changes to 2009 CSP: Adopt for Pub Rev (45 min) 2. Halibut Bycatch Est. for IPHC: Review (45 min) 3. Halibut Abundance Estimation Method for 2009: Review Issues (1 hr) <u><b>SALMON</b></u> 1. 2008 Methodology Rev: Select Final Rev Priorities (45 min) 2. Workgroup Rpt on Causes of Salmon Failure (2 hr) 3. Mitchell Act EIS: Provide Comments (1 hr 30 min)	<u><b>ENFORCEMENT</b></u> 1. State Activity Report (1 hr) <u><b>HABITAT</b></u> 1. Current Issues (45 min) <u><b>HIGHLY MIGRATORY SPECIES</b></u> 1. NMFS Rpt (45 min) 2. Routine Mgmt Measures: Adopt Proposed Changes for Analysis (1 hr 30 min) 3. High Seas Shallow-set Longline Amendment: Adopt Final Preferred Alt (3 hr) <u><b>OPEN PUBLIC COMMENT</b></u> Comments on Non-Agenda Items (45 min)	<u><b>GROUND FISH</b></u> 1. NMFS Rpt (45 min) 2. Amendment 22: Open Access License Limitation: Adopt Preferred Alt for Public Review (4 hr) 3. Initial Inseason Adjustments (2 hr 15 min)	<u><b>ADMINISTRATIVE</b></u> 2. Implement MSRA (ACL's etc.) (2 hr) 3. Research & Data Needs: Adopt Final (1 hr 30 min) <u><b>GROUND FISH</b></u> 4. GF EFH 5 Year Rev: Approve Issues for EFHOC Review (3 hr) 5. Final Inseason Adjustments (1 hr)	<u><b>MARINE PROTECTED AREAS</b></u> 1. MPA Issues (2 hr) <u><b>ADMINISTRATIVE</b></u> 4. Leg Matters (30 min) 5. Minutes (15 min) 6. Fiscal Matters (30 min) 7. Appointments & COP (15 min) 1. Future Agenda & Workload Planning (continued) (30 min)
		<b>8 hr 15 min</b>	<b>7 hr 45 min</b>	<b>7 hr</b>	<b>7 hr 30 min</b>	<b>4 hr</b>
<b>Committees</b>	8:00 am GAP 8:00 am GMT 8:00 am SSC 2:00 pm LC 4:00 pm BC 7:00 pm ChB	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SSC 8:00 am HMSAS 8:00 am HMSMT 8:30 am HC	8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am HMSAS 8:00 am HMSMT	8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am EC 8:00 am GAP 8:00 am GMT	8:00 am GMT

Council-sponsored evening sessions: Monday Evening--6:00 pm Chairman's Reception  
 Total Council Floor Time = 34.5 hr

3/24/2008 2:33 PM

# DRAFT PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, NOVEMBER 2-7, 2008, SAN DIEGO, CALIFORNIA

	Sun, Nov 2	Mon, Nov 3	Tue, Nov 4	Wed, Nov 5	Thu, Nov 6	Fri, Nov 7
<b>Day-Time Council Floor Matters</b>	<p><b>CLOSED SESSION</b> <b>3 PM</b></p> <p><b>OPEN SESSION</b> <b>4 PM</b></p> <p>1-4. Open &amp; Approve Agenda (15 min)</p> <p><b>ADMINISTRATIVE</b></p> <p>1. Future Agenda Pln (15 min)</p> <p><b>OPEN PUBLIC COMMENT</b></p> <p>Comments on Non-Agenda Items (45 min)</p>	<p><b>PACIFIC HALIBUT</b></p> <p>1. Changes to 2009 CSP: Adopt Final (45 min)</p> <p>2. Halibut Abundance Estimation Method for 2009: Review Issues (1 hr)</p> <p><b>SALMON</b></p> <p>1. 2009 Preseason Salmon Mgmt Sched.: Approve (30 min)</p> <p>2. 2008 Methodology Review: Adopt Final Changes for 2009 (1 hr 30 min)</p> <p><b>HIGHLY MIGRATORY SPECIES</b></p> <p>1. NMFS Rpt (45 min)</p> <p>2. Routine Mgmt Measures: Adopt Final (1 hr 30 min)</p> <p>3. WCPFC Actions: Provide Council Recommendations (1 hr)</p>	<p><b>HABITAT</b></p> <p>1. Current Issues (45 min)</p> <p><b>GROUNDFISH</b></p> <p>1. NMFS Rpt (45 min)</p> <p>2. EFPs for 2009: Adopt Final Recommendations (3 hr)</p> <p><b>ADMINISTRATIVE</b></p> <p>2. Implement MSRA (ACL's etc.) (4 hr)</p>	<p><b>COASTAL PELAGIC SPECIES</b></p> <p>1. STAR Panel 2008 TOR: Adopt for Public Review (1 hr)</p> <p>2. Pac. Sardine: Approve Stk Assmnt &amp; Mgmt Measures (2 hr)</p> <p>3. Amend. 11: Review Sardine Allocation (2 hr)</p> <p><b>GROUNDFISH</b></p> <p>3. Initial Inseason Adjustments for 2008 &amp; 2009 (2 hr)</p> <p><b>MARINE PROTECTED AREAS</b></p> <p>1. MPA Issues (2 hr)</p>	<p><b>GROUNDFISH</b></p> <p>4. Part I--Amendment 20: Trawl Rationalization: Adopt Final Preferred Alt for DEIS (6 hr)</p> <p>5. Final Inseason Adjustments (1 hr)</p> <p><b>ADMINISTRATIVE</b></p> <p>3. Leg Matters (30 min)</p> <p>4. Minutes (15 min)</p> <p>5. Fiscal Matters (30 min)</p> <p>6. Appointments &amp; COP (15 min)</p> <p>7. Future Agenda and Workload Planning (30 min)</p>	
	<b>2 hr 15 min</b>	<b>7 hr &amp; 2 hr in evening</b>	<b>8 hr 30 min</b>	<b>9 hr</b>	<b>8 hr</b>	<b>9 hr</b>
<b>Committees</b>	<p>1:00 pm GAP</p> <p>1:00 pm GMT</p> <p>1:00 pm SSC</p> <p>2:00 pm ChB</p> <p>5:00 pm TIQC</p> <p>?? LC</p> <p>?? BC</p> <p>?? HMSAS &amp; MT</p>	<p>8:00 am CPSAS</p> <p>8:00 am CPSMT</p> <p>8:00 am EC</p> <p>8:00 am GAP</p> <p>8:00 am GMT</p> <p>8:00 am SSC</p> <p>9:00 am HC</p> <p>?? HMSAS &amp; MT</p>	<p>8:00 am CPSAS</p> <p>8:00 am CPSMT</p> <p>8:00 am EC</p> <p>8:00 am GAP</p> <p>8:00 am GMT</p>	<p>8:00 am EC</p> <p>8:00 am GAP</p> <p>8:00 am GMT</p>	<p>8:00 am EC</p> <p>8:00 am GAP</p> <p>8:00 am GMT</p>	<p>8:00 am GAP</p> <p>8:00 am GMT</p>

Council-sponsored evening sessions: Monday Evening—7:00 pm Trawl Rationalization Briefing/Question & Answer Session

Tuesday Evening--6:00 pm Chairman's Reception

Total Council Floor Time = 45.75 hr

3/24/2008 2:39 PM

**Preliminary Three-Meeting Outlook for the Pacific Council**  
(Contingent Items are Shaded and Counted in Time Estimate)

<b>June</b> Foster City, CA (6/6-13/2008) Estimated Hours of Council Floor Time = 43.8	<b>September</b> Boise, ID (9/7-9/12/08) Estimated Hours of Council Floor Time = 34.5	<b>November</b> San Diego, CA (11/2-11/7/2008) Estimated Hours of Council Floor Time = 45.8
<b><u>Administrative</u></b> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments to Advisory Bodies (EFHOC) MSA Reauthorization Implementation 3 Mtg Outlook, Drft Sept Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items Research & Data Needs: Adopt for Pub Rev	<b><u>Administrative</u></b> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Nov Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items Research & Data Needs: Adopt Final	<b><u>Administrative</u></b> Closed Session; Open Session Call to Order; Min. Legislative Committee Report Fiscal Matters Interim Appointments to Advisory Bodies MSA Reauthorization Implementation 3 Mtg Outlook, Drft Mar Agenda, Workload (2 sessions) Public Comment on Non-Agenda Items
<b><u>Coastal Pelagic Species</u></b> Pac. Mackerel Harvest Guideline 2008-2009: Adopt Final Guideline and Mgmt Measures	<b><u>Coastal Pelagic Species</u></b>	<b><u>Coastal Pelagic Species</u></b> STAR Panel 2008 TOR: Adopt for Pub Rev Pac. Sardine: Approve Stk Assmnt & Mgmt Measures Amendment 11: Review Sardine Allocation
<b><u>Ecosystem FMP</u></b>	<b><u>Ecosystem FMP</u></b>	<b><u>Ecosystem FMP</u></b>
<b><u>Enforcement Issues</u></b>	<b><u>Enforcement Issues</u></b> State Activity Rpt	<b><u>Enforcement Issues</u></b>
<b><u>Groundfish</u></b> NMFS Report 2008 Inseason Management (2 Sessions) Trawl Rationalization: Preliminary DEIS--Adopt Pref. Alt.  Stock Assessments: Adopt Final TOR, List of Stocks to be Assessed, & Review Schedule for 2009 EFH 5-year Review: Appt. Committee for 5-Year Review (May require subcommittees as well) 2009-2010 Mgmt Recommendations: Adopt 1) Tentative Final Spx, RB Plans, & Mgmt Measures 2) Clarification to Tentative Adoption if Nec 3) Final EFPs for 2009: Preliminary Rev & Comment	<b><u>Groundfish</u></b> NMFS Report 2008 Inseason Management (2 Sessions)  Open Access License Limitaton: Adopt Preferred Alt for Public Review EFH Review Process: Consider EFHOC Recommendations  [Nonagenda item: If Nec, SSC may review certain EFPs for 2009]	<b><u>Groundfish</u></b> NMFS Report 2008 & 2009 Inseason Management (2 Sessions) Trawl Rationalization: Adopt Final for DEIS  EFPs for 2009: Adopt Final Recommendations

Agenda Item C.1.a  
Supplemental Attachment 5  
April 2008



**Preliminary Three-Meeting Outlook for the Pacific Council**  
(Contingent Items are Shaded and Counted in Time Estimate)

<b>June</b> Foster City, CA (6/6-13/2008) Estimated Hours of Council Floor Time = 43.8	<b>September</b> Boise, ID (9/7-9/12/08) Estimated Hours of Council Floor Time = 34.5	<b>November</b> San Diego, CA (11/2-11/7/2008) Estimated Hours of Council Floor Time = 45.8
<b><u>Habitat Issues</u></b> Habitat Committee Report	<b><u>Habitat Issues</u></b> Habitat Committee Report	<b><u>Habitat Issues</u></b> Habitat Committee Report
<b><u>Highly Migratory Species</u></b> NMFS Rpt Routine Mgmt Meas.: Identify any Proposed Changes WCPFC Northern Committee Actions: Provide Recom.	<b><u>Highly Migratory Species</u></b> NMFS Rpt Routine Mgmt Meas.: Adopt Proposed Changes for Analysis	<b><u>Highly Migratory Species</u></b> NMFS Rpt Routine Mgmt Meas.: Adopt Final Council Recommendations for WCPFW Mtg
	High Seas Shallow-set Longline Amendment: Adopt Final Preferred Alternative	
<b><u>Marine Protected Areas</u></b> MPA Issues	<b><u>Marine Protected Areas</u></b> MPA Issues	<b><u>Marine Protected Areas</u></b> MPA Issues
<b><u>Pacific Halibut</u></b>	<b><u>Pacific Halibut</u></b> Changes to 2009 CSP & Regs: Adopt for Pub Rev Halibut Bycatch Est for IPHC: review Halibut Abundance Estimation for 2009	<b><u>Pacific Halibut</u></b> Changes to 2009 CSP & Regs: Adopt Final Halibut Abundance Estimation for 2009
<b><u>Salmon</u></b> Klamath River Fall Chinook Overfishing Concern: Adopt Final	<b><u>Salmon</u></b> 2008 Methodology Review: Select Final Rev Priorities Workgroup Rpt on Causes of Salmon Failure Mitchell Act EIS: Provide Council Comments	<b><u>Salmon</u></b> Preseason Salmon Mgmt Sched for 2008: Approve 2007 Methodology Review: Adopt Final Changes
<b><u>Information Reports</u></b> Salmon Fishery Update	<b><u>Information Reports</u></b> Salmon Fishery Update Final SAFE Rpt (HMS)	<b><u>Information Reports</u></b> Salmon Fishery Update
<b><u>Special Sessions</u></b> None	<b><u>Special Sessions</u></b> None	<b><u>Special Sessions</u></b> Joint Session Mon Night--Trawl Rationalization

# PRELIMINARY PROPOSED COUNCIL MEETING AGENDA, JUNE 6-13, 2008, FOSTER CITY, CALIFORNIA

	Jun 6-7	Sun, June 8	Mon, Jun 9	Tue, Jun 10	Wed, Jun 11	Thu, Jun 12	Fri, June 13
<b>Day-Time Council Floor Matters</b>	<p><b>FRI, JUN 6</b> No Council Floor Session. See Advisory Body meetings below held in the Crowne Plaza Hotel.</p> <p><b>SAT, JUN 7</b> No Council Floor Session. See Advisory Body meetings below held in the Crowne Plaza Hotel.</p> <p><b>Note: HC meets week prior to Council Mtg</b></p>	<p><u><b>CLOSED SESSION 8 AM</b></u></p> <p><u><b>OPEN SESSION 9 AM</b></u></p> <p>1-4. Opening (15 min)</p> <p><u><b>OPEN PUBLIC COMMENT</b></u> Comments on Non-Agenda Items (45 min)</p> <p><u><b>ADMINISTRATIVE</b></u></p> <p>1. Future Agenda Pln (15 min)</p> <p>2. Minutes (15 min)</p> <p><u><b>HABITAT</b></u></p> <p>1. Current Issues (45 min)</p> <p><u><b>HIGHLY MIGRATORY SPECIES</b></u></p> <p>1. Routine Mgmt Meas.: Identify Changes (1 hr 30 min)</p> <p>2. WCPFW N. Committee: Provide Recom. (1 hr)</p> <p>-----</p> <p><u><b>SALMON</b></u></p> <p>1. KRFC Overfishing Concern: Adopt Final (1 hr 30 min)</p> <p>-----</p> <p><u><b>GROUNDFISH</b></u></p> <p>1. NMFS Rpt (45 min)</p>	<p><u><b>GROUNDFISH</b></u></p> <p>2. Stock Assessments: Adopt Final TOR, Stocks, &amp; Sched for 2009 (1 hr)</p> <p>3. Preliminary Review of EFPs for 2009 (2 hr)</p> <p><u><b>COASTAL PELAGIC SPECIES</b></u></p> <p>1. Pacific Mackerel Stk Assessment &amp; HG: Adopt 2008-2009 Final (1 hr)</p> <p><u><b>ADMINISTRATIVE</b></u></p> <p>3. Implement MSRA (ACL's etc.) (4 hr)</p>	<p><u><b>GROUNDFISH</b></u></p> <p>4. Tentative Adoption of 2009-10 GF Biennial Harvest Specs &amp; Mgmt Measures (6 hr)</p> <p>-----</p> <p><u><b>ADMINISTRATIVE</b></u></p> <p>4. Res &amp; Data Needs: Adopt for Pub Rev (1 hr 30 min)</p> <p>-----</p>	<p><u><b>GROUNDFISH</b></u></p> <p>5. Inseason Adjustments (2 hr)</p> <p>6. Amendment 20: Trawl Rationalization Alts: Adopt Prelim DEIS (6 hr)</p>	<p><u><b>GROUNDFISH</b></u></p> <p>6. A-20 (cont) (2 hr)</p> <p>7. Clarify Tent Adoption if Nec (1 hr 30 min)</p> <p><u><b>MARINE PROTECTED AREAS</b></u></p> <p>1. MPAs (2 hr)</p> <p><u><b>GROUNDFISH</b></u></p> <p>8. Final Inseason Adjustments (1 hr)</p> <p><u><b>ADMINISTRATIVE</b></u></p> <p>5. Leg Matters (30 min)</p> <p>6. Fiscal Matters (15 min)</p> <p>-----</p> <p>7. Appointments &amp; COP, including EFHOC (30 min)</p> <p>-----</p> <p>1. Future Agenda, Planning &amp; Wrkld (cont) (30 min)</p>	<p><u><b>GROUNDFISH</b></u></p> <p>9. 2009-10 GF Mgmt Spx &amp; Measures: Final Adoption (4 hr)</p>
		<b>8 hr</b>	<b>8 hr</b>	<b>7 hr 30 min</b>	<b>8 hr</b>	<b>8 hr 15 min</b>	<b>4 hr</b>
<b>Committees</b>	<p><b>Fri-Sat, Jun 6-7</b> 8:00 am GAP 8:00 am GMT <b>Sat., Jun 7</b> 1:00 pm SSC 1:30 pm BC 2:30 pm LC 4:00 pm ChrBr</p>	<p>8:00 am GAP 8:00 am GMT 8:00 am SSC 5:00 pm EC</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT 8:00 am SSC 4:30 pm EC</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT</p>	<p>8:00 am EC 8:00 am GAP 8:00 am GMT</p>	<p>8:00 am GMT</p>

Council-sponsored evening sessions: Sunday Evening--6:00 pm Chairman's Reception

Total Floor Hours = 43 hr 45 min

4/12/2008 8:32 AM

**COUNCIL WORK LOAD PRIORITIES APRIL 14, 2008 THROUGH JUNE 13, 2008**

(Bolded tasks represent a core program responsibility; lead responsibility for shaded tasks is outside Council staff)

	<b>Salmon</b>	<b>Groundfish</b>	<b>CPS</b>	<b>HMS</b>	<b>Other</b>
<b>ACTIVE</b>	<b>Safe Documents:</b>	<b>Inseason Mgmt</b>	<b>Pacific Mackerel Stk</b>	<b>Prepare Prelim SAFE</b>	<b>Admin Necessities</b>
	<b>Preseason Rpt III</b>	<b>2009-2010 Biennial Mgmt EIS</b>	<b>Assessment &amp; HG</b>	<b>Initiate Consideration of</b>	<b>(Briefing Book, minutes,</b>
	<b>Annual Specs &amp; EA</b>	<b>(Spx, Meas., RB Plan Revisions)</b>	<b>Finalize SAFE 2008</b>	<b>Routine Mgmt Measures</b>	<b>Newsletter, Website, E-Filing,</b>
	<b>Inseason Mgmt</b>	Trawl IQ Program (A-20): Refine Alts	Krill Mgmt (A-12)	Amendment: Mgmt Regime for	<b>Fiscal Matters, etc.</b>
	SRFC Workgroup Review	& Impact Anal. for Prelim EIS	SWR Addressing Additional Analysis	HS Longline Fishery	<b>MSA Reauthorization Implementation</b>
<b>CONTINGENT</b>		Open Access Limitations (A-22)--Prepare Analyses & EA for Sept Council Action			<b>Pacific Halibut Mgmt</b>
		Review Prelim EFPs for 2009			<b>Final Incidental Catch Regs</b>
		Stock Assessment Planning			<b>Council Coordination Com Mtg</b>
		Begin Planning 5 yr EFH Review			MPA coordination
					Solicit for EFHOC Nominees
<b>DELAYED</b>		GMT Mtg--at Jun Council Mtg	CPSMT Mtg--May		RecFIN Refinements
		GAP Mtg--at Jun Council Mtg	CPSAS Mtg--May		Leg. Com Mtg--Jun CM (tentative)
		TIQC Mtg--May 16			HC Mtg--at Jun CM
		GAC Mtg--May 13-15			SSC Mtg--at Jun CM
					EC Mtg--at Jun CM
<b>CONTINGENT</b>	Historical Data Doc			International HMS Forum	Pac Halibut Apportionment
	Update FMP			involvement	Workgroup Mtg
					PacFIN/EFIN issues
					Ecosystem-Based Mgmt
<b>DELAYED</b>	Mitchell Act EIS Com-in Sept	Intersector Allocation EIS	Harvest Control Rule	Planning for Joint	Communication Plan
	Amendments:		Review	WPFMC-PFMC Mtg	
	OCN Coho Matrix	GF Strategic Plan Formal Review	International Mgmt		Economic Data
	SOF Coho Allocation	SSC Bycatch Workshop II			Collection Program
	Cons. Objectives:	Amend. 14--Ownership Limits			
<b>DELAYED</b>	Puget S. Chin. & Coho	Gear Conversion			
	LCR Coho				
	Sacramento River Chinook				
	OR Coastal Chinook				

## **September Council Meeting and WCPFC Northern Committee Meeting Scheduling Conflict: Alternatives for 2009 and Beyond**

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### **1. *Status Quo***

- Both meetings typically scheduled for on or days either side of September 10-13
- Precludes direct participation of PFMC representatives at the Northern Committee meetings

### **2. *Pursue Change in the Northern Committee Schedule***

- Early October may be best fit for PFMC
- Requires agreement of all U.S. participants
- Requires agreement of several foreign counting delegations

### **3. *Pursue Changes in the September Council Meeting Schedule***

- Moving the meeting later may require also moving the November Council meeting later
  - November holidays and the early December WCPFC meeting are obstacles, as well as the mid-December holiday season
- Moving the meeting earlier is complicated by Labor Day Holiday and August
- Aggregating the September and November Council meetings to a single mid-October meeting could be considered
  - budget savings would likely accrue
  - meeting duration may be longer

03/13/2008  
PFMC

## Pacific Fishery Management Council

### ***Council Meeting Schedule***

[www.pcouncil.org/events/future.html](http://www.pcouncil.org/events/future.html)

<b><i>WEEK OF</i></b>	<b><i>LOCATION</i></b>
March 4–10, 2009 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	Marriott Hotel SeaTac Airport, 3201 South 176 <sup>th</sup> Street, Seattle, WA 98188 206–241–2000
April 1–7, 2009 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	Westin San Francisco Airport Millbrae, CA ( <i>under negotiation</i> )
June 10–16, 2009 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	Washington, Oregon or California
September 13–19, 2009 <i>Committees: Sunday – Friday</i> <i>Council: Monday – Saturday</i>	Washington, Oregon or California
Oct 28–Nov 3, 2009 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	Oregon or California

**Easter** – April 12, 2009

**Father's Day** – June 21, 2009

**Labor Day** – September 7, 2009

**Veteran's Day** – November 11, 2009

<b><i>WEEK OF</i></b>	<b><i>LOCATION</i></b>
March 3–9, 2010 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	California
April 7–13, 2010 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	Oregon or Washington
June 9–15, 2010 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	Washington, Oregon, or California
September 12–18, 2010 <i>Committees: Sunday – Friday</i> <i>Council: Monday – Saturday</i>	Washington, Oregon, or California
Oct 27–Nov 2, 2010 <i>Committees: Wednesday – Monday</i> <i>Council: Friday – Tuesday</i>	Oregon or California

**Easter** – April 4, 2010

**Father’s Day** – June 20, 2010

**Labor Day** – September 6, 2010

**Veteran’s Day** – November 11, 2010

GROUND FISH MANAGEMENT TEAM REPORT ON  
FUTURE COUNCIL MEETING AGENDA AND WORKLOAD PLANNING

The Groundfish Management Team (GMT) reviewed the Preliminary Proposed Council Meeting Agendas for the remainder of the year (Agenda Items C.1.a Attachments 2-4) and offers the following comments.

The GMT appreciates the courtesy that the Council has extended in prioritizing analyses for this current meeting. The June agenda is also particularly full given the need to adopt biennial groundfish specifications and management measures for 2009-2010, adopt a stock assessment schedule for 2009, adopt trawl rationalization alternatives for the preliminary draft Environmental Impact Statement, and begin the five-year review of essential fish habitat. These items are also in addition to an often lengthy suite of inseason management measure considerations that arise in June each year.

Given the workload for the June meeting and the need to front load the process, the GMT requests that a sub-group of GMT members (approximately 5 members) meet prior to the May 13-15, 2008 Groundfish Allocation Meeting (GAC) in Portland, Oregon. The GMT notes that the GAC meeting will start mid-day on a Tuesday, so the GMT suggests meeting a day and a half prior to allow the Team to discuss progress on issues arising from the 2009-2010 specifications and management measures analyses.

PFGC  
4/11/08

## LEGISLATIVE MATTERS

The Legislative Committee (Committee) is scheduled to meet Sunday, April 6<sup>th</sup> at 1:00 p.m. to review a variety of legislative matters of interest to the Council.

The *Flexibility in Rebuilding American Fisheries Act of 2008* (H.R. 5425), introduced in the U.S. House of Representatives February 13, 2008 by Representative Frank Pallone (D-NJ), seeks to amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to extend the authorized time period for rebuilding overfished species. The bill would provide exceptions to the requirement to rebuild overfished stocks within 10 years, including situations where the biology of the stock or international agreements dictate otherwise, where the cause of the decline is outside Council jurisdiction, to minimize economic impacts or provide for a multi-species fishery if the stock is on a positive rebuilding trend. H.R. 5425 has been referred to the House Subcommittee on Fisheries, Wildlife, and Oceans.

The *Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act* (H.R. 1187) has been the subject of Council comment in the past (Agenda Item C.2.a, Attachment 2) and was the subject of a mark-up session held by the House Committee on Natural Resources on March 12, 2008. No new version of the bill is available at this time.

The National Marine Sanctuary Act (NMSA) was last reauthorized in 2000 with funds appropriated through 2005. Reauthorization of the NMSA is anticipated in the near future and was the subject of a House Subcommittee on Fisheries, Wildlife, and Oceans hearing on November 3, 2007. Testimony was heard from a variety of perspectives including those of Mr. William Douros, West Coast Regional Director of the National Marine Sanctuary Program (Agenda Item C.2.a, Attachment 3), and Mr. Jim Martin, West Coast Regional Director of the Recreational Fishery Alliance and Groundfish Advisory Subpanel member (Agenda Item C.2.a, Attachment 4). For a full report on the hearing, please visit the House Subcommittee's website. As with the reauthorization of the MSA, the question of fishery regulatory authority within National Marine Sanctuaries is likely to be a point of interest for the Council during the NMSA reauthorization process.

Inter-American Tropical Tuna Commission (IATTC) adopted the Convention for the Strengthening of the [IATTC] (Antigua Convention) (Agenda Item C.2.a, Attachment 5) which cannot be fully implemented without U.S. ratification and implementing Federal legislation. The Administration, through the Department of State, has put forward a bill to implement the Antigua Convention (Agenda Item C.2.a, Attachment 6), but the bill has not been introduced in Congress. During deliberations on highly migratory species management matters at the 2008 March Council meeting, the Council tasked the Committee with reviewing this matter and making recommendations at the April meeting. National Marine Fisheries Service has submitted background material to assist in the review (Agenda Item C.2.a, Attachment 7).

In a written statement to the Council, the Highly Migratory Species Advisory Subpanel requested Council Staff review two items from the California State Legislature; Assembly Bill Number 2712 which would require the California Department of Fish and Game to develop a State Forage Species Management Plan (Agenda Item C.2.a, Attachment 8) and California Concurrent Resolution Number 85, relative to the Pacific bluefin tuna (Agenda Item C.2.a, Attachment 9).



Since, the Committee's primary focus has typically been on Federal legislation, the Council directed Council Staff to review relevant Council Operating Procedures on Committee review protocols. Council Staff found no reference to the Committee in the Council Operating Procedures, and considering both Assembly Bill Number 2712 and Senate Concurrent Resolution Number 85 directly mention the Council and/or its Coastal Pelagic Species Fishery Management Plan, the Committee may proceed with the review as time permits and report on ways existing Council fishery management actions address these topics.

Time permitting, the Committee may also discuss legislation it has reviewed in the past for which no new information is currently available, such as H.R. 21 the *Oceans Conservation, Education, and National Strategy for the 21st Century Act* and H.R. 2010, the *National Offshore Aquaculture Act of 2007*.

### **Council Action:**

#### **Consider the recommendations of the Legislative Committee.**

#### **Reference Materials:**

1. Agenda Item, C.2.a, Attachment 1: H.R. 5425, Flexibility in Rebuilding American Fisheries Act of 2008.
2. Agenda Item, C.2.a, Attachment 2: October 9, 2007 letter from Dr. McIsaac to U.S. Senator Smith (R-OR) regarding H.R. 1187.
3. Agenda Item C.2.a, Attachment 3: Written statement of Mr. Douros to the House Committee on Natural Resources on reauthorization of the NMSA.
4. Agenda Item C.2.a, Attachment 4: Written statement of Mr. Jim Martin to the House Committee on Natural Resources on reauthorization of the NMSA.
5. Agenda Item C.2.a, Attachment 5: Convention for the Strengthening of the Inter-American Tropical Tuna Commission (Antigua Convention).
6. Agenda Item C.2.a, Attachment 6: Administration Bill implementing the Antigua Convention.
7. Agenda Item C.2.a, Attachment 7: NMFS Report on implementation of the Antigua Convention.
8. Agenda Item C.2.a, Attachment 8: California Assembly Bill Number 2712, Forage Species Management Plan.
9. Agenda Item C.2.a, Attachment 9: California Senate Concurrent Resolution Number 85, Relative to the Pacific bluefin tuna.
10. Agenda Item C.2.d, Public Comment.

#### **Agenda Order:**

- a. Agenda Item Overview
- b. Legislative Committee Report
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Council Discussion

Mike Burner  
Dave Hanson

PFMC  
03/25/08

110TH CONGRESS  
2D SESSION

# H. R. 5425

To amend the Magnuson-Stevens Fishery Conservation and Management Act to extend the authorized time period for rebuilding of certain overfished fisheries, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2008

Mr. PALLONE (for himself, Mr. FRANK of Massachusetts, Mr. JONES of North Carolina, Mr. KENNEDY, Mr. LOBIONDO, Mr. ANDREWS, Mr. BROWN of South Carolina, and Mr. LAMPSON) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To amend the Magnuson-Stevens Fishery Conservation and Management Act to extend the authorized time period for rebuilding of certain overfished fisheries, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Flexibility in Rebuild-  
5       ing American Fisheries Act of 2008”.

1 **SEC. 2. EXTENSION OF TIME PERIOD FOR REBUILDING**  
2 **CERTAIN OVERFISHED FISHERIES.**

3 Section 304(e) of the Magnuson-Stevens Fishery  
4 Conservation and Management Act (16 U.S.C.  
5 1854(e)(4)) is amended—

6 (1) in paragraph (4)(A)—

7 (A) in clause (i) by striking “possible” and  
8 inserting “practicable”; and

9 (B) by amending clause (ii) to read as fol-  
10 lows:

11 “(ii) not exceed 10 years, except in  
12 cases where—

13 “(I) the biology of the stock of  
14 fish, other environmental conditions,  
15 or management measures under an  
16 international agreement in which the  
17 United States participates dictate oth-  
18 erwise;

19 “(II) the Secretary determines  
20 that such 10-year period should be ex-  
21 tended because the cause of the fish-  
22 ery decline is outside the jurisdiction  
23 of the Council or the rebuilding pro-  
24 gram cannot be effective only by lim-  
25 iting fishing activities;

1           “(III) the Secretary determines  
2           that such 10-year period should be ex-  
3           tended to provide for the sustained  
4           participation of fishing communities  
5           or to minimize the economic impacts  
6           on such communities, provided that  
7           there is evidence that the stock of fish  
8           is on a positive rebuilding trend;

9           “(IV) the Secretary determines  
10          that such 10-year period should be ex-  
11          tended for one or more stocks of fish  
12          of a multi-species fishery, provided  
13          that there is evidence that those  
14          stocks are on a positive rebuilding  
15          trend;

16          “(V) the Secretary determines  
17          that such 10-year period should be ex-  
18          tended because of a substantial  
19          change to the biomass rebuilding tar-  
20          get for the stock of fish concerned  
21          after the rebuilding plan has taken ef-  
22          fect; or

23          “(VI) the Secretary determines  
24          that such 10-year period should be ex-  
25          tended because the biomass rebuilding

1 target exceeds the highest abundance  
2 of the stock of fish in the 25-year pe-  
3 riod preceding and there is evidence  
4 that the stock is on a positive rebuild-  
5 ing trend;” or

6 (2) in paragraph (7), in the matter preceding  
7 subparagraph (A), by inserting after the first sen-  
8 tence the following: “In evaluating progress to end  
9 overfishing and to rebuild overfished stocks of fish,  
10 the Secretary shall review factors, other than com-  
11 mercial fishing and recreational fishing, that may  
12 contribute to a stock of fish’s overfished status, such  
13 as commercial, residential, and industrial develop-  
14 ment of, or agricultural activity in, coastal areas and  
15 their impact on the marine environment, predator/  
16 prey relationships of target and related species, and  
17 other environmental and ecological changes to the  
18 marine conditions.”; and

19 (3) by adding at the end the following:

20 “(8) If the Secretary determines that extended  
21 rebuilding time is warranted under subclause (III),  
22 (IV), (V), or (VI) of paragraph (4)(A)(ii), the max-  
23 imum time allowed for rebuilding the stock of fish  
24 concerned may not exceed the sum of the following  
25 time periods:

1                   “(A) The initial 10-year rebuilding period.

2                   “(B) The expected time to rebuild the  
3 stock absent any fishing mortality and under  
4 prevailing environmental conditions.

5                   “(C) The mean generation time of the  
6 stock.

7                   “(9) In this subsection the term ‘on a positive  
8 rebuilding trend’ means that the biomass of the  
9 stock of fish has shown a substantial increase in  
10 abundance since the implementation of the rebuild-  
11 ing plan.”.

○

April 2008



## Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384  
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | [www.pcouncil.org](http://www.pcouncil.org)  
Donald K. Hansen, Chairman Donald O. McIsaac, Executive Director

October 9, 2007

Senator Gordon H. Smith  
404 Russell Building  
Washington, DC 20510-3704

RE: PACIFIC FISHERY MANAGEMENT COUNCIL COMMENTS ON H.R. 1187

Dear Senator Smith:

Thank you for your continued interest in West Coast fishery issues and your request for Pacific Fishery Management Council (Pacific Council) comments on legislative matters of interest to the Pacific Council.

It has recently come to the Pacific Council's attention that H.R. 1187, the *Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act*, introduced in the U.S. House of Representatives on February 16, 2007 by Congresswoman Woolsey (D-CA), may be scheduled for review and revision in the near future. I would like to take this opportunity to convey the following comments of the Pacific Council on H.R. 1187.

- It is unclear why these proposed boundary expansions and protective measures were not adopted and implemented under the recently completed Joint Management Plan Review (JMPR) process for the Monterey Bay, Gulf of the Farallones, and Cordell Bank National Marine Sanctuaries. The Pacific Council believes some of the expansion alternatives and prohibitions may have been considered and rejected during the JMPR, and questions why these provisions are being proposed for implementation through legislation rather than the public JMPR process.
- Section 2 of H.R. 1187 finds the areas within these sanctuaries "include some of the Nation's richest fishing grounds" and that "Cordell Bank is at the nexus of an ocean upwelling system, which produces the highest biomass concentrations on the west coast of the United States." While the Pacific Council agrees these areas are productive and are likely to be ecologically important to the West Coast, these findings would benefit from independent verification.
- Section 3 of H.R. 1187 states that "nothing in this Act is intended to alter any existing authorities regarding the conduct and location of fishing activities in the Sanctuaries." The Pacific Council recommends this stated intent be accompanied by a statutory mandate that fishery management authority in federal waters of the Sanctuaries is retained by the Pacific Council and the National Marine Fisheries Service.

- Section 6 further clarifies that H.R. 1187 does not intend to prohibit the discharge of biodegradable effluents or the discharge of fish, fish parts, and chumming materials while legally fishing. The Pacific Council is concerned about the regulation of waste water discharges and would like to confirm that the United States Coast Guard retains its current level of authority on these matters.

Thank you again for providing the Pacific Council an opportunity to provide comments on H.R. 1187. If you or your staff have any questions about this letter, please contact me or Mr. Mike Burner, the lead Staff Officer on this matter at 503-820-2280.

MDB:ckm

Sincerely,



D.O. McIsaac, Ph.D.  
Executive Director

c: U.S. Congresswoman Lynn C. Woolsey, (D-CA)  
U.S. Congressman Joe Baca, (D-CA)  
U.S. Congresswoman Madeleine Z. Bordallo, (D-GU)  
U.S. Congresswoman Lois Capps, (D-CA)  
U.S. Congressman Jim Costa, (D-CA)  
U.S. Congressman Peter A. DeFazio, (D-OR)  
U.S. Congressman Elton Gallegly, (R-CA)  
U.S. Congressman Jay Inslee, (D-WA)  
U.S. Congressman George Miller, (D-CA)  
U.S. Congresswoman Grace F. Napolitano, (D-CA)  
U.S. Congressman Kevin McCarthy, (R-CA)  
U.S. Congresswoman Cathy McMorris Rodgers, (R-WA)  
U.S. Congressman Nick J. Rahall II, (D-WV)  
U.S. Congressman Bill Sali, (R-ID)  
U.S. Congresswoman Hilda L. Solis, (D-CA)  
U.S. Senator Barbara Boxer, (D-CA)  
U.S. Senator Maria Cantwell, (D-WA)  
U.S. Senator Larry Craig (R-ID)  
U.S. Senator Mike Crapo (R-ID)  
U.S. Senator Dianne Feinstein, (D-CA)  
U.S. Senator Patty Murray, (D-WA)  
U.S. Senator Ron Wyden, (D-OR)  
Pacific Fishery Management Council Members



**WRITTEN STATEMENT OF  
WILLIAM DOUROS  
WEST COAST REGIONAL DIRECTOR,  
NATIONAL MARINE SANCTUARY PROGRAM  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE**

**HEARING ON  
REAUTHORIZATION OF THE *NATIONAL MARINE SANCTUARIES ACT***

**BEFORE THE  
COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS  
U.S. HOUSE OF REPRESENTATIVES**

**November 3, 2007**

**INTRODUCTION**

Good morning, Madam Chair and members of the Committee. I am William Douros, West Coast Regional Director for the National Oceanic and Atmospheric Administration's (NOAA) National Marine Sanctuary Program. Thank you for the opportunity to testify on the reauthorization of the *National Marine Sanctuaries Act*.

Thirty-five years ago last week, Congress passed the *Marine Protection, Research, and Sanctuaries Act of 1972* (P.L. 92-532). Title III of that law, later also named the *National Marine Sanctuaries Act* (the *NMSA*), authorized the Secretary of Commerce to designate areas of the marine environment, including the Great Lakes, as national marine sanctuaries.

The *NMSA* is one of the strongest pieces of federal legislation for protecting both natural and cultural ocean resources. The *NMSA* is unique among the suite of federal laws aimed at protecting or managing marine resources in that its primary objective is to set aside marine areas of special national significance for their permanent protection and to manage them as ecosystems to maintain their natural biodiversity and historical and cultural heritage, consistent with compatible uses.

My testimony today will focus on the benefits of the *NMSA* to marine resource conservation and management, our recent accomplishments, and the remaining challenges faced by NOAA in fully implementing the *NMSA*.

**BENEFITS TO MARINE RESOURCE CONSERVATION**

As a leader in marine conservation, today's National Marine Sanctuary Program (NMSP) is meeting the evolving challenges facing our nation's ocean and Great Lakes resources

through better education, more research, and improved protection. We are making a difference in ocean conservation.

When Congress reauthorized the *NMSA* in November 2000, it strengthened the protection and management of these areas by providing that these individual national marine sanctuaries be managed as a single system of marine protected areas. Building on the concept of similar protected area systems such as the National Park System and National Wildlife Refuge System, the National Marine Sanctuary System (the System) was established so that the whole would be greater than the sum of its parts.

Today, the System provides protection and management to almost 150,000 square miles of ocean and coastal habitats. The System protects some of our nation's most significant natural and cultural marine resources from the coral reefs and mangrove swamps of the Florida Keys, to the deep-sea canyons of Monterey Bay, California, to the historically significant shipwrecks of Lake Huron. Its wide geographic scope provides an ideal platform to test new and emerging conservation practices that can then be applied in other coastal and marine areas throughout the nation. With these new techniques and an underlying commitment to adaptive management principles, the System is continually on the cutting edge of resource management.

#### *Including People in Ecosystem Based Management*

NOAA has been a leader in applying ecosystem approaches to marine resource management through its implementation of the *NMSA*. NOAA considers humans and their interactions in national marine sanctuaries to be an essential component of ecosystem based management. The *NMSA* envisions sanctuaries where human uses occur, compatible with the overarching goal of resource protection. More important, NOAA involves people in its decision making through the 14 advisory councils that provide a critical link to communities adjacent to national marine sanctuaries and the Papahānaumokuākea Marine National Monument. The Sanctuary Advisory Councils consist of representatives from the local fishing community, local business, academic and environmental sectors and local government.

The NMSP has one of the most inclusive public participatory processes in federal government. As federal trustees of the resources of our nation's specially protected marine areas, the NMSP depends on the valuable input of our constituents and sanctuary stakeholders to help guide our resource management actions and priorities. Whenever NOAA has embarked in reviews to its management plans, we go to great lengths to involve the public in the process to develop action plans or new regulations to address issues the public itself has raised.

The NMSP also engages more than 400 partners across the country to maximize its ocean conservation goals. The efforts of aquaria, local businesses, university researchers, government agencies, boaters, educators, volunteers and countless others allow the NMSP to leverage its investments for greater returns.

The NMSP reaches millions of Americans across the country with its educational messages on oceans. Through distance learning, live programming, curriculum programs and classroom workshops, the NMSP is reaching people of all ages.

#### *Creation and Implementation of NMSP Maritime Heritage Program*

The NMSP has launched a comprehensive Maritime Heritage Program to enhance NOAA's stewardship responsibilities of submerged historic and cultural resources within the 14-site System, and to meet the goals of President Bush's Preserve America Initiative. This is among the primary federal programs addressing this important area of the American experience. The System was the first program to bring together the richness of our nation's maritime past and conservation efforts.

The Maritime Heritage Program leverages NOAA's extensive experience in the investigation, management and protection of shipwrecks, paleo-Indian sites and other underwater cultural resources. The program completed a Maritime Archaeology Center in FY 2004. Located in Newport News, Virginia, the center provides technical assistance to sanctuary sites and supports federal, state and local efforts to preserve America's maritime heritage for future generations to learn from and enjoy.

#### *Making Science a Priority*

The NMSP has partnered with many research institutions across the country and spends about \$9 million per year on science and research in our sanctuaries. This research translates directly into meaningful sanctuary management applications. Some examples include the recent work at Stellwagen Bank National Marine Sanctuary where science is being applied to keep whales out of harm's way, in Olympic Coast National Marine Sanctuary where new deep sea coral is being discovered, and in the Channel Islands National Marine Sanctuary where new comprehensive biogeographic assessments have been conducted.

Based on NOAA science and U.S. Coast Guard assessments, the U.S. successfully made a proposal to the International Maritime Organization to shift ship traffic lanes within the Stellwagen Bank National Marine Sanctuary to dramatically reduce ship strikes of endangered right whales. The shipping lanes have been rotated slightly to the northeast and narrowed to avoid waters where there are high concentrations of whales. The lane shift adds 3.75 nautical miles to the overall distance and 10 to 22 minutes to each one-way trip. The lane shift also improves safety by moving large ship traffic further away from areas frequently transited by smaller fishing boats, and by reducing chances of damage to large ships owing to collisions with whales or with other ships while attempting to avoid whales. The shift is predicted to reduce ship strikes of endangered whales by 58 percent and to other whales by 81 percent.

In June 2006, NOAA researchers returned from a 10-day, deep-water coral expedition in Olympic Coast National Marine Sanctuary with evidence of sponge and coral communities in waters once thought too cold for them to thrive. Scientists found

colonies of the rare stony coral *Lophelia*, numerous other coral species and a rich abundance of invertebrates and fishes, including commercially important rockfish (*Sebastes*). Some sites surveyed showed signs of impact from seafloor disturbances. Findings confirmed that these coral communities are a significant portion of the sanctuary ecosystem. NOAA has identified them as a priority research topic because of their ecological significance and vulnerability to changes in seafloor habitats.

As pointed out in the recent National Science and Technology Council report *Charting the Course for Ocean Science in the United States for the Next Decade: A Ocean Research Priorities Plan and Implementation Strategy*, developing effective ecosystem-based management strategies requires knowing what lives in sanctuaries and their association to specific types of habitat. NOAA scientists are answering some of these questions by conducting comprehensive biogeographic assessments about the distribution of marine life and physical oceanography within national marine sanctuaries. Information gained from these in-depth studies supports NOAA ecosystem approaches to management as well as regional marine science and education efforts. The most recent study was completed in Channel Islands National Marine Sanctuary and represents one of the most comprehensive efforts undertaken in the region to understand how marine life and habitats are associated with one another.

#### *Promoting Regional Collaboration and Coordination*

Recognizing that the understanding and protection of our oceans and coasts is a complex and resource intensive endeavor, NOAA has taken great strides toward maximizing the efficiency of marine resource management by implementing or joining efforts at regional ocean governance.

The NMSP has recently established regional offices representing four geographic areas: the Pacific Islands, the West Coast, the Northeast/Great Lakes, and the Southeast/Gulf of Mexico. This structure promotes consistent decision-making and widespread program integration across the System, while allowing us to efficiently and consistently coordinate program activities with other organizations that already operate at a regional level (such as the National Marine Fisheries Service, the National Park Service, the State of California, and the multi-university Partnership for Interdisciplinary Studies of Coastal Oceans).

The NMSP's regional offices are also promoting more robust efforts at ecosystem-based management through dedicated collaboration on initiatives focusing on large swaths of the ocean connected by a common environmental link. In the West, such initiatives include the West Coast Governors' Agreement on Ocean Health and the West Coast Pilot, which is a regional marine protected area planning project led by NOAA's Marine Protected Areas Center.

## **SIGNIFICANT ACHIEVEMENTS IN MARINE RESOURCE PROTECTION**

Since the last authorization of the *NMSA*, the NMSP has helped to establish the world's largest fully protected marine area, set aside marine zones in Channel Island National Marine Sanctuary, created the Tortugas Ecological Reserve in Florida Keys National Marine Sanctuary, and rescued national artifacts from ruin in the Monitor National Marine Sanctuary.

### *Establishing the World's Largest Fully Protected Marine Area*

On June 15, 2006 the President established the Papahānaumokuākea Marine National Monument (PMNM) in the Northwestern Hawaiian Islands. Encompassing approximately 140,000 square nautical miles, the PMNM is the largest single area dedicated to conservation in the history of our country and the largest fully protected marine area in the world. The region holds the largest, healthiest, and most untouched coral-reef system in the United States and is home to more than 7,000 marine species, a quarter of which are found nowhere else on Earth. The Northwestern Hawaiian Islands are also the primary home for the nearly 1,400 surviving Hawaiian monk seals, virtually the entire population of this critically endangered species. They are also the breeding grounds for approximately 90 percent of the threatened Hawaiian green sea turtle population. This area is also of great cultural importance to Native Hawaiians with significant cultural sites found on the islands of Nihoa and Mokumanamana.

This significant achievement would not have been possible without the work NOAA had conducted while we worked towards designating the area as a national marine sanctuary. Between 2001 — when President Clinton designated the area as a coral reef ecosystem reserve — and 2006, NOAA conducted more than 100 public meetings, conducted numerous scientific and ecological characterizations of the area, completed a multitude of interagency consultations, and prepared an innovative management plan for the area. By 2006, President Bush determined that sufficient process had occurred regarding protection of the area and, using NOAA's work as a foundation, provided immediate protection to this internationally significant area.

While the actions NOAA had taken under the *NMSA* allowed the President to take decisive action on June 15, 2006, the President also recognized the significant role that the State of Hawaii and the Department of the Interior's Fish and Wildlife Service (FWS) have played in providing sound management to the area for over a century. As such, the area is now managed by a multi-agency management board consisting of NOAA, FWS, and the State of Hawaii. Other important partners include the U.S. Coast Guard and the U.S. Navy. This partnership approach to management is both innovative and elegant in that it leverages the diverse experience and expertise of each partner in achieving the highest level of marine resource protection and management ever attempted anywhere in the world.

### *Protecting the Channel Islands National Marine Sanctuary*

Earlier this year, the NMSP completed a network of marine zones in the federal waters of Channel Islands National Marine Sanctuary. NOAA's action complements an existing network of marine zones established in the waters of the sanctuary by the State of California in 2003.

The Channel Islands marine zoning network is now the largest in the continental United States. This action was developed through an eight-year public process, coordinated closely with the State of California, the Pacific Fishery Management Council and the National Marine Fisheries Service.

The network also reflects how NOAA can use the *NMSA* in concert with its other marine resource laws, particularly the *Magnuson-Stevens Fishery Conservation and Management Act*, for marine conservation.

### *Creating the Tortugas Ecological Reserve in Florida Keys National Marine Sanctuary*

After years of planning the Tortugas Ecological Reserve, a no-take area was created in 2001 to protect the diverse marine life and lush coral reefs of the Florida Keys National Marine Sanctuary.

Encompassing 151 square nautical miles in two sections, the Tortugas reserve is the largest of 24 areas set aside for special protection throughout the Florida Keys. Tortugas North protects the extensively deep coral reefs of Tortugas Bank and Sherwood Forest. Tortugas South protects Riley's Hump, a low profile reef that is a spawning site for grouper, snapper, and valuable deepwater habitat found nowhere else in the sanctuary that supports commercially important golden crab, tilefish, and snowy grouper.

Five years after its creation, researchers found confirmation that the reserve is fulfilling its goal of protecting the region's marine life. Three studies examining the Tortugas Ecological Reserve, protected from fishing since 2001, documented increasing numbers and sizes of commercially and recreationally important species of fish and other marine life.

### *Rescuing National Artifacts from Ruin in the Monitor National Marine Sanctuary*

At 6:00AM on August 5, 2002 the NMSP and the U.S. Navy succeeded in raising the world's first armored revolving gun turret from the wreck of the famous Civil War ironclad USS *Monitor*, which rests below 240 feet of water 16 miles southeast of Cape Hatteras, N.C., in the "Graveyard of the Atlantic." Also recovered were the vessel's two large Dahlgren cannons.

The retrieval of the turret and cannons marks the end of a multi-year effort by NOAA, the Navy and The Mariners' Museum to preserve key components of the revolutionary ship before sea water corrodes the vessel beyond recognition.

The turret, with the cannons inside, was hoisted from the sea floor by a 500-ton crane aboard the Derrick Barge Wotan. The turret was then secured on the barge's deck for transport to The Mariners' Museum in Newport News, Va., where conservators began the 10-year process to preserve it. Prior to the lift, NOAA and Navy teams worked for six weeks to remove a 30-ton section of the *Monitor's* hull plating and armor belt to uncover the turret and its contents, including the ship's two 11-inch smoothbore Dahlgren cannons.

More than 200 artifacts were recovered during the 41-day expedition, including a glass button, hydrometers, working thermometers, an intact lantern chimney and two stanchions. All were conveyed to The Mariners' Museum for conservation and exhibit.

## **PRIORITIES AND CHALLENGES FOR THE FUTURE**

The *NMSA* is one of the nation's most successful marine resource conservation laws and its reauthorization should be a top priority of Congress next session as it considers environmental legislation. There are several issues that the Administration considers potentially ripe for change within the bill.

### *The NMSA's Primary Purpose and Mission Focus*

Although the *NMSA's* primary purpose is resource protection, the *NMSA* has lacked an overarching mission statement since its passage in 1972. In implementing the *NMSA*, NOAA must piece together current priorities and management goals through references found scattered throughout the *NMSA*. This has, on occasion, led to confusion as to the *NMSA's* primary mission focus.

Additionally, reauthorizing the *NMSA* could benefit NOAA's regional efforts by clarifying the NMSP's scope of authority, reiterating NOAA's role in the regional governance of U.S. ocean and coastal waters, and emphasizing the vital part national marine sanctuaries play in the health of our nation's regional marine ecosystems.

### *Sanctuary Identification and Designation*

There has been considerable confusion about the processes for evaluating sites for eligibility and designating them as national marine sanctuaries. This confusion has been a significant impediment to NOAA making timely decisions about designating sites and in conducting management plan reviews for existing national marine sanctuaries. Reauthorization discussions of the *NMSA* could include consideration of new language to streamline and clarify these processes with the goal of allowing NOAA to make more timely and predictable decisions.

Any changes to the existing processes, however, must be made in a way that first and foremost preserves the *NMSA's* longstanding commitment to transparent public process.

Any changes must also maintain the *NMSA*'s important procedural safeguards, such as interagency and intergovernmental consultation requirements.

### *Marine National Monuments*

The *Antiquities Act of 1906* (16 U.S.C. 431-433) gives the President authority to protect natural and cultural objects through designation of a national monument. Although this authority has been largely used to protect terrestrial resources, it has been used to protect special areas of the marine environment as well, including the PMNM, which is the first monument NOAA has responsibility to manage. While this statute provides a basis for strong protection, the *NMSA* provides NOAA a number of well-tested and highly valuable administrative management tools to effectively manage and protect national marine sanctuaries that are not available under the *Antiquities Act*. In particular, the *NMSA* provides for the recovery of damages from parties responsible for injuring sanctuary resources (section 312); it allows for a community-based advisory council to provide input in sanctuary management (section 315); and it allows for NOAA to pursue civil penalties for violations of the *NMSA* and regulations or permits issued under the *NMSA* (section 307). Reauthorization discussions could include consideration of bridging this gap by providing NOAA the same management tools used in managing sanctuaries for those portions of marine national monuments that are managed by NOAA.

### *Technical Enhancements to Key Elements of the NMSA*

Several key elements of the *NMSA* lay the basic foundation for management of the System and provide essential statutory authority to ensure its overarching goals and objectives are efficiently met. These include the ability to enforce the *NMSA* and the NMSP regulations and permits (section 307), the authority to issue regulations (section 308), the mandate to conduct scientific research and educational programs (section 309), the flexibility to issue special use permits (section 310), the authority to enter into cooperative agreements (section 311), the authority to collect damages from parties responsible for injuring sanctuary resources (section 312), the authority to establish and convene advisory councils (section 315), and the authority to solicit sponsors and accept other forms of support (section 316). Reauthorization discussions could include careful evaluation of these foundational pieces of the *NMSA* and update them as necessary to ensure they continue to meet NOAA's needs. For example, some considerations could include:

- increasing the maximum civil administrative penalty per day per offense, to provide a greater deterrent;
- providing better clarity on the issuance and enforcement of permits;
- making the management of advisory councils more efficient by eliminating the limit on some advisory councils;
- allowing the NMSP to withhold sensitive data and information on sanctuary resources from public release in certain circumstances; and
- modifying the Dr. Nancy Foster Scholarship Program to increase focus on the resources and issues of the System.



## **CONCLUSION**

In closing, the Administration strongly supports reauthorization of the *NMSA* and looks forward to working with Congress to ensure the *NMSA* remains one of the nation's foremost conservation acts in the years to come.

Thank you again for the opportunity to offer my thoughts on this very important statute. I will be glad to answer any questions.

House Subcommittee on Fisheries, Wildlife and Oceans on the Reauthorization of the  
National Marine Sanctuary Act

November 3, 2007

Kohn Hall, University of California at Santa Barbara

Testimony by Jim Martin

West Coast Regional Director

The Recreational Fishing Alliance

Thank you, Chairwoman Bordallo, Congresswoman Capps, and members of the Committee for the opportunity to provide you with our testimony on the reauthorization of the National Marine Sanctuary Act.

For the record, my name is Jim Martin and I am speaking to you today on behalf of the Recreational Fishing Alliance. The Recreational Fishing Alliance (RFA) is a national 501(c)(4) non-profit grassroots political action organization whose mission is to safeguard the rights of salt water anglers, protect marine, boat, and tackle industry jobs, and insure the long-term sustainability of our nation's marine fisheries.

As a Groundfish Advisor to the Pacific Fishery Management Council since 2004, I have had the opportunity to meet with and discuss many issues with the staff of the National Marine Sanctuary system. I respect their dedication to the protection of the habitat upon which our marine fisheries depend. The National Marine Sanctuaries have done much to address non-source point water pollution. Recent surveys show that Californians are far more concerned about water quality and the negative impacts of polluted run-off on ocean health than they are about the impacts by recreational anglers and divers.

At the same time, we have seen National Marine Sanctuaries program officials proposing to close off public fishing access to large areas of the Pacific Ocean, and to create fishing regulations within Sanctuary boundaries.

RFA members are serving and have served on the Sanctuary Advisory Councils on the west coast, and I've spoken to them about their concerns with the public stakeholder process and sanctuary regulations.

Paramount among our concerns is the apparent conflict between regional fishery management and sanctuary goals and objectives. Examples of fishing regulations proposed by the National Marine Sanctuaries on the west coast include:

1. Ban on krill harvest when no such fishery existed. Most recreational and commercial fishermen supported the krill-harvest ban because of the importance of this forage species. Even so, the National Marine Sanctuaries imposed an unnecessary series of meetings on the PFMC to close a fishery that did not exist.
2. Expansion of sanctuary to include Davidson Seamount, with prohibitions on fishing at certain depths. Again, no fishing occurred at those depths in the first place.
3. No bottom-contact gear on the Cordell Banks. This provision was already under consideration as a part of MSA's Essential Fish Habitat provisions.

4. Direct involvement of Sanctuary staff in proposing large marine reserves in central California within the Marine Life Protection Act process.
5. Channel Islands marine reserves in federal waters. This could have easily been accomplished, using the best available science, under the Magnuson-Stevens Act, without changing the designation document of the CINMS.

In each case, state and federal fishery management had the authority to promulgate regulations to achieve these goals. Nonetheless, the National Marine Sanctuaries program made these decisions, even though they lacked the fisheries science expertise, and most importantly, a science-based, open and transparent public stakeholder process. Fishing communities supported many if not all of these regulatory changes, but found the conflict and confusion between the two federal statutes created more problems than were solved.

In general, we need much more public involvement on Sanctuary regulations and Sanctuary managers need to be more accountable to the public. It took us many years to get recreational fishing representatives on the Sanctuary Advisory Councils, even though recreational saltwater anglers are the most numerous visitors to the National Marine Sanctuaries. We still need more recreational fishing representation on Sanctuary Advisory Councils.

The National Marine Sanctuary Act ("NMSA") should be amended to make the development of regulations under NMSA more transparent and open to the public. We recommend a minimum number of recreational fishing representatives be appointed to the Sanctuary Advisory Councils, with representatives from a broad range of perspectives and experiences. Representation on these Councils could be proportionate to the user-group activity within each Sanctuary.

Our central concern is the lack of clarity for regulatory authority between MSA and NMSA. Under Section 304(a)(5) of the NMSA, 16 U.S.C. 1434(a)(5), regional fishery management councils are "provided the opportunity" to prepare draft regulations for fishing. In practice, Sanctuary staff propose a change in their designation document, pending approval of one person, the NOAA Administrator, unless the regional fishery management council agrees within 120 days. Most management decisions at the council-level take anywhere from six months to a year or more, because the public has numerous opportunities to submit comment, meet and speak about the decision.

The Recreational Fishing Alliance supports an amendment to NMSA's 304(a)(5) process. We support the proposed language contained in the eight Regional Councils' letter to the Resources Committee dated May 15, 2006 (see attachment, page 5-6). Under the proposed language, the Sanctuaries can apply for fishing regulations to the Councils under MSA directly. We believe this will increase transparency and improve the science-based stakeholder driven public process upon which sanctuary and fishery management decisions should be made.

Last year, Congress amended the Magnuson Stevens Act to govern the creation of any new marine protected area (a type of fishing regulation that limits or bans fishing in areas including areas within Sanctuary boundaries). Congress required that any new marine protected area adhere to the following standards: the proposals must be based on the best scientific information available; include quantifiable benchmarks to assess the conservation benefit of the closure; establish a timetable for review of regulations and

monitoring their success in meeting the stated goals and objectives; and an assessment of the benefits and impacts of the closure.

None of these standards were in place during the creation of the Channel Islands reserves. We urge you to ensure that both MSA and NMSA govern the proposal of new marine protected areas in a manner consistent with the new requirements under the MSA. If marine protected area decisions continue to be made under the NMSA in a manner which is inconsistent with the new language in the MSA, it will further exacerbate the conflict between the two laws.

The reauthorization of Magnuson-Stevens made some progress in clarifying the respective roles and responsibilities of the Sanctuaries and the regional fishery management councils. We urge you to complete the job and adopt the language proposed by all eight regional fishery management councils to amend Section 304(a)5 of the National Marine Sanctuary Act. Until this issue is resolved, sanctuary decisions will continue to be mired in conflicting laws and regulations, pitting interest groups and government officials against each other, rather than bringing them together to improve the conservation and management of our marine resources.

Thanks for your consideration. I would be happy to answer any questions you may have at this time.

Background material for the record:

From **"California Residents' Opinions On, and Attitudes Toward, Coastal Fisheries And Their Management" - A Public Opinion Survey Conducted for the Alliance of Communities for Sustainable Fisheries by Responsive Management (March 2007)**  
(Full survey available at [www.cafisheriescoalition.org](http://www.cafisheriescoalition.org).)

#### **CONCERNS REGARDING RECREATIONAL FISHING IN CALIFORNIA**

*The survey asked Californians to rate the importance of recreational fishing to California's economy, and they think it is somewhat important: just barely a majority (52%) rated it above the midpoint, and 69% rated it at the midpoint or higher. However, a quarter (25%) rated it less than the midpoint in importance.*

*A substantial percentage of California residents (15%) consider themselves to be recreational saltwater anglers.*

*Recreational fishing is not perceived as a great threat to California's marine waters, habitat, and fisheries: only 5% rate it as a high threat, while 66% say it is a low threat or not a threat at all. Furthermore, 76% disagree that people who recreationally fish in California are harming the ocean's fisheries (only 16% agree). On the other hand, the opportunity to be able to recreationally fish is perceived as important (even if the respondent does not personally fish himself or herself): an overwhelming majority (88%) rate ensuring that the opportunity exists at the midpoint or higher in the rating scale, and 29% rate it 10.*

*Disagreement (59%) far exceeds agreement (32%) for a complete ban of fishing, both commercial and recreational, if scientific evidence shows that fish populations are*

*declining. However, agreement is higher if recreational fishing is allowed while commercial fishing is still banned, if scientific evidence shows that fish populations are declining: 50% agree and 40% disagree.*

*An overwhelming majority of Californians (84%) agree that the State of California and local governments should work to keep charter boat opportunities available to the public, given that charter boat businesses provide opportunities to people who otherwise would not be able to boat because they cannot afford a boat of their own.*

INTER-AMERICAN TROPICAL TUNA COMMISSION

CONVENTION FOR THE STRENGTHENING OF THE  
INTER-AMERICAN TROPICAL TUNA COMMISSION  
ESTABLISHED BY THE 1949 CONVENTION

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE REPUBLIC OF COSTA RICA

(“ANTIGUA CONVENTION”)

The Parties to this Convention:

**Aware that**, in accordance with the relevant provisions of international law, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) of 1982, all States have the duty to take such measures as may be necessary for the conservation and management of living marine resources, including highly migratory species, and to cooperate with other States in taking such measures;

**Recalling** the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in UNCLOS, and the right of all States for their nationals to engage in fishing on the high seas in accordance with UNCLOS;

**Reaffirming** their commitment to the Rio Declaration on Environment and Development and Agenda 21, particularly Chapter 17, adopted by the United Nations Conference on Environment and Development (1992), and to the Johannesburg Declaration and Plan of Implementation adopted by the World Summit on Sustainable Development (2002);

**Stressing the need** to implement the principles and standards of the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organization of the United Nations (FAO) in 1995, including the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993, which forms an integral part of the Code, as well as the International Plans of Action adopted by FAO within the framework of the Code of Conduct;

**Taking note** that the 50<sup>th</sup> General Assembly of the United Nations, pursuant to resolution A/RES/50/24, adopted the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Stocks and Highly Migratory Fish Stocks (“the 1995 UN Fish Stocks Agreement”);

**Considering** the importance of fishing for highly migratory fish stocks as a source of food, employment and economic benefits for the populations of the Parties and that conservation and management measures must address those needs and take into account the economic and social impacts of those measures;

**Taking** into account the special circumstances and requirements of the developing countries of the region, particularly the coastal countries, in order to achieve the objective of the Convention;

**Recognizing** the significant efforts and the outstanding achievements of the Inter-American Tropical Tuna Commission, as well as the importance of its work in the tuna fisheries in the Eastern Pacific Ocean;

**Desirous** to benefit from the experiences derived from the implementation of the 1949 Convention;

**Reaffirming** that multilateral cooperation constitutes the most effective means for achieving the objectives of conservation and sustainable use of living marine resources;

**Committed** to ensuring the long-term conservation and the sustainable use of fish stocks covered by this Convention;

**Convinced** that the aforementioned objectives and the strengthening of the Inter-American Tropical Tuna Commission can best be achieved through bringing up to date the provisions of the 1949 Convention between the United States of America and the Republic of Costa Rica for the establishment of an Inter-American Tropical Tuna Commission;

Have agreed as follows:

**PART I**  
**GENERAL PROVISIONS**  
**ARTICLE I. DEFINITIONS**

For the purposes of this Convention:

1. "Fish stocks covered by this Convention" means stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the Convention Area;
2. "Fishing" means:
  - (a) the actual or attempted searching for, catching, or harvesting of the fish stocks covered by this Convention;
  - (b) engaging in any activity which can reasonably be expected to result in the locating, catching, harvesting of these stocks;
  - (c) placing, searching for or recovering any fish-aggregating device or associated equipment, including radio beacons;
  - (d) any operation at sea in support of, or in preparation for, any activity described in sub-paragraphs (a), (b) and (c) of this paragraph, except for any operation in emergencies involving the health and safety of crew members or the safety of a vessel;
  - (e) the use of any other vehicle, air- or sea-borne, in relation to any activity described in this definition except for emergencies involving the health or safety of crew members or the safety of a vessel;
3. "Vessel" means any vessel used or intended for use for the purpose of fishing, including support vessels, carrier vessels and any other vessels directly involved in such fishing operations;
4. "Flag State" means, unless otherwise indicated:
  - (a) a State whose vessels are entitled to fly its flag, or
  - (b) a regional economic integration organization in which vessels are entitled to fly the flag of a member State of that regional economic integration organization;
5. "Consensus" means the adoption of a decision without voting and without the expression of any stated objection;
6. "Parties" means the States and regional economic integration organizations which have consented to be bound by this Convention and for which this Convention is in force, in accordance with the provisions of Articles XXVII, XXIX, and XXX of this Convention;
7. "Members of the Commission" means the Parties and any fishing entity which has expressed in accordance with the provisions of Article XXVIII of this Convention its formal commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant thereto;

8. "Regional economic integration organization" means a regional economic integration organization to which its member States have transferred competence over matters covered by this Convention, including the authority to make decisions binding on its member States in respect of those matters;
9. "1949 Convention" means the Convention between the United States of America and the Republic of Costa Rica for the establishment of an Inter-American Tropical Tuna Commission;
10. "Commission" means the Inter-American Tropical Tuna Commission;
11. "UNCLOS" means the United Nations Convention on the Law of the Sea of 10 December 1982;
12. "1995 UN Fish Stocks Agreement" means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995;
13. "Code of Conduct" means the Code of Conduct for Responsible Fisheries adopted by the 28th Session of the Conference of the Food and Agriculture Organization of the United Nations in October 1995;
14. "AIDCP" means the Agreement on the International Dolphin Conservation Program of 21 May 1998.

## **ARTICLE II. OBJECTIVE**

The objective of this Convention is to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention, in accordance with the relevant rules of international law.

## **ARTICLE III. AREA OF APPLICATION OF THE CONVENTION**

The area of application of the Convention ("the Convention Area") comprises the area of the Pacific Ocean bounded by the coastline of North, Central, and South America and by the following lines:

- i. the 50°N parallel from the coast of North America to its intersection with the 150°W meridian;
- ii. the 150°W meridian to its intersection with the 50°S parallel; and
- iii. the 50°S parallel to its intersection with the coast of South America.

## **PART II**

## **CONSERVATION AND USE OF THE FISH STOCKS COVERED BY THE CONVENTION**

### **ARTICLE IV. APPLICATION OF THE PRECAUTIONARY APPROACH**

1. The members of the Commission, directly and through the Commission, shall apply the precautionary approach, as described in the relevant provisions of the Code of Conduct and/or the 1995 UN Fish Stocks Agreement, for the conservation, management and sustainable use of fish stocks covered by this Convention.
2. In particular, the members of the Commission shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.
3. Where the status of target stocks or non-target or associated or dependent species is of concern, the members of the Commission shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new scientific information available.

### **ARTICLE V. COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES**

1. Nothing in this Convention shall prejudice or undermine the sovereignty or sovereign rights of coastal States related to the exploration and exploitation, conservation and management of the living marine



resources within areas under their sovereignty or national jurisdiction as provided for in UNCLOS, or the right of all States for their nationals to engage in fishing on the high seas in accordance with UNCLOS.

2. The conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible, in order to ensure the conservation and management of the fish stocks covered by this Convention.

### **PART III**

## **THE INTER-AMERICAN TROPICAL TUNA COMMISSION**

### **ARTICLE VI. THE COMMISSION**

1. The members of the Commission agree to maintain, with all its assets and liabilities, and to strengthen the Inter-American Tropical Tuna Commission established by the 1949 Convention.
2. The Commission shall be composed of sections consisting of from one (1) to four (4) Commissioners appointed by each member, who may be accompanied by such experts and advisers as that member may deem advisable.
3. The Commission shall have legal personality and shall enjoy, in its relations with other international organizations and with its members, such legal capacity as may be necessary to perform its functions and achieve its objective, in accordance with international law. The immunities and privileges which the Commission and its officers shall enjoy shall be subject to an agreement between the Commission and the relevant member.
4. The headquarters of the Commission shall remain at San Diego, California, United States of America.

### **ARTICLE VII. FUNCTIONS OF THE COMMISSION**

1. The Commission shall perform the following functions, giving priority to tunas and tuna-like species:
  - (a) promote, carry out and coordinate scientific research concerning the abundance, biology and biometry in the Convention Area of fish stocks covered by this Convention and, as necessary, of associated or dependent species, and the effects of natural factors and human activities on the populations of these stocks and species;
  - (b) adopt standards for collection, verification, and timely exchange and reporting of data concerning the fisheries for fish stocks covered by this Convention;
  - (c) adopt measures that are based on the best scientific evidence available to ensure the long-term conservation and sustainable use of the fish stocks covered by this Convention and to maintain or restore the populations of harvested species at levels of abundance which can produce the maximum sustainable yield, *inter alia*, through the setting of the total allowable catch of such fish stocks as the Commission may decide and/or the total allowable level of fishing capacity and/or level of fishing effort for the Convention Area as a whole;
  - (d) determine whether, according to the best scientific information available, a specific fish stock covered by this Convention is fully fished or overfished and, on this basis, whether an increase in fishing capacity and/or the level of fishing effort would threaten the conservation of that stock;
  - (e) in relation to the stocks referred to in subparagraph (d) of this paragraph, determine, on the basis of criteria that the Commission may adopt or apply, the extent to which the fishing interests of new members of the Commission might be accommodated, taking into account relevant international standards and practices;
  - (f) adopt, as necessary, conservation and management measures and recommendations for species belonging to the same ecosystem and that are affected by fishing for, or dependent on or associated with, the fish stocks covered by this Convention, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

- (g) adopt appropriate measures to avoid, reduce and minimize waste, discards, catch by lost or discarded gear, catch of non-target species (both fish and non-fish species) and impacts on associated or dependent species, in particular endangered species;
  - (h) adopt appropriate measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of the fish stocks covered by this Convention;
  - (i) establish a comprehensive program for data collection and monitoring which shall include such elements as the Commission determines necessary. Each member of the Commission may also maintain its own program consistent with guidelines adopted by the Commission;
  - (j) ensure that, in developing measures to be adopted under subparagraphs (a) to (i) of this paragraph, due consideration is given to the need for coordination and compatibility with measures adopted pursuant to the AIDCP;
  - (k) promote, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques and such other related activities, including activities connected with, *inter alia*, transfer of technology and training;
  - (l) where necessary, develop criteria for, and make decisions relating to, the allocation of total allowable catch, or total allowable fishing capacity, including carrying capacity, or the level of fishing effort, taking into account all relevant factors;
  - (m) apply the precautionary approach in accordance with the provisions of Article IV of this Convention. In cases where measures are adopted by the Commission pursuant to the precautionary approach in the absence of adequate scientific information, as set out in Article IV, paragraph 2 of this Convention, the Commission shall, as soon as possible, undertake to obtain the scientific information necessary to maintain or modify any such measures;
  - (n) promote the application of any relevant provision of the Code of Conduct and of other relevant international instruments including, *inter alia*, the International Plans of Action adopted by FAO in the framework of the Code of Conduct;
  - (o) appoint the Director of the Commission;
  - (p) approve its program of work;
  - (q) approve its budget, in accordance with the provisions of Article XIV of this Convention;
  - (r) approve the accounts for the past budgetary period;
  - (s) adopt or amend its own rules and procedures, financial regulations and other internal administrative regulations as may be necessary to carry out its functions;
  - (t) provide the Secretariat for the AIDCP, taking into account the provisions of Article XIV, paragraph 3 of this Convention;
  - (u) establish such subsidiary bodies as it considers necessary;
  - (v) adopt any other measure or recommendation, based on relevant information, including the best scientific information available, as may be necessary to achieve the objective of this Convention, including non-discriminatory and transparent measures consistent with international law, to prevent, deter and eliminate activities that undermine the effectiveness of the conservation and management measures adopted by the Commission.
2. The Commission shall maintain a staff qualified in matters pertaining to this Convention, including administrative, scientific and technical areas, under the supervision of the Director, and ensure that it shall include all personnel needed for the efficient and effective application of this Convention. The Commission should seek the most qualified staff available, and give due consideration to the importance

of recruiting staff on an equitable basis to promote broad representation and participation of the members of the Commission.

3. In considering guidance for the program of work on scientific matters to be addressed by the scientific staff, the Commission shall consider, *inter alia*, the advice, recommendations, and reports of the Scientific Advisory Committee established pursuant to Article XI of this Convention.

#### **ARTICLE VIII. MEETINGS OF THE COMMISSION**

1. The ordinary meetings of the Commission shall take place at least once a year, in such location and on such date as the Commission agrees.
2. The Commission may also hold extraordinary meetings when deemed necessary. These meetings shall be convened at the request of at least two of the members of the Commission, provided that a majority of the members support the request.
3. The meetings of the Commission shall be held only when a quorum is present. Quorum is reached when two-thirds of the members of the Commission are present. This rule shall also apply to meetings of subsidiary bodies established under this Convention.
4. The meetings shall be held in English and Spanish, and the documents of the Commission shall be produced in both these languages.
5. Members shall elect a Chairman and Vice-Chairman from, unless otherwise decided, different Parties to this Convention. Both officials shall be elected for a period of one (1) year and shall remain in office until their successors are elected.

#### **ARTICLE IX. DECISION MAKING**

1. Unless provided otherwise, all decisions made by the Commission at meetings convened pursuant to Article VIII of this Convention shall be by consensus of members of the Commission present at the meeting in question.
2. Decisions on adoption of amendments to this Convention and its annexes, as well as invitations to accede to the Convention pursuant to Article XXX, paragraph (c) of this Convention, shall require consensus of all Parties. In such cases, the Chairman of the meeting shall ensure that all members of the Commission have the opportunity to express their views on the proposed decisions, which the Parties shall take into account in reaching the final decision.
3. The consensus of all the members of the Commission shall be required for decisions on:
  - (a) the adoption and amendment of the Commission's budget, and those that determine the form and proportion of the contributions of the members;
  - (b) the issues referred to in Article VII, subparagraph (l) of paragraph 1 of this Convention.
4. With respect to decisions referred to in paragraphs 2 and 3 of this Article, if a Party or member of the Commission, as the case may be, is absent from the meeting in question and has not sent a notification in accordance with paragraph 6 of this Article, the Director shall notify such Party or member of the decision taken at the meeting. If, within thirty (30) days of the receipt by the Party or member of such notification, the Director has not received a response from such Party or member, that Party or member shall be deemed to have joined the consensus on the decision in question. If, within such 30-day period, such Party or member replies in writing that it cannot join the consensus on the decision in question, the decision shall have no effect, and the Commission shall seek to reach consensus at the earliest opportunity.
5. When a Party or member of the Commission that was not present at a meeting notifies the Director, in accordance with paragraph 4 of this Article, that it cannot join the consensus on a decision taken at that

meeting, that member shall not be able to oppose consensus on the same issue if it is not present at the next meeting of the Commission at which that issue is on the agenda.

6. If a member of the Commission is not able to attend a meeting of the Commission due to extraordinary and unforeseen circumstances outside its control:
  - (a) It shall so notify the Director, in writing, prior to the start of the meeting if possible or otherwise at the earliest possible opportunity. Such notification shall be effective upon acknowledgement of its receipt by the Director to the member concerned; and
  - (b) Subsequently and as soon as possible, the Director shall notify the member of all the decisions taken at that meeting in accordance with paragraph 1 of this Article;
  - (c) within thirty (30) days of the notice referred to in subparagraph (b) of this paragraph, the member may notify the Director in writing that it cannot join the consensus on one or more of these decisions. In such cases, the relevant decision or decisions shall have no effect, and the Commission shall seek to reach consensus at the earliest opportunity.
7. The decisions adopted by the Commission pursuant to this Convention shall be binding for all members forty-five (45) days after their notification, unless otherwise specified in this Convention or agreed when a decision is taken.

#### **ARTICLE X. COMMITTEE FOR THE REVIEW OF IMPLEMENTATION OF MEASURES ADOPTED BY THE COMMISSION**

1. The Commission shall establish a Committee for the Review of Implementation of Measures Adopted by the Commission, which shall be composed of those representatives designated for this purpose by each member of the Commission, who may be accompanied by such experts and advisers as that member may deem advisable.
2. The functions of the Committee shall be those established in Annex 3 of this Convention.
3. In the exercise of its functions, the Committee may, where appropriate, and with the approval of the Commission, consult any other fisheries management, technical or scientific organization with competence in the subject matter of such consultation and may seek such expert advice as may be required in each case.
4. The Committee shall strive to adopt its reports and recommendations by consensus. If every effort to achieve consensus has failed, the reports shall so indicate, and shall reflect the majority and minority views. At the request of any member of the Committee, the views of that member on all or any part of the reports shall also be reflected.
5. The Committee shall meet at least once a year, preferably on the occasion of the ordinary meeting of the Commission.
6. The Committee may convene additional meetings at the request of at least two (2) of the members of the Commission, provided that a majority of the members support the request.
7. The Committee shall exercise its functions in accordance with such rules of procedure, guidelines and directives as the Commission may adopt.
8. In support of the work of the Committee, the staff of the Commission shall:
  - (a) collect the information necessary for the work of the Committee and develop a data base, in accordance with the procedures established by the Commission;
  - (b) provide such statistical analyses as the Committee deems necessary for carrying out its functions;
  - (c) prepare the reports of the Committee;

- (d) distribute to the members of the Committee all pertinent information, particularly that set out in subparagraph (a) of paragraph 8 of this Article.

#### **ARTICLE XI. SCIENTIFIC ADVISORY COMMITTEE**

1. The Commission shall establish a Scientific Advisory Committee, which shall be composed of a representative designated by each member of the Commission, who shall have appropriate qualifications or relevant experience in the area of competence of the Committee, and who may be accompanied by such experts or advisers as that member may deem advisable.
2. The Commission may invite to participate in the work of the Committee organizations or persons with recognized scientific experience in matters related to the work of the Commission.
3. The functions of the Committee shall be those established in Annex 4 of this Convention.
4. The Committee shall meet at least once a year, preferably prior to a meeting of the Commission.
5. The Committee may convene additional meetings at the request of at least two (2) of the members of the Commission, provided that a majority of the members support the request.
6. The Director shall serve as Chairman of the Committee or may delegate the exercise of this function subject to the approval of the Commission.
7. The Committee shall strive to adopt its reports and recommendations by consensus. If every effort to achieve consensus has failed, the reports shall so indicate, and shall reflect the majority and minority views. At the request of any member of the Committee, the views of that member on all or any part of the reports shall also be reflected.

#### **ARTICLE XII. ADMINISTRATION**

1. The Commission shall appoint, in accordance with the adopted rules of procedure and taking into account any criteria established therein, a Director, whose competence in the field of this Convention is established and generally recognized, in particular in its scientific, technical and administrative aspects, and who shall be responsible to the Commission and may be removed by the Commission at its discretion. The term of the Director shall be of 4 years, and he may be reappointed as many times as the Commission decides.
2. The functions of the Director shall be:
  - (a) preparing research plans and programs for the Commission;
  - (b) preparing budget estimates for the Commission;
  - (c) authorizing the disbursement of funds for the implementation of the approved program of work and budget by the Commission and accounting for the funds thus employed;
  - (d) appointing, removing and directing the administrative, scientific, technical and other staff, required for the functions of the Commission, in accordance with the rules of procedure adopted by the Commission;
  - (e) where appropriate for the efficient functioning of the Commission, appointing a Coordinator of Scientific Research, in accordance with subparagraph (d) of paragraph 2 of this Article, who shall operate under the supervision of the Director, who shall assign to the Coordinator of Scientific Research such functions and responsibilities as the Director determines appropriate;
  - (f) arranging for cooperation with other organizations or individuals, as appropriate, when needed for the performance of the functions of the Commission;
  - (g) coordinating the work of the Commission with that of organizations and individuals whose cooperation the Director has arranged;

- (h) drafting administrative, scientific and other reports for the Commission;
  - (i) preparing draft agendas for and convening the meetings of the Commission and its subsidiary bodies, in consultation with the members of the Commission and taking into account their proposals, and providing administrative and technical support for such meetings;
  - (j) ensuring the publication and dissemination of the conservation and management measures which have been adopted by the Commission and are in force and, as far as practicable, the maintenance and dissemination of records of other applicable conservation and management measures adopted by the members of the Commission in force in the Convention Area;
  - (k) ensuring the maintenance of a record, based, *inter alia*, on the information provided to the Commission pursuant to Annex 1 of this Convention, of vessels fishing in the Convention Area, as well as the periodic circulation of the information contained in such record to all members of the Commission, and, on request, to any member individually;
  - (l) acting as the legal representative of the Commission;
  - (m) performing such other functions as are necessary to ensure the efficient and effective operation of the Commission and others that may be assigned to him by the Commission.
3. In fulfilling their functions, the Director and the staff of the Commission shall not act in any manner that could be incompatible with their status or with the objective and provisions of this Convention, nor shall they have any financial interests in activities such as investigation and research, exploration, exploitation, processing and marketing of the fish stocks covered by this Convention. Likewise, they shall also maintain as confidential, while they are employed by the Commission and thereafter, any confidential information they obtained or to which they had access during their employment.

#### **ARTICLE XIII. SCIENTIFIC STAFF**

The Scientific Staff shall operate under the supervision of the Director, and of the Coordinator of Scientific Research if appointed in accordance with Article XII, subparagraphs (d) and (e) of paragraph 2 of this Convention, and shall have the following functions, giving priority to tunas and tuna-like species:

- (a) conduct the scientific research projects and other research activities approved by the Commission in accordance with the plans of work adopted for this purpose;
- (b) provide the Commission, through the Director, with scientific advice and recommendations in support of the formulation of conservation and management measures and other relevant matters, following consultations with the Scientific Advisory Committee, except in circumstances where evident time constraints would limit the ability of the Director to provide the Commission with such advice or recommendations on a timely basis;
- (c) provide the Scientific Advisory Committee with the information necessary to carry out the functions specified in Annex 4 of this Convention;
- (d) provide the Commission, through the Director, with recommendations for scientific research in support of the Commission's functions in accordance with Article VII, subparagraph (a) of paragraph 1, of this Convention;
- (e) collect and analyze information relating to current and past conditions and trends of the populations of the fish stocks covered by this Convention;
- (f) provide the Commission, through the Director, with proposed standards for collection, verification, and timely exchange and reporting of data concerning the fisheries for fish stocks covered by this Convention;
- (g) collect statistical data and all kinds of reports concerning catches of fish stocks covered by this Convention and the operations of vessels in the Convention Area, and any other relevant

information concerning fisheries for such stocks, including, as appropriate, social and economic aspects;

- (h) study and appraise information concerning methods and procedures for maintaining and increasing the fish stocks covered by this Convention;
- (i) publish or otherwise disseminate reports on its findings and such other reports as fall within the scope of this Convention as well as scientific, statistical and other data relating to the fisheries for the fish stocks covered by this Convention, ensuring confidentiality in conformity with the provisions of Article XXII of this Convention;
- (j) perform such other functions and tasks as may be assigned to it.

#### **ARTICLE XIV. BUDGET**

1. The Commission shall adopt each year its budget for the following year, in accordance with Article IX, paragraph 3 of this Convention. In determining the size of the budget, the Commission shall give due consideration to the principle of cost effectiveness.
2. The Director shall submit to the Commission for consideration a detailed draft annual budget that shall identify the disbursements to be made from contributions referred to in Article XV, paragraph 1, and those referred to in Article XV, paragraph 3, of this Convention.
3. The Commission shall maintain separate accounts for the activities carried out under this Convention and under the AIDCP. The services to be provided to the AIDCP and the corresponding estimated costs shall be specified in the Commission's budget. The Director shall provide to the Meeting of the Parties to the AIDCP for its approval, and prior to the year in which the services are to be provided, estimates of services and their costs corresponding to the tasks to be carried out pursuant to that Agreement.
4. The accounts of the Commission shall be subjected to an annual independent financial audit.

#### **ARTICLE XV. CONTRIBUTIONS**

1. The amount of the contribution of each member of the Commission to the budget shall be determined in accordance with the scheme which the Commission shall adopt, and amend, as required, in accordance with Article IX, paragraph 3, of this Convention. The scheme adopted by the Commission shall be transparent and equitable for all members and shall be set out in the financial regulations of the Commission.
2. The contributions agreed pursuant to the provisions of paragraph 1 of this Article shall enable the operation of the Commission and cover in a timely manner the annual budget adopted in accordance with Article XIV, paragraph 1, of this Convention.
3. The Commission shall establish a fund to receive voluntary contributions for research on and conservation of the fish stocks covered by this Convention and, as appropriate, associated or dependent species, and for the conservation of the marine environment.
4. Notwithstanding the provisions of Article IX of this Convention, unless the Commission decides otherwise, if a member of the Commission is in arrears in the payment of its contributions by an amount equal to or greater than the total of the contributions due from it for the preceding twenty-four (24) months, that member shall not have the right to participate in decision-making in the Commission until it has fulfilled its obligations pursuant to this Article.
5. Each member of the Commission shall meet its own expenses arising from attendance at meetings of the Commission and of its subsidiary bodies.

#### **ARTICLE XVI. TRANSPARENCY**

1. The Commission shall promote transparency in the implementation of this Convention in its decision-making processes and other activities, *inter alia*, through:

- (a) the public dissemination of pertinent non-confidential information; and
  - (b) as appropriate, facilitating consultations with, and the effective participation of, non-governmental organizations, representatives of the fishing industry, particularly the fishing fleet, and other interested bodies and individuals.
2. Representatives of non-Parties, relevant intergovernmental organizations, and non-governmental organizations, including environmental organizations with recognized experience in matters pertaining to the Commission and the tuna industry of any of the members of the Commission operating in the Convention Area, particularly the tuna fishing fleet, shall be afforded the opportunity to take part in the meetings of the Commission and of its subsidiary organs, as observers or otherwise, as appropriate, in accordance with the principles and criteria established in Annex 2 of this Convention as well as others that the Commission may adopt. Such participants shall have timely access to relevant information, subject to the rules of procedure and of confidentiality on access to such information that the Commission may adopt.

## **PART IV**

### **RIGHTS AND OBLIGATIONS OF MEMBERS OF THE COMMISSION**

#### **ARTICLE XVII. RIGHTS OF STATES**

No provision of this Convention may be interpreted in such a way as to prejudice or undermine the sovereignty, sovereign rights, or jurisdiction exercised by any State in accordance with international law, as well as its position or views with regard to matters relating to the law of the sea.

#### **ARTICLE XVIII. IMPLEMENTATION, COMPLIANCE AND ENFORCEMENT BY PARTIES**

1. Each Party shall take the measures necessary to ensure the implementation of and compliance with this Convention and any conservation and management measures adopted pursuant thereto, including the adoption of the necessary laws and regulations.
2. Each Party shall provide to the Commission all the information that may be required for the fulfillment of the objective of this Convention, including statistical and biological information and information concerning its fishing activities in the Convention Area, and shall provide to the Commission information regarding actions taken to implement the measures adopted in accordance with this Convention, whenever required by the Commission and as appropriate, subject to the provisions of Article XXII of this Convention and in accordance with the rules of procedure to be developed and adopted by the Commission.
3. Each Party shall promptly, through the Director, inform the Committee for the Review of Implementation of Measures Adopted by the Commission established pursuant to the provisions of Article X of this Convention of:
  - (a) legal and administrative provisions, including those regarding infractions and sanctions, applicable to compliance with conservation and management measures adopted by the Commission;
  - (b) actions taken to ensure compliance with conservation and management measures adopted by the Commission, including, if appropriate, an analysis of individual cases and the final decision taken.
4. Each Party shall:
  - (a) authorize the use and release, subject to any applicable rules of confidentiality, of pertinent information recorded by on-board observers of the Commission or a national program;
  - (b) ensure that vessel owners and/or captains allow the Commission, in accordance with the rules of procedure adopted by the Commission in this respect, to collect and analyze information necessary for carrying out the functions of the Committee for the Review of Implementation of Measures Adopted by the Commission;



- (c) provide to the Commission every six months a report on the activities of its tuna-fishing vessels and any other information necessary for the work of the Committee for the Review of Implementation of Measures Adopted by the Commission.
- 5. Each Party shall take measures to ensure that vessels operating in waters under its national jurisdiction comply with this Convention and the measures adopted pursuant thereto.
- 6. Each Party, where it has reasonable grounds to believe that a vessel flying the flag of another State has engaged in any activity that undermines the effectiveness of conservation and management measures adopted for the Convention Area, shall draw this to the attention of the flag State concerned and may, as appropriate, draw the matter to the attention of the Commission. The Party in question shall provide the flag State with full supporting evidence and may provide the Commission with a summary of such evidence. The Commission shall not circulate such information until such time as the flag State has had an opportunity to comment, within a reasonable time, on the allegation and evidence submitted for its consideration, or to object, as the case may be.
- 7. Each Party, at the request of the Commission or of any other Party, when provided with relevant information that a vessel under its jurisdiction has carried out activities which contravene the measures adopted pursuant to this Convention, shall carry out a thorough investigation, and if appropriate proceed in accordance with its national legislation and inform, as soon as possible, the Commission and, if applicable, the other Party, of the results of its investigations and the actions taken.
- 8. Each Party shall apply, in accordance with its national laws and in a manner consistent with international law, sanctions of sufficient gravity as to be effective in securing compliance with the provisions of this Convention and of measures adopted pursuant thereto and to deprive offenders of the benefits accruing from their illegal activities, including, as appropriate, refusal, suspension or withdrawal of the authorization to fish.
- 9. The Parties whose coasts border the Convention Area or whose vessels fish for fish stocks covered by this Convention or in whose territory the catch is landed and processed shall cooperate with a view to ensuring compliance with this Convention and with a view to ensuring the application of the conservation and management measures adopted by the Commission, including through the adoption of cooperative measures and schemes, as appropriate.
- 10. If the Commission determines that vessels fishing in the Convention Area have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures adopted by the Commission, the Parties may take action, following the recommendations adopted by the Commission and in accordance with this Convention and international law, to deter such vessels from such activities until such time as appropriate action is taken by the flag State to ensure that such vessels do not continue those activities.

#### **ARTICLE XIX. IMPLEMENTATION, COMPLIANCE AND ENFORCEMENT BY FISHING ENTITIES**

Article XVIII of this Convention applies, *mutatis mutandis*, to fishing entities that are members of the Commission.

#### **ARTICLE XX. DUTIES OF FLAG STATES**

- 1. Each Party shall, in accordance with international law, take such measures as may be necessary to ensure that vessels flying its flag comply with the provisions of this Convention and the conservation and management measures adopted pursuant thereto, and that such vessels do not engage in any activity which undermines the effectiveness of such measures.
- 2. No Party shall allow any vessel entitled to fly its flag to be used for fishing for fish stocks covered by this Convention unless it has been authorized to do so by the appropriate authority or authorities of that Party. A Party shall authorize the use of vessels flying its flag for fishing in the Convention Area only where it is able to exercise effectively its responsibilities in respect of such vessels under this Convention.

3. In addition to its obligations under paragraphs 1 and 2 of this Article, each Party shall take such measures as may be necessary to ensure that vessels flying its flag do not fish in areas under the sovereignty or national jurisdiction of any other State in the Convention Area without the corresponding license, permit or authorization issued by the competent authorities of that State.

#### **ARTICLE XXI. DUTIES OF FISHING ENTITIES**

Article XX of this Convention applies, *mutatis mutandis*, to fishing entities that are members of the Commission.

### **PART V CONFIDENTIALITY**

#### **ARTICLE XXII. CONFIDENTIALITY**

1. The Commission shall establish rules of confidentiality for all bodies and individuals given access to information pursuant to this Convention.
2. Notwithstanding any confidentiality rules which may be adopted in accordance with paragraph 1 of this Article, any persons with access to such confidential information may disclose such information in connection with legal or administrative proceedings, if requested by the competent authority concerned.

### **PART VI COOPERATION**

#### **ARTICLE XXIII. COOPERATION AND ASSISTANCE**

1. The Commission shall seek to adopt measures relating to technical assistance, technology transfer, training and other forms of cooperation, to assist developing countries that are members of the Commission to fulfill their obligations under this Convention, as well as to enhance their ability to develop fisheries under their respective national jurisdictions and to participate in high seas fisheries on a sustainable basis.
2. The members of the Commission shall facilitate and promote such cooperation, especially financial and technical, and the transfer of technology, as may be necessary for the effective implementation of paragraph 1 of this Article.

#### **ARTICLE XXIV. COOPERATION WITH OTHER ORGANIZATIONS OR ARRANGEMENTS**

1. The Commission shall cooperate with subregional, regional, and global fishery organizations and arrangements and, as appropriate, shall establish relevant institutional arrangements such as consultative committees, in agreement with such organizations or arrangements, with the goal of promoting the achievement of the objective of this Convention, obtaining the best available scientific information, and avoiding duplication with respect to their work.
2. The Commission, in agreement with the relevant organizations or arrangements, shall adopt the rules of operation for the institutional arrangements established in accordance with paragraph 1 of this Article.
3. Where the Convention Area overlaps with an area under regulation by another fisheries management organization, the Commission shall cooperate with such other organization in order to ensure that the objective of this Convention is reached. To this end, through consultations or other arrangements, the Commission shall strive to agree with the other organization on the relevant measures to be taken, such as ensuring the harmonization and compatibility of the conservation and management measures adopted by the Commission and the other organization, or deciding that the Commission or the other organization, as appropriate, avoid taking measures in respect of species in that area which are regulated by the other.

4. The provisions of paragraph 3 of this Article shall be applied, as appropriate, to the case of fish stocks that migrate through areas under the purview of the Commission and of another organization or organizations or arrangements.

## **PART VII**

### **SETTLEMENT OF DISPUTES**

#### **ARTICLE XXV. SETTLEMENT OF DISPUTES**

1. The members of the Commission shall cooperate in order to prevent disputes. Any member may consult with one or more members about any dispute related to the interpretation or application of the provisions of this Convention to reach a solution satisfactory to all as quickly as possible.
2. If a dispute is not settled through such consultation within a reasonable period, the members in question shall consult among themselves as soon as possible in order to settle the dispute through any peaceful means they may agree upon, in accordance with international law.
3. In cases when two or more members of the Commission agree that they have a dispute of a technical nature, and they are unable to resolve the dispute among themselves, they may refer the dispute, by mutual consent, to a non-binding *ad hoc* expert panel constituted within the framework of the Commission in accordance with the procedures adopted for this purpose by the Commission. The panel shall confer with the members concerned and shall endeavor to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

## **PART VIII**

### **NON-MEMBERS**

#### **ARTICLE XXVI. NON-MEMBERS**

1. The Commission and its members shall encourage all States and regional economic integration organizations referred to in Article XXVII of this Convention and, as appropriate, fishing entities referred to in Article XXVIII of this Convention that are not members of the Commission to become members or to adopt laws and regulations consistent with this Convention.
2. The members of the Commission shall exchange information among themselves, either directly or through the Commission, with respect to activities of vessels of non-members that undermine the effectiveness of this Convention.
3. The Commission and its members shall cooperate, consistent with this Convention and international law, to jointly deter vessels of non-members from carrying out activities that undermine the effectiveness of this Convention. To this end, the members shall, *inter alia*, call to the attention of non-members such activities by their vessels.

## **PART IX**

### **FINAL PROVISIONS**

#### **ARTICLE XXVII. SIGNATURE**

1. This Convention shall be open for signature at Washington from November 14, 2003, until December 31, 2004, by:
  - (a) the Parties to the 1949 Convention;
  - (b) States not Party to the 1949 Convention with a coastline bordering the Convention Area; and
  - (c) States and regional economic integration organizations which are not Parties to the 1949 Convention and whose vessels have fished for fish stocks covered by this Convention at any time during the four

years preceding the adoption of this Convention and that participated in the negotiation of this Convention; and

- (d) other States which are not Parties to the 1949 Convention and whose vessels have fished for fish stocks covered by this Convention at any time during the four years preceding the adoption of this Convention, following consultations with the Parties to the 1949 Convention.
2. In relation to the regional economic integration organizations referred to in paragraph 1 of this Article, no member State of such organizations may sign this Convention unless it represents a territory which lies outside the territorial scope of the treaty establishing the organization and provided that such member State's participation be limited to representing only the interests of that territory.

#### **ARTICLE XXVIII. FISHING ENTITIES**

1. Any fishing entity whose vessels have fished for fish stocks covered by this Convention at any time during the four years preceding the adoption of this Convention may express its firm commitment to abide by the terms of this Convention and comply with any conservation and management measures adopted pursuant thereto, by:
- (a) signing, during the period referred to in Article XXVII, paragraph 1 of this Convention, an instrument drafted to this effect in accordance with a resolution to be adopted by the Commission under the 1949 Convention; and/or
  - (b) during or after the above-mentioned period, providing a written communication to the Depositary in accordance with a resolution to be adopted by the Commission under the 1949 Convention. The Depositary shall promptly provide a copy of this communication to all signatories and Parties.
2. The commitment expressed pursuant to paragraph 1 of this Article shall be effective from the date referred to in Article XXXI, paragraph 1, of this Convention, or on the date of the written communication referred to in paragraph 1 of this Article, whichever is later.
3. Any fishing entity referred to above may express its firm commitment to abide by the terms of this Convention as it may be amended pursuant to Article XXXIV or Article XXXV of this Convention by providing a written communication to this effect to the Depositary in accordance with the resolution referred to in paragraph 1 of this Article.
4. The commitment expressed pursuant to paragraph 3 of this Article shall be effective from the dates referred to in Article XXXIV, paragraph 3, and Article XXXV, paragraph 4, of this Convention, or on the date of the written communication referred to in paragraph 3 of this Article, whichever is later.

#### **ARTICLE XXIX. RATIFICATION, ACCEPTANCE OR APPROVAL**

This Convention is subject to ratification, acceptance or approval by the signatories in accordance with their domestic laws and procedures.

#### **ARTICLE XXX. ACCESSION**

This Convention shall remain open to accession by any State or regional economic integration organization:

- (a) that meets the requirements of Article XXVII of this Convention; or
- (b) whose vessels fish for fish stocks covered by this Convention, following consultations with the Parties; or
- (c) that is otherwise invited to accede on the basis of a decision by the Parties.

#### **ARTICLE XXXI. ENTRY INTO FORCE**

1. This Convention shall enter into force fifteen (15) months after the deposit with the Depositary of the seventh instrument of ratification, acceptance, approval, or accession of the Parties to the 1949 Convention that were Parties to that Convention on the date this Convention was opened for signature.

2. After the date of entry into force of this Convention, with respect to each State or regional economic integration organization that meets the requirements of Article XXVII or Article XXX, this Convention shall enter into force for said State or regional economic integration organization on the thirtieth (30<sup>th</sup>) day following the deposit of its instrument of ratification, acceptance, approval, or accession.
3. Upon entry into force of this Convention, this Convention shall prevail, as between Parties to this Convention and the 1949 Convention, over the 1949 Convention.
4. Upon the entry into force of this Convention, conservation and management measures and other arrangements adopted by the Commission under the 1949 Convention shall remain in force until such time as they expire, are terminated by a decision of the Commission, or are replaced by other measures or arrangements adopted pursuant to this Convention.
5. Upon entry into force of this Convention, a Party to the 1949 Convention that has not yet consented to be bound by this Convention shall be deemed to remain a member of the Commission unless such Party elects not to remain a member of the Commission by so notifying the Depositary in writing prior to the entry into force of this Convention.
6. Upon entry into force of this Convention for all Parties to the 1949 Convention, the 1949 Convention shall be considered as terminated in accordance with the relevant rules of international law as reflected in Article 59 of the Vienna Convention on the Law of Treaties.

#### **ARTICLE XXXII. PROVISIONAL APPLICATION**

1. In accordance with its laws and regulations, a State or regional economic integration organization that meets the requirements of Article XXVII or Article XXX of this Convention may apply this Convention provisionally by so notifying the Depositary in writing. Such provisional application shall commence on the later of the date of entry into force of this Convention and the date of receipt of such notification by the Depositary.
2. Provisional application of this Convention by a State or regional economic integration organization referred to in paragraph 1 of this Article shall terminate upon entry into force of this Convention for that State or regional economic integration organization, or upon notification to the Depositary by that State or regional economic integration organization of its intention to terminate its provisional application of this Convention.

#### **ARTICLE XXXIII. RESERVATIONS**

No reservations may be made to this Convention.

#### **ARTICLE XXXIV. AMENDMENTS**

1. Any member of the Commission may propose an amendment to the Convention by providing to the Director the text of a proposed amendment at least sixty (60) days in advance of a meeting of the Commission. The Director shall provide a copy of this text to all other members promptly.
2. Amendments to the Convention shall be adopted in accordance with Article IX, paragraph 2, of this Convention.
3. Amendments to this Convention shall enter into force ninety (90) days after all Parties to the Convention at the time the amendments were approved have deposited their instruments of ratification, acceptance, or approval of such amendments with the Depositary.
4. States or regional economic integration organizations that become Parties to this Convention after the entry into force of amendments to the Convention or its annexes shall be considered to be Party to the Convention as amended.

#### **ARTICLE XXXV. ANNEXES**

1. The Annexes to this Convention form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention includes a reference to the Annexes thereto.
2. Any member of the Commission may propose an amendment to an Annex to the Convention by providing to the Director the text of a proposed amendment at least sixty (60) days in advance of a meeting of the Commission. The Director shall provide a copy of this text to all other members promptly.
3. Amendments to the Annexes shall be adopted in accordance with Article IX, paragraph 2, of this Convention.
4. Unless otherwise agreed, amendments to an Annex shall enter into force for all members of the Commission ninety (90) days after their adoption pursuant to paragraph 3 of this Article.

#### **ARTICLE XXXVI. WITHDRAWAL**

1. Any Party may withdraw at any time after twelve (12) months from the date on which this Convention entered into force with respect to that Party by giving written notice of withdrawal to the Depositary. The Depositary shall inform the other Parties of the withdrawal within thirty (30) days of receipt of such notice. The withdrawal shall become effective six (6) months after receipt of such notice by the Depositary.
2. This article applies, *mutatis mutandis*, to any fishing entity with respect to its commitment under Article XXVIII of this Convention.

#### **ARTICLE XXXVII. DEPOSITARY**

The original texts of this Convention shall be deposited with the Government of the United States of America, which shall send certified copies thereof to the signatories and the Parties thereto, and to the Secretary General of the United Nations for registration and publication, pursuant to Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, having been duly authorized by their respective Governments, have signed this Convention.

DONE at Washington, on this 14th day of November, 2003, in English, Spanish and French, all three texts being equally authentic.

## ANNEX 1. GUIDELINES AND CRITERIA FOR THE ESTABLISHMENT OF RECORDS OF VESSELS

1. In application of Article XII, subparagraph (k) of paragraph 2, of this Convention, each Party shall maintain a record of vessels entitled to fly its flag and authorized to fish in the Convention Area for fish stocks covered by this Convention, and shall ensure that the following information for all such vessels is entered in that record:
  - (a) Name of vessel, registration number, previous names (if known) and port of registry;
  - (b) A photograph of the vessel showing its registration number;
  - (c) Name and address of owner or owners;
  - (d) Name and address of operator(s) and/or manager(s) if any;
  - (e) Previous flag (if known and if any);
  - (f) International Radio Call Sign (if any);
  - (g) Where and when built;
  - (h) Type of vessel;
  - (i) Type of fishing methods;
  - (j) Length, beam and moulded depth;
  - (k) Gross tonnage;
  - (l) Power of main engine or engines;
  - (m) The nature of the authorization to fish granted by the flag State;
  - (n) Freezer type, freezer capacity, and number and capacity of fish holds.
2. The Commission may decide to exempt vessels from the requirements of paragraph 1 of this Annex on the basis of their length or other characteristic.
3. Each Party shall provide to the Director, in accordance with the procedures established by the Commission, the information referred to in paragraph 1 of this Annex and shall promptly notify the Director of any modifications to such information.
4. Each Party shall also promptly inform the Director of:
  - (a) any additions to the record;
  - (b) deletions from the record by reason of:
    - i. the voluntary relinquishment or non-renewal of the fishing authorization by the owner or operator of the vessel;
    - ii. the withdrawal of the fishing authorization issued to the vessel in accordance with Article XX, paragraph 2, of this Convention;
    - iii. the fact that the vessel is no longer entitled to fly its flag;
    - iv. the scrapping, decommissioning or loss of the vessel; and
    - v. any other reason,specifying which of the reasons listed above are applicable.
5. This Annex applies, *mutatis mutandis*, to fishing entities that are members of the Commission.

## **ANNEX 2. PRINCIPLES AND CRITERIA FOR THE PARTICIPATION OF OBSERVERS AT MEETINGS OF THE COMMISSION**

1. The Director shall invite to meetings of the Commission convened pursuant to Article VIII of this Convention intergovernmental organizations whose work is relevant to the implementation of this Convention, as well as non-Parties interested in conservation and sustainable use of the fish stocks covered by this Convention that so request.
2. Non-governmental organizations (NGOs) referred to in Article XVI, paragraph 2 of this Convention shall be eligible to participate as observers in all meetings of the Commission and its subsidiary bodies convened pursuant to Article VIII of this Convention, except meetings held in executive session or meetings of Heads of Delegation.
3. Any NGO desiring to participate as an observer in a meeting of the Commission shall notify the Director of its request to participate at least fifty (50) days in advance of the meeting. The Director shall notify the members of the Commission of the names of such NGOs, together with the information specified in paragraph 6 of this Annex, at least forty-five (45) days prior to the beginning of the meeting.
4. If a meeting of the Commission is held with less than fifty (50) days' notice, the Director shall have greater flexibility concerning the time frames established in paragraph 3 of this Annex.
5. An NGO wishing to participate in the meetings of the Commission and its subsidiary bodies may also be allowed to do so on an annual basis, subject to paragraph 7 of this Annex.
6. Requests for participation referred to in paragraphs 3, 4 and 5 of this Annex shall include the name and office locations of the NGO, and a description of its mission and how its mission and activities are related to the work of the Commission. Such information shall be updated if necessary.
7. An NGO desiring to participate as an observer may do so unless at least one-third of the members of the Commission object for cause in writing to such participation.
8. All observers admitted to a meeting of the Commission shall be sent or otherwise provided the same documentation generally available to the members of the Commission, except documentation containing business-confidential data.
9. Any observer admitted to a meeting of the Commission may:
  - (a) attend meetings, subject to paragraph 2 of this Annex, but not vote;
  - (b) make oral statements during the meetings upon the invitation of the Chairman;
  - (c) distribute documents at the meeting, with the approval of the Chairman; and
  - (d) engage in other activities, as appropriate and as approved by the Chairman.
10. The Director may require non-Party and NGO observers to pay reasonable fees, and to cover costs attributable to their attendance.
11. All observers admitted to a meeting of the Commission shall comply with all rules and procedures applicable to other participants in the meeting.
12. Any NGO that does not comply with the requirements of paragraph 11 of this Annex shall be excluded from further participation in meetings, unless the Commission decides otherwise.



### **ANNEX 3. COMMITTEE FOR THE REVIEW OF IMPLEMENTATION OF MEASURES ADOPTED BY THE COMMISSION**

The functions of the Committee for the Review of Implementation of Measures Adopted by the Commission established under Article X of this Convention shall be the following:

- (a) review and monitor compliance with conservation and management measures adopted by the Commission, as well as cooperative measures referred to in Article XVIII, paragraph 9, of this Convention;
- (b) analyze information by flag or, when information by flag would not cover the relevant case, by vessel, and any other information necessary to carry out its functions;
- (c) provide the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with, conservation and management measures;
- (d) recommend to the Commission means of promoting compatibility among the fisheries management measures of the members of the Commission;
- (e) recommend to the Commission means to promote the effective implementation of Article XVIII, paragraph 10, of this Convention;
- (f) in consultation with the Scientific Advisory Committee, recommend to the Commission the priorities and objectives of the program for data collection and monitoring established in Article VII, subparagraph (I) of paragraph 1, of this Convention and assess and evaluate the results of that program;
- (g) perform such other functions as the Commission may direct.

#### **ANNEX 4. SCIENTIFIC ADVISORY COMMITTEE**

The functions of the Scientific Advisory Committee established under Article XI of this Convention shall be the following:

- (a) review the plans, proposals and research programs of the Commission, and provide to the Commission such advice as may be appropriate;
- (b) review any relevant assessments, analyses, research or work, as well as recommendations prepared for the Commission by its scientific staff prior to consideration of such recommendations by the Commission, and to provide additional information, advice and comments, as warranted, to the Commission on these matters;
- (c) recommend to the Commission specific issues and items to be addressed by the scientific staff as part of its future work;
- (d) in consultation with the Committee for the Review of the Implementation of Measures Adopted by the Commission, recommend to the Commission the priorities and objectives of the program for data collection and monitoring established in Article VII, subparagraph (i) of paragraph 1, of this Convention and assess and evaluate the results of that program;
- (e) assist the Commission and the Director in locating sources of funding to conduct the research to be undertaken under this Convention;
- (f) develop and promote cooperation between and among the members of the Commission through their research institutions, with the purpose of expanding the knowledge and understanding of the fish stocks covered by this Convention;
- (g) promote and facilitate, as appropriate, the cooperation of the Commission with other national and international public or private organizations with similar objectives;
- (h) consider any matter referred to it by the Commission;
- (i) perform such other functions and tasks as may be requested or assigned to it by the Commission.

**OES draft January 23, 2006**

**Administration Bill**

**A BILL**

To implement the Antigua Convention for the Strengthening of the Inter-American  
Tropical Tuna Commission, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of  
America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as “The Antigua Convention Implementing Act of 2005”.

**SECTION 2. AMENDMENT OF THE TUNA CONVENTIONS ACT OF 1950.**

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Tuna Conventions Act of 1950, September 7, 1950, ch. 907, 64 Stat. 777-780, as amended (16 U.S.C. Chapter 16, §§ 951-962).

**SECTION 3. DEFINITIONS.**

(a) CONVENTION. – Section 2 (16 U.S.C. § 951) is amended by-

(1) striking paragraph (a) of Section 2; and

(2) inserting in its place: “(a) “convention” includes (1) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica, and (2) the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica, signed at Washington, November 14, 2003, hereafter the Antigua Convention, upon its entry into force for the United States, and any amendments thereto that are in force for the United States, or both such Conventions, as the context requires;”;

(b) COMMISSION. -- Section 2 (16 U.S.C. § 951) is amended by-

(1) striking paragraph (b) of Section 2; and

(2) inserting in its place: “(b) “Commission” means the Inter-American Tropical Tuna Commission provided for by the Convention referred to in subsection (a) of this section;”;

(c) UNITED STATES COMMISSIONERS. -- Section 2 (16 U.S.C. § 951) is amended by striking in paragraph (c) of Section 2 the words “representing the United States of America”;

(d) UNITED STATES SECTION. Section 2 (16 U.S.C. § 951) is amended by-

(1) inserting a new paragraph (d): ““United States Section” means the U.S. Commissioners to the IATTC and a designee of the Secretary of State;” and

(2) redesignating paragraph (d) “person” as paragraph (f) “person”;

(e) IMPORT. – Section 2 (16 U.S.C. § 951) is amended by inserting a new paragraph (e): ““Import” means to land on, bring into, or introduce into, or attempt to land on, bring

into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.”.

(f) UNITED STATES. Section 2 (16 U.S.C. § 951) is amended by-

(1) redesignating paragraph (e) “United States” as paragraph (g) “United States”;  
and

(2) in this paragraph deleting the words “, the Trust Territory of the Pacific Islands, and the Canal Zone”.

#### **SECTION 4. COMMISSIONERS; NUMBER, APPOINTMENT, AND QUALIFICATIONS.**

Section 3 (16 U.S.C. § 952) is amended by-

(a) deleting in the first line the word “two” and the “s” at the end of the word  
“Commissions”; and

(b) inserting in the first line the words “by the U.S. Section, including” after the word  
“Commission”.

#### **SECTION 5. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.**

(1) Paragraph (a) of section 4 (16 U.S.C. § 953) is amended by-

(a) inserting in the first line the words “of State” after the word “Secretary”;

(b) inserting in the first line of subsection (1) the words “, with the concurrence of the Secretary of Commerce,” after the first word, “appoint”; and

(c) inserting in the first line of subsection (2) the words “jointly with the Secretary of Commerce” after the first word “appoint”.

(2) Paragraph (b) of section 4 (16 U.S.C. § 953) is amended by-

(a) striking the text of subsection (1);

(b) inserting in its place “The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States Sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, resolutions, and regulations of the Commission.”;

(c) striking in the second line of subsection (2)(A) the word “Commissioners”;

(d) inserting in its place the words “U.S. Section”;

(e) inserting in the second line of subsection (2)(A)(ii) the word “tropical” between the words “eastern” and “Pacific Ocean”;

(f) inserting in the last line of subsection (2)(B) the acronym “(IDCP)” after the word “Program” and before the period;

(g) striking in subsection (2)(B)(i) the word “Program”;

(h) inserting in its place the acronym “IDCP”;

(i) striking in the second line of subsection (2)(B)(ii) the letter “s” at the end of the word “ecosystems”;

(j) inserting in the second line of subsection (2)(B)(ii) the word “considerations” after the word “ecosystem”;

(k) striking in the second line of subsection (2)(B)(iii) the word “Program”;

(l) inserting in its place the acronym “IDCP”;

- (m) striking in the second line of subsection (2)(B)(v) the word “Program”;
- (n) inserting in its place the acronym “IDCP”;
- (o) striking in the third line of subsection (3) the word “sections”; and
- (p) inserting in its place the word “Section”.

## **SECTION 6. SECRETARY OF STATE TO ACT FOR THE UNITED STATES**

(1) Paragraph (a) of Section 6 (16 U.S.C. § 955) is amended by-

- (a) striking paragraph (a);
- (b) inserting in its place: “(a) The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws and rules, or amendments thereof, adopted by the Commission and submitted for approval of the United States Government in accordance with the provisions of the Conventions, and, with the concurrence of the Secretary of Commerce, to approve or disapprove the general annual programs of the Commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, decisions, and other communications of the Commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.”;
- (c) striking the title of paragraph (a); and
- (d) inserting in its place “(a) Approval of Commission bylaws and rules; action on reports, requests, recommendations, resolutions, and decisions” .

(2) Paragraph (b) of Section 6 (16 U.S.C. § 955) is amended by-

- (a) striking paragraph (b); and

(b) inserting in its place: “ (b) Regulations recommended and decisions adopted by the Commission pursuant to the Convention requiring the submission to the Commission of records of operations by boat captains or other persons who participate in the fisheries covered by the Convention, upon the concurrent approval of the Secretary of State and the Secretary of Commerce, shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States. .”.

(3) Paragraph (c) of Section 6 (16 U.S.C. § 955) is amended by-

(a) striking subsection (c);

(b) inserting in its place: “(1) Regulations to carry out recommendations and decisions of the Commission shall be promulgated by the Secretary of Commerce, after consultation with the Secretary of State.

“(2) To the extent practicable within the implementation schedule of the recommendations and decisions of the Commission, the Secretary of Commerce shall provide opportunity for public comment on any rules promulgated under this section.

“(3) After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary of Commerce shall prescribe, except that no such rules shall go into effect for United States vessels and persons prior to an agreed date for the application of similar rules to all vessels from all nations whose vessels fish in common with United States vessels in the regulatory area.

“(4) The Secretary of Commerce shall suspend at any time the application of any rules promulgated under this section when, after consultation with the U.S. Section it is



determined that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the Commission's recommendations or decisions.

“(5) Upon the promulgation of regulations under section (1), the Secretary of Commerce shall promulgate additional regulations, in consultation with the Secretary of State, which shall become effective simultaneously with the initiating regulations.”;

(c) striking the title of section (c); and

(d) inserting in it place: “(c) Rulemaking Procedures and Prohibitions”.

## **SECTION 7. PROHIBITED ACTS**

Section 8 (16 U.S.C. § 957) is amended by-

(a) striking subsections (a) through (h);

(b) inserting in their place: “It is unlawful for any person--

“(a) to violate any provision of this chapter or any regulation or permit issued pursuant to this Act;

“(b) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

“(c) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in Section 10) to board a fishing vessel subject to such person's control for the purposes of conducting any search, investigation or inspection in connection with the enforcement of this Act or any regulation, permit, or the Convention;

“(d) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any such authorized officer in the conduct of any search, investigations or inspection in connection with the enforcement of this Act or any regulation, permit, or the Convention;

“(e) to resist a lawful arrest for any act prohibited by this Act;

“(f) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subsection (a) or (b);

“(g) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any chapter prohibited by this section;

“(h) to knowingly and willfully submit to the Secretary false information regarding any matter that the Secretary is considering in the course of carrying out this Act;

“(i) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this Act, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;

“(j) to engage in fishing in violation of any regulation adopted pursuant to Section 6(c) of this Act;

“(k) to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations;

“(l) to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this Act to be made, kept, or furnished;

“(m) to fail to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States;

“(n) to import, in violation of any regulation adopted pursuant to Section 6(c) of this Act, any fish in any form of those species subject to regulation pursuant to a recommendation, resolution, or decision of the Commission, or any tuna in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of Section 6(c) of this Act. In the case of any fish as described in this subsection offered for entry into the United States, the Secretary of Commerce shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of Section 6(c) of this Act.”;

(c) striking the title of Section 8; and

(d) inserting in its place: “Prohibited Acts”.

## **SECTION 8. CIVIL PENALTIES AND PERMIT/REGISTRY SANCTIONS**

The Act is amended by inserting following Section 8 (16 U.S.C. § 957) a new section:

“Sec. 8A. Civil penalties and permit/registry sanctions

“(a) Civil administrative penalties.--

“(1) Assessment of civil administrative penalties. -- Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with

section 554 of title 5, United States Code, to have committed an act prohibited by Section 8 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$240,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil administrative penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, *Provided*, That the information is served on the Secretary at least 30 days prior to an administrative hearing.

“(2) Review of civil administrative penalties.--Any person against whom a civil administrative penalty is assessed under subsection (a)(1) or against whom a permit/registry sanction is imposed under subsection (g) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such order. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall

be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

“(3) Action upon failure to pay civil administrative penalty assessment.--If any person fails to pay an assessment of a civil administrative penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount (plus interest at the current prevailing rates from the date of the final order). In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review. Any person who fails to pay, on a timely basis, the amount of an assessment of a civil penalty shall be required to pay, in addition to such amount and interest, attorney’s fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person’s penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

“(b) Civil judicial penalties.-- Any person who violates any provision of this Act, or any regulation or permit issued thereunder, shall be subject to a civil penalty not to exceed \$300,000 for each such violation. Each day of a continuing violation shall constitute a separate violation. The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States, and such court shall have jurisdiction to award civil penalties and such other relief as justice may require. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require. In imposing such penalty, the district court may also consider information related to the ability of the violator to pay.”;

“(c) Upon the request of the Secretary, the Attorney General may seek to enjoin any person who is alleged to be in violation of any provision of this Act, or regulation, or permit issued under this Act.”;

“(d) In rem jurisdiction.--A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by Section 8 shall be liable in rem for any civil penalty assessed for such violation under Section 8A and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

“(e) Compromise or other action by Secretary.--The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

“(f) Subpoenas.--For the purposes of conducting any investigation or hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned for the purposes of conducting any hearing shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

“(g) Permit/registry sanctions.--

“(1) In any case in which (A) a vessel has been used in the commission of an act prohibited under Section 8, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of Section 8, (C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a

vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue, or (D) any payment required for observer services provided to or contracted by an owner or operator who has been issued a permit or applied for a permit under any marine resource law administered by the Secretary has not been paid and is overdue, the Secretary may--

“(i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

“(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

“(iii) deny such permit;

“(iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application; or

“(v) revoke or suspend the listing of the vessel on any fishery vessel registry for a period of time considered by the Secretary to be appropriate.

“(2) In imposing a sanction under this subsection, the Secretary may take into account--

“(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and



“(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

“(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

“(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

“(5) No sanctions shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.”.

## **SECTION 9. CRIMINAL OFFENSES**

The Act is amended by inserting following Section 8 (16 U.S.C. § 957) a new section:

“Sec. 8B. Criminal offenses

“(a) Any person (other than a foreign government or any entity of such government) who knowingly violates Section 8(c), (d), (e), (g), (h), or (i), upon conviction, shall be

imprisoned for not more than five years and shall be fined not more than \$500,000 for individuals or \$1,000,000 for an organization; except that if in the commission of any such offense the individual uses a dangerous weapon, engages in conduct that causes bodily injury to any observer or data collector described in Section 7 or any officer authorized to enforce the provisions of this Act (as provided for in Section 10), or places any such observer, data collector or officer in fear of imminent bodily injury, the maximum term of imprisonment is not more than ten years.

“(b) Any person (other than a foreign government or any entity of such government) who knowingly violates any other provision of Section 8 shall be fined under Title 18 or imprisoned not more than five years or both.

“(c) Jurisdiction.--The several district courts of the United States shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any offenses not committed in any district are subject to the venue provisions of Title 18, Section 3238.

“(d) Penalties pursuant to this section for fishing violations prohibited by Section 8(a), (b), (c), (g), and (k) committed in the Exclusive Economic Zone by a vessel other than a vessel of the United States shall be imposed on a natural person only in accordance with international law.”

## **SECTION 10. CIVIL FORFEITURES**

The Act is amended by inserting following Section 8 (16 U.S.C. § 957) a new section:

“Sec. 8C. Civil forfeitures

“(a) In general.--Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) or other conveyance used, and any fish (or the fair market value thereof) taken, retained, or imported in any manner, in connection with or as a result of the Commission of any act prohibited by Section 8 (other than any act for which the issuance of a citation under Section 10 (c) is sufficient sanction) shall be subject to forfeiture to the United States.

“(b) Jurisdiction of district courts.--Any district court of the United States which has jurisdiction under Section 10 or other applicable law shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

“(c) Applicable Procedures.—The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section insofar as such provisions are not inconsistent with this Act. The provisions of the customs laws relating to--

“(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

“(2) the disposition of such property or the proceeds from the sale thereof; and

“(3) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under the provisions incorporated by this subsection shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

“(d) Procedure.--

“(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under Section 10 may--

“(A) stay the execution of such process; or

“(B) discharge any fish seized pursuant to such process upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under Section 10, to release on bond any seized fish or other property or the proceeds from the sale thereof.

“(2) Any fish seized pursuant to this Act may be sold as authorized by the provisions incorporated by subsection (c).”.

## **SECTION 11. COOPERATION WITH OTHER AGENCIES**

(1) Paragraph (a) of Section 9 (16 U.S.C. § 958) is amended by striking in the sixth line the word “Commissions” and inserting the word “Commission’s”.

(2) Paragraph (b) of Section 9 (16 U.S.C. § 958) is amended by striking in the fourth line the word “their” and inserting the word “its”.

(3) Paragraph (c) of Section 9 (16 U.S.C. § 958) is amended by striking in the first line the words “Commissions are” and inserting the words “Commission is”.

## **SECTION 12. ENFORCEMENT**

Section 10 (16 U.S.C. § 959) is amended by-

(1) striking paragraphs (a) through (e);

(2) inserting the following:

“(a) Responsibility.--The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties.

“(b) Powers of authorized officers.--

“(1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may--

“(A) with or without a warrant or other process--

“(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by Section 8;

“(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;

“(iii) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

“(iv) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

“(v) seize any other evidence related to any violation of any provision of this Act;

“(B) execute any warrant or other process issued by any court of competent jurisdiction; and

“(C) exercise any other lawful authority.

“(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sentence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone, the Secretary of the department in which the Coast Guard is operating.

“(c) Issuance of citations.--If any officer authorized to enforce the provisions of this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this Act, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefore, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

“(d) Jurisdiction of courts.--The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam or any possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii, and except that in the case of the Northern Mariana Islands, the appropriate court is the United States District Court for the District of the Northern Mariana Islands. Any such court may, at any time--

“(1) enter restraining orders or prohibitions;

“(2) issue warrants, process in rem, or other process;

“(3) prescribe and accept satisfactory bonds or other security; and

“(4) take such other actions as are in the interest of justice.

“(e) Payment of storage, care, and other costs.--

“(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this Act -

“(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other marine resource law enforced by the Secretary with respect to that fish or other property;



“(B) a reward of up to and not exceeding 20 percent of the penalty or fine collected or \$20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary;

“(C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

“(D) any valid liens or mortgages against any property that has been forfeited;

“(E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by Section 8C(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

“(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.

“(2) Any person found in an administrative or judicial proceeding to have violated this Act or any other marine resource law enforced by the Secretary shall be liable for the cost incurred in the sale, storage, care, and maintenance of any fish or other property lawfully seized in connection with the violation.”; and

(3) striking in the heading of Section 10 the words “of chapter”.

### **SECTION 13. FUNCTIONS NOT RESTRAINED**

Section 11 (16 U.S.C. § 960) is amended by-

(1) striking in the fifth and six lines the word “Commissions” and inserting the word “Commission”;

(2) striking in the sixth line the words “or their”; and

(3) striking in the heading of Section 11 the word “Commissions” and inserting the word “Commission’s”.

### **SECTION 14. AUTHORIZATION OF APPROPRIATIONS**

Section 12 (16 U.S.C. § 961) is amended by-

(1) striking in the third line the words “each convention” and inserting the words “the Convention”; and

(2) striking in the first line of paragraph (a) the words “each commission” and inserting the words, “the Commission”.

### **SECTION 15. REDUCTION OF BYCATCH**

Section 15 (16 U.S.C. § 962) is amended by striking in the third line the word “vessel” and inserting the word “vessels”.

**SECTION 16. REPEAL OF EASTERN PACIFIC TUNA LICENSING ACT OF 1984**

Public Law 98-445, October 4, 1984 (16 U.S.C. Chapter 16B) is repealed.

## **PFMC April 2008 Briefing Book Submission**

### **The Antigua Convention**

#### **Background**

In 2003, the Inter-American Tropical Tuna Commission (IATTC) adopted a resolution that approved the Antigua Convention, a major revision of the original 1949 convention establishing the IATTC. This new text brings the convention current with respect to internationally accepted norms for the conservation and management of living marine resources, in particular for management of highly migratory species and for taking an ecosystem-based approach to management in the Pacific Ocean. Specifically, the Antigua Convention revises the 1949 IATTC Convention to: reflect current IATTC practices; incorporate important changes in international law (United Nations Highly Migratory Fish Stocks Agreement); and provides for the full participation of non-state entities (European Community, Taiwan). The Antigua Convention expands the jurisdiction of the 1949 Convention Area to include the waters of the eastern tropical Pacific Ocean (EPO) bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. The Antigua Convention shall enter into force and effectiveness fifteen months after the deposit of the seventh instrument of ratification or accession of the Parties to the 1949 Convention establishing the IATTC. Thus far, eleven Parties to the 1949 Convention have signed the Antigua Convention and five have deposited their instrument of ratification or accession with the depository (the United States). To date (March 2008), the United States has not ratified the Antigua Convention, though it has received Senate advice and consent to ratification. The next step is signature of the instrument of ratification by the President.

**Pending Implementing Legislation for the Antigua Convention:** In 2006 and 2007, the Administration, through the Department of State, forwarded the draft implementing legislation to Congress, but that legislation has not been acted upon. The Hill has heard from the Administration that ratification is a high priority. Both NOAA and State have been contacted by Congressional staff regarding legislative priorities for 2008, and the Antigua Convention was identified as a top priority on our list. Congressional inquiries continue, but there is no indication as to when a Bill might be introduced.

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2712**

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**Introduced by Assembly Member Plescia  
(Principal coauthor: Assembly Member DeSaulnier)**

February 22, 2008

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An act to add Chapter 9 (commencing with Section 7095) to Part 1.7 of Division 6 of the Fish and Game Code, relating to marine fisheries.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2712, as introduced, Plescia. Marine Life Management Act: marine fisheries: forage species.

(1) Existing law, enacted as part of the Marine Life Management Act, generally establishes a comprehensive plan for the management of marine life resources, and utilizes fishery management plans as the primary basis for managing the state's sport and commercial marine fisheries.

This bill would require the Department of Fish and Game, on or before January 1, 2010, to prepare, and submit to the Fish and Game Commission for adoption, a prescribed Forage Species Management Plan that governs the management of forage species within state waters in accordance with specified policy.

The bill would generally prohibit a state fishery for an actively managed forage species that allows for a geographic expansion of an existing fishery beyond those areas fished between the years 2002 and 2007, inclusive, or allows catch levels for an actively managed forage species to exceed levels caught in 2007. The bill, with specified exceptions, would prohibit the state from authorizing any commercial fishery for a forage species in state waters other than an actively managed forage species for which there is an existing commercial

fishery in state waters for any purpose. The bill would generally require the department to limit commercial fishing for forage species to areas of state waters in which fishing for those species took place between the years 2002 and 2007, and would generally prohibit the department from permitting fishing for forage species other than those managed under a certain federal plan in state waters at levels greater than those species were taken in 2007, until the department has performed prescribed optimum yield calculations.

The bill would require the department, on or before January 1, 2010, to prepare and submit to the Fish and Game Commission a plan for additional research on the ecological role of forage species in California's coastal and marine ecosystems and a report that analyzes the ecological and economic effects of harvesting forage species.

(2) Existing law generally makes any violation of fish and game laws, or of any rule, regulation, or order made or adopted pursuant to those laws, a crime.

This bill, by imposing new restrictions on forage species fisheries, the violation of which would be a crime, would impose a state-mandated local program by creating new crimes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 9 (commencing with Section 7095) is added to Part 1.7 of Division 6 of the Fish and Game Code, to read:

#### CHAPTER 9. FORAGE SPECIES

7095. The Legislature finds and declares all of the following:

(a) The long-term health of California's coastal and marine ecosystems depends upon the health and viability of forage species.

(b) Populations of forage species face many threats, including global climate change, ocean acidification, pollution, and industrial

1 aquaculture that uses wild-caught forage fish reduced into fish  
2 meal.

3 (c) Maintaining healthy and abundant populations of forage  
4 species will help other marine species cope with, and adapt to,  
5 environmental changes.

6 (d) There is not sufficient scientific study in place to support  
7 the conclusion that industrial fishing for forage species can take  
8 place without reducing the resilience of marine ecosystems or  
9 populations of marine predators.

10 (e) It is the state's priority to recognize and protect the role of  
11 forage species in California's marine ecosystems and to encourage  
12 additional scientific research regarding the role of forage species  
13 in the ecosystem.

14 (f) The commission can best ensure that forage species will be  
15 managed from an ecosystem perspective.

16 7096. (a) It shall be the policy of the commission to maintain  
17 healthy populations of forage species while ensuring the integrity  
18 of the ecosystem and habitat upon which these species depend by  
19 prioritizing the protection of forage species over extractive uses  
20 and by moving management of fisheries targeting forage species  
21 away from single-species management and toward an ecosystem  
22 approach.

23 (b) The objective of this policy shall be to accomplish all of the  
24 following:

25 (1) Maintain healthy populations of forage species.

26 (2) Protect the food web, including the functional role of forage  
27 species as prey for fish, birds, and marine mammals.

28 (4) Ensure the long-term health and viability of California's  
29 coastal and marine ecosystems through the conservation,  
30 sustainable use, and protection of forage species for the benefit of  
31 all citizens of the state.

32 (4) Encourage scientific research that focuses on the role of  
33 forage species in the ecosystem.

34 (5) Require management entities to consider, evaluate, and  
35 prioritize the role of forage species in the marine ecosystem and  
36 the need to maintain sufficient abundance of forage species for  
37 ecosystem needs.

38 (c) On and after January 1, 2009, the commission shall manage  
39 forage species in accordance with the requirements of this part.

40 7097. As used in this chapter:

1 (a) "Actively managed forage species" means those forage  
2 species, as of January 1, 2008, managed under existing sport or  
3 commercial fishery management measures implemented by the  
4 commission or department.

5 (b) "Forage species" means small schooling pelagic fish and  
6 invertebrates that serve as an important source of food for other  
7 fish species, birds, and marine mammals. Forage species include  
8 herring, sardine and anchovy (*Clupeiformes*), Pacific sandlance  
9 (*Ammodytidae*), smelt (*Osmeridae*), krill (*Euphausiacea*), market  
10 squid (*Loligo opalescens*), pelagic juvenile salmonids  
11 (*Salmonidae*), pelagic juvenile rockfish (*Sebastes* spp.), jack  
12 mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber*  
13 *japonicus*), and Pacific saury (*Scomberesocidae*).

14 (c) "Optimum yield" has the same meaning as that term is  
15 defined in Section 97.

16 (d) "Plan" means the Forage Species Management Plan adopted  
17 in accordance with this chapter.

18 7098. (a) On or before January 1, 2010, the department shall  
19 prepare, and submit to the commission for adoption, a Forage  
20 Species Management Plan that governs the management of forage  
21 species within state waters in accordance with the policy  
22 established in this chapter. The plan shall do all of the following:

23 (1) Specify the process and the resources needed to prepare,  
24 adopt, and implement existing forage species management for  
25 sport and commercial marine fisheries managed by the state.

26 (2) Identify and protect spawning habitat of forage species from  
27 any activity that threatens its functions as habitat.

28 (3) Explicitly analyze and consider the role of forage species  
29 in the ecosystem by identifying all species in the marine ecosystem  
30 that directly or indirectly consume each forage species, and  
31 compare ecosystem effects to a baseline in which no forage species  
32 were harvested.

33 (4) Identify and describe the locations where fisheries targeting  
34 forage species took place between the years 2002 and 2007,  
35 inclusive.

36 (5) Include management measures and controls to cap bycatch  
37 in fisheries targeting forage species and provide consistent annual  
38 reporting, including but not limited to, bycatch estimates.

39 (b) In calculating optimum yield for actively managed forage  
40 species, the protection of marine ecosystems shall be prioritized,



1 and optimum yield shall be reduced for ecological factors that shall  
2 include ensuring sufficient quantities of forage species to maintain  
3 predators and other ecosystem needs, such as community stability  
4 and resilience.

5 (c) If there is uncertainty about the status of a stock, the stock  
6 is in decline, or the stock condition is poor, the plan shall take a  
7 conservative and precautionary management approach.

8 (d) The plan shall be prepared with the advice, assistance, and  
9 involvement of participants in the various fisheries and their  
10 representatives, marine conservationists, marine scientists, and  
11 other interested persons.

12 (e) The department shall review the plan not less than every  
13 five years for its effectiveness in achieving ecosystem sustainability  
14 goals and for fairness and reasonableness in its interaction with  
15 people affected by management in accordance with this chapter.  
16 Review shall include the involvement of persons listed in  
17 subdivision (d).

18 (f) The plan shall be consistent with Section 7099.

19 (g) The plan modifies, but is not intended to supplant, the  
20 existing management plan for market squid as required under  
21 Article 9.7 (commencing with Section 8420 of Chapter 2 of Part  
22 3).

23 (h) This chapter does not alter Section 8510 regarding the take  
24 or landing of krill.

25 7099. There shall be no state fishery for an actively managed  
26 forage species that does either of the following:

27 (a) Allows for a geographic expansion of an existing fishery  
28 beyond those areas fished between the years 2002 and 2007,  
29 inclusive, unless and until scientific information, with peer review  
30 by independent experts, indicates fishery activities are not directly  
31 or indirectly adversely affecting marine life dependant on forage  
32 species in those areas.

33 (b) Allows catch levels for an actively managed forage species  
34 to exceed levels caught in 2007 until the department, with peer  
35 review by independent experts, determines that increased harvest  
36 will not jeopardize ecosystem protection goals and provides  
37 optimum yield calculations that explicitly account for the role of  
38 targeted forage species in the marine ecosystem and the need to  
39 provide a sufficient abundance of forage species for predators and  
40 other ecosystem needs.

1 7099.1 Except as specified in Section 7099.2, the state shall  
2 not authorize any commercial fishery for a forage species in state  
3 waters other than an actively managed forage species for which  
4 there is an existing commercial fishery in state waters for any  
5 purpose except scientific research pursuant to regulations adopted  
6 by the commission.

7 7099.2. (a) Section 7099.1 does not apply to Northern anchovy  
8 (*Engraulis mordax*) and jack mackerel (*Trachurus symmetricus*)  
9 until January 1, 2010. On and after January 1, 2010, there shall be  
10 no direct harvest of those species unless they are managed under  
11 the plan.

12 (b) The department shall limit commercial fishing for forage  
13 species, other than those specified in subdivision (a), managed  
14 under the federal Coastal Pelagic Species Fishery Management  
15 Plan (Pacific mackerel and Pacific sardine) to areas of state waters  
16 in which fishing for those species took place between the years  
17 2002 and 2007, inclusive. The department shall not permit fishing  
18 for those species addressed in this subdivision in other areas of  
19 state waters until the department determines that scientific  
20 information shows conclusively that fishery activities are not  
21 directly or indirectly adversely affecting marine life dependent on  
22 forage species in those areas.

23 (b) The department shall not permit fishing for forage species  
24 other than those specified in subdivision (a), managed under the  
25 federal Coastal Pelagic Species Fishery Management Plan in state  
26 waters at levels greater than those species were taken in 2007, until  
27 the department has performed optimum yield calculations that  
28 explicitly account for the role of those forage species in the marine  
29 ecosystem and the need to provide a sufficient abundance of forage  
30 species for predator species and other ecosystem needs.

31 7099.3. (a) On or before January 1, 2010, the department shall  
32 prepare, and submit to the commission both of the following:

33 (1) A plan for additional research on the ecological role of forage  
34 species in California's coastal and marine ecosystems. The research  
35 plan shall include all of the following:

36 (A) Research on the effects of fisheries removals of forage  
37 species on other fish populations, pinnipeds, whales and seabirds.

38 (B) Research on the effects of ocean conditions, including global  
39 warming-associated impacts on forage species populations and  
40 other associated ecological communities.

1 (C) External peer review.

2 (2) A report that analyzes the ecological and economic effects  
3 of harvesting forage species. This analysis shall include external  
4 peer review.

5 7099.4. This chapter does not prohibit or otherwise limit the  
6 authority of the director or the commission under this part.

7 SEC. 2. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.

**ASSEMBLY BILL**

**No. 2712**

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**Introduced by Assembly Member Plescia  
(Principal coauthor: Assembly Member DeSaulnier)**

**February 22, 2008**

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**Senate Concurrent Resolution**

**No. 85**

**Introduced by Senators Kuehl, Migden, and Wiggins**  
(Coauthors: Assembly Members DeSaulnier, Feuer, Jones, and Saldana)

February 26, 2008

Senate Concurrent Resolution No. 85—Relative to the Pacific bluefin tuna.

LEGISLATIVE COUNSEL'S DIGEST

SCR 85, as introduced, Kuehl. Pacific bluefin tuna.

This measure would seek the assistance of the Governor, the Department of Fish and Game, and the Ocean Protection Council in initiating, at the highest international level, the cessation of illegal, unreported, and unregulated bluefin tuna overfishing, the creation of marine protected areas, and the imposition and enforcement of catch limits for countries fishing for Pacific bluefin tuna in the Exclusive Economic Zone.

Fiscal committee: yes.

- 1 WHEREAS, The Pacific bluefin tuna is rapidly approaching
- 2 the fate of the collapsed Atlantic bluefin tuna population, which
- 3 has diminished by 90 percent in the Atlantic Ocean and in the
- 4 Mediterranean Sea, due to overfishing and the lack of effective
- 5 conservation and protection efforts; and
- 6 WHEREAS, The coastal economic losses for California as a
- 7 result of the diminishing bluefin tuna population in the Pacific
- 8 Ocean include decreased security of the pelagic (open ocean)
- 9 seafood market and fishing industry, decreased reliability and
- 10 productivity of coastal goods and services, and depletion of jobs
- 11 and income for those communities and stakeholders involved in
- 12 the pelagic seafood fishing industry; and

1 WHEREAS, The commercial catch of Pacific bluefin tuna for  
2 California's coast from 1950 to 1998 averaged 11,434,390 pounds  
3 per year; however, since 1999, the average catch has spiraled down  
4 to an average of 294,544 pounds of tuna per year, a devastating  
5 drop; and

6 WHEREAS, Overfishing of the Pacific bluefin tuna, sparked  
7 by increasing demand by countries around the world, poses an  
8 imminent threat to California's coastal economy that has created  
9 a need for global solutions to preserve the population of the species  
10 for California; and

11 WHEREAS, The crisis facing the Pacific bluefin tuna population  
12 could portend future oceanic ecological losses because of the loss  
13 of habitat and the inability of the ocean environment to recover  
14 from a biological disruption of such significance that could  
15 adversely affect the sustainability of current marine life; and

16 WHEREAS, Without the abundance of the Pacific bluefin tuna  
17 serving as predators along California's coastline, an environment  
18 is provided for the Humboldt squid (*Dosidicus gigas*) to invade  
19 and devour marine life, thereby drastically altering the composition  
20 and structure of the pelagic community for the coast of California;  
21 and

22 WHEREAS, Tuna swim in enormous schools, often numbering  
23 in the thousands, that allow modern fishing nets to scoop up entire  
24 schools of bluefin tuna, threatening the survival of the bluefin tuna  
25 population and significantly facilitating overfishing of the bluefin  
26 tuna; and

27 WHEREAS, The Pacific bluefin tuna is a slow growing,  
28 endothermic fish that migrates thousands of miles across the open  
29 ocean to feed and spawn; and

30 WHEREAS, The Pacific bluefin tuna is endangered by the  
31 fishing fleets of nations that capture the tuna at their spawning  
32 areas near Japan, Taiwan, and the Philippines before they have a  
33 chance to spawn, which further decimates the Pacific bluefin tuna  
34 population; and

35 WHEREAS, The Pacific Fishery Management Council, which  
36 manages fisheries that include highly migratory species, like tunas,  
37 in the Exclusive Economic Zone, three to 200 miles off the coasts  
38 of Washington, Oregon, and California, has difficulty enforcing  
39 the federal Magnuson-Stevens Fishery Conservation and

1 Management Act and other laws that affect fisheries management  
2 and which dictate catch limits of the Pacific bluefin tuna; and

3 WHEREAS, Research institutions that support and promote  
4 bluefin tuna protection through governance stewardship include  
5 the Monterey Bay Aquarium, the Monterey Bay Aquarium  
6 Research Institute of Science and Engineering, the Blue Oceans  
7 Institute, the National Environmental Trust, the World Wildlife  
8 Fund, the Tuna Research and Conservation Center, Hopkins Marine  
9 Station of Stanford University, the Ocean Conservancy, the  
10 California Coastal Commission, the National Oceanic and  
11 Atmospheric Administration, the Natural Resources Defense  
12 Council, the Food and Agriculture Organization of the United  
13 Nations, and the National Marine Fisheries Service; now, therefore,  
14 be it

15 *Resolved by the Senate of the State of California, the Assembly*  
16 *thereof concurring,* That the state Legislature acknowledges the  
17 devastation to the pelagic community off California's coast from  
18 the mismanagement of the seriously imperiled Pacific bluefin tuna  
19 species, and supports efforts to recover and preserve the population;  
20 and be it further

21 *Resolved,* That the Secretary of the Senate transmit copies of  
22 this resolution to the Governor, the Department of Fish and Game,  
23 and the Ocean Protection Council, to seek their assistance in  
24 initiating, at the highest international level, the cessation of illegal,  
25 unreported, and unregulated bluefin tuna overfishing, the creation  
26 of marine protected areas, and the imposition and enforcement of  
27 catch limits for countries fishing for Pacific bluefin tuna in the  
28 Exclusive Economic Zone.

### Recent Federal Legislation Pertaining to Vessel Discharge

In January 1999, a number of interested parties submitted a rulemaking petition to EPA asking the Agency to repeal its long-standing regulation at 40 C.F.R. 122.3(a) that excludes certain discharges incidental to the normal operation of vessels, including ballast water, from the requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA). Following an EPA denial decision, several groups filed a lawsuit in December 2003 in the U.S. District Court for the Northern District of California (*Northwest Environmental Advocates et al. v. EPA*, No. CV 03-05760 SI). On March 30, 2005, the District Court ruled that the EPA regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA. On September 18, 2006, the Court issued an order vacating (revoking) the regulatory exclusions at 40 C.F.R. 122.3(a) as of September 30, 2008. Because the Court's decision is not limited to vessels with ballast water tanks, it appears to implicate an extremely large number of vessels and a range of discharges. Information available from the U.S. Coast Guard indicates that in 2005, vessels equipped with ballast water tanks alone accounted for 8,400 ships reporting over 86,000 port calls. However, there are also 13 *million* State-registered recreational boats, 81,000 commercial fishing vessels, and 53,000 freight and tank barges operating in U.S. waters.

Subsequently, several bills have been introduced in the Congress to address this issue. These bills and a fact sheet on the topic are included in this packet:

- *S.2766 the Clean Boating Act of 2008*, introduced IN the U. S. Senate on March 13, 2008 by Senator Bill Nelson (D-FL) and Senator Barbara Boxer (D-CA).
- *H.R.5594 the Vessel Discharge Evaluation and Review Act*, introduced in the U. S. House of Representatives on March 11, 2008 by Representative Don Young (R-AK).
- *S.2645 the Vessel Discharge Evaluation and Review Act*, introduced in the U.S. Senate on February 14, 2008 by Senator Ted Stevens (R-AK).



United States Environmental Protection Agency  
Office of Water  
Office of Wastewater Management  
Water Permits Division



April 2007

## FACT SHEET

### **District Court Decision Vacating the Federal Regulation Excluding Discharges Incidental to Normal Vessel Operations from Clean Water Act Permitting as of September 30, 2008**

#### **How did the lawsuit get started and what is it about?**

In January 1999, a number of interested parties submitted a rulemaking petition to EPA asking the Agency to repeal its long-standing regulation at 40 C.F.R. 122.3(a) that excludes certain discharges incidental to the normal operation of vessels, including ballast water, from the requirement to obtain a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA). The petition seeking repeal expressed concern over discharges of ships' ballast water containing invasive species and other matter. In September 2003, EPA denied the petition. Among its bases for denial, the Agency determined that actions by the federal government under other statutes specific to ballast water were likely to be more effective and efficient in addressing the concerns raised in the petition than reliance on NPDES permits. The denial also noted that the regulation had existed unchallenged since its initial issuance in May 1973, and that Congressional enactment of subsequent statutory schemes and amendments indicated Congress was aware of, and accepted, the regulatory exclusion. Following EPA's denial decision, several groups filed a lawsuit in December 2003 in the U.S. District Court for the Northern District of California (*Northwest Environmental Advocates et al. v. EPA*, No. C 03-05760 SI).

#### **What was the court's ruling?**

On March 30, 2005, the District Court ruled that the EPA regulation excluding discharges incidental to the normal operation of a vessel from NPDES permitting exceeded the Agency's authority under the CWA. In subsequent proceedings before the Court, EPA argued that any relief granted by the Court should be limited to ballast water matters alone. However, on September 18, 2006, the Court issued an order vacating (revoking) the regulatory exclusions at 40 C.F.R. 122.3(a) as of September 30, 2008. The Court reasoned that delaying the vacatur by two years would give the Agency time to address the ramifications of the vacatur. Because the Agency respectfully disagrees with the District Court's decision, on November 16, 2006, the United States filed a notice of appeal with the U.S. Court of Appeals for the Ninth Circuit and that appeal is currently pending.

#### **What types of vessels and discharges might become subject to CWA permitting?**

Because the Court's decision is not limited to vessels with ballast water tanks, it appears to implicate an extremely large number of vessels and a range of discharges. Information available from the U.S. Coast Guard indicates that in 2005, vessels equipped with ballast water tanks alone accounted for 8,400 ships reporting over 86,000 port calls. However, there are also 13 *million*

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State-registered recreational boats, 81,000 commercial fishing vessels, and 53,000 freight and tank barges operating in U.S. waters. A final rulemaking undertaken specific to the authority of CWA § 312(n) with respect to vessels of the Armed Forces is illustrative as to the potential variety of operational discharges. For purposes of CWA § 312(n), that rulemaking identified 39 such discharges in the context of military vessels, and it would appear that besides ballast water, non-military vessels could generate approximately two dozen, or perhaps more, of these kinds of operational discharges (e.g., bilgewater, deck runoff, graywater). See, 40 CFR 1700.4; 1700.5.

**Are there any exemptions relevant to vessel discharges unaffected by the Court's ruling?**

The Court's ruling would not affect vessel discharge exemptions from permitting that are specifically provided for in the CWA itself. For example, § 502(6)(A) excludes from the Act's definition of "pollutant" sewage from vessels (including graywater in the case of commercial vessels operating on the Great Lakes) and discharges incidental to the normal operation of a vessel of the Armed Forces within the meaning of the CWA § 312. As another example, the CWA provides in § 502(12)(B) that discharges from vessels (i.e., discharges other than those when the vessel is operating in a capacity other than as a means of transportation) do not constitute the "discharge of a pollutant" when such discharges occur beyond the limit of the three mile territorial sea. Because both "a pollutant" and a "discharge of a pollutant" are prerequisites to the requirement to obtain an NPDES permit, these two statutory provisions have the effect of exempting the vessel discharges they address from the requirement to obtain an NPDES permit.

**What are the implications of the Court's ruling and what is EPA doing in response?**

Section 301(a) of the CWA generally prohibits the "discharge of a pollutant" without an NPDES permit. If the District Court's order remains unchanged, the regulatory exclusion allowing for the discharge of pollutants incidental to the normal operation of a vessel without an NPDES permit will be vacated by the court on September 30, 2008. This means that, as of that date, that regulatory exclusion will no longer exempt such discharges from the prohibition in CWA section 301(a). The CWA authorizes civil and criminal penalties for violations of the prohibition against the discharge of a pollutant without a permit, and also allows for citizen suits against violators.

Because discharges of pollutants incidental to the normal operation of vessels have been exempt from the NPDES permitting requirement for over 30 years, the Agency lacks practical experience permitting them. These types of discharges pose unique challenges, because vessels are highly mobile and the vessel universe is extremely diverse. In order to address the above ramifications of the Court's ruling, EPA is exploring all available options, including establishment of an appropriate permitting program, and plans to solicit public input as it does so.

**For more information:**

Ruby Cooper, Water Permits Division, (202) 564-0757, [cooper.ruby@epa.gov](mailto:cooper.ruby@epa.gov) or  
John Lishman, Water Permits Division, (202) 564-0995, [lishman.john@epa.gov](mailto:lishman.john@epa.gov).

Documents related to the rulemaking petition and the Court's ruling are available on-line at:  
[http://www.epa.gov/owow/invasive\\_species/ballast\\_water.html](http://www.epa.gov/owow/invasive_species/ballast_water.html)

# # #

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110TH CONGRESS  
2D SESSION

# S. 2766

To amend the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel.

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## IN THE SENATE OF THE UNITED STATES

MARCH 13, 2008

Mr. NELSON of Florida (for himself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Water Pollution Control Act to address certain discharges incidental to the normal operation of a recreational vessel.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Clean Boating Act of  
5       2008”.

1 **SEC. 2. DISCHARGES INCIDENTAL TO THE NORMAL OPER-**  
 2 **ATION OF RECREATIONAL VESSELS.**

3 Section 402 of the Federal Water Pollution Control  
 4 Act (33 U.S.C. 1342) is amended by adding at the end  
 5 the following:

6 “(r) DISCHARGES INCIDENTAL TO THE NORMAL OP-  
 7 ERATION OF RECREATIONAL VESSELS.—No permit shall  
 8 be required under this Act by the Administrator (or a  
 9 State, in the case of a permit program approved under  
 10 subsection (b)) for the discharge of any graywater, bilge  
 11 water, cooling water, weather deck runoff, oil water sepa-  
 12 rator effluent, or effluent from properly functioning ma-  
 13 rine engines, or any other discharge that is incidental to  
 14 the normal operation of a vessel, if the discharge is from  
 15 a recreational vessel.”.

16 **SEC. 3. DEFINITION.**

17 Section 502 of the Federal Water Pollution Control  
 18 Act (33 U.S.C. 1362) is amended by adding at the end  
 19 the following:

20 “(25) RECREATIONAL VESSEL.—

21 “(A) IN GENERAL.—The term ‘recreational  
 22 vessel’ means any vessel that is—

23 “(i) manufactured or used primarily  
 24 for pleasure; or

25 “(ii) leased, rented, or chartered to a  
 26 person for the pleasure of that person.

1                   “(B) EXCLUSION.—The term ‘recreational  
2                   vessel’ does not include a vessel that is subject  
3                   to Coast Guard inspection and that—

4                               “(i) is engaged in commercial use; or

5                               “(ii) carries paying passengers.”.

6 **SEC. 4. MANAGEMENT PRACTICES FOR RECREATIONAL**  
7 **VESSELS.**

8           Section 312 of the Federal Water Pollution Control  
9 Act (33 U.S.C. 1322) is amended by adding at the end  
10 the following:

11           “(o) MANAGEMENT PRACTICES FOR RECREATIONAL  
12 VESSELS.—

13                   “(1) APPLICABILITY.—This subsection applies  
14                   to any discharge, other than a discharge of sewage,  
15                   from a recreational vessel that is—

16                               “(A) incidental to the normal operation of  
17                   the vessel; and

18                               “(B) exempt from permitting requirements  
19                   under section 402(r).

20                   “(2) DETERMINATION OF DISCHARGES SUB-  
21 JECT TO MANAGEMENT PRACTICES.—

22                               “(A) DETERMINATION.—

23                               “(i) IN GENERAL.—The Adminis-  
24                   trator, in consultation with the Secretary  
25                   of the department in which the Coast

1 Guard is operating, the Secretary of Com-  
2 merce, and interested States, shall deter-  
3 mine the discharges incidental to the nor-  
4 mal operation of a recreational vessel for  
5 which it is reasonable and practicable to  
6 develop management practices to mitigate  
7 adverse impacts on the waters of the  
8 United States.

9 “(ii) PROMULGATION.—The Adminis-  
10 trator shall promulgate the determinations  
11 under clause (i) in accordance with section  
12 553 of title 5, United States Code.

13 “(iii) MANAGEMENT PRACTICES.—The  
14 Administrator shall develop management  
15 practices for recreational vessels in any  
16 case in which the Administrator deter-  
17 mines that the use of those practices is  
18 reasonable and practicable.

19 “(B) CONSIDERATIONS.—In making a de-  
20 termination under subparagraph (A), the Ad-  
21 ministrator shall consider—

22 “(i) the nature of the discharge;

23 “(ii) the environmental effects of the  
24 discharge;

1 “(iii) the practicability of using a  
2 management practice;

3 “(iv) the effect that the use of a man-  
4 agement practice would have on the oper-  
5 ation, operational capability, or safety of  
6 the vessel;

7 “(v) applicable Federal and State law;

8 “(vi) applicable international stand-  
9 ards; and

10 “(vii) the economic costs of the use of  
11 the management practice.

12 “(C) TIMING.—The Administrator shall—

13 “(i) make the initial determinations  
14 under subparagraph (A) not later than 1  
15 year after the date of enactment of this  
16 subsection; and

17 “(ii) every 5 years thereafter—

18 “(I) review the determinations;

19 and

20 “(II) if necessary, revise the de-  
21 terminations based on any new infor-  
22 mation available to the Administrator.

23 “(3) PERFORMANCE STANDARDS FOR MANAGE-  
24 MENT PRACTICES.—

1           “(A) IN GENERAL.—For each discharge  
2           for which a management practice is developed  
3           under paragraph (2), the Administrator, in con-  
4           sultation with the Secretary of the department  
5           in which the Coast Guard is operating, the Sec-  
6           retary of Commerce, other interested Federal  
7           agencies, and interested States, shall promul-  
8           gate, in accordance with section 553 of title 5,  
9           United States Code, Federal standards of per-  
10          formance for each management practice re-  
11          quired with respect to the discharge.

12          “(B) CONSIDERATIONS.—In promulgating  
13          standards under this paragraph, the Adminis-  
14          trator shall take into account the considerations  
15          described in paragraph (2)(B).

16          “(C) CLASSES, TYPES, AND SIZES OF VES-  
17          SELS.—The standards promulgated under this  
18          paragraph may—

19               “(i) distinguish among classes, types,  
20               and sizes of vessels;

21               “(ii) distinguish between new and ex-  
22               isting vessels; and

23               “(iii) provide for a waiver of the appli-  
24               cability of the standards as necessary or



appropriate to a particular class, type, age,  
or size of vessel.

“(D) TIMING.—The Administrator shall—

“(i) promulgate standards of performance for a management practice under subparagraph (A) not later than 1 year after the date of a determination under paragraph (2) that the management practice is reasonable and practicable; and

“(ii) every 5 years thereafter—

“(I) review the standards; and

“(II) if necessary, revise the standards, in accordance with subparagraph (B) and based on any new information available to the Administrator.

“(4) REGULATIONS FOR THE USE OF MANAGEMENT PRACTICES.—

“(A) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall promulgate such regulations governing the design, construction, installation, and use of management practices for recreational vessels as are necessary to meet the

standards of performance promulgated under paragraph (3).

“(B) REGULATIONS.—

“(i) IN GENERAL.—The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator promulgates standards with respect to the practice under paragraph (3), but not later than 1 year after the date on which the Administrator promulgates the standards.

“(ii) EFFECTIVE DATE.—The regulations promulgated by the Secretary under this paragraph shall be effective upon promulgation unless another effective date is specified in the regulations.

“(iii) CONSIDERATION OF TIME.—In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall consider the period of time necessary to communicate the existence of the regulation to persons affected by the regulation.

“(5) EFFECT OF OTHER LAWS.—This subsection shall not affect the application of section 311

1 to discharges incidental to the normal operation of  
2 a recreational vessel.

3 “(6) PROHIBITION RELATING TO REC-  
4 REATIONAL VESSELS.—After the effective date of  
5 the regulations promulgated by the Secretary of the  
6 department in which the Coast Guard is operating  
7 under paragraph (4), the owner or operator of a rec-  
8 reational vessel shall neither operate in nor dis-  
9 charge any discharge incidental to the normal oper-  
10 ation of the vessel into, the waters of the United  
11 States or the waters of the contiguous zone, if the  
12 owner or operator of the vessel is not using any ap-  
13 plicable management practice meeting standards es-  
14 tablished under this subsection.”.

○

110TH CONGRESS  
2D SESSION

# H. R. 5594

To require the Commandant of the Coast Guard to conduct an evaluation  
and review of certain vessel discharges.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2008

Mr. YOUNG of Alaska (for himself and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

---

## A BILL

To require the Commandant of the Coast Guard to conduct  
an evaluation and review of certain vessel discharges.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Vessel Discharge Eval-  
5       uation and Review Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8               (1) Starting with passage of the Act to Prevent  
9       Pollution from Ships in 1980, the United States  
10      Coast Guard has been the principal Federal author-

1       ity charged with administering, enforcing, and pre-  
2       scribing regulations relating to the discharge of pol-  
3       lutants from vessels engaged in maritime commerce  
4       and transportation.

5           (2) There are more than 16 million State-reg-  
6       istered boats, 110,000 commercial fishing vessels,  
7       and 53,000 freight and tank barges operating in  
8       United States waters. Since 1973 certain discharges  
9       incidental to the normal operation of these vessels  
10      have been exempted from regulation.

11          (3) When required, Congress has specifically  
12      mandated Federal programs for control of dis-  
13      charges from vessels, including—

14           (A) the Act to Prevent Pollution from  
15      Ships (33 U.S.C. 1901 et seq.) in 1980;

16           (B) the Nonindigenous Aquatic Nuisance  
17      Prevention and Control Act of 1990 (16 U.S.C.  
18      4701 et seq.);

19           (C) the National Invasive Species Act of  
20      1996 (16 U.S.C. 4701 note); and

21           (D) section 1401 of the 2000 Omnibus  
22      Consolidated and Emergency Supplemental Ap-  
23      propriations for Fiscal Year 2001, which pre-  
24      vented discharge of treated sewage and  
25      graywater in certain areas of Alaska.

1 **SEC. 3. EVALUATION AND REVIEW OF CERTAIN DIS-**  
2 **CHARGES.**

3 (a) IN GENERAL.—The Commandant of the Coast  
4 Guard, in consultation with the heads of appropriate Fed-  
5 eral agencies, as determined by the Commandant, shall  
6 conduct an evaluation and review of vessel discharges,  
7 other than ballast water, that are described in section  
8 122.3(a) of title 40, Code of Federal Regulations, as in  
9 effect on the date of enactment of this Act. The evaluation  
10 shall include—

11 (1) a characterization of the various types and  
12 composition of such discharges by different classes  
13 of vessels;

14 (2) the volumes of such discharges for rep-  
15 resentative individual vessels and by classes of ves-  
16 sels in the aggregate;

17 (3) an analysis of current technologies or best  
18 management practices, and their associated costs,  
19 used to control such discharges;

20 (4) an analysis of the extent to which such dis-  
21 charges are currently subject to regulation under ex-  
22 isting Federal laws or binding international obliga-  
23 tions of the United States;

24 (5) the locations of such discharges;

1           (6) analyses and conclusions as to the nature  
2           and extent of potential effects of such discharges on  
3           human health, welfare, and the environment;

4           (7) an analysis of practicable measures, includ-  
5           ing best management practices, to control such dis-  
6           charges; and

7           (8) recommendations as to steps, including reg-  
8           ulatory changes, together with a schedule for imple-  
9           mentation, that are appropriate to address such dis-  
10          charges.

11         (b) PUBLIC COMMENT.—The Commandant shall—

12           (1) publish a draft report containing findings,  
13           conclusions, and recommendations from the evalua-  
14           tion and review required by subsection (a) in the  
15           Federal Register;

16           (2) accept public comments regarding such re-  
17           port for a period of not less than 120 days after the  
18           date the report is published in the Federal Register;  
19           and

20           (3) consider any such public comments in the  
21           preparation of a final report under subsection (c).

22         (c) FINAL REPORT.—Not later than 2 years after the  
23         date of the enactment of this Act, the Commandant shall  
24         prepare and submit to the Senate Committee on Com-  
25         merce, Science, and Transportation and the House of Rep-

1 representatives Committee on Transportation and Infrastruc-  
 2 ture a final report containing findings, conclusions, and  
 3 recommendations from the evaluation and review required  
 4 by subsection (a).

5 **SEC. 4. DISCHARGES INCIDENTAL TO NORMAL OPERATION**  
 6 **OF VESSELS.**

7 (a) STATEMENT OF PURPOSE.—The purposes of this  
 8 section are—

9 (1) to provide for the establishment of nation-  
 10 ally uniform, environmentally sound, standards for  
 11 discharges incidental to the normal operation of ves-  
 12 sels; and

13 (2) to establish procedures for designation of no  
 14 discharge zones as necessary to protect waters with-  
 15 in the jurisdiction of a State from the effects of dis-  
 16 charges incidental to the normal operation of vessels.

17 (b) EVALUATION AND REVIEW OF CERTAIN DIS-  
 18 CHARGES.—Subtitle B of the Nonindigenous Aquatic Nui-  
 19 sance Prevention and Control Act of 1990 (16 U.S.C.  
 20 4711 et seq.) is amended by adding at the end thereof  
 21 the following:

22 **“SEC. 1105. REGULATION OF CERTAIN DISCHARGES.**

23 “(a) IN GENERAL.—Notwithstanding any other pro-  
 24 vision of law, any requirement to obtain a permit for a  
 25 discharge incidental to the normal operation of a vessel



1 is suspended beginning on the date of enactment of the  
2 Vessel Discharge Evaluation and Review Act. The Com-  
3 mandant of the Coast Guard, in consultation with the  
4 heads of other appropriate Federal agencies, as deter-  
5 mined by the Commandant, and based on the findings of  
6 the final report submitted under section 3(c) of the Vessel  
7 Discharge Evaluation and Review Act, shall promulgate  
8 a final rule to establish an appropriate program for estab-  
9 lishing enforceable uniform national discharge standards,  
10 in lieu of any permit requirement established pursuant to  
11 any other provision of law, that are modeled in whole or  
12 in part on the regulatory program for vessels of the Armed  
13 Forces and based upon the best available technology. Any  
14 such national uniform discharge standards or prohibitions  
15 shall be enforced by the Secretary and may be enforced  
16 by a State.

17 “(b) JUDICIAL REVIEW.—

18 “(1) An interested person may file a petition  
19 for review of a final regulation promulgated under  
20 this section in the United States Court of Appeals  
21 for the District of Columbia Circuit. Any such peti-  
22 tion shall be filed within 120 days after the date no-  
23 tice of such promulgation appears in the Federal  
24 Register, except that if such petition is based solely  
25 on grounds arising after such 120th day, then any

1 petition for review under this subsection shall be  
2 filed within 120 days after such grounds arise.

3 “(2) Any regulation for which review could have  
4 been obtained under paragraph (1) of this sub-  
5 section is not subject to judicial review in any civil  
6 or criminal proceeding for enforcement.

7 “(c) EFFECT ON STATE AUTHORITY.—

8 “(1) Notwithstanding any other provision of  
9 law, except as provided in this subsection, no State  
10 or political subdivision thereof may adopt or enforce  
11 any statute or regulation of the State or political  
12 subdivision with respect to a discharge incidental to  
13 the normal operation of a vessel subject to evalua-  
14 tion under section 3 of the Vessel Discharge Evalua-  
15 tion and Review Act after the promulgation of a  
16 final rule under that subsection.

17 “(2) If a State determines that the protection  
18 and enhancement of the quality of some or all of the  
19 waters within the State require greater environ-  
20 mental protection, the State may prohibit one or  
21 more such discharges incidental to the normal oper-  
22 ation of a vessel. No such prohibition shall apply  
23 until the Commandant, in consultation with the  
24 heads of appropriate Federal agencies, as deter-  
25 mined by the Commandant, determines that—

1           “(A) adequate facilities for the safe and  
2           sanitary removal of the relevant discharges are  
3           reasonably available for the waters to which the  
4           prohibition would apply; and

5           “(B) such prohibition does not create an  
6           undue burden on commerce.

7           “(3) The Governor of any State may submit a  
8           petition requesting that the Commandant review the  
9           regulations promulgated under subsection (a) if  
10          there is significant new information, not available  
11          previously, that could reasonably result in a change  
12          to the regulation. The petition shall be accompanied  
13          by the scientific and technical information on which  
14          the petition is based.

15          “(d) CERTAIN DISCHARGES UNAFFECTED.—Nothing  
16          in this section shall be interpreted to apply to—

17               “(1) a vessel of the Armed Forces;

18               “(2) a discharge of vessel sewage; or

19               “(3) any discharge not subject to the permit ex-  
20          clusion contained in section 122.3(a) of title 40,  
21          Code of Federal Regulations, as in effect on the date  
22          of enactment of the Vessel Discharge Evaluation  
23          and Review Act.

24          “(e) EXCLUSIONS.—No permit shall be required  
25          under any other provision of law for, nor shall any uniform

1 national discharge standard promulgated under subsection  
2 (a) or prohibitions established under subsection (c)(2)  
3 apply to—

4 “(1) a discharge incidental to the normal oper-  
5 ation of a vessel that is—

6 “(A) less than 79 feet in length and en-  
7 gaged in commercial service (as defined in sec-  
8 tion 2101 of title 46, United States Code);

9 “(B) a fishing vessel (as defined in section  
10 2101 of title 46, United States Code) less than  
11 125 feet in length;

12 “(C) a fish tender vessel (as defined in sec-  
13 tion 2101 of title 46, United States Code) less  
14 than 125 feet in length; or

15 “(D) a recreational vessel (as defined in  
16 section 2101 of title 46, United States Code);  
17 or

18 “(2) a discharge of ballast water, of sediment,  
19 or from other vessel-related vectors subject to sec-  
20 tion 1101;

21 “(3) the placement, release, or discharge of  
22 equipment, devices, or other material from a vessel  
23 for the sole purpose of conducting research on the  
24 aquatic environment or its natural resources in ac-

1 cordance with generally recognized scientific meth-  
2 ods, principles, or techniques;

3 “(4) any discharge from a vessel authorized by  
4 an On-Scene Coordinator in accordance with part  
5 300 of title 40, Code of Federal Regulations, or sec-  
6 tion 153.10(e) of title 33, Code of Federal Regula-  
7 tions;

8 “(5) discharges from a vessel that are necessary  
9 to secure the safety of the vessel or human life or  
10 to suppress fires onboard or at shoreside facilities;  
11 or

12 “(6) a vessel of the armed forces of a foreign  
13 nation.

14 “(f) INCIDENTAL DISCHARGE DEFINED.—In this  
15 section, the term ‘discharge incidental to the normal oper-  
16 ation of a vessel’—

17 “(1) means a discharge, including—

18 “(A) graywater, bilge water, cooling water,  
19 weather deck runoff, oil water separator efflu-  
20 ent, and any other pollutant discharge from the  
21 operation of a marine propulsion system, ship-  
22 board maneuvering system, crew habitability  
23 system, or installed major equipment, such as  
24 an aircraft carrier elevator or a catapult, or

1 from a protective, preservative, or absorptive  
2 application to the hull of the vessel; and

3 “(B) a discharge in connection with the  
4 testing, maintenance, and repair of a system  
5 described in subparagraph (A) whenever the  
6 vessel is waterborne; and

7 “(2) does not include—

8 “(A) a discharge of rubbish, trash, gar-  
9 bage, or other such material discharged over-  
10 board;

11 “(B) an air emission resulting from the op-  
12 eration of a vessel propulsion system, motor  
13 driven equipment, or incinerator; or

14 “(C) a discharge that is not covered by  
15 part 122.3 of title 40, Code of Federal Regula-  
16 tions (as in effect on the date of enactment of  
17 the Vessel Discharge Evaluation and Review  
18 Act).

19 “(g) APPLICATION WITH OTHER STATUTES.—Not-  
20 withstanding any other provision of law, this section shall  
21 be the exclusive statutory authority for regulation by the  
22 Federal Government of vessel discharges to which this sec-  
23 tion applies.”.

○

110TH CONGRESS  
2D SESSION

# S. 2645

To require the Commandant of the Coast Guard, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, to conduct an evaluation and review of certain vessel discharges.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2008

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To require the Commandant of the Coast Guard, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, to conduct an evaluation and review of certain vessel discharges.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Vessel Discharge Eval-  
5       uation and Review Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) Starting with passage of the Act to Prevent  
2           Pollution from Ships in 1980, the United States  
3           Coast Guard has been the principal Federal author-  
4           ity charged with administering, enforcing, and pre-  
5           scribing regulations relating to the discharge of pol-  
6           lutants from vessels engaged in maritime commerce  
7           and transportation.

8           (2) There are more than 16 million State-reg-  
9           istered boats, 110,000 commercial fishing vessels,  
10          and 53,000 freight and tank barges operating in  
11          United States waters. Since 1973 certain discharges  
12          incidental to the normal operation of these vessels  
13          have been exempted from regulation.

14          (3) When required, Congress has specifically  
15          mandated Federal programs for control of dis-  
16          charges from vessels, including—

17                (A) the Act to Prevent Pollution from  
18                Ships (33 U.S.C. 1901 et seq.) in 1980;

19                (B) the Nonindigenous Aquatic Nuisance  
20                Prevention and Control Act of 1990 (16 U.S.C.  
21                4701 et seq.);

22                (C) the National Invasive Species Act of  
23                1996 (16 U.S.C. 4701 note); and

24                (D) section 1401 of the 2000 Omnibus  
25                Consolidated and Emergency Supplemental Ap-



1           appropriations for Fiscal Year 2001, which pre-  
2           vented discharge of treated sewage and  
3           graywater in certain areas of Alaska.

4 **SEC. 3. EVALUATION AND REVIEW OF CERTAIN DIS-**  
5 **CHARGES.**

6           (a) IN GENERAL.—The Commandant of the Coast  
7 Guard, in consultation with the Under Secretary of Com-  
8 merce for Oceans and Atmosphere and the head of any  
9 other appropriate agency or department of the United  
10 States, shall conduct an evaluation and review of vessel  
11 discharges, other than aquatic nuisance species, that are  
12 described in section 122.3(a) of title 40, Code of Federal  
13 Regulations, as in effect on January 5, 1989. The evalua-  
14 tion shall include—

15           (1) a characterization of the various types and  
16 composition of such discharges by different classes  
17 of vessels;

18           (2) the volumes of such discharges for rep-  
19 resentative individual vessels and by classes of ves-  
20 sels in the aggregate;

21           (3) an analysis of current technologies or best  
22 management practices, and their associated costs,  
23 used to control such discharges;

24           (4) an analysis of the extent to which such dis-  
25 charges are currently subject to regulation under ex-

1       isting Federal laws or binding international obliga-  
2       tions of the United States;

3               (5) the locations of such discharges;

4               (6) analyses and conclusions as to the nature  
5       and extent of potential effects of such discharges on  
6       human health, welfare, and the environment;

7               (7) an analysis of practicable measures, includ-  
8       ing best management practices, to control such dis-  
9       charges; and

10              (8) recommendations as to steps, including reg-  
11       ulatory changes, together with a schedule for imple-  
12       mentation, that are appropriate to address such dis-  
13       charges.

14       (b) PUBLIC COMMENT.—The Commandant shall—

15              (1) publish a draft report containing findings,  
16       conclusions, and recommendations from the evalua-  
17       tion and review required by subsection (a) in the  
18       Federal Register;

19              (2) accept public comments regarding such  
20       draft for a period of not less than 120 days after the  
21       date the draft is published in the Federal Register;  
22       and

23              (3) consider any such public comments in the  
24       preparation of the final report.

1 (c) FINAL REPORT.—Not later than 2 years after the  
2 date of the enactment of this Act, the Commandant shall  
3 prepare and submit to the Senate Committee on Com-  
4 merce, Science, and Transportation and the House of Rep-  
5 resentatives Committee on Transportation and Infrastruc-  
6 ture a final report containing findings, conclusions, and  
7 recommendations from the evaluation and review required  
8 by subsection (a).

9 **SEC. 4. DISCHARGES INCIDENTAL TO NORMAL OPERATION**  
10 **OF VESSELS.**

11 (a) STATEMENT OF PURPOSE.—The purposes of this  
12 section are—

13 (1) to provide for the establishment of nation-  
14 ally uniform, environmentally sound, standards for  
15 discharges incidental to the normal operation of ves-  
16 sels; and

17 (2) to establish procedures for designation of no  
18 discharge zones as necessary to protect waters with-  
19 in the jurisdiction of a State from the effects of dis-  
20 charges incidental to the normal operation of vessels.

21 (b) EVALUATION AND REVIEW OF CERTAIN DIS-  
22 CHARGES.—Subtitle B of the Nonindigenous Aquatic Nui-  
23 sance Prevention and Control Act of 1990 (16 U.S.C.  
24 4711 et seq.) is amended by adding at the end thereof  
25 the following:

1 **“SEC. 1105. REGULATION OF CERTAIN DISCHARGES.**

2       “(a) IN GENERAL.—Notwithstanding any other pro-  
3 vision of law, any requirement to obtain a permit for a  
4 discharge incidental to the normal operation of a vessel  
5 is suspended beginning on the date of enactment of the  
6 Vessel Discharge Evaluation and Review Act. The Com-  
7 mandant of the Coast Guard, in consultation with the  
8 Under Secretary of Commerce for Oceans and Atmosphere  
9 shall promulgate a final rule to establish an appropriate  
10 program for establishing enforceable uniform national dis-  
11 charge standards, in lieu of any permit requirement estab-  
12 lished pursuant to any other provision of law, that are  
13 modeled in whole or in part on the regulatory program  
14 for vessels of the Armed Forces and based upon the best  
15 available technology. Any such national uniform discharge  
16 standards or prohibitions shall be enforced by the Sec-  
17 retary of the department in which the Coast Guard is op-  
18 erating and may be enforced by a State.

19       “(b) JUDICIAL REVIEW.—

20               “(1) An interested person may file a petition  
21 for review of a final regulation promulgated under  
22 this section in the United States Court of Appeals  
23 for the District of Columbia Circuit. Any such peti-  
24 tion shall be filed within 120 days after the date no-  
25 tice of such promulgation appears in the Federal  
26 Register, except that if such petition is based solely

1 on grounds arising after such 120th day, then any  
2 petition for review under this subsection shall be  
3 filed within 120 days after such grounds arise.

4 “(2) Any regulation for which review could have  
5 been obtained under paragraph (1) of this sub-  
6 section is not subject to judicial review in any civil  
7 or criminal proceeding for enforcement.

8 “(c) EFFECT ON STATE AUTHORITY.—

9 “(1) Notwithstanding any other provision of  
10 law, except as provided in this subsection, no State  
11 or political subdivision thereof may adopt or enforce  
12 any statute or regulation of the State or political  
13 subdivision with respect to a discharge incidental to  
14 the normal operation of a vessel subject to evalua-  
15 tion under section 3 of the Vessel Discharge Evalua-  
16 tion and Review Act after the promulgation of a  
17 final rule under that subsection.

18 “(2) If a State determines that the protection  
19 and enhancement of the quality of some or all of the  
20 waters within the State require greater environ-  
21 mental protection, the State may prohibit one or  
22 more such discharges incidental to the normal oper-  
23 ation of a vessel. No such prohibition shall apply  
24 until—

1           “(A) the Administrator determines that  
2           adequate facilities for the safe and sanitary re-  
3           moval of the relevant discharges are reasonably  
4           available for the waters to which the prohibition  
5           would apply; and

6           “(B) the Under Secretary of Commerce for  
7           Oceans and Atmosphere determines that such  
8           prohibition does not create an undue burden on  
9           Commerce.

10          “(3) The Governor of any State may submit a  
11          petition requesting that the Commandant review the  
12          regulations promulgated under subsection (a) if  
13          there is significant new information, not available  
14          previously, that could reasonably result in a change  
15          to the regulation. The petition shall be accompanied  
16          by the scientific and technical information on which  
17          the petition is based.

18          “(d) CERTAIN DISCHARGES UNAFFECTED.—Nothing  
19          this section shall be interpreted to apply to—

20               “(1) a vessel of the Armed Forces;

21               “(2) a discharge of vessel sewage; or

22               “(3) any discharge not subject to the permit ex-  
23          clusion contained in section 122.3(a) of title 40,  
24          Code of Federal Regulations, as in effect on March  
25          29, 2005.

1       “(e) EXCLUSIONS.—No permit shall be required  
2 under any other provision of law for, nor shall any uniform  
3 national discharge standard promulgated under subsection  
4 (a) apply to—

5               “(1) a discharge incidental to the normal oper-  
6 ation of a vessel that is less than 79 feet in length  
7 and is—

8                       “(A) engaged in commercial service (as de-  
9 fined in section 2101(5) of title 46, United  
10 States Code); or

11                      “(B) a recreational vessel (as defined in  
12 section 2101(25) of title 46, United States  
13 Code); or

14               “(2) a discharge of aquatic nuisance species in  
15 vessel ballast water or sediment or from other vessel-  
16 related vectors of aquatic nuisance species subject to  
17 section 1101 of the Nonindigenous Aquatic Nuisance  
18 Prevention and Control Act of 1990 (16 U.S.C.  
19 4711);

20               “(3) the placement, release, or discharge of  
21 equipment, devices, or other material from a vessel  
22 for the sole purpose of conducting research on the  
23 aquatic environment or its natural resources in ac-  
24 cordance with generally recognized scientific meth-  
25 ods, principles, or techniques;

1           “(4) any discharge from a vessel authorized by  
2           an On-Scene Coordinator in accordance with part  
3           300 of title 40, Code of Federal Regulations, or sec-  
4           tion 153.10(e) of title 33, Code of Federal Regula-  
5           tions;

6           “(5) discharges from a vessel that are necessary  
7           to secure the safety of the vessel or human life or  
8           to suppress fires onboard or at shoreside facilities;  
9           or

10           “(6) a vessel of the armed forces of a foreign  
11           nation when engaged in noncommercial service.

12           “(f) INCIDENTAL DISCHARGE DEFINED.—In this  
13           section, the term ‘discharge incidental to the normal oper-  
14           ation of a vessel’—

15           “(1) means a discharge, including—

16           “(A) graywater, bilge water, cooling water,  
17           weather deck runoff, ballast water, oil water  
18           separator effluent, and any other pollutant dis-  
19           charge from the operation of a marine propul-  
20           sion system, shipboard maneuvering system,  
21           crew habitability system, or installed major  
22           equipment, such as an aircraft carrier elevator  
23           or a catapult, or from a protective, preservative,  
24           or absorptive application to the hull of the ves-  
25           sel; and



1           “(B) a discharge in connection with the  
2           testing, maintenance, and repair of a system  
3           described in subparagraph (A) whenever the  
4           vessel is waterborne; and

5           “(2) does not include—

6           “(A) a discharge of rubbish, trash, gar-  
7           bage, or other such material discharged over-  
8           board;

9           “(B) an air emission resulting from the op-  
10          eration of a vessel propulsion system, motor  
11          driven equipment, or incinerator; or

12          “(C) a discharge that is not covered by  
13          part 122.3 of title 40, Code of Federal Regula-  
14          tions (as in effect on Feb. 10, 1996).

15          “(g) APPLICATION WITH OTHER STATUTES.—Not-  
16          withstanding any other provision of law, this section shall  
17          be the exclusive statutory authority for regulation by the  
18          Federal Government of vessel discharges to which this sec-  
19          tion applies.”.

○

110TH CONGRESS  
2D SESSION

# H. R. 1187

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## AN ACT

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Gulf of the Farallones  
3 and Cordell Bank National Marine Sanctuaries Boundary  
4 Modification and Protection Act”.

5 **SEC. 2. FINDINGS.**

6       The Congress finds the following:

7           (1) The Gulf of the Farallones extends approxi-  
8 mately 100 miles along the coast of Marin and  
9 Sonoma counties of northern California. It includes  
10 approximately one-half of California’s nesting  
11 seabirds, rich benthic marine life on hard-rock sub-  
12 strate, prolific fisheries, and substantial concentra-  
13 tions of resident and seasonally migratory marine  
14 mammals.

15           (2) Cordell Bank is adjacent to the Gulf of the  
16 Farallones and is a submerged island with spectac-  
17 ular, unique, and nationally significant marine envi-  
18 ronments.

19           (3) These marine environments have national  
20 and international significance, exceed the biological  
21 productivity of tropical rain forests, and support  
22 high levels of biological diversity.

23           (4) These biological communities are easily sus-  
24 ceptible to damage from human activities, and must  
25 be properly conserved for themselves and to protect

1 the economic viability of their contribution to na-  
2 tional and regional economies.

3 (5) The Gulf of Farallones and Cordell Bank  
4 include some of the Nation's richest fishing grounds,  
5 supporting important commercial and recreational  
6 fisheries. These fisheries are regulated by State and  
7 Federal fishery agencies and are supported and fos-  
8 tered through protection of the waters and habitats  
9 of Gulf of the Farallones National Marine Sanctuary  
10 and Cordell Bank National Marine Sanctuary.

11 (6) The report of the Commission on Ocean  
12 Policy established by Public Law 106–256 calls for  
13 comprehensive protection for the most productive  
14 ocean environments and recommends that they be  
15 managed as ecosystems.

16 (7) New scientific discoveries by the National  
17 Marine Sanctuary Program support comprehensive  
18 protection for these marine environments by broad-  
19 ening the geographic scope of the existing Gulf of  
20 the Farallones National Marine Sanctuary and the  
21 Cordell Bank National Marine Sanctuary.

22 (8) Cordell Bank is at the nexus of an ocean  
23 upwelling system, which produces the highest bio-  
24 mass concentrations on the west coast of the United  
25 States.

1   **SEC. 3. POLICY AND PURPOSE.**

2           (a) **POLICY.**—It is the policy of the United States in  
3 this Act to protect and preserve living and other resources  
4 of the Gulf of the Farallones and Cordell Bank marine  
5 environments.

6           (b) **PURPOSE.**—The purposes of this Act are the fol-  
7 lowing:

8                   (1) To extend the boundaries of the Gulf of the  
9 Farallones National Marine Sanctuary and the  
10 Cordell Bank National Marine Sanctuary to the  
11 areas described in section 5.

12                   (2) To strengthen the protections that apply in  
13 the Sanctuaries.

14                   (3) To educate and interpret for the public the  
15 ecological value and national importance of those  
16 marine environments.

17                   (4) To manage human uses of the Sanctuaries  
18 under this Act and the National Marine Sanctuaries  
19 Act (16 U.S.C. 1431 et seq.).

20           (c) **EFFECT ON FISHING ACTIVITIES.**—Nothing in  
21 this Act is intended to alter any existing authorities re-  
22 garding the conduct and location of fishing activities in  
23 the Sanctuaries.

24   **SEC. 4. DEFINITIONS.**

25           In this Act:

1           (1) MARICULTURE.—The term “mariculture”  
2       means the propagation or rearing of aquatic orga-  
3       nisms in controlled or selected aquatic environments  
4       for any commercial, recreational, or public purpose.

5           (2) CORDELL BANK NMS.—The term “Cordell  
6       Bank NMS” means the Cordell Bank National Ma-  
7       rine Sanctuary.

8           (3) FARALLONES NMS.—The term “Farallones  
9       NMS” means the Gulf of the Farallones National  
10      Marine Sanctuary.

11          (4) SANCTUARIES.—The term “Sanctuaries”  
12      means the Gulf of the Farallones National Marine  
13      Sanctuary and the Cordell Bank National Marine  
14      Sanctuary, as expanded by section 5.

15          (5) SECRETARY.—The term “Secretary” means  
16      the Secretary of Commerce.

17 **SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY AD-**  
18 **JUSTMENTS.**

19      (a) GULF OF THE FARALLONES.—

20          (1) BOUNDARY ADJUSTMENT.—The areas de-  
21      scribed in paragraph (2) are added to the existing  
22      Gulf of the Farallones National Marine Sanctuary  
23      described in part 922.80 of title 15, Code of Federal  
24      Regulations.

25          (2) AREAS INCLUDED.—

1 (A) IN GENERAL.—The areas referred to  
2 in paragraph (1) consist of the following:

3 (i) All submerged lands and waters,  
4 including living marine and other resources  
5 within and on those lands and waters,  
6 from the mean high water line to the  
7 boundary described in subparagraph (B).

8 (ii) The submerged lands and waters,  
9 including living marine and other resources  
10 within those waters, within the approxi-  
11 mately two-square-nautical-mile portion of  
12 the Cordell Bank NMS (as in effect imme-  
13 diately before the enactment of this Act)  
14 that is located south of the area that is  
15 added to Cordell Bank NMS by subsection  
16 (b)(2), which are transferred to the  
17 Farallones NMS from the Cordell Bank  
18 NMS.

19 (B) BOUNDARY DESCRIBED.—The bound-  
20 ary referred to in subparagraph (A)(i) com-  
21 mences from the mean high water line  
22 (MHWL) at 39.00000 degrees north in a west-  
23 ward direction approximately 29 nautical miles  
24 (nm) to 39.00000 north, 124.33333 west. The  
25 boundary then extends in a southeasterly direc-

1           tion to 38.30000 degrees north, 124.00000 de-  
2           grees west, approximately 44 nm westward of  
3           Bodega Head. The boundary then extends east-  
4           ward to the most northeastern corner of the ex-  
5           panded Cordell Bank NMS at 38.30000 north,  
6           123.20000 degrees west, approximately 6 nm  
7           miles westward of Bodega Head. The boundary  
8           then extends in a southeasterly direction to  
9           38.26500 degrees north, 123.18166 degrees  
10          west at the northwestern most point of the cur-  
11          rent Gulf of the Farallones Boundary. The  
12          boundary then follows the current northern  
13          Gulf of the Farallones NMS boundary in a  
14          northeasterly direction to the MHWL near  
15          Bodega Head. The boundary then follows the  
16          MHWL in a northeasterly direction to the com-  
17          mencement point at the intersection of the  
18          MHWL and 39.00000 north. Coordinates listed  
19          in this subparagraph are based on the North  
20          American Datum 1983 and the geographic pro-  
21          jection.

22       (b) CORDELL BANK.—

23           (1) BOUNDARY ADJUSTMENT.—The area de-  
24          scribed in paragraph (2) is added to the existing  
25          Cordell Bank National Marine Sanctuary described



1 in part 922.80 of title 15, Code of Federal Regula-  
2 tions.

3 (2) AREA INCLUDED.—

4 (A) IN GENERAL.—The area referred to in  
5 paragraph (1) consists of all submerged lands  
6 and waters, including living marine and other  
7 resources within those waters, within the  
8 boundary described in subparagraph (B).

9 (B) BOUNDARY.—The boundary referred  
10 to in subparagraph (A) commences at the most  
11 northeastern point of the current Cordell Bank  
12 NMS boundary at 38.26500 degrees north,  
13 123.18166 degrees west and extends  
14 northwestward to 38.30000 degrees north,  
15 123.20000 degrees west, approximately 6 nau-  
16 tical miles (nm) west of Bodega Head. The  
17 boundary then extends westward to 38.30000  
18 degrees north, 124.00000 degrees west, ap-  
19 proximately 44 nautical miles west of Bodega  
20 Head. The boundary then turns southeastward  
21 and continues approximately 34 nautical miles  
22 to 37.76687 degrees north, 123.75142 degrees  
23 west, and then approximately 15 nm eastward  
24 to 37.76687 north, 123.42694 west at an inter-  
25 section with the current Cordell Bank NMS

1 boundary. The boundary then follows the cur-  
2 rent Cordell Bank NMS, which is coterminous  
3 with the current Gulf of the Farallones bound-  
4 ary, in a northeasterly and the northwesterly di-  
5 rection to its commencement point at 38.26500  
6 degrees north, 123.18166 degrees west. Coordi-  
7 nates listed in this subparagraph are based on  
8 NAD83 Datum and the geographic projection.

9 (c) INCLUSION IN THE SYSTEM.—The areas included  
10 in the Sanctuaries under subsections (a) and (b) shall be  
11 managed as part of the National Marine Sanctuary Sys-  
12 tem, established by section 301(c) of the National Marine  
13 Sanctuaries Act (16 U.S.C. 1431(c)), in accordance with  
14 that Act.

15 (d) UPDATED NOAA CHARTS.—The Secretary  
16 shall—

17 (1) produce updated National Oceanic and At-  
18 mospheric Administration nautical charts for the  
19 areas in which the Sanctuaries are located; and

20 (2) include on those nautical charts the bound-  
21 aries of the Sanctuaries, as revised by this Act.

22 (e) BOUNDARY ADJUSTMENTS.—In producing re-  
23 vised nautical charts as directed by subsection (d) and in  
24 describing the boundaries in regulations issued by the Sec-  
25 retary, the Secretary may make technical modifications to

1 the boundaries described in this section for clarity and  
2 ease of identification, as appropriate.

3 **SEC. 6. PROHIBITION OF OIL AND GAS LEASING AND PER-**  
4 **MITTING.**

5 No lease or permit may be issued that authorizes ex-  
6 ploration, development, production, or transporting by  
7 pipeline of minerals or hydrocarbons within the Sanc-  
8 tuaries.

9 **SEC. 7. MANAGEMENT PLANS AND REGULATIONS.**

10 (a) INTERIM PLAN.—The Secretary shall complete an  
11 interim supplemental management plan for the Sanc-  
12 tuaries by not later than 24 months after the date of en-  
13 actment of this Act, that focuses on management in the  
14 areas added to the Sanctuaries under this Act. The Sec-  
15 retary shall ensure that the supplemental plan does not  
16 weaken existing resource protections.

17 (b) REVISED PLANS.—The Secretary shall issue a re-  
18 vised comprehensive management plan for the Sanctuaries  
19 during the first management review initiated after the  
20 date of the enactment of this Act under section 304(e)  
21 of the National Marine Sanctuaries Act (16 U.S.C.  
22 1434(e)) for the Sanctuaries, and issue such final regula-  
23 tions as may be necessary.

24 (c) APPLICATION OF EXISTING REGULATIONS.—The  
25 regulations for the Gulf of the Farallones National Marine

1 Sanctuary (15 C.F.R. 922, subpart H) and the Cordell  
2 Bank National Marine Sanctuary (15 C.F.R. 922, subpart  
3 K), including any changes made as a result of a joint man-  
4 agement plan review for the Sanctuaries conducted pursu-  
5 ant to section 304(e) of the National Marine Sanctuaries  
6 Act (16 U.S.C. 1434(e)), shall apply to the areas added  
7 to each Sanctuary, respectively, under section 5 until the  
8 Secretary modifies such regulations in accordance with  
9 subsection (d) of this section.

10 (d) REVISED REGULATIONS.—

11 (1) IN GENERAL.—The Secretary shall carry  
12 out an assessment of necessary revisions to the regu-  
13 lations for the Sanctuaries in a manner that ensures  
14 the protection of the resources of the Sanctuaries  
15 consistent with the purposes and policies of the Na-  
16 tional Marine Sanctuaries Act and the goals and ob-  
17 jectives for the new areas added to each sanctuary  
18 under section 5 of this Act. The assessment and any  
19 corresponding regulatory changes shall be complete  
20 within 24 months of the date of enactment of this  
21 Act.

22 (2) REGULATION OF SPECIFIC ACTIVITIES.—In  
23 revising the regulations for the Sanctuaries pursuant  
24 to this subsection, the Secretary shall consider ap-  
25 propriate regulations for the following activities:

1 (A) The deposit or release of introduced  
2 species.

3 (B) The alteration of stream and river  
4 drainage into the Sanctuaries.

5 (C) Mariculture operations in the Sanc-  
6 tuaries.

7 (3) CONSIDERATIONS.—In revising the regula-  
8 tions for the Sanctuaries pursuant to this sub-  
9 section, the Secretary shall consider exempting from  
10 further regulation under the National Marine Sanc-  
11 tuaries Act and this Act discharges that are per-  
12 mitted under a National Pollution Discharge Elimi-  
13 nation System permit in effect on the date of enact-  
14 ment of this Act, or under a new or renewed Na-  
15 tional Pollution Discharge Elimination System per-  
16 mit that does not increase pollution in the Sanc-  
17 tuaries and that originates—

18 (A) in the Russian River Watershed out-  
19 side the boundaries of the Gulf of the  
20 Farallones National Marine Sanctuary; or

21 (B) from the Bodega Marine Laboratory.

22 (e) CONTENTS OF PLANS.—Revisions to each com-  
23 prehensive management plan under this section shall, in  
24 addition to matters required under section 304(a)(2) of

1 the Marine Protection, Research, and Sanctuaries Act of  
2 1972 (16 U.S.C. 1434(A)(2))—

3 (1) facilitate all appropriate public and private  
4 uses of the national marine sanctuary to which each  
5 respective plan applies consistent with the primary  
6 objective of sanctuary resource protection;

7 (2) establish temporal and geographical zoning  
8 if necessary to ensure protection of sanctuary re-  
9 sources;

10 (3) identify priority needs for research that  
11 will—

12 (A) improve management of the Sanc-  
13 tuaries;

14 (B) diminish threats to the health of the  
15 ecosystems in the Sanctuaries; or

16 (C) fulfill both of subparagraphs (A) and  
17 (B);

18 (4) establish a long-term ecological monitoring  
19 program and database, including the development  
20 and implementation of a resource information sys-  
21 tem to disseminate information on the Sanctuaries'  
22 ecosystem, history, culture, and management;

23 (5) identify alternative sources of funding need-  
24 ed to fully implement the plan's provisions and sup-  
25 plement appropriations under section 313 of the Ma-

1       rine Protection, Research, and Sanctuaries Act of  
2       1972 (16 U.S.C. 1444);

3           (6) ensure coordination and cooperation be-  
4       tween sanctuary superintendents and other Federal,  
5       State, and local authorities with jurisdiction over  
6       areas within or adjacent to the Sanctuaries to deal  
7       with issues affecting the Sanctuaries, including sur-  
8       face water run-off, stream and river drainages, and  
9       navigation;

10          (7) in the case of revisions to the plan for the  
11       Farallones NMS, promote cooperation with farmers  
12       and ranchers operating in the watersheds adjacent  
13       to the Farallones NMS and establish voluntary best  
14       management practices programs;

15          (8) promote cooperative and educational pro-  
16       grams with fishing vessel operators and crews oper-  
17       ating in the waters of the Sanctuaries, and, when-  
18       ever possible, include individuals who engage in fish-  
19       ing and their vessels in cooperative research, assess-  
20       ment, and monitoring programs and educational  
21       programs to promote sustainable fisheries, conserva-  
22       tion of resources, and navigational safety; and

23          (9) promote education and public awareness,  
24       among users of the Sanctuaries, about the need for

1 marine resource conservation and safe navigation  
2 and marine transportation.

3 (f) PUBLIC PARTICIPATION.—The Secretary shall  
4 provide for participation by the general public in the revi-  
5 sion of the comprehensive management plans and relevant  
6 regulations under this section.

7 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated to the Sec-  
9 retary—

10 (1) \$3,000,000 to carry out this Act for each  
11 of fiscal years 2009 through 2013, other than for  
12 construction and acquisition projects; and

13 (2) \$3,500,000 for fiscal year 2009 and such  
14 sums as may be necessary for each of fiscal years  
15 2010 through 2013 for construction and acquisition  
16 projects related to the Sanctuaries.



Passed the House of Representatives March 31,  
2008.

Attest:

*Clerk.*



110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 1187**

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## **AN ACT**

To expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes.

TITLE 16--CONSERVATION

CHAPTER 16--TUNA CONVENTIONS

Sec. 951. Definitions

As used in this chapter, the term--

(a) ``convention'' includes (1) the Convention for the Establishment of an International Commission for the Scientific Investigation of Tuna, signed at Mexico City, January 25, 1949, by the United States of America and the United Mexican States, (2) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica, or both such conventions, as the context requires;

(b) ``commission'' includes (1) the International Commission for the Scientific Investigation of Tuna, (2) the Inter-American Tropical Tuna Commission provided for by the conventions referred to in subsection (a) of this section, or both such commissions, as the context requires;

(c) ``United States Commissioners'' means the members of the commissions referred to in subsection (b) of this section representing the United States of America and appointed pursuant to the terms of the pertinent convention and section 952 of this title;

(d) ``person'' means every individual, partnership, corporation, and association subject to the jurisdiction of the United States; and

(e) ``United States'' shall include all areas under the sovereignty of the United States, the Trust Territory of the Pacific Islands, and the Canal Zone.

(Sept. 7, 1950, ch. 907, Sec. 2, 64 Stat. 777; Pub. L. 87-814, Sec. 1, Oct. 15, 1962, 76 Stat. 923.)

References in Text

For definition of Canal Zone, referred to in subsec. (e), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Amendments

1962--Subsec. (e). Pub. L. 87-814 substituted definition of ``United States'' for definition of ``enforcement agency''.

#### Effective Date

Section 14 of act Sept. 7, 1950, provided: ``This Act [this chapter] shall take effect with respect to each of the conventions upon the entry into force of that convention, unless such entry into force shall be prior to the date of approval of this Act [Sept. 7, 1950] in which case this Act [this chapter] shall take effect immediately.'' The Costa Rican convention was ratified on March 3, 1950, and the Mexican convention on July 11, 1950. Therefore, the act took effect upon its approval on Sept. 7, 1950.

#### Short Title

Section 1 of act Sept. 7, 1950, provided: ``That this Act [enacting this chapter] may be cited as the `Tuna Conventions Act of 1950'.''

#### Separability

Section 13 of act Sept. 7, 1950, provided: ``If any provision of this Act [this chapter] or the application of such provision to any circumstances or persons shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other circumstances or persons shall not be affected thereby.''

#### Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### Landing of Catch of Fish by Foreign Vessels

Section 6 of Pub. L. 87-814 provided that: ``Nothing in this Act [amending this section and sections 955 to 957, 959 of this title] shall be construed to amend or repeal the provisions of section 4311 of the Revised Statutes, as amended (46 U.S.C. 251).''

#### Sec. 952. Commissioners; number, appointment, and qualification

The United States shall be represented on the two commissions by a total of not more than four United States Commissioners, who shall be appointed by the President, serve as such during his pleasure, and receive no compensation for their services as such Commissioners. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28. Of such Commissioners--

(a) not more than one shall be a person residing elsewhere than in a State whose vessels maintain a substantial fishery in the areas of the conventions;

(b) at least one of the Commissioners who are such legal residents shall be a person chosen from the public at large, and who

is not a salaried employee of a State or of the Federal Government;  
(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and  
(d) at least one shall be chosen from a nongovernmental conservation organization.

(Sept. 7, 1950, ch. 907, Sec. 3, 64 Stat. 777; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 102-523, Sec. 3(a)(1), Oct. 26, 1992, 106 Stat. 3433; Pub. L. 105-42, Sec. 7(a), Aug. 15, 1997, 111 Stat. 1137; Pub. L. 106-562, title III, Sec. 302, Dec. 23, 2000, 114 Stat. 2806.)

#### Amendments

2000--Pub. L. 106-562 inserted after first sentence ``Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.''

1997--Subsec. (c). Pub. L. 105-42, which directed the general amendment of section 3(c) of the Tuna Convention Act, was executed by making the amendment to subsec. (c) of this section, to reflect the probable intent of Congress. Prior to amendment, subsec. (c) read as follows: ``at least one shall be an officer of the Department of Commerce; and''.

1992--Par. (d). Pub. L. 102-523 added par. (d).

#### Effective Date of 1997 Amendment

For effective date of amendment by Pub. L. 105-42, see section 8 of Pub. L. 105-42, set out as a note under section 1362 of this title.

#### Alternate United States Commissioners

Secretary of State authorized to designate Alternate United States Commissioners, see sections 2672a and 2672b of Title 22, Foreign Relations and Intercourse.

#### Sec. 953. General Advisory Committee and Scientific Advisory Subcommittee

(a) Appointments; public participation; compensation

The Secretary, in consultation with the United States Commissioners, shall--

(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations;

(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with

balanced representation from the public and private sectors, including nongovernmental conservation organizations;

(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

(b) Functions

(1) General Advisory Committee

The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

(2) Scientific Advisory Subcommittee

(A) Advice

The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including--

- (i) the conservation of ecosystems;
- (ii) the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and
- (iii) the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

(B) Other functions and assistance

The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include--

- (i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;
- (ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;
- (iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;
- (iv) consulting with other experts as needed; and

(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).

### (3) Attendance at meetings

The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.

(Sept. 7, 1950, ch. 907, Sec. 4, 64 Stat. 778; Pub. L. 102-523, Sec. 3(a)(2), Oct. 26, 1992, 106 Stat. 3433; Pub. L. 105-42, Sec. 7(b), Aug. 15, 1997, 111 Stat. 1137.)

### Amendments

1997--Pub. L. 105-42 which directed insertion of catchline and general amendment of text of section 4 of the Tuna Conventions Act, was executed to this section, to reflect the probable intent of Congress. Prior to amendment, text read as follows: ``The United States Commissioners shall (a) appoint an advisory committee which shall be composed of not less than five nor more than fifteen persons who shall be selected from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations, and (b) shall fix the terms of office of the members of such committee, who shall receive no compensation for their services as such members. The advisory committee shall be invited to attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the commissions. The advisory committee may attend all meetings of the international commissions to which they are invited by such commissions.''

1992--Pub. L. 102-523 inserted ``and from nongovernmental conservation organizations,' ' after ``under the conventions,' '.

### Effective Date of 1997 Amendment

For effective date of amendment by Pub. L. 105-42, see section 8 of Pub. L. 105-42, set out as a note under section 1362 of this title.

### Termination of Advisory Committees

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration



of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5,

Government Organization and Employees.

Sec. 954. Repealed. Pub. L. 92-471, title II, Sec. 203(b), Oct. 9, 1972, 86 Stat. 787

Section, act Sept. 7, 1950, ch. 907, Sec. 5, 64 Stat. 778, provided that service of individuals appointed as United States Commissioners shall not be treated as service for the purposes of certain sections of Title 18, Crimes and Criminal Procedure, and Title 5, Government Organization and Employees.

Sec. 955. Secretary of State to act for United States

(a) Approval of commission bylaws and rules; action on reports, requests, and recommendations

The Secretary of State is authorized to approve or disapprove, on behalf of the United States Government, bylaws and rules, or amendments thereof, adopted by each commission and submitted for approval of the United States Government in accordance with the provisions of the conventions, and, with the concurrence of the Secretary of Commerce, to approve or disapprove the general annual programs of the commissions. The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, recommendations, and other communications of the commissions, and to take appropriate action thereon either directly or by reference to the appropriate authority.

(b) Regulations

Regulations recommended by each commission pursuant to the convention requiring the submission to the commission of records of operations by boat captains or other persons who participate in the fisheries covered by the convention, upon the concurrent approval of the Secretary of State and the Secretary of Commerce, shall be promulgated by the latter and upon publication in the Federal Register, shall be applicable to all vessels and persons subject to the jurisdiction of the United States.

(c) Rulemaking procedures; prohibitions

Regulations required to carry out recommendations of the commission made pursuant to paragraph 5 of article II of the Convention for the Establishment of an Inter-American Tropical Tuna Commission shall be promulgated as hereinafter provided by the Secretary of Commerce upon approval of such recommendations by the Secretary of State and the Secretary of Commerce. The Secretary of Commerce shall cause to be published in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (1) submission of written data, views, or arguments, and (2) oral presentation at a public hearing. Such

regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations. After publication in the Federal Register such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary of Commerce shall prescribe, but in no event prior to an agreed date for the application by all countries whose vessels engage in fishing for species covered by the convention in the regulatory area on a meaningful scale, in terms of effect upon the success of the conservation program, of effective measures for the implementation of the commission's recommendations applicable to all vessels and persons subject to their respective jurisdictions. The Secretary of Commerce shall suspend at any time the application of any such regulations when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations. The regulations thus promulgated may include the selection for regulation of one or more of the species covered by the convention; the division of the convention waters into areas; the establishment of one or more open or closed seasons as to each area; the limitation of the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed; the limitation or prohibition of the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish; the requiring of such clearance certificates for vessels as may be necessary to carry out the purposes of the convention and this chapter; and such other measures incidental thereto as the Secretary of Commerce may deem necessary to implement the recommendations of the commission: Provided, That upon the promulgation of any such regulations the Secretary of Commerce shall promulgate additional regulations, with the concurrence of the Secretary of State, which shall become effective simultaneously with the application of the regulations hereinbefore referred to (1) to prohibit the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the regulatory area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area; and (2) to prohibit entry into the United States, from any country, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the commission and which were taken from the regulatory area by vessels other than those of such country in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the commission. In the case of repeated and flagrant fishing operations in the regulatory area by the vessels of any country which seriously threaten the achievement of the objectives of the commission's recommendations, the Secretary of Commerce, with the concurrence of the Secretary of State, may, in his discretion, also prohibit the entry from such country of such other species of tuna, in any form, as may be under investigation by the commission and which were taken in the regulatory area. The aforesaid prohibitions shall continue until the Secretary of Commerce is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under

regulation which were previously prohibited from entry shall continue to be prohibited from entry.

(Sept. 7, 1950, ch. 907, Sec. 6, 64 Stat. 778; Pub. L. 87-814, Sec. 2, Oct. 15, 1962, 76 Stat. 923; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

#### Amendments

1962--Subsecs. (a), (b). Pub. L. 87-814 substituted ``Secretary of the Interior'' for ``head of the enforcement agency''.

Subsec. (c). Pub. L. 87-814 added subsec. (c).

#### Transfer of Functions

``Secretary of Commerce'' substituted in text for ``Secretary of the Interior'' in view of: creation of National Oceanic and Atmospheric Administration in Department of Commerce and Office of Administrator of such Administration; abolition of Bureau of Commercial Fisheries in Department of the Interior and Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in Secretary of the Interior or Department of the Interior which were administered through Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

Sec. 956. Inspection of returns, records, or other reports

Any person authorized to carry out enforcement activities under this chapter and any person authorized by the commissions shall have power without warrant or other process, to inspect, at any reasonable time, catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished.

(Sept. 7, 1950, ch. 907, Sec. 7, 64 Stat. 778; Pub. L. 87-814, Sec. 3, Oct. 15, 1962, 76 Stat. 924.)

#### Amendments

1962--Pub. L. 87-814 substituted provisions respecting inspection of returns, records, or other reports for provisions authorizing a fine not exceeding \$1,000 and proceedings for injunction against fishing for or possessing the kind of fish covered by the convention for failure to make, keep, furnish, or refusal to permit inspection of returns, records, or reports or for furnishing a false return, record, or report.

Sec. 957. Violations; fines and forfeitures; application of related laws

(a) It shall be unlawful for any master or other person in charge of a fishing vessel of the United States to engage in fishing in violation of any regulation adopted pursuant to section 955(c) of this title or for any person knowingly to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations.

(b) It shall be unlawful for the master or any person in charge of any fishing vessel of the United States or any person on board such vessel to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished; or to fail to stop upon being hailed by a duly authorized official of the United States; or to refuse to permit the duly authorized officials of the United States or authorized officials of the commissions to board such vessel or inspect its catch, equipment, books, documents, records, or other articles or question the persons on board in accordance with the provisions of this chapter, or the convention, as the case may be.

(c) It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section 955(c) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the commission, or any tuna in any form not under regulation but under investigation by the commission, during the period such fish have been denied entry in accordance with the provisions of section 955(c) of this title. In the case of any fish as described in this subsection offered for entry into the United States, the Secretary of Commerce shall require proof satisfactory to him that such fish is not ineligible for such entry under the terms of section 955(c) of this title.

(d) Any person violating any provisions of subsection (a) of this section shall be fined not more than \$25,000, and for a subsequent violation of any provisions of said subsection (a) shall be fined not more than \$50,000.

(e) Any person violating any provision of subsection (b) of this section shall be fined not more than \$1,000, and for a subsequent violation of any provision of subsection (b) shall be fined not more than \$5,000.

(f) Any person violating any provision of subsection (c) of this section shall be fined not more than \$100,000.

(g) All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

(h) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

(Sept. 7, 1950, ch. 907, Sec. 8, 64 Stat. 779; Pub. L. 87-814, Sec. 4, Oct. 15, 1962, 76 Stat. 924; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

## Amendments

1962--Pub. L. 87-814 substituted provisions respecting violations, fines, and forfeitures, and application of related laws for provisions respecting enforcement of chapter.

## Transfer of Functions

Transfer of functions to Secretary of Commerce from Secretary of the Interior by Reorg. Plan No. 4 of 1970, see note set out under section 955 of this title.

## Sec. 958. Cooperation with other agencies

### (a) Coordination of programs

In order to provide coordination between the general annual programs of the commissions and programs of other agencies, relating to the exploration, development, and conservation of fishery resources, the Secretary of State may recommend to the United States Commissioners that they consider the relationship of the commissions' programs to those of such agencies and when necessary arrange, with the concurrence of such agencies, for mutual cooperation between the commissions and such agencies for carrying out their respective programs.

### (b) Scientific and other programs; facilities and personnel

All agencies of the Federal Government are authorized on request of the commissions to cooperate in the conduct of scientific and other programs, or to furnish facilities and personnel for the purpose of assisting the commissions in the performance of their duties.

### (c) Facilities and personnel to non-Federal agencies

The commissions are authorized and empowered to supply facilities and personnel to existing non-Federal agencies to expedite research work which in the judgment of the commissions is contributing or will contribute directly to the purposes of the conventions.

(Sept. 7, 1950, ch. 907, Sec. 9, 64 Stat. 779.)

## Sec. 959. Enforcement of chapter

### (a) Issuance of process

The judges of the United States district courts and United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and the regulations issued pursuant thereto.

### (b) Federal law enforcement agents

Enforcement of the provisions of this chapter and the regulations

issued pursuant thereto shall be the joint responsibility of the United States Coast Guard, the United States Department of Commerce, and the United States Customs Service. In addition, the Secretary of Commerce may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities hereunder. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes.

(c) Execution of process

Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter.

(d) Arrests

Such person so authorized shall have the power--

(1) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this chapter or the regulations issued thereunder;

(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of the provisions of this chapter or the regulations issued thereunder, then to arrest such person.

(e) Seizures and disposition of fish

Such person so authorized may seize, whenever and wherever lawfully found, all fish taken or retained in violation of the provisions of this chapter or the regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to the order of a court of competent jurisdiction, pursuant to the provisions of subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of Commerce.

(f) Security

Notwithstanding the provisions of section 2464 of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject

to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

(Sept. 7, 1950, ch. 907, Sec. 10, 64 Stat. 779; Pub. L. 87-814, Sec. 5, Oct. 15, 1962, 76 Stat. 925; Pub. L. 90-578, title IV, Sec. 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 101-650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117.)

#### Amendments

1962--Subsec. (a). Pub. L. 87-814 substituted provisions for issuance of process for provisions respecting arrest and execution of process, incorporated in subsecs. (c) and (d)(1) of this section.

Subsec. (b). Pub. L. 87-814 substituted provisions respecting Federal law enforcement agents for provisions relating to inspections, incorporated in section 956 of this title.

Subsec. (c). Pub. L. 87-814 substituted provisions for execution of process, formerly incorporated in subsec. (a), for provisions respecting the functioning of officers and law enforcement officers, incorporated in subsec. (b) of this section.

Subsec. (d). Pub. L. 87-814 incorporated provisions of former subsec. (a) in par. (1) and added par. (2).

Subsecs. (e), (f). Pub. L. 87-814 added subsecs. (e) and (f).

#### Change of Name

``United States magistrate judges'' substituted for ``United States magistrates'' in subsec. (a) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, ``United States magistrates'' substituted for United States commissioners'' pursuant to Pub. L. 90-578. See chapter 43 (Sec. 631 et seq.) of Title 28.

``Customs Service'' substituted for ``Bureau of Customs'' in subsec. (b) pursuant to Treasury Department Order 165-23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

#### Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security

Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

In subsecs. (b) and (e), ``Department of Commerce'' substituted for ``Department of the Interior'' and ``Secretary of Commerce'' for ``Secretary of the Interior'' pursuant to Reorg. Plan No. 4 of 1970, see note set out under section 955 of this title.

Sec. 960. Commissions' functions not restrained by this chapter  
or State laws

None of the prohibitions contained in this chapter or in the laws and regulations of the States shall prevent the commissions from conducting or authorizing the conduct of fishing operations and biological experiments at any time for the purpose of scientific investigations as authorized by the conventions, or shall prevent the commissions from discharging any of its or their functions or duties prescribed by the conventions.

(Sept. 7, 1950, ch. 907, Sec. 11, 64 Stat. 779.)

Sec. 961. Authorization of appropriations

There is hereby authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of each convention and of this chapter, including--

(a) contributions to each commission for the United States share of any joint expenses of the commission and the expenses of the United States Commissioners and their staff, including personal services in the District of Columbia and elsewhere;

(b) travel expenses without regard to the Standardized Government Travel Regulations, as amended, subchapter I of chapter 57 of title 5, or section 5731(a) of title 5;

(c) printing and binding without regard to section 501 of title 44, or section 5 of title 41;

(d) stenographic and other services by contract, if deemed necessary, without regard to section 5 of title 41; and

(e) purchase, hire, operation, maintenance, and repair of aircraft, motor vehicles (including passenger-carrying vehicles), boats and research vessels.

(Sept. 7, 1950, ch. 907, Sec. 12, 64 Stat. 780.)

#### Codification

In par. (b), ``subchapter I of chapter 57 of title 5, or section 5731(a) of title 5'' substituted for ``the Travel Expense Act of 1949, or section 10 of the Act of March 3, 1933 (U.S.C., title 5, sec. 73b)'' on authority of Pub. L. 89-554, Sec. 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In par. (c), ``section 501 of title 44'' substituted for ``section 11 of the Act of March 1, 1919 (U.S.C., title 44, sec. 111)'' on authority of Pub. L. 90-620, Sec. 2(b), Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents.



Sec. 962. Reduction of bycatch in eastern tropical Pacific Ocean

The Secretary of State, in consultation with the Secretary of Commerce and acting through the United States Commissioners, shall seek, in cooperation with other nations whose vessel \1\ fish for tuna in the eastern tropical Pacific Ocean, to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures--

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    \1\ So in original. Probably should be ``vessels''.

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- 
- (1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;
  - (2) to reduce, to the maximum extent practicable, the harvest of nontarget species;
  - (3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and
  - (4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.

(Sept. 7, 1950, ch. 907, Sec. 15, as added Pub. L. 105-42, Sec. 7(c), Aug. 15, 1997, 111 Stat. 1138.)

Codification

Section 7(c) of Pub. L. 105-42, which directed the addition of this section at the end of the Tuna Conventions Act, was executed by adding this section at the end of the Tuna Conventions Act of 1950, to reflect the probable intent of Congress.

Effective Date

Section effective upon certification by Secretary of Commerce that sufficient funding is available to complete first year of study required by section 1414a(a) of this title and that study has commenced, and certification by Secretary of State to Congress that binding resolution of Inter-American Tropical Tuna Commission or other legally binding instrument establishing International Dolphin Conservation Program has been adopted and is in force, see section 8 of Pub. L. 105-42, set out as an Effective Date of 1997 Amendment note under section 1362 of this title.

AMENDED IN SENATE APRIL 2, 2008

**Senate Concurrent Resolution**

**No. 85**

**Introduced by Senators Kuehl, Migden, and Wiggins**

(Coauthors: Assembly Members DeSaulnier, Feuer, Jones, and Saldana)

February 26, 2008

Senate Concurrent Resolution No. 85—Relative to the Pacific bluefin tuna.

LEGISLATIVE COUNSEL'S DIGEST

SCR 85, as amended, Kuehl. Pacific bluefin tuna.

This measure would seek the assistance of the Governor, *the Fish and Game Commission*, the Department of Fish and Game, ~~and the Ocean Protection Council in initiating, at the highest international level, the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service, the Inter-American Tropical Tuna Commission, and the Western and Central Pacific Fisheries Council to work with the Pacific Regional Fishery Management Council and other appropriate authorities to achieve the cessation of illegal, unreported, and unregulated bluefin tuna overfishing, the creation of marine protected areas~~ *implementation of a robust stock assessment of Pacific bluefin tuna to evaluate and enhance conservation efforts for the status of this highly valuable resource, and the imposition and enforcement of catch limits for countries fishing for Pacific bluefin tuna in the United States Exclusive Economic Zone.*

Fiscal committee: yes.

- 1 WHEREAS, The Pacific bluefin tuna is rapidly approaching
- 2 the fate of the collapsed Atlantic bluefin tuna population, which
- 3 ~~has diminished by 90 percent in the Atlantic Ocean and in the~~

1 ~~Mediterranean Sea~~ has declined by more than 80 percent since  
2 1975, due to overfishing and the lack of effective conservation  
3 and protection efforts; and

4 ~~WHEREAS, The coastal economic losses for California as a~~  
5 ~~WHEREAS, The economic losses for California coastal~~  
6 ~~communities as a~~

7 ~~WHEREAS, The populations of all other bluefin tuna species,~~  
8 ~~except Pacific bluefin tuna have been declared overfished and~~  
9 ~~have been designated as “endangered” or “critically endangered”~~  
10 ~~by the International Union for Conservation of Nature (IUCN);~~  
11 ~~and~~

12 ~~WHEREAS, Complete information on the status of the Pacific~~  
13 ~~bluefin tuna requires further study while emerging data suggests~~  
14 ~~the fishing pressure on this species is likely to increase due to the~~  
15 ~~high worldwide demand for bluefin tuna and the decreased supply~~  
16 ~~from Atlantic and Southern bluefin tuna populations; and~~

17 result of the diminishing bluefin tuna population in the Pacific  
18 Ocean include decreased security of the pelagic (open ocean)  
19 seafood market and fishing industry, decreased reliability and  
20 productivity of coastal goods and services, and depletion of jobs  
21 and income for those communities and stakeholders involved in  
22 the pelagic seafood fishing industry; and

23 ~~WHEREAS, The commercial catch of Pacific bluefin tuna for~~  
24 ~~California’s coast from 1950 to 1998 averaged 11,434,390 pounds~~  
25 ~~per year; however, since 1999, the average catch has spiraled down~~  
26 ~~to an average of 294,544 pounds of tuna per year, a devastating~~  
27 ~~drop; and~~

28 ~~WHEREAS, Overfishing of the Pacific bluefin tuna, sparked~~  
29 ~~by increasing demand by countries around the world, poses an~~  
30 ~~imminent threat to California’s coastal economy that has created~~  
31 ~~a need for global solutions to preserve the population of the species~~  
32 ~~for California; and~~

33 ~~WHEREAS, Overfishing has caused dramatic shifts in bluefin~~  
34 ~~tuna populations that have pushed the species closer to extinction~~  
35 ~~on a global scale; and~~

36 ~~WHEREAS, The potential crisis facing the Pacific bluefin tuna~~  
37 ~~population could portend future oceanic ecological losses because~~  
38 ~~of the loss of habitat and the inability of the ocean environment to~~  
39 ~~recover from a biological disruption of such significance that could~~  
40 ~~adversely affect the sustainability of current marine life; and~~

1     ~~WHEREAS, Without the abundance of the Pacific bluefin tuna~~  
2 ~~serving as predators along California's coastline, an environment~~  
3 ~~is provided for the Humboldt squid (*Dosidicus gigas*) to invade~~  
4 ~~and devour marine life~~

5     ~~WHEREAS, The declining tuna population off California's coast~~  
6 ~~is one of several factors accounting for the rising numbers of its~~  
7 ~~prey, the Humboldt squid (*Dosidicus gigas*), which can invade and~~  
8 ~~devour marine life in the tuna's absence, thereby drastically~~  
9 ~~altering the composition and structure of the pelagic community~~  
10 ~~for the coast of California; and~~

11     ~~WHEREAS, Tuna swim in enormous schools, often numbering~~  
12 ~~in the thousands, that allow modern fishing nets to scoop up which~~  
13 ~~allows the capture of entire schools of bluefin tuna, threatening~~  
14 ~~the survival of the global bluefin tuna population populations and~~  
15 ~~significantly facilitating overfishing of the bluefin tuna; and~~

16     ~~WHEREAS, The Pacific bluefin tuna is a slow growing,~~  
17 ~~long-lived endothermic fish that migrates thousands of miles across~~  
18 ~~the open ocean to feed and spawn; and~~

19     ~~WHEREAS, The Pacific bluefin tuna is endangered caught by~~  
20 ~~the fishing fleets of nations that capture the tuna at their spawning~~  
21 ~~areas near Japan, Taiwan, and the Philippines before they have a~~  
22 ~~chance to spawn, which further decimates the Pacific bluefin tuna~~  
23 ~~population; and~~

24     ~~WHEREAS, The Pacific Fishery Management Council, which~~  
25 ~~manages fisheries that include highly migratory species, like tunas,~~  
26 ~~in the Exclusive Economic Zone, three to 200 miles off the coasts~~  
27 ~~of Washington, Oregon, and California, has difficulty enforcing~~  
28 ~~the federal Magnuson-Stevens Fishery Conservation and~~  
29 ~~Management Act and other laws that affect fisheries management~~  
30 ~~and which dictate catch limits of the Pacific bluefin tuna; and~~

31     ~~WHEREAS, Research institutions that support and promote~~  
32 ~~bluefin tuna protection through governance stewardship include~~  
33 ~~the Monterey Bay Aquarium, the Monterey Bay Aquarium~~  
34 ~~Research Institute of Science and Engineering, the Blue Oceans~~  
35 ~~Institute, the National Environmental Trust, the World Wildlife~~  
36 ~~Fund, the Tuna Research and Conservation Center, Hopkins Marine~~  
37 ~~Station of Stanford University, the Ocean Conservancy, the~~  
38 ~~California Coastal Commission, the National Oceanic and~~  
39 ~~Atmospheric Administration, the Natural Resources Defense~~

1 ~~Council, the Food and Agriculture Organization of the United~~  
2 ~~Nations, and the National Marine Fisheries Service; now, therefore,~~  
3 *WHEREAS, Research institutions, agencies, and organizations*  
4 *that support and promote bluefin tuna protection range from local*  
5 *research institutes and state agencies, to federal organizations*  
6 *and nonprofits, to international councils and committees; and*

7 *WHEREAS, The current national and international regulatory*  
8 *structure of undeclared fishing stocks is failing to provide*  
9 *prospective management and protection for the Pacific bluefin*  
10 *tuna population against growing pressures due to a lack of*  
11 *sufficient data which would allow full analysis of current and*  
12 *future threats throughout the migratory range of the species and*  
13 *help to prevent the collapse of the Pacific bluefin tuna as has been*  
14 *found in other bluefin tuna populations; now, therefore, be it*

15 *Resolved by the Senate of the State of California, the Assembly*  
16 *thereof concurring, That the state Legislature acknowledges the*  
17 *devastation to the pelagic community off California's coast from*  
18 *the mismanagement of the seriously imperiled Pacific bluefin tuna*  
19 *potential devastation to the Pacific bluefin tuna species, and*  
20 *supports efforts to recover and preserve the population; and be it*  
21 *further*

22 *Resolved, That the Secretary of the Senate transmit copies of*  
23 *this resolution to the Governor, the Fish and Game Commission,*  
24 *the Department of Fish and Game, and the Ocean Protection*  
25 *Council, to seek their assistance in initiating, at the highest*  
26 *international level, the cessation of illegal, the Ocean Protection*  
27 *Council, the National Oceanic and Atmospheric Administration,*  
28 *the National Marine Fisheries Service, the Inter-American Tropical*  
29 *Tuna Commission, and the Western and Central Pacific Fisheries*  
30 *Council to seek their assistance in working with the Pacific*  
31 *Regional Fishery Management Council and other appropriate*  
32 *authorities for the cessation of illegal, unreported, and unregulated*  
33 *bluefin tuna overfishing, the creation of marine protected areas*  
34 *implementation of a robust stock assessment for Pacific bluefin*  
35 *tuna to evaluate and enhance conservation efforts for the status*  
36 *of this highly valuable resource, and the imposition and*  
37 *enforcement of catch limits for countries fishing for Pacific bluefin*

- 1 ~~tuna in the~~ *catch limits for Pacific bluefin tuna in the United States*
- 2 Exclusive Economic Zone.

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110TH CONGRESS  
2D SESSION

# S. 2635

To expand the boundaries of the Gulf of the Farallones National Marine  
Sanctuary and the Cordell Bank National Marine Sanctuary.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2008

Mrs. BOXER (for herself and Mrs. FEINSTEIN) introduced the following bill;  
which was read twice and referred to the Committee on Commerce,  
Science, and Transportation

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## A BILL

To expand the boundaries of the Gulf of the Farallones  
National Marine Sanctuary and the Cordell Bank Na-  
tional Marine Sanctuary.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gulf of the Farallones  
5 and Cordell Bank National Marine Sanctuaries Boundary  
6 Modification and Protection Act”.

7 **SEC. 2. FINDINGS.**

8 The Congress finds the following:

1           (1) The Gulf of the Farallones extends approxi-  
2           mately 100 miles along the coast of Marin and  
3           Sonoma counties of northern California. It includes  
4           approximately one-half of California's nesting  
5           seabirds, rich benthic marine life on hard-rock sub-  
6           strate, prolific fisheries, and substantial concentra-  
7           tions of resident and seasonally migratory marine  
8           mammals.

9           (2) Cordell Bank is adjacent to the Gulf of the  
10          Farallones and is a submerged island with spectac-  
11          ular, unique, and nationally significant marine envi-  
12          ronments.

13          (3) These marine environments have national  
14          and international significance, exceed the biological  
15          productivity of tropical rain forests, and support  
16          high levels of biological diversity.

17          (4) These biological communities are easily sus-  
18          ceptible to damage from human activities, and must  
19          be properly conserved for themselves and to protect  
20          the economic viability of their contribution to na-  
21          tional and regional economies.

22          (5) The Gulf of Farallones and Cordell Bank  
23          include some of the Nation's richest fishing grounds,  
24          supporting important commercial and recreational  
25          fisheries. These fisheries are regulated by State and



1 Federal fishery agencies and are supported and fos-  
2 tered through protection of the waters and habitats  
3 of Gulf of the Farallones National Marine Sanctuary  
4 and Cordell Bank National Marine Sanctuary.

5 (6) The report of the Commission on Ocean  
6 Policy established by Public Law 106–256 calls for  
7 comprehensive protection for the most productive  
8 ocean environments and recommends that they be  
9 managed as ecosystems.

10 (7) New scientific discoveries by the National  
11 Marine Sanctuary Program support comprehensive  
12 protection for these marine environments by broad-  
13 ening the geographic scope of the existing Gulf of  
14 the Farallones National Marine Sanctuary and the  
15 Cordell Bank National Marine Sanctuary.

16 (8) Cordell Bank is at the nexus of an ocean  
17 upwelling system, which produces the highest bio-  
18 mass concentrations on the west coast of the United  
19 States.

20 **SEC. 3. POLICY AND PURPOSE.**

21 (a) POLICY.—It is the policy of the United States in  
22 this Act to protect and preserve living and other resources  
23 of the Gulf of the Farallones and Cordell Bank marine  
24 environments.

1 (b) PURPOSE.—The purposes of this Act are the fol-  
2 lowing:

3 (1) To extend the boundaries of the Gulf of the  
4 Farallones National Marine Sanctuary and the  
5 Cordell Bank National Marine Sanctuary to the  
6 areas described in section 5.

7 (2) To strengthen the protections that apply in  
8 the Sanctuaries.

9 (3) To educate and interpret for the public re-  
10 garding those marine environments.

11 (4) To manage human uses of the Sanctuaries  
12 under this Act and the National Marine Sanctuaries  
13 Act (16 U.S.C. 1431 et seq.).

14 (c) EFFECT ON FISHING ACTIVITIES.—Nothing in  
15 this Act is intended to alter any existing authorities re-  
16 garding the conduct and location of fishing activities in  
17 the Sanctuaries.

18 **SEC. 4. DEFINITIONS.**

19 In this Act:

20 (1) AQUACULTURE.—The term “aquaculture”  
21 means the propagation or rearing of aquatic orga-  
22 nisms in controlled or selected aquatic environments  
23 for any commercial, recreational, or public purpose.

1           (2) CORDELL BANK NMS.—The term “Cordell  
2     Bank NMS” means the Cordell Bank National Ma-  
3     rine Sanctuary.

4           (3) FARALLONES NMS.—The term “Farallones  
5     NMS” means the Gulf of the Farallones National  
6     Marine Sanctuary.

7           (4) SANCTUARIES.—The term “Sanctuaries”  
8     means the Gulf of the Farallones National Marine  
9     Sanctuary and the Cordell Bank National Marine  
10    Sanctuary, as expanded by section 5.

11          (5) SECRETARY.—The term “Secretary” means  
12    the Secretary of Commerce.

13          (6) PERSON.—The term “person” means—

14               (A) any private or public individual, cor-  
15               poration, partnership, trust, institution, associa-  
16               tion, or other entity, whether foreign or domes-  
17               tic; or

18               (B) any officer, employee, agent, depart-  
19               ment, agency, or instrumentality of—

20                       (i) the Federal Government;

21                       (ii) any State, tribal, or local unit of  
22                       government; or

23                       (iii) any foreign government.

1 **SEC. 5. NATIONAL MARINE SANCTUARY BOUNDARY AD-**  
2 **JUSTMENTS.**

3 (a) GULF OF THE FARALLONES.—

4 (1) BOUNDARY ADJUSTMENT.—The areas de-  
5 scribed in paragraph (2) are added to the existing  
6 Gulf of the Farallones National Marine Sanctuary  
7 described in part 922.80 of title 15, Code of Federal  
8 Regulations.

9 (2) AREAS INCLUDED.—

10 (A) IN GENERAL.—The areas referred to  
11 in paragraph (1) consist of the following:

12 (i) All submerged lands and waters,  
13 including living marine and other resources  
14 within and on those lands and waters,  
15 from the mean high water line to the  
16 boundary described in subparagraph (B).

17 (ii) The submerged lands and waters,  
18 including living marine and other resources  
19 within those waters, within the approxi-  
20 mately two-square-nautical-mile portion of  
21 the Cordell Bank NMS (as in effect imme-  
22 diately before the enactment of this Act)  
23 that is located south of the area that is  
24 added to Cordell Bank NMS by subsection  
25 (b)(2), which are transferred to the

1 Farallones NMS from the Cordell Bank  
2 NMS.

3 (B) BOUNDARY DESCRIBED.—The bound-  
4 ary referred to in subparagraph (A)(i) com-  
5 mences from the mean high water line  
6 (MHWL) at 39.00000 degrees north in a west-  
7 ward direction approximately 29 nautical miles  
8 (nm) to 39.00000 north, 124.33333 west. The  
9 boundary then extends in a southeasterly direc-  
10 tion to 38.30000 degrees north, 124.00000 de-  
11 grees west, approximately 44 nm westward of  
12 Bodega Head. The boundary then extends east-  
13 ward to the most northeastern corner of the ex-  
14 panded Cordell Bank NMS at 38.30000 north,  
15 123.20000 degrees west, approximately 6 nm  
16 miles westward of Bodega Head. The boundary  
17 then extends in a southeasterly direction to  
18 38.26500 degrees north, 123.18166 degrees  
19 west at the northwestern most point of the cur-  
20 rent Gulf of the Farallones Boundary. The  
21 boundary then follows the current northern  
22 Gulf of the Farallones NMS boundary in a  
23 northeasterly direction to the MHWL near  
24 Bodega Head. The boundary then follows the  
25 MHWL in a northeasterly direction to the com-

mencement point at the intersection of the MHWL and 39.00000 north. Coordinates listed in this subparagraph are based on the North American Datum 1983 and the geographic projection.

(b) CORDELL BANK.—

(1) BOUNDARY ADJUSTMENT.—The area described in paragraph (2) is added to the existing Cordell Bank National Marine Sanctuary described in part 922.80 of title 15, Code of Federal Regulations.

(2) AREA INCLUDED.—

(A) IN GENERAL.—The area referred to in paragraph (1) consists of all submerged lands and waters, including living marine and other resources within those waters, within the boundary described in subparagraph (B).

(B) BOUNDARY.—The boundary referred to in subparagraph (A) commences at the most northeastern point of the current Cordell Bank NMS boundary at 38.26500 degrees north, 123.18166 degrees west and extends northwestward to 38.30000 degrees north, 123.20000 degrees west, approximately 6 nautical miles (nm) west of Bodega Head. The

1 boundary then extends westward to 38.30000  
2 degrees north, 123.66666 degrees west, ap-  
3 proximately 28 nautical miles west of Bodega  
4 Head. The boundary then turns southward and  
5 continues approximately 32 nautical miles to  
6 37.83333 degrees north, 123.66666 degrees  
7 west, and then approximately 11 nm eastward  
8 to 37.83333 north, 123.42333 west at an inter-  
9 section with the current Gulf of the Farallones  
10 NMS boundary. The boundary then follows the  
11 current Cordell Bank NMS, which is cotermi-  
12 nous with the current Gulf of the Farallones  
13 boundary, in a northeasterly and the northwest-  
14 erly direction to its commencement point at  
15 38.26500 degrees north, 123.18166 degrees  
16 west. Coordinates listed in this subparagraph  
17 are based on NAD83 Datum and the geo-  
18 graphic projection.

19 (c) INCLUSION IN THE SYSTEM.—The areas included  
20 in the Sanctuaries under subsections (a) and (b) shall be  
21 managed as part of the National Marine Sanctuary Sys-  
22 tem, established by section 301(c) of the National Marine  
23 Sanctuaries Act (16 U.S.C. 1431(c)), in accordance with  
24 that Act.

1 (d) UPDATED NOAA CHARTS.—The Secretary  
2 shall—

3 (1) produce updated National Oceanic and At-  
4 mospheric Administration charts for the areas in  
5 which are located the Farallones NMS and Cordell  
6 Bank NMS; and

7 (2) include on those charts the boundaries of  
8 such national marine sanctuaries, as revised by this  
9 Act.

10 (e) BOUNDARY ADJUSTMENTS.—In producing re-  
11 vised charts as directed by subsection (d) of this section  
12 and in describing the boundaries in regulations issued by  
13 the Secretary, the Secretary may make technical modifica-  
14 tions to the boundaries described in this section for clarity  
15 and ease of identification, as appropriate.

16 **SEC. 6. PROHIBITION OF CERTAIN USES.**

17 (a) MINERAL AND HYDROCARBON LEASING, EXPLO-  
18 RATION, DEVELOPMENT, AND PRODUCTION.—No leasing,  
19 exploration, development, production, or transporting by  
20 pipeline of minerals or hydrocarbons shall be permitted  
21 within the Sanctuaries.

22 (b) AQUACULTURE.—

23 (1) PROHIBITION.—It is unlawful for any per-  
24 son to conduct aquaculture—

25 (A) in any area of the Sanctuaries; or



1 (B) within Monterey Bay National Marine  
2 Sanctuary.

3 (2) EXISTING BIVALVE FARMING ALLOWED.—

4 The prohibition in paragraph (1) shall not apply to  
5 persons and their successors conducting bivalve  
6 farming operations that are in existence on the date  
7 of enactment of this Act, and shall not apply to their  
8 successors in such operations.

9 (3) REGULATIONS.—The Secretary shall issue  
10 regulations that specify the operations referred to in  
11 paragraph (2).

12 (c) DISCHARGE OF MATERIALS AND SUBSTANCES.—

13 (1) PROHIBITIONS.—It is unlawful for any per-  
14 son—

15 (A) to deposit or discharge any material or  
16 substance of any kind within the Sanctuaries;

17 (B) to deposit or discharge any material or  
18 substance of any kind that enters and injures  
19 any sanctuary resource (as that term is defined  
20 in the National Marine Sanctuaries Act); or

21 (C) to deposit or discharge any introduced  
22 species in the Sanctuaries.

23 (2) CHANGES IN SALINITY.—No person shall  
24 cause a change of salinity in the Sanctuaries that in-

1 jures, causes the loss of, or destroys any sanctuary  
2 resource.

3 (3) LIMITATION ON APPLICABILITY.—Para-  
4 graph (1) does not apply with respect to any dis-  
5 charge—

6 (A) of fish, fish parts, and chumming ma-  
7 terials resulting from, and while conducting  
8 otherwise lawful, fishing activity;

9 (B) of biodegradable effluents incidental to  
10 vessel use and generated by an operable Type  
11 I or II marine sanitation device (as classified by  
12 the Coast Guard) that is approved in accord-  
13 ance with section 312 of the Federal Water Pol-  
14 lution Control Act (33 U.S.C. 1322) if all ma-  
15 rine sanitation devices on the vessel are secured  
16 in a manner that prevents discharge of un-  
17 treated sewage from a Type I or Type II Coast  
18 Guard-approved sanitation devices on the ves-  
19 sel, except that this subparagraph does not  
20 apply with respect to a discharge from a cruise  
21 ship within the boundaries of either of the  
22 Sanctuaries;

23 (C) of biodegradable material resulting  
24 from deck wash down from a vessel;

25 (D) from vessel engine exhaust; or

1 (E) that—

2 (i) originates in the Russian River  
3 Watershed outside the boundaries of the  
4 Gulf of the Farallones National Marine  
5 Sanctuary;

6 (ii) originates from the Bodega Ma-  
7 rine Laboratory; and

8 (iii) is permitted under a National  
9 Pollution Discharge Elimination System  
10 permit that is in effect on the date of en-  
11 actment of this Act, or under a new or re-  
12 newed National Pollution Discharge Elimi-  
13 nation System permit that does not in-  
14 crease pollution in the Sanctuaries.

15 (d) CONSULTATION REQUIREMENT FOR CHANGES IN  
16 WATER FLOW.—Any Federal, State, or local government  
17 agency that is responsible for significant alteration of  
18 fresh water flow regimes that may affect the Sanctuaries  
19 must consult with the Secretary prior to initiating such  
20 change in order to ensure sanctuary resources are not in-  
21 jured.

22 (e) PENALTIES AND ENFORCEMENT.—A violation of  
23 this section shall be treated as a violation of section 306  
24 of the Marine Protection, Research, and Sanctuaries Act  
25 of 1972 (16 U.S.C. 1436).

1 (f) SECRETARIAL AUTHORITY NOT LIMITED.—

2 (1) IN GENERAL.—Except as provided in para-  
3 graph (2), nothing in this Act limits the authority  
4 of the Secretary to prohibit, allow, or otherwise reg-  
5 ulate the discharge of materials or other substances.

6 (2) LIMITATION WITH RESPECT TO DIS-  
7 CHARGES.—The Secretary may only modify the reg-  
8 ulation of those activities listed in subsection (c) to  
9 further protection of sanctuary resources and quali-  
10 ties.

11 **SEC. 7. MANAGEMENT PLANS AND REGULATIONS.**

12 (a) INTERIM PLAN.—The Secretary shall complete an  
13 interim supplemental management plan for each of the  
14 Sanctuaries by not later than 30 months after the date  
15 of enactment of this Act, that focuses on management in  
16 the areas added to the Sanctuaries under this Act. The  
17 Secretary shall ensure that these supplemental plans shall  
18 not weaken existing resource protections.

19 (b) REVISED PLANS.—The Secretary shall issue a re-  
20 vised comprehensive management plan for each of the  
21 Sanctuaries during the first management review initiated  
22 after the date of the enactment of this Act under section  
23 304(e) of the National Marine Sanctuaries Act (16 U.S.C.  
24 1434(e)) for each of the Sanctuaries, and issue such final  
25 regulations as may be necessary.

1 (c) APPLICATION OF EXISTING REGULATIONS.—The  
 2 regulations for the Gulf of the Farallones National Marine  
 3 Sanctuary (15 C.F.R. 922, subpart H) and the Cordell  
 4 Bank National Marine Sanctuary (15 C.F.R. 922, subpart  
 5 K), respectively, shall apply to the areas added to the rel-  
 6 evant Sanctuary under section 5 until the Secretary modi-  
 7 fies such regulations in accordance with this section.

8 (d) CONTENTS OF PLANS.—Revisions to each com-  
 9 prehensive management plan under this section shall, in  
 10 addition to matters required under section 304(a)(2) of  
 11 the Marine Protection, Research, and Sanctuaries Act of  
 12 1972 (16 U.S.C. 1434(A)(2))—

13 (1) facilitate all public and private uses of the  
 14 national marine sanctuary to which the plan applies  
 15 consistent with the primary objective of sanctuary  
 16 resource protection;

17 (2) establish temporal and geographical zoning  
 18 if necessary to ensure protection of sanctuary re-  
 19 sources;

20 (3) identify priority needs for research that  
 21 will—

22 (A) improve management of the Sanc-  
 23 tuaries;

24 (B) diminish threats to the health of the  
 25 ecosystems in the Sanctuaries; or

1 (C) fulfill both of subparagraphs (A) and  
2 (B);

3 (4) establish a long-term ecological monitoring  
4 program and database, including the development  
5 and implementation of a resource information sys-  
6 tem to disseminate information on the Sanctuaries'  
7 ecosystem, history, culture, and management;

8 (5) identify alternative sources of funding need-  
9 ed to fully implement the plan's provisions and sup-  
10 plement appropriations under section 313 of the Ma-  
11 rine Protection, Research, and Sanctuaries Act of  
12 1972 (16 U.S.C. 1444);

13 (6) ensure coordination and cooperation be-  
14 tween sanctuary superintendents and other Federal,  
15 State, and local authorities with jurisdiction over  
16 areas within or adjacent to the Sanctuaries to deal  
17 with issues affecting the Sanctuaries, including  
18 nonpoint discharges and navigation;

19 (7) in the case of revisions to the plan for the  
20 Farallones NMS, promote cooperation with farmers  
21 and ranchers operating in the watersheds adjacent  
22 to the Farallones NMS and establish voluntary best  
23 practices programs for farming and ranching;

24 (8) promote cooperative and educational pro-  
25 grams with fishing vessel operators and crews oper-

1       ating in the waters of the Sanctuaries, and, when-  
2       ever possible, include individuals who engage in fish-  
3       ing and their vessels in cooperative research, assess-  
4       ment, and monitoring programs and educational  
5       programs to promote sustainable fisheries, conserva-  
6       tion of resources, and navigational safety; and

7               (9) promote education, among users of the  
8       Sanctuaries, about conservation and navigation safe-  
9       ty.

10       (e) PUBLIC PARTICIPATION.—The Secretary shall  
11       provide for participation by the general public in the revi-  
12       sion of the comprehensive management plans and regula-  
13       tions under this section.

14       **SEC. 8. FEASIBILITY OF A NEW SANCTUARY DESIGNATION.**

15       (a) REVIEW AND RECOMMENDATION.—As part of the  
16       first review initiated after the date of enactment of this  
17       Act of the Gulf of the Farallones National Marine Sanc-  
18       tuary Management Plan pursuant to section 304(e) of the  
19       National Marine Sanctuaries Act (16 U.S.C. 1434(e)), the  
20       Secretary shall—

21               (1) conduct a review of the operations of the  
22       Farallones NMS; and

23               (2) following not less than one public hearing  
24       held in Sonoma County, California, and the receipt  
25       of public comment, determine whether the aea of the

1 Gulf of the Farallones National Marine Sanctuary  
2 expanded by this Act shall be designated as a new  
3 and separate national marine sanctuary.

4 (b) CONSIDERATIONS FOR DETERMINATION.—In  
5 making the determination under subsection (a)(2), the  
6 Secretary shall consider responsiveness to local needs, the  
7 effectiveness of conservation, education and volunteer pro-  
8 grams, and organizational efficiency.

9 (c) IMPLEMENTATION OF DETERMINATION.—If the  
10 Secretary determines under subsection (b) to designate a  
11 new national marine sanctuary, the Secretary shall imple-  
12 ment measures to assure a smooth and effective transition  
13 to a separate national marine sanctuary.

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## REPORT OF THE LEGISLATIVE COMMITTEE

The Legislative Committee (Committee) convened at 1 p.m. on Sunday, April 6, 2008. In attendance were Committee members Mr. Rod Moore (vice chair), Ms. Kathy Fosmark, Mr. Don Hansen, and Mr. Dale Myer. Also present were Council member Mr. Mark Cedergreen; Council Executive Director Dr. Don McIsaac, Highly Migratory Species Advisory Subpanel member Mr. Doug Fricke, Mr. Mike Burner with the Council staff, and Ms. Dorothy Lowman, consultant for Environmental Defense.

The Committee reviewed all of the legislative matters on its agenda and provides the following reviews and recommendations:

### H.R. 5425 - Flexibility in Rebuilding American Fisheries Act of 2008

H.R. 5425 (Agenda Item C.2.a, Attachment 1), introduced in the U.S. House of Representatives on February 13, 2008 by Representative Frank Pallone (D-NJ), seeks to amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to extend the requirement to rebuild overfished stocks within 10 years in specific situations, including situations where the biology of the stock or international agreements dictate otherwise, where the cause of the decline is outside Council jurisdiction, to minimize economic impacts or provide for a multi-species fishery if the stock is on a positive rebuilding trend. H.R. 5425 has been referred to the House Subcommittee on Fisheries, Wildlife, and Oceans.

The Committee sees H.R. 5425 as a positive amendment to the MSA that provides flexibility in rebuilding overfished stocks while not minimizing conservation goals. Although the specific situations H.R. 5425 would exempt from the 10-year rebuilding requirement do not currently apply to West Coast rebuilding efforts, the Committee is supportive of the bills proposed language change in MSA Section 304(e)(4)A:

*“For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph(5) for such fishery shall—*

*(A) specify a time period for rebuilding the fishery that shall*

*(i) be as short as ~~possible~~ practicable, taking into account the status and biology of any overfished stocks of fish, the need of fishing communities, recommendations by international organizations in which the [U.S.] participates, and the interaction of the overfished stock of fish within the marine ecosystem;....”*

In April 2007, U.S. Senator Gordon Smith (R-OR) sent a letter to the Council requesting Council comments on matters affecting west coast fishery resources. The Committee recommends the Council direct the Council Executive Director to send a letter to Senator Smith conveying Council support for H.R. 5425.

### H.R. 1187 - Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act

H.R. 1187 was the subject of a mark-up session held by the House Committee on Natural Resources on March 12, 2008. Council member Ms. Kathy Fosmark provided testimony at hearings on the bill and reported to the Committee on a failed attempt to amend H.R. 1187 by adding clarifying language on fishery regulatory authority within National Marine Sanctuaries. H.R. 1187 passed the U.S. House of Representatives on March 31, 2008 and has been referred to the U.S. Senate. U.S. Senator Barbara Boxer (D-CA) has introduced S.2654 the *“Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary Modification and Protection Act.”* Although the bills in Congress state that nothing in the proposed legislation is “intended to alter any existing authorities regarding the conduct and location of fishing activities in the Sanctuaries,” none of the bills specify that the regulation of fishing within Federal waters of the Sanctuaries is under the sole authority of the MSA.

Because this matter is now before the U. S Senate, the Committee recommends the Council send a letter to Senator Smith that reiterates the recommendations contained in the Council’s October 9, 2007 letter (Agenda Item C.2.a, Attachment 2), expresses the same concerns regarding S. 2654, and request that any new legislation include clarifying language on fishery regulatory authority within National Marine Sanctuaries.

### Status of National Marine Sanctuary Act (NMSA) reauthorization

Reauthorization of the NMSA is anticipated in the near future and was the subject of a House Subcommittee on Fisheries, Wildlife, and Oceans hearing on November 3, 2007. Mr. Moore reported the staff of the Subcommittee is aware of the Council Coordinating Committee’s (CCC) position on the regulation of fisheries within National Marine Sanctuaries, but it is anticipated that Subcommittee Chairwoman Madeleine Bordallo (R-GU) will introduce a NMSA reauthorization bill in late April that does not address this topic. Additionally, a hearing has been tentatively scheduled for early May to discuss NMSA reauthorization legislation. The Committee and Council staff will track this legislation.

Dr. Mc Isaac noted that NMSA reauthorization will be an agenda topic for the May 2008 CCC meeting. The Committee recommends the Council direct Council staff develop a position statement for the Council delegation to the May CCC meeting that reaffirms the Council’s perspective on fishery authority within Sanctuaries. The statement should include examples of what has worked well (e.g. MSA closures on bottom contacting gear in the Cordell Bank National Marine Sanctuary) and what has not (e.g. denial of MSA regulations to close the water column to fishing in the Channel Islands National Marine Sanctuary).

### The Antigua Convention Implementing Act of 2005

The Inter-American Tropical Tuna Commission (IATTC) adopted the Antigua Convention (Agenda Item C.2.a, Attachment 5) which cannot be fully implemented without U.S. ratification and implementing Federal legislation. The Administration, through the Department of State, has put forward a bill to implement the Antigua Convention (Agenda Item C.2.a, Attachment 6), but the bill has not been introduced in Congress.

Central to the concerns of the Committee and the Highly Migratory Species (HMS) Advisory Bodies is the Administration Bill's lack of specificity on the membership of the U.S. Delegation and Advisory Bodies to the IATTC and the funding and legal status of such representatives when travelling on IATTC business. One possible solution discussed by the Committee was to include language in the legislation that is similar to the language under Title V of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act concerning U.S. representation to the Western and Central Pacific Fisheries Commission.

The Committee agreed there is a need for specificity on U.S. representation in the IATTC forum and discussed ways the Council could provide recommendations to National Marine Fisheries Service and the U.S. State Department on any subsequent versions of the Administration Bill on this matter. The Committee recommends the Council direct the HMS Advisory Bodies review existing draft bill language, the draft State-Commerce-Councils Memorandum of Understanding, and any other relevant materials, and develop recommendations for proper representation for the Pacific Council to the IATTC.

#### California State Legislative Matters

In a written statement to the Council, the Highly Migratory Species Advisory Subpanel requested Council Staff review two items from the California State Legislature; Assembly Bill Number 2712 which would require the California Department of Fish and Game to develop a State Forage Species Management Plan (Agenda Item C.2.a, Attachment 8) and California Concurrent Resolution Number 85, relative to the Pacific bluefin tuna (Agenda Item C.2.a, Attachment 9).

The Committee's primary focus has typically been on Federal legislation, but because both Assembly Bill 2712 and California Concurrent Resolution 85 directly mention the Council and/or its Coastal Pelagic Species Fishery Management Plan, the Committee briefly reviewed these matters. Because the Council's recommendations on these issues have not been solicited by the California Assembly, lobbying restrictions prevent the Council from commenting directly. However, the Committee notes that individual Council members and other members of the Council family are not restricted from contacting California Assembly members.

Regarding California Assembly Bill 2712, the Committee reviewed materials submitted by the California Wetfish Producers Association (Agenda Item C.2.d, Supplemental Public Comment 2). The Committee appreciates the efforts of the CWPA on this matter and generally agrees with their comments.

Regarding California Concurrent Resolution 85, the Committee was supportive of the changes to the resolution as presented in Agenda Item C.2.a, Supplemental Attachment 13 and offers no other comments at this time.

#### Vessel Discharge Permitting

On March 30, 2005, the U.S. District Court for the Northern District of California ruled that the Environmental Protection Agency regulation excluding discharges incidental to the normal operation of a vessel from discharge permitting exceeded the Agency's authority under the Clean Water Act. Because the Court's decision is not limited to vessels with ballast water tanks, it

appears to implicate an extremely large number of vessels (including recreational vessels) and a wide range of discharges.

Subsequently, several bills have been introduced in the Congress (Agenda Item C.2.a, Supplemental Attachment 10) to address this issue. Mr. Dave Whaley, Senior Professional Staff of the U.S. House Subcommittee on Fisheries, Wildlife and Oceans, brought this matter to the Council's attention and requested Council comments on these bills.

Of the bills that have been introduced, the Committee preferred the comprehensive approach of *H.R. 5594, the Vessel Discharge Evaluation and Review Act* introduced by U.S. Congressman Don Young (R-AK) because it exempts both recreational and commercial vessels from unnecessary discharge permitting requirement set to go into effect in September 2008. The Committee did not understand why H.R. 5594 has separate length categories for recreational, non-fishing commercial vessels, and commercial fishing vessels. The Committee recommends the Council direct the Council Executive Director to send a letter to Mr. Dave Whaley, supporting the bill, but suggesting that legislation in the U.S. House of Representatives be amended to provide a broad exemption for all recreational and commercial vessels below 125 feet in length from the discharge permitting requirements.

#### Future Meeting Plans

The Committee noted the draft agenda for the June Council meeting includes a proposed Committee meeting on Saturday June 7. Because there are no urgent legislative matters anticipated in the near future and due to the heavy workload of the June Council meeting the Committee recommends postponing the meeting until September.

The Committee adjourned at 3 p.m.

#### Legislative Committee Recommendations

1. **Direct the Council Executive Director to send a letter to Senator Smith conveying Council support for H.R. 5425.**
2. **Direct the Council Executive Director to send a letter to U.S. Senator Smith that reiterates the recommendations on H.R. 1187 contained in Council's October 9, 2007 letter, expresses the same concerns regarding S. 2654, and request that any new legislation include clarifying language on fishery regulatory authority within National Marine Sanctuaries.**
3. **Direct Council staff to develop a position statement for the Council delegation to the May CCC meeting that reaffirms the Council's perspective on fishery authority within National Marine Sanctuaries.**
4. **Direct the HMS advisory bodies to develop recommendations on Council representation to the U.S. Delegation and Advisory Bodies to the IATTC, which the Council can convey to the National Marine Fisheries Service and the U.S. Department of State.**
5. **Direct the Council Executive Director to send a letter to Mr. Dave Whaley, supporting H.R. 5594, but suggesting that legislation in the U.S. House of Representatives be amended to provide a broad exemption for all recreational and**

**commercial vessels below 125 feet in length from the discharge permitting requirements.**

- 6. Schedule the next meeting of the Committee for the September Council meeting unless Council staff or Committee members identify an urgent matter in the interim.**

PFMC

04/09/08

HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON  
LEGISLATIVE MATTERS

**Antigua Convention**

A proposed administration bill to implement the Antigua Convention requires amendments to the Tuna Conventions Act of 1950, as amended. The Highly Migratory Species Advisory Subpanel (HMSAS) has conducted a preliminary review of the bill entitled "OES draft, January 23, 2006" identified at the April meeting of the Council as Agenda Item c.2.a Attachment 6. The proposed bill makes substantial amendments to sections of the existing law; therefore, a careful legal review and analysis of the changes is required. To date this has not been forthcoming from National Marine Fisheries Service (NMFS) or National Oceanic and Atmospheric Administration (NOAA).

The HMSAS has numerous concerns with the draft legislation including, but not limited to, the deletion of embargo provisions, the increased enforcement penalties, and the absence of provisions to prevent inequitable treatment of the U.S. fleet in management and conservation measures. At this time the HMSAS expresses a strong objection to the proposed amendment of paragraph "c" of section 6, 16 USC 955c, (see pages 6-7 of Agenda Item C.2.a, Attachment 6). These provisions in the original act provide protection for the U.S. fishing fleet against being regulated by conservation and management measures that are not being followed by other countries participating in the same international fishery. The proposed bill makes unnecessary changes which weaken the existing provisions.

In addition, the proposed bill does not treat the Antigua Convention Advisory Committee in the same manner that the recently enacted enabling legislation for the Western and Central Pacific Fisheries Commission treats that advisory committee. The two advisory committees should have similar responsibilities and privileges. After further study and consultation by its members, the HMSAS will provide substantive language for the Council and/or the Council's Legislative Committee for their consideration. The HMSAS request this to be on the agenda for their next meeting.

**SCR 85**

The HMSAS has again reviewed this California senate concurrent resolution, the latest draft of which is labeled Agenda Item C.2.a, Supplemental Attachment 13. While a number of changes have been made in the legislature's apparent good faith effort to be more accurate, there remain misleading and incomplete statements in the "whereas" clauses. Because SCR 85 is still being considered by various legislative committees, the HMSAS will not comment on the current "whereas" clauses. The HMSAS disagrees with the Legislative Committee's statement that "because the Council's recommendations on these issues have not been solicited by the California assembly, lobbying restrictions prevent the Council from commenting directly." The HMSAS requests that the Council make known its views to the Council member from the California Department of Fish and Game, to be conveyed to the Legislature, the Governor, and

the Ocean Protection Council. The HMSAS encourages NMFS and NOAA to investigate how they became listed as supporters of SCR 85, particularly since the Council has received no guidance from these entities as to the interpretation of the Magnuson-Stevens Act amendments concerning total annual catch limits and their application to internationally managed fisheries. The HMSAS is, however, very concerned by the language in the “resolved” section of the resolution, which states in part “and the imposition and enforcement of catch limits for Pacific bluefin tuna in the United States exclusive zone” and recommends that the Council ask the California Senate to strike all the language on page 4 beginning after the word “resource” in line 36 to the end, which is the language previously noted. This language represents a misguided attempt to impose unilateral regulations, rather than action to implement internationally agreed measures which would apply to *all* countries in the international fishery. Further, while the HMSAS is aware of illegal, unreported, and unregulated (IUU) fishing in the North Pacific which is impacting salmon and albacore, it is unaware of any IUU fishing impacting North Pacific bluefin. Lastly, the HMSAS recommends the Scientific and Statistical Committee evaluate the priority which should be given to assessing North Pacific bluefin tuna as contrasted with other HMS species in the northern Pacific Ocean which may be in greater need of study.

A minority of the HMSAS (Meghan Jeans, Ocean Conservancy) supports SCR 85 regarding the conservation and management of bluefin tuna as amended and approved by the California Senate Committee on Natural Resources and Water on Tuesday, April 8, 2008 (Agenda Item C.2.a, Supplemental Attachment 13). The spirit and intent of the law is consistent with a precautionary approach to management and prioritizes the need for more informed, transparent, and scientifically based management of a species with high ecological and commercial value. Moreover, the clause requiring the imposition of catch limits for U.S. vessels targeting and catching bluefin tuna is both prudent and entirely consistent with the Council and NMFS’s obligations under the Magnuson-Stevens Act.

PFMC  
04/11/08

32506 Seahill Drive  
Rancho Palos Verdes, CA 90275

March 19, 2008

Dear Senators Kuehl, Migden and Wiggins  
Dear Assembly members DeSaulnier, Feuer, Smith and Saldana

With all due respect to you in your positions in the California legislature, I find Senate Concurrent Resolution No. 85 (with your names as sponsors) to be one of the most horrendous examples I have ever seen of misguided, misinformed, and illogical "legislation."

First, I would point out that I do not know of a single reputable and peer reviewed stock assessment of north Pacific bluefin tuna that suggests the alarming picture the proposed resolution portrays. I worked in the National Marine Fisheries Service for 30 years, including 10 years of involvement in U.S. delegations to regional fishery management organizations such as the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission (the U.S. is party to both of these organizations). Both commissions are supported by experts in tuna and associated species. In addition, I have read and followed work by the International Scientific Committee for Tuna and Tuna-like Species of the North Pacific (ISC). This organization provides scientific advice (including stock assessments) to regional fishery management organizations and member governments. None of these bodies has concluded that north Pacific bluefin is overfished or is being subjected to overfishing. The ISC – as a precautionary move – has recommended that fishing mortality for this stock not be increased above current levels but has not suggested any further fishery controls. I note that there is no citation in the resolution that indicates the source of information you must have relied on for your conclusions; I doubt that there is such a source that is scientifically sound. I believe that you, as legislators, have a responsibility to check out the facts of the situation before promoting action to deal with a crisis that is not a crisis.

The chapeau of your resolution refers to "the cessation of illegal, unreported and unregulated bluefin tuna overfishing" and the "imposition and enforcement of catch limits for countries fishing for Pacific bluefin tuna in the Exclusive Economic Zone" (which I presume means the U.S. EEZ). There is no foreign fishing for bluefin tuna in the U.S. EEZ; I repeat, there is ZERO foreign fishing for bluefin (or any other fish) in the U.S. EEZ. Also, I am not aware of any illegal, unreported and unregulated overfishing of bluefin tuna anywhere in the Pacific



Ocean. There may be some IUU fishing on the high seas, but it is not determined that bluefin is a target, or that there is any overfishing of Pacific bluefin, nor does it seem likely that bluefin would be a major target of any IUU fishing that is occurring.

The first WHEREAS of your resolution refers to the Atlantic bluefin tuna stock situation as if conditions there have a relationship to conditions in the Pacific. This is ludicrous; conditions are very different in the Atlantic and Pacific. Bluefin are NOT overfished in the Pacific.

The second WHEREAS of your resolution argues that the diminishing bluefin tuna population in the Pacific results in coastal economic losses to California including decreased security of the pelagic seafood market and fishing industry, etc. This is incorrect in that the decreased landings and economic activity associated with tuna fishing are a result of the shift/decline in the California-based fleet and not a result of a decline in the bluefin stock, which extends across the Pacific Ocean (see next comment).

The third WHEREAS uses the decline in bluefin tuna landings into California ports as a reason for concern about the stock. This is simply illogical; it takes a single fact to reach an incorrect conclusion. Yes, it is true that landings of bluefin tuna into California are much lower now than they were historically. However, this is not a reflection of a decline in the stock but is a consequence of the virtual disappearance from California of the U.S. purse seine fishery for tuna. In the 1970s, the U.S. had the largest tuna purse seine fleet in the Pacific, with 150 or so large vessels. There were major canneries on Terminal Island in Los Angeles harbor, and the fleet was headquartered in San Diego. Thousands of people worked at the canneries. Millions of pounds of tuna were canned there including large amounts of bluefin tuna. Now, the canneries are closed; the large U.S. purse seiners have either relocated to the Western Pacific or have been sold to foreign interests; and there are only one or two moderate sized purse seiners operating out of California ports. The purse seine fishery was partly driven out by the tuna-dolphin controversy. In addition, the U.S. canning industry could not survive in California against regulation and foreign (lower labor cost) competition. It was not a stock decline that drove the fishery away; it was other factors. It stands to reason that landings of bluefin tuna would drop to almost zero given what happened to the fleet based in California. If there are no boats fishing for the species, it won't be caught and landed.

The fourth WHEREAS seems to hypothesize that "overfishing of the Pacific bluefin tuna, sparked by increasing demand by countries around the world, poses an imminent threat to California's economy," even though bluefin now make up a very small portion of California's total fish landings and economy; a drop from the cited 300,000 pounds (rounded) per year would seem miniscule in impact. If

California's coastal economy is threatened by declines in bluefin tuna landings from 300,000 pounds, then the coastal economy should really have collapsed in the 1980s when landings dropped from 11 million pounds. That didn't happen then and it won't happen now.

The sixth WHEREAS, which tries to link the decline in bluefin tuna landings, to an undocumented decline in the stock of bluefin, to the prospective rise and terror of giant squid, is an especially awesome feat of logic. I have neither read nor heard of any credible scientific analyses that would support this proposition.

The point of the seventh WHEREAS is simply not clear. Yes, tuna generally swim in large schools, and this does often facilitate their capture; but so what? From a fishing point of view, this is good as it promotes efficiency, which in turn can help provide a really good food source to the public at a moderate price. As long as controls can be put in place to limit total fishing mortality (which would have to be done at the international level) when needed, it should not matter whether the fish swim in large schools or as independent fish.

The ninth WHEREAS is simply misguided; the bluefin tuna population is NOT endangered!! There may be fishing on juveniles (note that this is far, far from the California coast) in some waters, but in and of itself this is not necessarily a threat to the stock. It depends on how much fishing occurs there and how much additional fishing occurs as the fish grow and migrate. Further, much of the mortality from fishing at this small size merely means that humans are getting the fish instead of other animals getting the fish. The natural mortality rate at very small sizes is thought to be very high for this species.

The WHEREAS that references the Pacific Fishery Management Council reflects that the authors simply don't know what agencies are involved at what level in fishery management in the ocean. The Pacific Council does not "enforce" the Magnuson-Stevens Act; the Pacific Council develops fishery management plans that essentially set the ground rules for fishing. Regulations to implement approved fishery management plans are promulgated by the National Marine Fisheries Service, which is part of the National Oceanic and Atmospheric Administration in the Department of Commerce. NMFS in cooperation with the U.S. Coast Guard enforces the regulations and NOAA prosecutes violators. In the case of tuna, there may also be regulations promulgated by NMFS to implement conservation and management measures agreed to by regional fishery management organizations such as the IATTC. The Council does have a fishery management plan for highly migratory species, and Pacific bluefin tuna is among the management unit species, but the Council has so far not recommended any controls on fishing for bluefin either in or beyond the EEZ. NMFS has NOT presented the Council with any determination that bluefin are overfished or that overfishing is occurring.

Finally, turning to the “resolved” portions of the resolution, the first resolved repeats the erroneous conclusion that bluefin are overfished and further charges that there has been mismanagement of the “seriously impaired Pacific bluefin tuna species;” since the species is NOT overfished according to any sound scientific analysis, it can hardly be correct that there has been mismanagement.

The second “resolved” section repeats the charges about IUU fishing and calls for the imposition of catch limits for countries fishing for bluefin in the EEZ; again, there are NO foreign vessels fishing for bluefin tuna in the EEZ. This section also calls for creation of marine protected areas, presumably in U.S. waters, as if this would be beneficial to Pacific bluefin. If the areas to be closed were important for spawning, perhaps some good could come from such action. For the most part, however, bluefin tuna are widespread across the north Pacific; they only occasionally enter U.S. waters, typically from the south; and they are not at all resident in the EEZ and do not spawn in the EEZ. It is inconceivable that marine protected areas in U.S. waters could provide any benefit at all to the species.

In sum, I am disappointed that you would affix your names to such a resolution. I am not concerned about the effects of the resolution; it has no regulatory or policy effect as far as I know. My concern is that I think you have a responsibility to take and promote policy positions and actions that are based on fact and science, that are logical, and that are well thought out. This resolution suggests that you were simply talked into supporting this resolution without any consideration of whether the facts were correct or whether the position was solidly based and logical. It suggests that you simply took the word of a number of environmental organizations that want to use you to get attention (and funds) to fight against fishing and against fishermen and fisherwomen, especially on the matter of marine protected areas. I think you owe it to the fishermen and fisherwomen of California to seek to understand and to help them, not to inappropriately suggest that they have overfished a stock that is not overfished. If you are concerned about losses to the coastal economy, then pay more attention to the pressures these folks are under as salmon seem to have disappeared and as rockfish are strained and as marine protected areas make more and more areas unavailable to them.

Perhaps even more important in some ways, I would hope that you would want to be able to show children and students how your positions in the Senate and Assembly reflect careful consideration of facts, science and logic. This resolution is not a shining example of such a pattern of behavior.

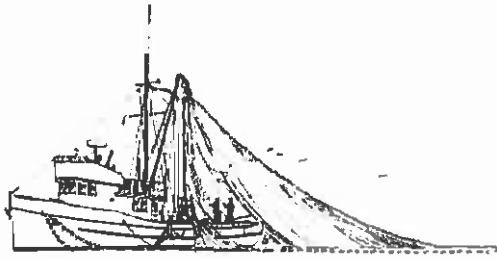
And finally, if I were a politician like you, I would not want my name on this kind of resolution as it could be available to my political foes who, if they knew the facts, could then use it to ridicule me in a campaign.

My recommendation is to withdraw the resolution before it gets more publicity and save yourselves the trouble.

Sincerely,

Svein Fougner

Cc:  
Pacific Council



## CALIFORNIA WETFISH PRODUCERS ASSOCIATION

Representing California's Historic Fishery

VISIT [WWW.CALIFORNIAWETFISH.ORG](http://WWW.CALIFORNIAWETFISH.ORG) FOR INFORMATION

March 6, 2008

The Honorable George Plescia  
California State Assembly  
California State Capitol Room 3141  
Sacramento, CA 94249

Dear Mr. Plescia,

On behalf of California's historic wetfish industry, I appreciate this opportunity to introduce myself and the California Wetfish Producers Association (CWPA), a nonprofit 501(c) organization representing the majority of fishermen and processors who harvest and market 'wetfish' in California: including Pacific sardine, Pacific and jack mackerel, anchovy and market squid. The wetfish industry has produced the lion's share of California's commercial fishery harvest since before the turn of the 20<sup>th</sup> century, contributing substantially to California's economy as well as California culture for nearly 150 years.

Wetfish industry leadership established CWPA in 2004 with a primary goal to cooperate with state and federal fishery managers to assure the continued sustainability of coastal pelagic 'wetfish' resources as well as this storied industry. California's wetfish industry was founded by immigrant fishermen more than a century ago, and the enterprise of these fishing families helped to build the ports of Monterey and San Pedro, as well as San Diego and San Francisco. Today's wetfish industry is a traditional industry with a contemporary outlook: streamlined and more efficient but still peopled by fourth and fifth-generation fishing families. Now as then, this industry has heavily invested in research – from the beginnings of the California Cooperative Fishery Investigations (CalCOFI) to today, with CWPA's cooperative research program expanding knowledge of market squid and sardine, in coordination with the state Department of Fish and Game and federal Southwest Fishery Science Center.

In light of today's precautionary wetfish fishery management and current research programs, we are assured that our wetfish resources and fishery are sustainable. So it was with alarm and extreme dismay that we learned of AB 2712, which you authored and introduced February 22.

However well-meaning the intent of this bill to protect marine resources, this legislation as drafted would – intentionally or not – result in the unnecessary curtailment of California's historic wetfish industry. Therefore we must oppose AB 2712 as written.

This bill appears not to have considered nor coordinated with any other regulations now in place to protect, manage and sustain coastal pelagic resources. It duplicates and overrides existing fishery management – both the federal Coastal Pelagic Species Fishery Management Plan (CPS FMP) and state Market Squid Fishery Management Plan. Moreover it lays yet another extreme and unneeded

regulatory burden, in fact a prohibition on fishing, on top of the current network of marine reserves and marine protected areas now being implemented under the Marine Life Protection Act (MLPA) and those already implemented by the Channel Islands Marine Reserve process, a pilot project and precursor to MLPA, not to mention the numerous areas now closed to fishing through existing fishery regulations. It further mandates the Department to conduct extensive research but provides neither the funding nor scientific personnel to accomplish these tasks: AB 2712 thus appears as another unfunded mandate.

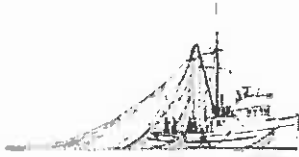
Board members of CWPA and I, along with our scientific research consultant, would very much appreciate an opportunity to sit down with you to discuss this bill and present data supporting the length and breadth of resource management regulations currently in effect to protect and sustain coastal pelagic resources, including the wetfish species enumerated in AB 2712.

I look forward to meeting and working with you in support of strengthening California's emphasis on best available science, as mandated in existing California ocean protection policies including the Marine Life Management Act, Marine Life Protection Act and California Ocean Protection Act, and assuring the coordination and integration of these mandates.

Thank you very much for your consideration.

Best regards,

Diane Pleschner-Steele  
Executive Director



**CALIFORNIA WETFISH PRODUCERS  
ASSOCIATION**  
**WWW.CALIFORNIAWETFISH.ORG**

## **BACKGROUND INFORMATION**

**on**

**California's Historic Wetfish Industry  
Precautionary Management of Coastal  
Pelagic Species  
Concerns regarding AB 2712**

## **INTRODUCTION**

- Overview
- A Brief History of CA's Wetfish Industry
- Highlights of existing fishery management
  - Coastal Pelagic Species FMP
  - Marker Squid FMP
  - Introduction to Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

## **MARINE LIFE TRENDS & FORAGE FISHING**

- Central CA Trends
- Southern CA Trends
- Information on forage habits of marine birds

## **MAPS OF SOME AREAS CLOSED TO FISHING**

- Channel Islands Marine Reserves
- MPAs implemented through Marine Life Protection Act.

## **CONCERNS REGARDING AB 2712**

- Analysis of the Bill by Dr. Richard Parrish, former member of the Coastal Pelagic Species Fishery Management Team (retired)

## OVERVIEW

“Wetfish”, coastal pelagic species including sardines, anchovy, market squid and mackerels, have contributed the lion’s share of California’s commercial seafood harvest since before the turn of the 20<sup>th</sup> century, producing more than 80 percent of the total statewide catch, on average, and representing thousands of jobs in the ports of Monterey and San Pedro as well as San Diego and San Francisco, and harbors in-between.

AB 2712 places unnecessary restrictions on this historic fishery, jeopardizing its sustainability.

- AB 2712 duplicates existing protections without recognizing nor integrating the ecosystem-based conservation benefits of:
  - Magnuson-Stevens Conservation and Management Act (PFMC)
  - California Current System Fishery Management Plan (in development, PFMC)
  - Coastal Pelagic Species Fishery Management Plan (PFMC)
  - Marine Life Management Act (DFG)
  - Market Squid Fishery Fishery Management Plan (DFG)
  - Statewide network of Marine Protected Areas implemented under the Marine Life Protection Act
  - Additional closures and restrictions implemented through fishery regulations
- AB 2712 (Sec. 7095) specifies environmental risks, none of which are caused by fisheries in CA, yet proposes only to restrict fishing – where’s the link?
  - “Industrial fishing” [d] is not defined; moreover it does not occur in CA.
  - Virtually NO whole fish are converted to fish meal in CA.
- The plan outlined in AB 2712 does nothing to enhance ecosystem management, the goal of current state and federal fishery management policy; the solutions proposed are simply a series of single species management plans.
  - *As written, the bill is a strange mixture of goals and specific management options, none of which are necessary or even well thought out. For example, the specific management options would go into law before, and with priority over, the management recommendations developed by the proposed fishery management plan. Clearly this is not the way to manage the ecosystem, or the fisheries.*
  - *Ecosystem management cannot be carried out with attention only given to a single trophic level in a small portion of a single habitat (in this case forage fishes in the epi-pelagic habitat (Parrish comments, page 1)*
- AB 2712 is another unfunded mandate and duplication of existing efforts – seemingly a misguided attempt to curtail CA’s historic wetfish fishery complex in the guise of marine resource protection
  - *There is no way that a forage species management plan can be adequately addressed without significant dedicated funding for both the planning team and a permanent monitoring plan to track the ecosystem health of the lower trophic level fishes and pelagic invertebrates as well as oceanic regime shifts. (Parrish comments, page 1)*
  - *The research required by this bill is already being investigated by NOAA and independent scientists.*



– CA Ocean Protection Council set global warming / ocean acidification as a high priority for CA Sea Grant research in 2008.  
– Marine mammal populations have increased in California during the past several decades, after passage of the Marine Mammal Protection Act of 1972, when fisheries were significantly larger than they are at present, suggesting that the ecosystem was healthy even at the higher exploitation rates that occurred during the 1980s and early 1990s. (Parrish comments, page 2)

- Section 7099 is a prescription for certain failure of an ecosystem management plan. Simplistic and artificial policies such as only allowing fishing where fishing occurred from 2002-07 and setting maximum landings based on the 2007 landings cannot be considered to be even a first guess proxy for ecosystem management. [The 2007 landings were not even available when AB 2712 was written.]
- This section completely negates the role of science in the development of the plan, and it is an insult to the hundreds of scientists who have spent their lives studying, describing and analyzing the complex ecology of the California Current System. (Parrish comments, page 7)
  - *Pelagic species by definition are carried by the currents; their distribution varies wildly from year to year due to their population size, wind and density driven local circulation processes, El Nino events, decadal and regime scale environmental process in the entire Pacific Basin.*
- The evidence gathered over the last century demonstrates that ecosystem management will necessarily be an adaptive process that utilizes monitoring of both environmental and biological processes to determine the current environmental state, and then applies an ecosystem model to determine optimum harvest policies for that state.
  - CWPA has developed a collaborative research program for market squid that links environmental indices (i.e. sea surface temperature, chlorophyll A, ocean currents etc.) to scientific capture of squid paralarvae and local concentrations by area, and is cooperating with state and fishery squid scientists to relate trends to harvest levels over time.
- In summary, knowledge-based ecosystem management in which the importance of forage species is included in the determination of their optimum yield is an important goal.
  - The existing definition of "Optimum yield" in Sec. 97 of the CA Fish & Game Code already includes ecological factors.
- Unfortunately, this legislation offers simplistic, belief-based measures affecting only a portion of a single trophic level in a small portion of the California Current Ecosystem. Measures such as capping landings at an as yet unknown value determined by the landings in 2007, and restriction of the future fishery to the state water areas that were fished in the years 2002-2007, are not likely to produce a management system that is sufficiently accurate or adaptive enough to result in successful ecosystem management. (Parrish comments, page 9)

## HIGHLIGHTS: CONSERVATION AND MANAGEMENT OF 'FORAGE' SPECIES

### Specific References:

[Federal] PFMC – Coastal Pelagic Species FMP and  
[State] DFG – Market Squid Fishery Management Plan

### Introduction:

For more than a decade, both federal and California state fishery management programs have adopted an ecosystem-based management (EBM) focus: federally managed fisheries must comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), whose amendments adopted by Congress in 2007 provide an even stronger ecosystem-based fishery management framework that mandates, among other provisions, a study on the state of science for the integration of ecosystem consideration in fishery management (MSA Section 406).

The State of California adopted an ecosystem focus for fishery management, paralleling that of the MSA, with its adoption of the Marine Life Management Act (MLMA) and Marine Life Protection Act (MLPA) in 1999.

Fluharty, D., et. al. (1999), in the paper Ecosystem-based fishery management: a report to Congress by the Ecosystem Principles Advisory Panel (U.S. Department of Commerce. NOAA/NMFS. 54 pages), acknowledged the Pacific Fisheries Management Council's Anchovy Fishery Management Plan (precursor to the Coastal Pelagic Species FMP) for setting aside a portion of the population as forage for other marine life. This FMP was a pioneer in adopting an ecosystem approach to fisheries management, and the ecosystem focus was carried over into the CPS FMP, with the Cutoff portion deducted 'off the top' of the spawning stock biomass estimate when computing harvest guidelines to provide a forage reserve.

In response to Assembly Bill No. 2712

- Fisheries governed by the Pacific Fishery Management Council and State of California are currently managed based on precautionary principles. Monitoring fisheries stocks and determining estimates of population abundance are an essential and ongoing component of management. That is, fisheries are currently managed in an inherently flexible manner in which annual catch limits, restricted access, and time/area closures [both seasonal and permanent] play a key role.
- Stock assessment science incorporates estimates of abundance and productivity of a given stock first to sustain and protect the resource as well as to optimize the potential yield. Adaptive fishery management is an ongoing process and requires estimates of current biomass, historical biomass, productivity, and uncertainty.
- Shifts in the biomass of different species in many fished ecosystems have often been driven by environmental change rather than the direct or indirect effects of fishing. In fact, in most pelagic systems, species replacements would have occurred even in the absence of fishing pressure.

NOTE: AN INDEPENDENT SCIENTIFIC AND STATISTICAL COMMITTEE (SSC) PLAYS AN IMPORTANT ROLE IN PEER REVIEWING PROPOSED FEDERAL MANAGEMENT GUIDELINES. COASTAL PELAGIC SPECIES FISHERIES ARE CLOSELY GOVERNED AND REGULATED BASED ON ESTABLISHED "BEST AVAILABLE SCIENCE" PRINCIPLES.

## Highlights of the CPS FMP and Market Squid FMP

### Summary:

- Pioneering EBM fishery management plan, CPS FMP established a "Cutoff", subtracting 150,000 mt off the top of estimated sardine biomass, to conserve biomass as forage.
- Established Sea Surface Temperature control for sardine, recognizing that warm-water oceanic cycles favor sardine population abundance and cold-water regimes reduce productivity.
  - Precautionary Harvest Guideline (HG) Fraction set at 15% of sardine spawning biomass minus Cutoff when SST exceeds 17.2° C, and is reduced to 5% when SST drops to 16.7° C
- CPS FMP authorized limited entry fishery in CA; reduced CPS finfish fleet to 65 permits, established capacity goal at 5,650.9 mt, to maintain a diverse fleet with normal harvesting capacity equal to long-term expected aggregate total finfish target harvest level of approx. 110,000 mt
- Even though no krill fishery currently exists on the west coast, CPS FMP added krill to FMP as a 'prohibited species'.
- [Note: all west coast states prohibit harvesting and landing krill in state waters, but the CPS FMP prohibition prevents future offshore harvest/processing of krill in US EEZ]
- CPS FMP established proxy MSY for market squid at 30% egg escapement. Squid is monitored species under CPS FMP, and actively managed by CA under state Market Squid FMP.
  - In addition to 30% egg escapement, state MSFMP mandates:
    - fishery closures statewide on weekends;
    - limited entry, transferable permits [reduced purse seine fleet from 164 to 77 permits]
    - Numerous areas closed to fishing, including approx. 20% squid harvest grounds in Channel Islands Marine Sanctuary, with additional marine reserves implemented or pending under Marine Life Protection Act

### Detail:

**1) Amendment 8** Established CPS FMP, expanded from the Anchovy FMP; included four finfish species (Pacific sardine, Pacific mackerel, northern anchovy, jack mackerel) and one invertebrate (market squid)

- ~65 limited entry permits established for fishing vessels south of 39° N latitude; open access from 39° N [approx. Pt. Arena] north through Oregon and Washington.
- MSY (maximum sustainable yield) control rules for harvest of "actively managed species": **Harvest Guideline = (Biomass-Cutoff) x Fraction x Distribution**
- Sardine: Cutoff = 150,000 metric tons and Fraction =  $0.248649805 T_2 - 8.190043975 T + 67.4558326$  (where  $T_2$  is 3-year temperature average). Distribution accounts for percentage of northern sardine biomass in US waters (87%). This precautionary formula reduces the US harvest guideline to account for sardine harvested in Mexico.

- Pacific mackerel: Cutoff = 18,200 metric tons; Fraction = 30% [environment-based percentage of biomass above Cutoff allowed to be harvested by fisheries]; Distribution 70% [percentage of total biomass in US waters]
- Anchovy, jack mackerel, and market squid included as monitored species; anchovy and jack mackerel monitored due to low landings, with active management if landings increased (squid is actively managed by California)
- Allocation of sardine HG: apportioned 33% of HG to subarea A (35° 40' N. latitude, Point Piedras Blancas, California to 39° N. latitude, Point Arena, California) and 66% to subarea B (Point Piedras Blancas to US Mexico border).
- Sardine season January 1 to December 31 and P mackerel July 1 to June 30
- Required annual Stock Assessment and Fishery Evaluation (SAFE) report for CPS

**2) Amendment 9** Addressed Bycatch and Indian fishing rights

- Recommended that agencies and tribes develop dockside bycatch monitoring program, observer programs for all new fisheries, and that grates over ships holds be evaluated for separating out and live release of bycaught species
- Recognized that treaty rights apply to CPS FMP and allocations of HG

**3) Amendment 10** Fleet capacity and market squid MSY control rule

- Set CPS finfish fleet capacity goal of 5,650.9 mt, to maintain a diverse fleet with normal harvesting capacity equal to long-term expected aggregate finfish target harvest level of approx. 110,000 mt
- Allowed permit transfers with restrictions while maintaining fleet capacity goal
- Set market squid MSY: established proxy MSY for squid at 30% egg escapement

**4) Regulatory Amendment** Revised allocation framework

- (1) moved geographic boundary between Subarea A (northern subarea) and Subarea B (southern subarea) from 35° 40' N. latitude (Point Piedras Blancas, California) to 39° N. latitude (Point Arena, California), (2) moved the reallocation date for unharvested sardine from October 1 to September 1, (3) changed the reallocation percentage of unharvested sardine to 20% to Subarea A and 80% to Subarea B, and (4) reallocated all unharvested sardine on December 1 coastwide.

**5) Amendment 11** Revised sardine allocation to allow for more efficient use of HG

Established coastwide, seasonal allocation, releasing HG in three time periods: Jan 1 – June 30, 35%; July 1 – Sept 15, 40%; Sept 16 – Dec 31 25%, with any unused HG remaining in any time period to be rolled automatically into the next period. PFMC agreed to review the allocation framework in three years: 2008.

**6) Amendment 12** Measures to prohibit fishing for krill

- Added krill to the management unit species of the CPS FMP under new category of "prohibited harvest"

**Highlights of Market Squid FMP**

From Table 3-1. Summary of Management Measures as Identified in the Draft MSFMP Adopted by the Fish and Game Commission 27 August 2004 and 3 December 2004. (Revised by Commission 22 March 2005)

***FINAL MARKET SQUID FISHERY MANAGEMENT PLAN: 25 March 2005*****FISHERY CONTROL RULES****Seasonal Statewide Catch Limitation**

Established a seasonal catch limitation based on recent average catch and the assumption that squid biomass is above average spawning biomass (currently set at 118,000 tons) to be reviewed in two years.

**Weekend Closures**

Continued closures from noon Friday to noon Sunday from the U.S.-Mexico border to the California-Oregon border

**Monitoring Program**

Continued existing squid monitoring programs (port sampling and logbooks).

**Live Bait Fishery and Incidental Catch of Market Squid**

Continued existing regulations that do not require a squid permit when fishing for live bait or incidental take two tons or less.

**Gear Restrictions**

Maintained existing gear options regarding maximum wattage (30,000 watts)

Established gear restrictions which stating each vessel fishing for squid and lighting for squid would utilize shielding that will reduce the light scatter of its fishing operations by shielding the entire filament of each light used to attract squid and orient the illumination directly downward so that the lower edge of the shield will be parallel to the deck of the vessel.

**RESTRICTED ACCESS PROGRAM****Market Squid Fleet Capacity Goal**

Established a capacity goal for market squid vessels that produces a moderately productive and specialized fleet (55 vessels, 18 brail vessels and 34 light boats; capacity goal for nontransferable permits is zero)

**Requirements for Initial Issuance of Permits**

Transferable Permits: Market Squid Vessel Permit: possession of a current market squid vessel permit (2004-2005) and a minimum of 50 landings in window period January 1, 2000 through March 31, 2003; Brail Permit: Possession of a current market squid vessel permit (2004-2005) and a minimum of 10 landings made with brail gear in window period January 1, 2000 through March 31, 2003; Light Boat Permit: Possession of a current market squid permit (either vessel or light for 2004-2005) and have submitted one light boat log by December 31, 2000. Non-Transferable Permits: Market Squid Vessel Permit: Possession of a current market squid vessel permit (2004-2005), possession of a California commercial fishing license for at least 20 years and a minimum of 33 landings prior to August 27, 2004. Only receipts that demonstrate catch aboard a vessel that does not already qualify for issuance of a transferable permit of any permit class are eligible. Brail Permit: Possession of a current market squid vessel permit (2004-2005), possessed a California commercial fishing license for at least 20 years and made a minimum of 10 landings with brail gear during one fishing season in a window period from January 1, 2000 through March 31, 2003. Only receipts that demonstrate catch aboard a vessel that does not

already qualify for issuance of a transferable permit of any permit class are eligible. Light Boat Permit: There is not a non-transferable permit category.

**Permit Fees**

Annual permit fees (adjusted annually for inflation):

Market Squid Vessel Permit – Transferable = \$2,000 (2008-09 permit = \$2,334.50)

Market Squid Vessel Permit – Non-Transferable = \$1,000 (2008-09 permit = \$1,167.25)

Market Squid Brail Permit – Transferable = \$2,000 (2008-09 permit = \$2,334.50)

Market Squid Brail Permit – Non-Transferable = \$1,000 (2008-09 permit = \$1,167.25)

Market Squid Light Boat Permit - Transferable = \$600 (2008-09 permit = \$700.25)

Market Squid Light Boat Permit – Nontransferable = \$45

**Market Squid Vessel Permit Transferability**

Established full transferability of market squid vessel permits based on comparable capacity (within 10%); Established transferability of market squid vessel permits to a vessel of larger capacity under a "2 for 1" permit retirement; individuals wishing to gain entry into the fishery must secure two permits.

**Market Squid Brail Permit Transferability**

Established full transferability of market squid brail permits based on comparable capacity

**Market Squid Light Boat Owner's Permit Transferability**

Established full transferability of light boat owner permits with a '1 for 1' permit retirement

Upgrade 1 light boat owner permits for one brail permit

**Transferability Fees**

Established a transfer fee of \$500

Established a Market Squid Brail Permit Upgrade Fee of \$1,500.

Experimental Market Squid Vessel Permits

Established three non-transferable experimental fishery permits.

**ECOLOGICAL CONSIDERATIONS****Area and Time Closures to Address Seabird Issues**

Established areas closed to squid vessels using attracting lights in all waters of the Gulf of the Farallones National Marine Sanctuary.

[Note: Approx. 20 percent of Channel Islands Marine Sanctuary state waters was closed in marine reserves, including about 20% of squid spawning areas. These areas also coincided with known bird nesting sites on Anacapa and Santa Barbara Islands. Additional marine reserves have been implemented near Año Nuevo and are under development for Farallon Islands.]

**ADMINISTRATIVE ITEMS****Market Squid Advisory Committee**

Established one advisory committee for the squid fishery, which includes scientific, environmental and industry representatives

The California market squid fishery is managed based on the egg escapement method. The following definitions are used by CDFG:

**Egg Escapement** – the number or proportion of a female squid's lifetime supply of eggs that she is able to deposit, on average, before being taken in the fishery.

***Egg Escapement Method*** – a management tool which may be used to determine whether the fleet is fishing above or below a predetermined sustainable level of exploitation. The method requires establishing a threshold value (30%) to ensure that an adequate number of eggs are deposited prior to harvest.

NOTE: Preliminary research conducted by the National Marine Fisheries Service, Southwest Fisheries Science Center, indicates that the guidelines (or parameters) established by this method may be considered conservative for market squid in that viability of eggs may increase with increased harvesting of adult squid. Research and modeling to date indicate that the fishery is well-managed according to precautionary principles.

## Reasons why market squid, sardine and anchovy harvest in should be allowed to continue as regulated under current fishery management

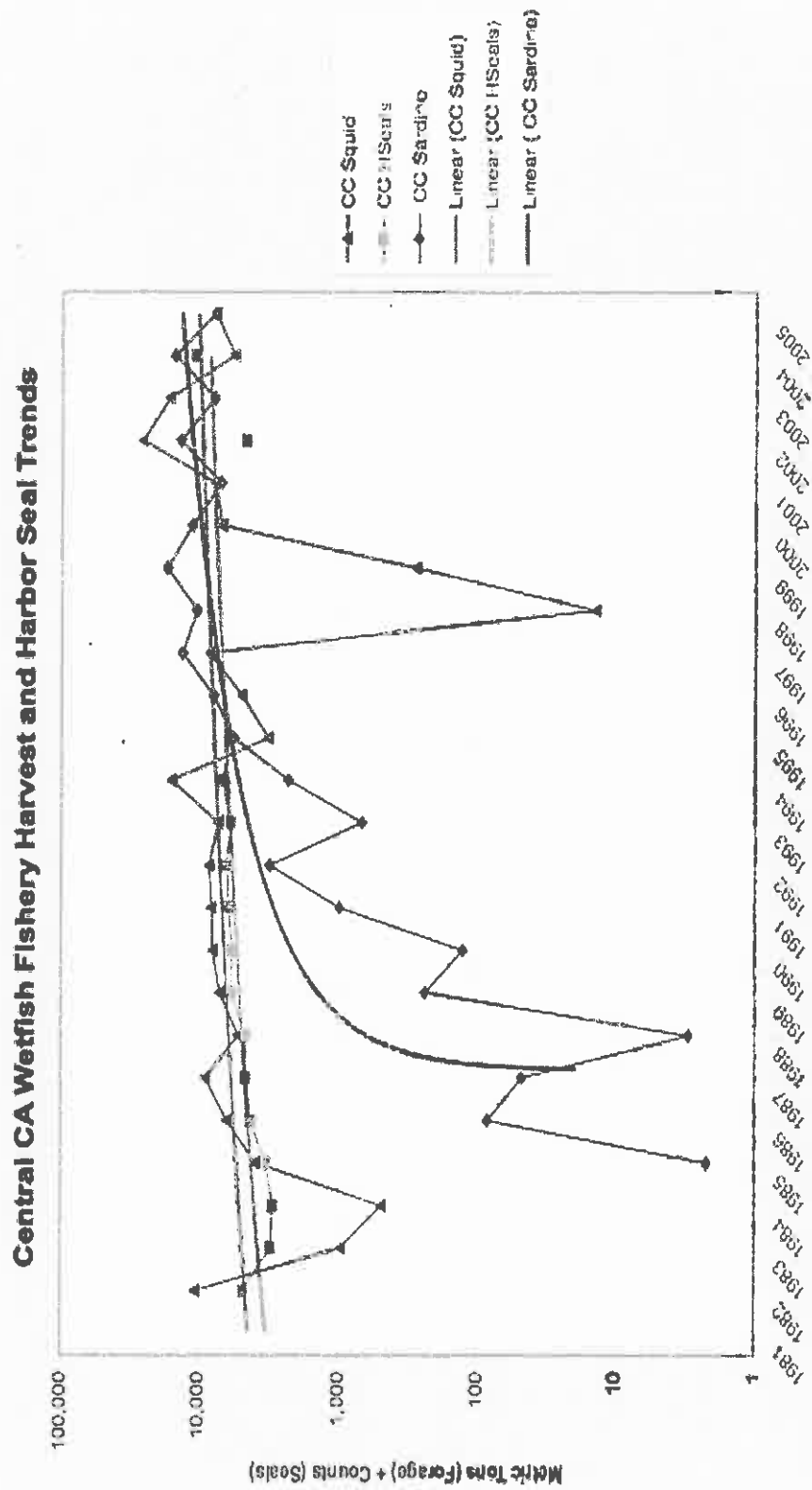
### Summary

- Marine mammals are increasing or stable in the presence of the squid and wetfish fisheries, suggesting that these fisheries do not harm marine populations or ecosystem function
- Krill, a primary forage species observed in bird diet in many areas of California, is a prohibited species under CPS FMP: **no harvest allowed**
- The harvest of squid, sardine and anchovy removes very small percentage of the available forage base
  - The wetfish fishery has minimal 'bycatch'
- Coastal pelagic 'wetfish' species including sardine, anchovy and squid are very important to California's historic wetfish industry
- The squid fishery is the economic driver of the wetfish industry, the backbone of California's fishing industry, in operation for more than 150 years
- California's wetfish fisheries produce as much as 80 percent of the total California commercial fishery harvest – a multiplied value exceeding one hundred million dollars and thousands of jobs.
- Monterey's wetfish industry produces:
  - up to 95 percent of all landings and 63 percent of value of all commercial fisheries in the Monterey Bay region
- Southern California's wetfish industry produces:
  - up to 95 percent by volume and 47 percent by value of all fisheries in LA-San Pedro area
  - 86 percent by volume and 32 percent by value of all fisheries in Ventura-Hueneme area



# CENTRAL CA SQUID LANDINGS & HARBOR SEAL ABUNDANCE

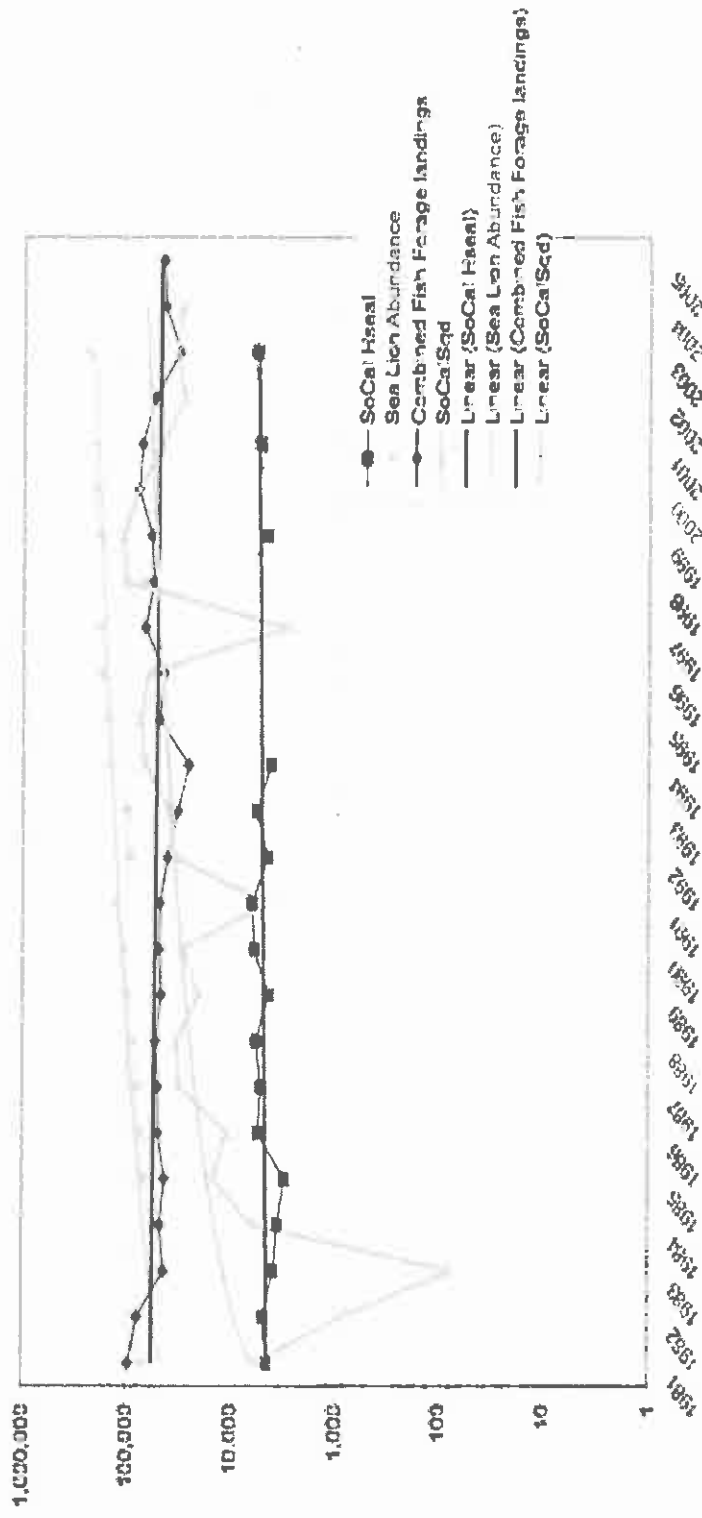
Marine mammal populations are increasing in the presence of wetfish fisheries



# SOUTHERN CA WETFISH LANDINGS & PINNIPED ABUNDANCE

Marine mammal populations are increasing in the presence of wetfish fisheries

S.CA. Wetfish Harvest & Pinniped Trends



# EFFECTS OF CLIMATE CHANGE, NOT FISHERIES INTERACTIONS, MAY HAVE A MAJOR IMPACT ON SEABIRDS

USFWS, 2005: Regional Seabird Conservation Plan and USGS

- Natural climatic or oceanographic fluctuations create inter-annual variability of seasonal temperature cycles and corresponding timing of zooplankton blooms that can have pronounced effects on marine fish and birds (Anderson and Piatt, 1999; Bertram *et al.*, 2001; Abraham and Sydeman, 2004).
- Sea surface temperatures have risen by 1°C in the last 100 years.
- Recently scientists have documented that seabird adult survival, reproduction, and population abundance are strongly correlated with climate fluctuations (e.g. air temperature, Croxall *et al.*, 2002; sea surface temperature, Gjerdrum *et al.*, 2003)
- Declines in breeding populations and reproductive success. Notable changes in the diet and reproductive output of 11 species of seabirds in the southern California current system are the result of low-frequency climate change (Sydeman *et al.*, 2001).
- Seabird diets can reveal such climatic influences ten to even 100 year scale (Miller and Sydeman, 2004; Montevecchi and Myers, 1997).

# SEABIRDS OFF SOUTHERN CA – A 20-year comparison

## UNITED STATES GEOLOGICAL SURVEY RESEARCH (In conjunction with Minerals Management Service, MMS)

- A newly published twenty year - long United States Geological Survey (USGS) field study cited concerns to seabird conservation off Southern California as regarding offshore oil production, oil transportation by tankers, commercial shipping, commercial fishing (set and drift gillnets, long lines), military activities, and public recreation (Mason *et al.*, 2007).
- The study of distribution and abundance of seabirds off California from Cambria to the Mexican border, conducted aerial surveys from 1993 to 2003, a 20-year comparison. Results were compared to historical data collected twenty years prior.
- Common Murres, Sooty Shearwaters, Bonaparte's Gulls had lower population densities than twenty years before.
- Brown Pelicans, Xantus's Murrelets, Cassin's Auklets, Ashy Storm Petrels, Western Gulls, and Brandt's Cormorants all had increased population densities.
- **The study concluded that declines in seabird abundance off the California coast were due to environmental degradation and larger forces such as climate change.**

**PRIMARY PREY ITEMS AND MAJOR CONSERVATION THREATS FOR  
SEVERAL SPECIES OF INTEREST IN THE S. CA. CHANNEL ISLANDS**

<b>SEABIRD</b>	<b>PRIMARY PREY ITEMS</b>	<b>MAJOR CONSERVATION THREATS</b>
Ashy Storm-Petrel	larval fish, planktonic squid, zooplankton	introduced rodents, native predators, contaminants
Black Storm Petrel	poorly known - likely larval fish, planktonic squid, zooplankton	native predators, contaminants
Leach's Storm-Petrel	planktonic/nektonic fish, planktonic squid, crustaceans, jellies	habitat degradation, introduced mammals, native predators, contaminants
Brandt's Cormorant	rockfish, anchovy, blacksmith (minor component of squid and other fish)	disturbance at breeding sites
Double-crested Cormorant	surferch, sticklebacks, sandlance, herring, salmon	disturbance at breeding sites

<b>SEABIRD (Continued)</b>	<b>PRIMARY PREY ITEMS</b>	<b>MAJOR CONSERVATION THREATS</b>
Pelagic Cormorant	sculpins, rockfish, sandlance, non-schooling fish	disturbance at breeding sites, contaminants
Brown Pelican	northern anchovy, Pacific sardine (almost exclusively small schooling fish)	introduced mammals, entanglement in fishing gear, contaminants
Pigeon Guillemot	blennies, sculpin, flatfish, small benthic fish	oil contamination
Xantus's Murrelet	larval anchovy, saury, and rockfish, subadult and adult anchovy, juvenile bluefin drifffish, juvenile medusa fish and krill	introduced mammals, native predators, contaminants
Cassin's Auklet	krill, larval and juvenile fishes	oil contamination, native predators
Western Gull	anchovy, rockfish, Pacific whiting, jack mackerel, Pacific saury, midshipmen, whitecroaker, eupasusids, squid, barnacles, sea urchin, human refuse, scavange - eggs, chicks, birds	introduced predators, contaminants

The following information is extracted from

Long-term Studies of Seabirds on Año Nuevo Island (ANI) and Mainland, 2003  
*Final Report to the Monterey Bay National Marine Sanctuary –*

*Sanctuary Integrated Monitoring Network*

Julie A. Thayer and William J. Sydeman  
415-868-1221, x317 415-868-1221, x319  
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Marine Ecology Division

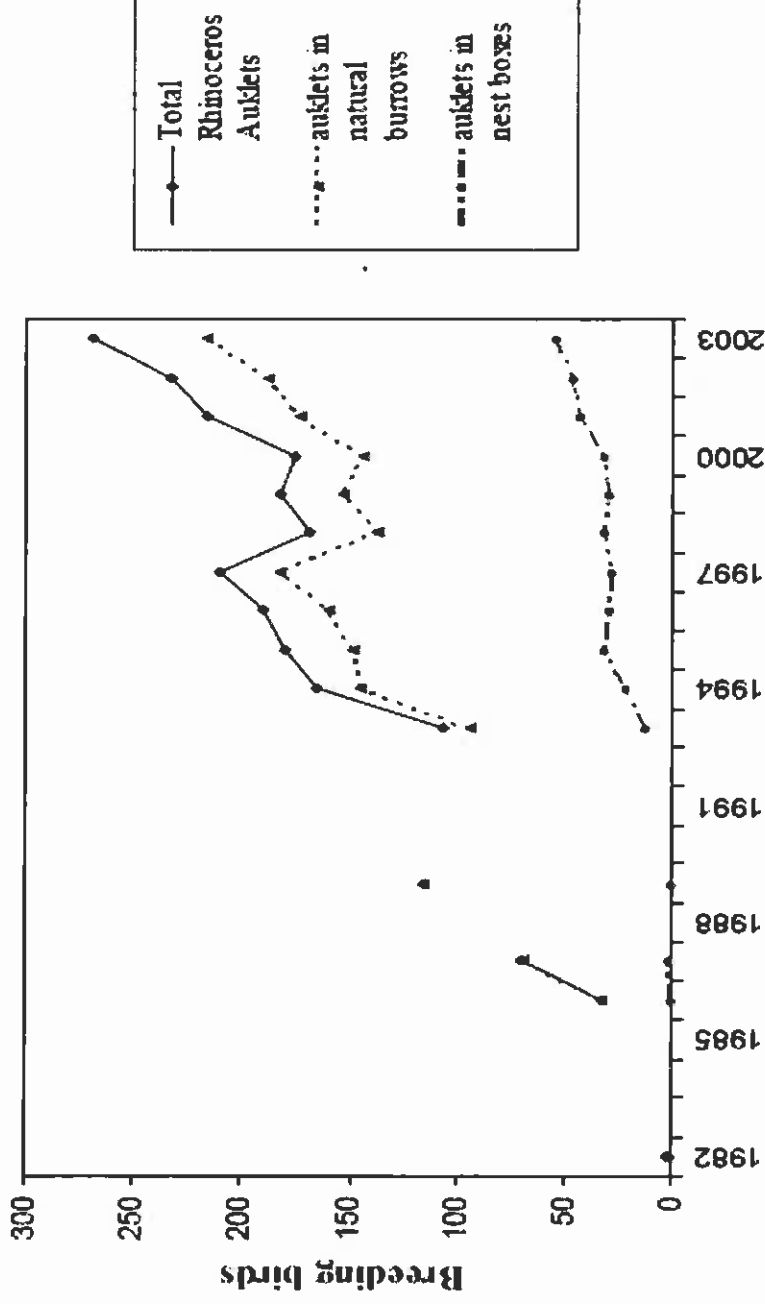
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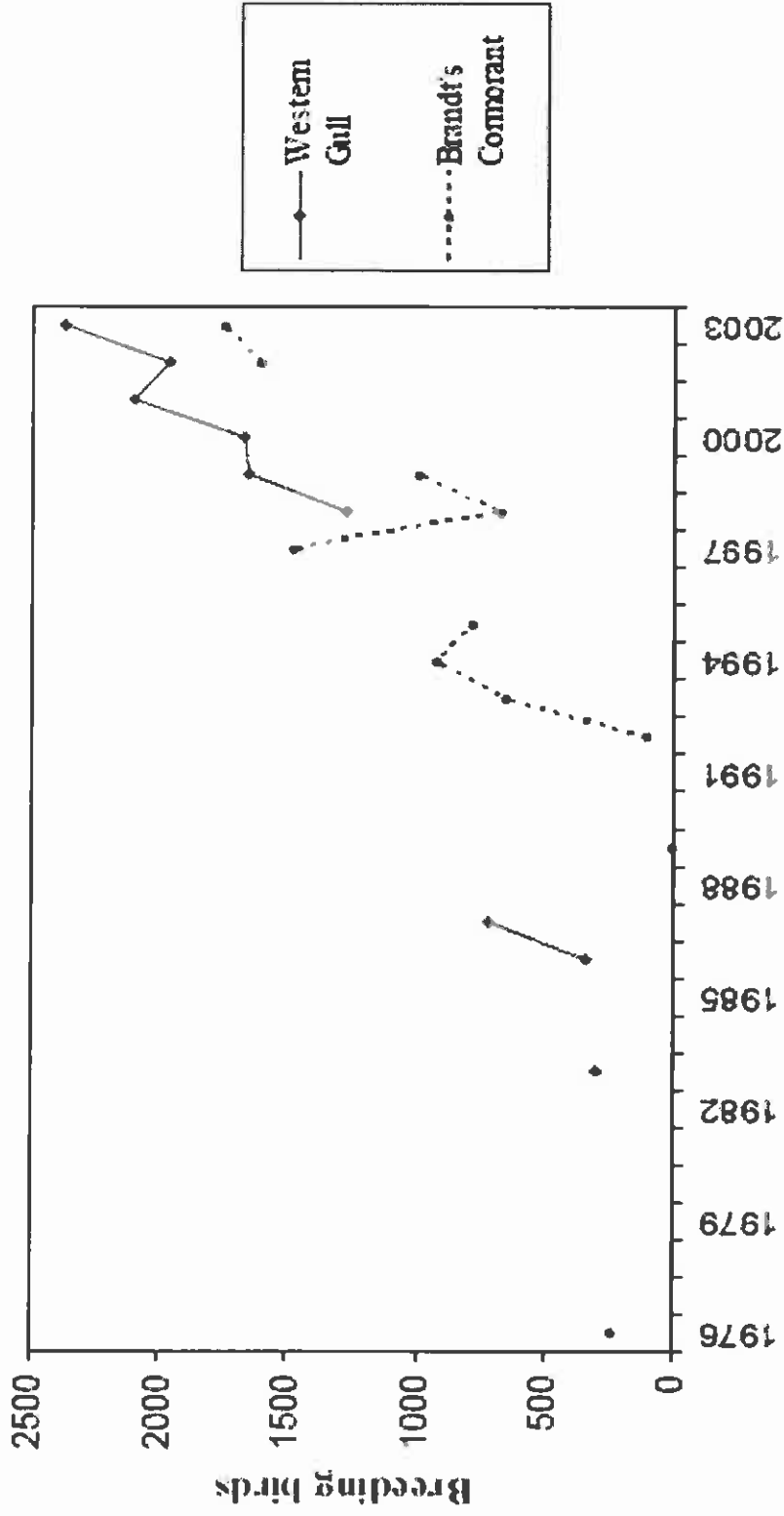
## ANI BIRD POPULATIONS ARE INCREASING IN THE PRESENCE OF THE SQUID FISHERY

Rhinoceros auklet, Brandt's cormorant and Western gull populations increased from 2002 to 2003 to the highest levels yet recorded for ANI  
(see next slide for Brand's cormorant and western gull population trends)



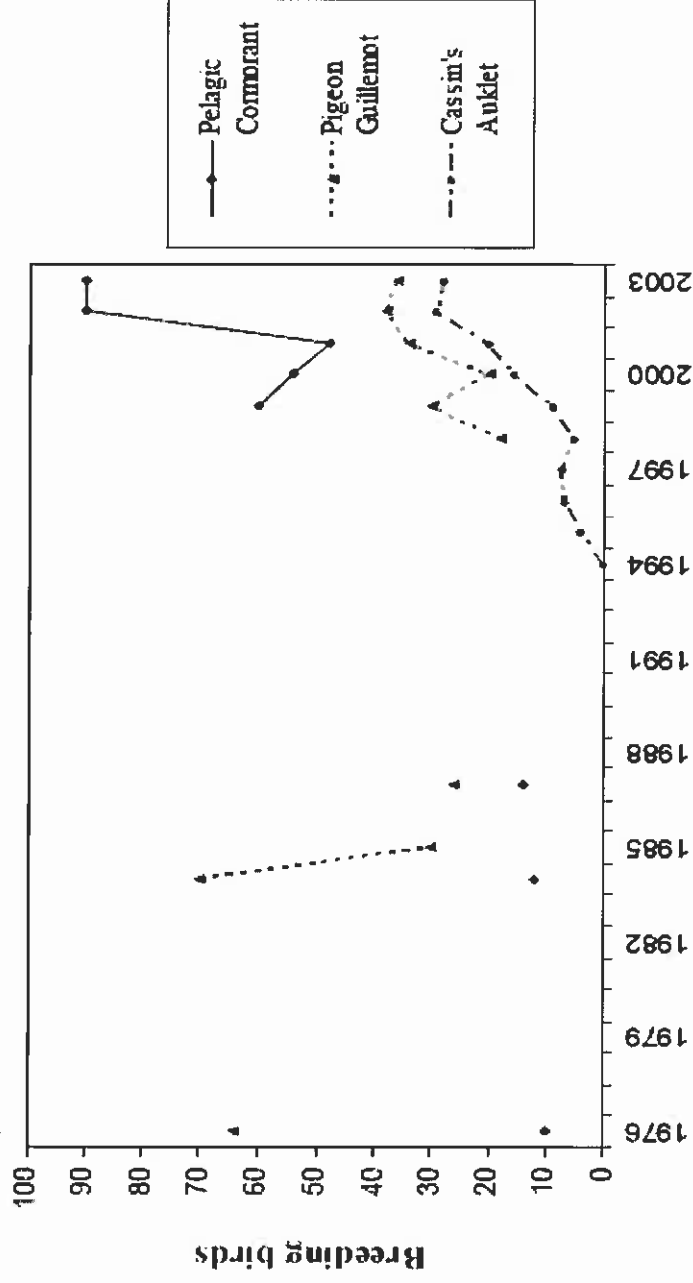
**Figure 1.** Population dynamics of Rhinoceros Auklets on Año Nuevo Island over 21 years, 1982-2003. Data in 1982 from LeValley and Evens (1982). 1986-1987 from Lewis and Tyler (1987), and 1989 from Carter et al. (1992), all adjusted with PRBO burrow occupancy correction factor.





**Figure 2.** Population dynamics of Western Gulls and Brandt's Cormorants on Año Nuevo Island, 1976-2003. Western Gull data in 1976 from Briggs' survey in SOWLS et al. 1980, 1983 and 1987-1987 from A. Huntley/ pers. comm. in Lewis and Tyler (1987). Brandt's Cormorant data in 1989 from Carter et al. (1992). Cormorant nests in 1992-1999 were counted from aerial photographs courtesy of M. Lowry (NMFS/NOAA).

# POPULATIONS OF PELAGIC CORMORANTS, PIGEON GUILLEMOTS AND CASSIN'S AUKLETS ON ANI ALSO HAVE INCREASED IN THE PRESENCE OF THE SQUID FISHERY



**Figure 3.** Population dynamics of Pelagic Cormorants, Pigeon Guillemots and Cassin's Auklets on Año Nuevo Island, 1976-2003. Pelagic Cormorant data in 1976 from Briggs' survey in Sowls et al. (1980), 1984 from A. Huntley pers. comm. in Lewis and Tyler (1987), and 1987 from Lewis and Tyler (1987). Pigeon Guillemot data in 1976 from Briggs' survey in Sowls et al. (1980), 1984-1985 from A. Huntley, pers. comm. in Lewis & Tyler (1987), and 1987 from Lewis & Tyler (1987).

## SQUID IS A SMALL PERCENTAGE OF BIRD DIET AT ANI

Auklet diet reveals a shift from anchovy to rockfish in recent years, corresponding to a shift in ocean climate in 1998-1999.

Note: 1997-98 El Niño sharply reduced squid harvest in CA

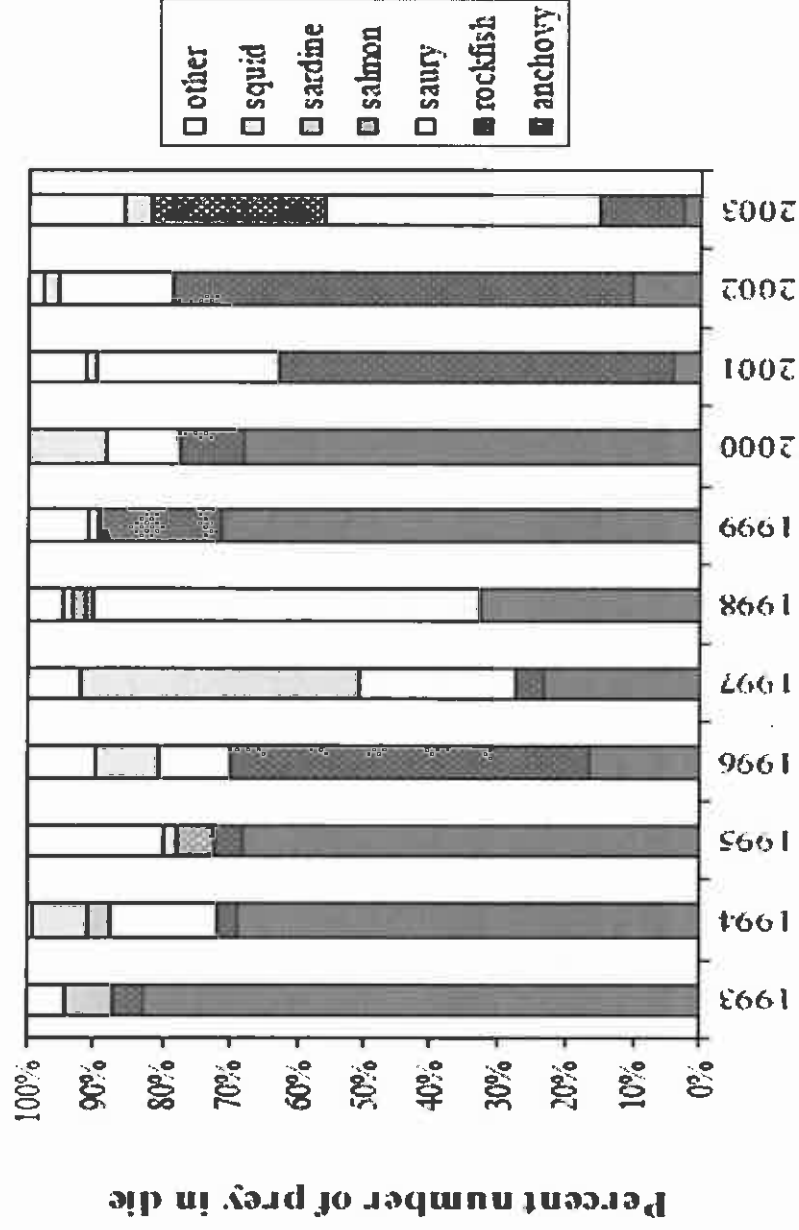


Figure 8. Percent number of prey species in Rhinoceros Auklet chick diet on Año Nuevo Island over 11 years, 1993-2003.

## FISHERIES CAN HAVE POSITIVE EFFECTS ON SEABIRD POPULATIONS

United States Fish and Wildlife Service (USFWS, 2005)

Offal, or discard, in some fisheries has been demonstrated to enhance seabird feeding opportunities (Camphuysen *et al.*, 1995).

Scientific research has shown that fisheries targeting predator fish species result in more forage fish available to seabirds. (See Furness, 1982; Tasker *et al.*, 2000; USFWS, 2005).

## COMMENTS ON AB 2712 (Plescia)

By Richard H. Parrish, PhD

*Richard Parrish was a member of the original Pacific Fisheries Management Council's Coastal Pelagics Management Team. This team developed the present ecosystem based management strategy for Pacific Sardine and originated the "active" and "monitored" management categories to allow the direction of management and research efforts where they are most needed.*

The California Current does need an ecosystem-based management plan which specifies management strategies for the different trophic levels. The Pacific Fishery Management Council is now developing such a plan, encompassing the entire California Current System (CCS), extending from the Washington-Canadian border to the California-Mexico border and out to the 200-mile limit of U.S. jurisdiction. It is not clear how a separate plan for the narrow strip of California state waters would satisfy, or even assist in addressing, this need. In any case, there is no way that a forage species management plan can be adequately addressed without significant dedicated funding for both the planning team and a permanent monitoring plan to track the ecosystem health of the lower trophic level fishes and pelagic invertebrates as well as oceanic regime shifts.

In the past there has been considerable criticism of single species fishery management because it did not specifically address ecosystem management. That issue has been addressed with the increased ecosystem focus of the federal Magnuson-Stevens Fishery Conservation and Management Act, with particular reference to the 2007 amendments; with the adoption of the State of California's Marine Life Management and Marine Life Protection Acts; and notably, with the pioneering ecosystem focus of the federal Coastal Pelagic Species (CPS FMP).

The plan outlined in AB 2712 does nothing to enhance ecosystem management as the solutions proposed are simply a series of single species management plans. Moreover, AB 2712 does not recognize nor integrate with any of the above mentioned ecosystem-based protections – for example, the CPS FMP already places a total prohibition on krill harvest throughout the entire west coast EEZ, extending out 200 miles. It needs to be pointed out that ecosystem management cannot be carried out with attention only given to a single trophic level in a small portion of a single habitat (in this case forage fishes in the epi-pelagic habitat).

As written, the bill is a strange mixture of goals and specific management options, none of which are necessary or even well thought out. For example, the specific management options would go into law before, and with priority over, the management recommendations developed by the proposed fishery management plan. Clearly this is not the way to manage the ecosystem, or the fisheries, and it proves yet again, that the Department of Fish and Game and Fish and Game Commission (not the Legislature) are the proper place to develop marine resource management regulations.

Problems with the present version of AB 2712

7095

*(b) Populations of forage species face many threats, including global climate change, ocean acidification, pollution, and industrial aquaculture that uses wild-caught forage fish reduced into fish meal.*

There is no evidence that 'forage' species are presently threatened by overfishing in California. In addition, the uses that forage fish are put to after being caught has nothing to do with a threat. The species defined as forage fish in this legislation are used for a wide range of purposes including human consumption (fresh, canned and frozen), pet food (canned), zoo food (typically individually quick frozen), bait for other fisheries (live and dead), consumed whole or as portions in aquaculture. Elsewhere in the world, forage species, especially anchovy, whiting and to some extent krill, are used to make fish meal. In California, fish meal was once a major use of both anchovy and sardine, and fish offal from jack mackerel, Pacific mackerel, some groundfish and tunas was also used for fish meal. However, production of fish meal from whole fish is now virtually nonexistent in California.

The threat to the forage fish populations is dependent upon the exploitation rate of the fishery, not the use of the landed fish. Evaluation of present and optimum exploitation rates would be the major job of the fishery management team. For example, the CPS FMP allows for a precautionary net 11 percent exploitation rate in warm-water oceanic regimes favoring sardine abundance, after subtracting 150,000 metric tons of spawning biomass 'off the top' of the biomass estimate as a forage reserve. The biomass estimate itself and harvest guideline are based on a variety of observations in the field (i.e. egg deposition rate, fecundity, sea surface temperature etc.). In cold-water regimes the exploitation rate drops to 5 percent.

*(d) There is not sufficient scientific study in place to support the conclusion that industrial fishing for forage species can take place without reducing the resilience of marine ecosystems or populations of marine predators.*

The same could be said of non-industrial fishing for forage species

The same could be said of commercial fishing for marine predators.

The same could be said of recreational fishing for marine predators or forage species.

The bill does not define 'industrial fishing'. This term is typically associated with at-sea factory ship operations. This type of fishing occurred during the early 1970s when the foreign fleets fished off the California coast but it has not occurred in state or federal waters of California since the 200-mile limit went into effect in 1976 with passage of the federal Magnuson-Stevens Fishery Conservation and Management Act. Moreover, marine mammal populations have increased in California during the past several decades, after passage of the Marine Mammal Protection Act of 1972, when fisheries were significantly larger than they are at present, suggesting that the ecosystem was healthy even at the higher exploitation rates that occurred during the 1980s and early 1990s.

*(a) "Actively managed forage species" means those forage species, as of January 1, 2008, managed under existing sport or commercial fishery management measures implemented by the commission or department.*

According to the wording of 'actively managed' species in this subsection, the only forage species actively managed by the State of California are herring and market squid. This section ignores the fact that the presently "actively managed" species (Pacific mackerel and Pacific sardine) are managed by the Pacific Fisheries Management Council under the Coastal Pelagics Species Fishery Management Plan (CPS FMP).

According to the CPS FMP:

Coastal pelagic species (CPS) include northern anchovy, market squid, Pacific bonito, Pacific saury, Pacific herring, Pacific sardine, Pacific (chub or blue) mackerel, and jack (Spanish) mackerel. "Pelagic" means these fish live in the water column as opposed to living near the sea floor. They can generally be found anywhere from the surface to 1,000 meters (547 fathoms) deep. Five of these species are managed under the Pacific Council's CPS fishery management plan. A sixth species, krill, has been added to the CPS FMP as a prohibited species. In 2007 the PFMF approved a prohibition on krill harvest throughout the entire CCS.

Assuming management authority of federally managed species has both practical and legal problems for the State of California. The CPS species move back and forth between state and federal waters and they move back and forth between California, Mexico, Oregon, Washington and Canada. It makes little sense to manage a species on one side of the line with State regulations and the other side of the line with Federal regulations. It also makes little economic sense to fund two management processes to research, monitor and manage fish that will be in state waters on one day and federal waters the next day. Presently the Pacific Fisheries Management Council has the management authority for all coastal pelagic species; California actively manages squid, in cooperation with the PFMF and National Marine Fisheries Service, and also cooperates in the management of the other coastal pelagic species by collecting research samples and conforming the fishery to and enforcing federal regulations.

*(b) "Forage species" means small schooling pelagic fish and invertebrates that serve as an important source of food for other fish species, birds, and marine mammals. Forage species include herring, sardine and anchovy (Clupeiformes), Pacific sandlance (Ammodytidae), smelt (Osmeridae), krill (Euphausiacea), market squid (Loligo opalescens), pelagic juvenile salmonids (Salmonidae), pelagic juvenile rockfish (Sebastes spp.), jack mackerel (Trachurus symmetricus), Pacific mackerel (Scomber japonicus), and Pacific saury (Scomberesocidae).*

The species that comprise this forage fish list are a very odd assortment of fishes that includes: valid forage species, major predators of forage species and species that are totally protected during the period of their life that they might be considered forage fishes. In addition, the list does not include many of the most important forage species of the California Current.

There is no biological basis for considering jack mackerel and Pacific mackerel to be forage species. In fact these two species are major consumers of forage species. When their populations are high (both species have extensive decadal scale population fluctuations) they probably rank second or third in total consumption of pelagic forage species in the California Current System (Pacific whiting being first). According to Love (1996. *"Probably more than you wanted to know about the fishes of the Pacific Coast"*. 381pp.) "Jack mackerel reach 32 inches and live 35 years. They grow quickly during their first year (reaching 8 inches)". He also notes that jack mackerel feed on "krill and copepods as well as juvenile squid and fishes". Love (1996) states, "Pacific mackerel eat anything they can get their teeth around, particularly small fishes, squid and large zooplankton such as copepods and krill", and "Pacific mackerel reach 25 inches. They have been aged to over 11 years. Like other tunas, these are fast growing fish, a two year old is 12 inches long". Of course some adult mackerel are consumed by high level predators; the same can be said of sea lions that are forage for white sharks and killer whales.

The rest of the list of forage species is a strange mix of species. It includes osmerid smelts but not antherinid smelts. It includes pelagic juvenile rockfish, but not benthic juvenile rockfish or pelagic juvenile flatfish. It includes krill but not mysids or pelagic crabs. It includes pelagic juvenile salmonids, but does not define the size at which a salmonid is not considered to be a juvenile. Note that juveniles are generally considered to be animals that have not yet reached sexual maturity; salmon do not reach sexual maturity until they return to freshwater. So the only adult salmonids in the ocean are steelhead trout that have previously spawned. In addition, salmon are federally managed species and Chinook, the only species that can be taken by marine fishermen in California, have a minimum size of 20 inches (or 24 inches North of Horse Mountain). In other words, for the brief period when marine salmonids are small enough to be considered forage fish, they are already totally protected from fishing.

The list entirely ignores the most abundant forage fishes in the California Current system (i.e. meso-pelagic fishes, bathy-pelagic fishes and shortbelly rockfish).

7098

*(a) (3) Explicitly analyze and consider the role of forage species in the ecosystem by identifying all species in the marine ecosystem that directly or indirectly consume each forage species, and compare ecosystem effects to a baseline in which no forage species were harvested.*



This is simply a large and very expensive exercise in futility.

A much simplified version of what appears to be the intent of this section was recently published. See the figure below from “Top-down modeling and bottom-up dynamics: Linking a fisheries-based ecosystem model with climate hypotheses in the Northern California Current” by J.C. Field a,\*, R.C. Francis b, K. Aydin : Progress in Oceanography 68 (2006) 238–270.

Note that the “state of the art” analysis carried out by Field, Francis and Aydin does not attempt to separate forage fishes into individual species boxes as is the intent of this section of AB 2712. They also do not consider mackerel to be forage fish.

*J.C. Field et al. / Progress in Oceanography 68 (2006) 238–270*

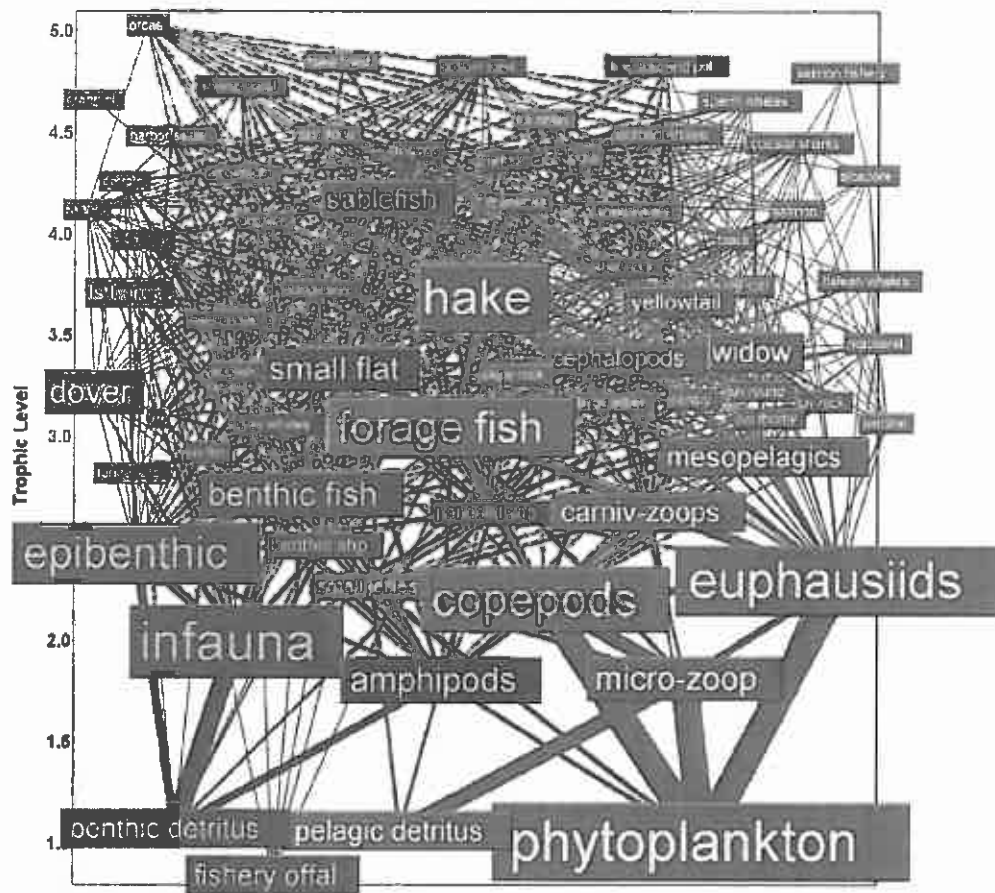


Fig. 2. The significant food web of the Northern California Current. Key taxa for functional groups are provided in Table 3. Common names and scientific names of species and stocks are given in Table 4. The estimated trophic level is along the y axis, the height of the boxes is scaled to the log of the standing biomass, the width of the bars represents biomass flux of prey to predators, and the colors represent the alternative energy pathways such that pelagic (primary production) energy pathways are shown in blue and the benthic (detrital loop) energy pathways are shaded in red.

*(b) In calculating optimum yield for actively managed forage species, the protection of marine ecosystems shall be prioritized, and optimum yield shall be reduced for ecological factors that shall include ensuring sufficient quantities of forage species to maintain predators and other ecosystem needs, such as community stability and resilience.*

This is inconsistent with California's definition of optimum yield in the California Fish and Game Code. See below:

#### **97. Optimum Yield**

"Optimum yield." with regard to a marine fishery, means the amount of fish taken in a fishery that does all of the following:

- Provides the greatest overall benefit to the people of California, particularly with respect to food production and recreational opportunities, and takes into account the protection of marine ecosystems.
- Is the maximum sustainable yield of the fishery, as reduced by relevant economic, social, or ecological factors.

In the case of an overfished fishery, provides for rebuilding to a level consistent with producing maximum sustainable yield in the fishery.

In fisheries, optimum yield (OY) is generally described as a departure from maximum sustainable yield (MSY) and it is determined with a subjective evaluation made by the agency or council that regulates the fishery. Clearly based on the above California definition, optimum yield already includes ecological factors.

The wording of AB 2712 appears not to acknowledge the present definition of optimum yield, which already includes ecological factors: if the bill wants to alter this definition then it should do this rather than misusing the definition. It seems that the intent of AB 2712 is to give additional, but not specified, priority to forage fishes. This is certainly a desirable goal and I agree that forage species should not be fished at their MSY rate. I note that the members of the original PMFC Coastal Pelagics Management Team successfully convinced the Pacific Council that the Pacific sardine stock should not be fished at its MSY rate. The precautionary policy the team recommended, that was approved by the PFMC and enacted by the Secretary of Commerce, will result in a sardine population that will average well more than half a million tons larger than the MSY policy.

*There shall be no state fishery for an actively managed forage species that does either of the following:*

- (a) Allows for a geographic expansion of an existing fishery beyond those areas fished between the years 2002 and 2007, inclusive, unless and until scientific information, with peer review by independent experts, indicates fishery activities are not directly or indirectly adversely affecting marine life dependant on forage species in those areas.*
- (b) Allows catch levels for an actively managed forage species to exceed levels caught in 2007 until the department, with peer review by independent experts, determines that increased harvest will not jeopardize ecosystem protection goals and provides optimum yield calculations that explicitly account for the role of targeted forage species in the marine ecosystem and the need to provide a sufficient abundance of forage species for predators and other ecosystem needs.*

Section 7099 is a prescription for certain failure of an ecosystem management plan. Simplistic and artificial policies such as only allowing fishing where fishing occurred from 2002-07 and setting maximum landings based on the 2007 landings cannot be considered to be even a first guess proxy for ecosystem management. This section completely negates the role of science in the development of the plan, and it is an insult to the hundreds of scientists who have spent their lives studying, describing and analyzing the complex ecology of the California Current System.

Pelagic species by definition are carried by the currents; their distribution varies wildly from year to year due to their population size, wind and density driven local circulation processes, El Nino events, decadal and regime scale environmental process in the entire Pacific Basin. They will also be greatly affected by global climate change, which would be expected to move their populations poleward as ocean temperatures increase.

Norton and Mason (2004) used the California fish landings and two environmental indices (sea surface temperature and upwelling favorable winds) to show the multi-dimensional trends in different components of the fish and shellfish community that is harvested in California. Their figure, shown below, describes the time trends of the species exploited in California and it clearly demonstrates that basing ecosystem management policy on information gathered over any limited time period (i.e. 2002-2007) will automatically be wrong in just a few years as the living components of the California Current System adjust to the complex, regime scale environmental fluctuations of the California Current.

In the Norton and Mason analysis the first principal component (EOF1) was significantly correlated with sea surface temperature and the second principal component was significantly correlated with upwelling favorable winds. Their study validates numerous other studies showing that the populations of individual species and species groups are largely heavily impacted by large-scale environmental fluctuations in the California Current.

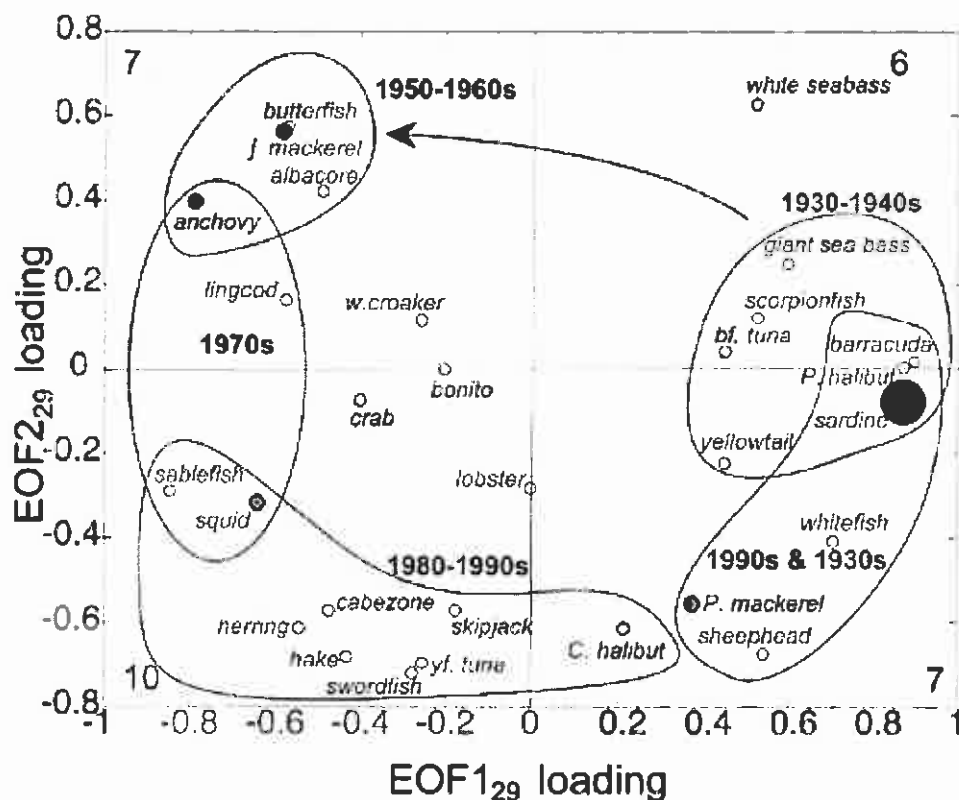


Figure 3. Species EOF loading values are plotted, with EOF1 on the horizontal and EOF2 on the vertical axis. The arrow and the enclosed species groups show the counterclockwise progression of species groups having landings maxima. Filled circles show species that have had total landings exceeding 10<sup>6</sup> metric tons; size of the filled circles indicates relative total catch among those species. Number of species in each quadrant is shown in the corners. Abbreviated common names for the 29 single-species market groups are albacore (*Thunnus alalunga*), anchovy (*Engraulis mordax*), barracuda (*Sphyraena argentea*), bluefin (bf.) tuna (*Thunnus thynnus*), bonito (*Sarda chilensis*), butterfish (*Peprilus simillimus*), California (C.) halibut (*Paralichthys californicus*), cabezone (*Scorpaenochelys mamoratus*), crab (*Cancer magister*), croaker (*Genyonemus lineatus*), giant seabass (*Stereolepis gressi*), hake (*Merluccius productus*), herring (*Clupea pallasii*), jack (j.) mackerel (*Trachurus symmetricus*), lingcod (*Ophiodon elongatus*), lobster (*Paralithus interruptus*), Pacific (P.) halibut (*Hippoglossus stenolepis*), Pacific (P.) mackerel (*Scomber japonicus*), sablefish (*Anoplopoma fimbria*), sardine (*Sardinops sagax*), scorpionfish (*Scorpaena guttata*), sheephead (*Senecossyphus pulcher*), skipjack (*Euthynnus pelamis*), squid (*Loligo opalescens*), swordfish (*Xiphias gladius*), white seabass (*Atractoscion nobilis*), whitefish (*Coregonus princeps*), yellowtail (*Seriola dorsalis*), and yellowfin (yf.) tuna (*Thunnus albacore*).

The Norton and Mason study shows that using the distribution of species during any short period of years (i.e. 2002 to 2007) to develop a management plan will produce an extremely inaccurate view of both the species population size distribution in other time periods.

The combination of the Field, Francis and Aydin ecosystem model of the California Current and the decadal patterns of landings of fishes and invertebrates in California described by Norton and Mason clearly points out that the California Current System is not stationary and that there will not be a single ecosystem management strategy that will

optimize management for periods longer than about 10-15 years. Very likely the optimum harvest strategy for a given environmental state (say the 1970s) would be a disastrous strategy for the 1990s.

The evidence gathered over the last century demonstrates that ecosystem management will necessarily be an adaptive process that utilizes monitoring of both environmental and biological processes to determine the current environmental state, and then applies an ecosystem model to determine optimum harvest policies for that state.

Freezing fishing to the geographical base which occurred during the years of 2002 to 2007 and setting a cap at the landings that occurred in 2007 cannot be considered to be based on any scientific data, analysis or logic. The 2007 landings were not even available when AB 2712 was written.

7099.1

7099.2

These sections are similar to section 7099 addressed above and the comments on section 7099 apply to sections 7099.1 and 7099.2.

In summary, knowledge-based ecosystem management in which the importance of forage species is included in the determination of their optimum yield is an important goal. Unfortunately, this legislation offers simplistic, belief-based measures affecting only a portion of a single trophic level in a small portion of the California Current Ecosystem. Measures such as capping landings at an as yet unknown value determined by the landings in 2007, and restriction of the future fishery to the state water areas that were fished in the years 2002-2007, are not likely to produce a management system that is sufficiently accurate or adaptive enough to result in successful ecosystem management.

This is a poor start to achieve ecosystem management.

Richard Parrish  
Fisheries Biologist

## UPDATE ON MAGNUSON-STEVENSON ACT REAUTHORIZATION IMPLEMENTATION

The Council has been anticipating proposed guidelines and/or regulations on several important provisions of the *Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006* (MSRA) such as a Draft Environmental Impact Statement (DEIS) from National Marine Fisheries Service (NMFS) regarding the process for establishing annual catch limits and accountability measures designed to prevent overfishing and a revised proposal for a new environmental review process for fishery management actions.

No review materials were available by the deadline for the advance April Briefing Book. The MSRA status report posted on the NMFS web site dedicated to MSA implementation ([www.nmfs.noaa.gov/msa2007/](http://www.nmfs.noaa.gov/msa2007/)) schedules these items for publication in the spring of 2008. Staff will continue to work with NMFS on implementation of MSRA provisions and review materials will be distributed at the first Council meeting following their publication by NMFS.

Given the impending release of these significant MSA implementation materials, the Council may discuss a preferred process for Council review.

### **Council Task:**

**Council discussion on the review process and any available proposed requirements, as available.**

### **Reference Materials:**

None.

### **Agenda Order:**

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. Council discussion on the review process and any available proposed requirements.

Mike Burner

PFMC

03/24/08

## MEMBERSHIP APPOINTMENTS AND COUNCIL OPERATING PROCEDURES

During this agenda item, the Council will consider changes in advisory body membership, appointments to other forums, and relevant changes in Council Operating Procedures (COP).

### **Council Advisory Body Appointments**

#### **Coastal Pelagic Species Management Team (CPSMT)**

The Council has been notified of a vacancy for the Oregon Department of Fish and Wildlife (ODFW) CPSMT position due to the resignation of Mr. Brett Wiedoff (Closed Session A.1.a, Attachment 1). The ODFW is expected to name a replacement in the near future.

#### **Habitat Committee (HC)**

The Monterey Bay National Marine Sanctuary has notified the Council of the resignation of Mr. Huff McGonigal from the National Marine Sanctuary (NMS) position on the HC and nominates Dr. Lisa Wooninck as his replacement (Closed Session A.1.a, Attachment 2).

#### **Ad Hoc Pacific Halibut Workgroup (PHW)**

In March, the Council approved the formation of the PHW as an ad hoc committee to review and develop recommendations with regard to potential changes in the management methodologies of the International Pacific Halibut Commission. Members of the PHW were to be appropriate representatives of the federal, state, and tribal fishery management agencies, and stakeholder advisors, based on Council member recommendations to the Council Chairman. Membership of the PHW should be confirmed in time for members to participate in the first meeting which is expected to occur in late June.

#### **Ad Hoc Groundfish Essential Fish Habitat Oversight Committee (EFHOC)**

At its June Meeting, the Council is scheduled to appoint members to the EFHOC in preparation for completing the five-year review of groundfish essential fish habitat (EFH) as outlined in Amendment 19 of the Groundfish Fishery Management Plan and in Council Operating Procedure (COP) 22 (Closed Session A.1.a, Attachment 3). At the April meeting, the Council should formally approve formation of the EFHOC and identify desired member positions.

Council staff proposes to solicit nominations to the committee following the April Council meeting. Based on guidance in COP 22 and pending further Council guidance, staff intends to solicit for the following positions for the initial EFHOC (original Groundfish Habitat Technical Review Committee members are listed in parentheses):

- Two NMFS scientists—one each from the NW and SW Science Centers (Dr. Waldo Wakefield and Ms. Mary Yoklavich);
- Two bottom trawl representatives (Mr. Marion Larkin and Mr. Scott McMullen);

- Two scientists representing conservation entities (Dr. Rod Fujita and Dr. Mark Powell);
- Two scientists at-large intimately involved and expert in marine habitats and mapping of those habitats off the Pacific Coast (Dr. Chris Goldfinger and Dr. Gary Greene); and
- One representative from the Enforcement Consultants.

When proposals for changes in EFH or habitat areas of particular concern are received by the Council in September, it may be necessary to add other members to the EFHOC with particular expertise in the identified areas. To facilitate planning, staff proposes to request a notice of intent from any entities intending to submit proposals for changes to EFH that must be submitted to the Council prior to the June meeting. Detailed proposals are due for review at the September Council meeting.

### **Proposed Termination of Ad Hoc Committees**

Many ad hoc committees created by the Council have completed the work for which they were created and/or membership is seriously outdated due to changes in Council family personnel. In view of this, Council staff proposes termination of the following Ad Hoc Committees:

- Full Retention Committee (Ms. Eileen Cooney, Dr. James Hastie, Mr. Rod Moore)
- Groundfish EFH EIS Oversight Committee (Mr. Phil Anderson, Ms. Patricia Burke, Mr. Tom Ghio, Mr. Peter Huhtala, Mr. Curt Melcher, Ms. Marija Vojkovich)
- Groundfish Habitat Technical Review Committee (Dr. Rod Fujita, Dr. Chris Goldfinger, Dr. Gary Greene, Mr. Marion Larkin, Mr. Scott McMullen, Dr. Mark Powell, Dr. Waldo Wakefield, Ms. Mary Yoklavich)
- Groundfish Multi-year Management Committee (Mr. Phil Anderson, Ms. Eileen Cooney, Dr. James Hastie, Mr. Frank Lockhart, Mr. Curt Melcher)
- Groundfish Strategic Plan Implementation Oversight Committee (Mr. Phil Anderson, Mr. Donald K. Hansen, Dr. David Hanson, Mr. Curt Melcher, Ms. Marija Vojkovich)
- Groundfish Strategic Plan Implementation Oversight Open Access Conversion Subcommittee (Mr. Phil Anderson, Ms. Eileen Cooney, Ms. Kathy Fosmark, Dr. Steve Freese, Mr. Douglas Fricke, Dr. James Hastie, Mr. Kenyon Hensel, Mr. Steve Joner, Mr. Frank Lockhart, Mr. Mike McCorkle, Mr. Rod Moore, Mr. Brian Petersen, Ms. Marija Vojkovich)
- Observer Implementation Committee (Mr. J. Thomas Barnes, Mr. William Barss, Dr. David Hanson, Ms. Becky Renko, Ms. Teresa Turk)
- Salmon Amendment Committee (consisting of approximately 26 individuals formed for Salmon Amendment 15)

### **Remaining Vacancies on Permanent Council Advisory Bodies**

The following advisory body positions are vacant with no nominations:

- |  |  |
|--|--|
| • GMT                                      | NMFS NW Region, 2 <sup>nd</sup> Position |
| • Habitat Committee                        | IDFG Position                            |
| • Highly Migratory Management Team (HMSMT) | IATTC Position                           |



## Update on Appointments to Other Forums

None.

## Changes to COP

None.

### **Council Action:**

1. Confirm or provide guidance for appointments to Council advisory bodies and potential COP changes.
2. At the time of briefing book preparation, the following specific items needed attention: the ODFW CPSMT position, NMS HC position, membership of the PHW and EFHOC, and termination of ad hoc committees.

### **Reference Materials:**

1. Closed Session A.1.a, Attachment 1: ODFW Resignation from CPSMT.
2. Closed Session A.1.a, Attachment 2: Resignation and Nomination for NMS seat on the HC.
3. Closed Session A.1.a, Attachment 3: COP 22, Groundfish Essential Fish Habitat Review and Modification.

### **Agenda Order:**

- a. Agenda Item Overview
  - b. Reports and Comments of Advisory Bodies
  - c. Public Comment
  - d. **Council Action:** Appoint New Advisory Body Members and Consider Changes to Council Operating Procedures as Needed
- John Coon

PFMC

03/24/08

## PROPOSED PROCESS FOR INITIATING THE REVIEW OF POTENTIAL CHANGES TO GROUNDFISH ESSENTIAL FISH HABITAT CLOSURES

In June of 2007, the Council approved Council Operating Procedure (COP) 22 to guide the review process for considering changes to groundfish essential fish habitat (EFH). This procedure for the review and implementation of changes is a new process which has not had the benefit of prior experience. COP 22 contains most of the needed Council direction based on the understanding of the issue at the time of its adoption. However, the Council requested a review of the current state of knowledge of the needs and timing for the process and additional assessment of the details involved in the process. On the basis of that review, National Marine Fisheries Service (NMFS) and Council staffs recommend holding COP 22 in abeyance and instead use a modified approach to initiate the EFH review procedure as outlined below.

### **EFH Review Procedure Recommendations**

1. The Council identifies initial EFH Oversight Committee (OC) membership positions at the April 2008 Council meeting:

Membership Specifically Identified by COP 22:

Scientists

- 2 from NMFS Science Centers
- 2 from Conservation Entities
- 2 At-large (with marine habitat and mapping expertise)

Industry Representatives

- 2 Bottom Trawl

Others

- 1 Enforcement Consultant

If Needed for a Specific EFH Issue

- Appropriate member(s) of the Council's advisory bodies or appropriate expert

Additional Membership Possibilities:

- NMFS NWR representative
- NMS representative
- Other?

2. Council staff formally solicits nominations to the EFHOC following the April 2008 Council meeting.
3. Council appoints initial EFHOC at the June Council meeting.
4. EFHOC meets prior to or at the September Council meeting to accomplish the following tasks for Council approval at the September meeting:
  - a. Appoint a Chair and Vice Chair;
  - b. Review and recommend a revised COP 22 as needed to clarify and establish:
    - 1) Committee charge,
    - 2) Schedule and process for the five-year review,

- 3) An adjusted schedule, criteria, and process for submission and review of proposed EFH changes within the five-year period,
  - 4) Any other recommendations deemed appropriate by the EFHOC.
5. The Council adopts a revised COP 22 at the September Council meeting.
  6. The Council solicits proposals for potential EFH changes prior to the five-year review in accord with the approved schedule and convenes the EFHOC as needed.
  7. The Council selects which proposals to formally consider, appoints specialized EFHOC positions as necessary, and proceeds with the process described in the revised COP 22.

### **Additional Comments**

NMFS has determined that solely from the standpoint of meeting a five-year review deadline, a comprehensive EFH review need not begin until 2011 (Five years from final implementation of the original EFH closures). Several marine habitat mapping efforts are in progress or scheduled for the near future that will likely provide considerable new data in time for a 2011 review. Less expansive proposals for change may warrant consideration such as areas of deep water coral and sponge habitat within the Olympic National Marine Sanctuary. Such proposals can likely be handled with an initial interim process which will also provide the Council and EFHOC with experience from which to better handle the more complex overall five-year review.

PFMC  
04/11/08