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Mr. Rod McInnis
Regional Administrator, Southwest Region
National Marine Fisheries Service
501 W. Ocean Blvd, Ste 4200
Long Beach, CA 90802-4213

RE: Coastal Pelagic Species Fishery Management Plan Amendment 13 – Annual Catch Limits and Accountability Measures.

Dear Mr. McInnis:

The Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS) are in the process of amending the Coastal Pelagic Species Fishery Management Plan (CPS FMP) through Amendment 13 to comply with the Magnuson Stevens Fishery Conservation and Management Act (MSA) and revised National Standard 1 guidelines. This process provides the Council and NMFS with the opportunity to advance the long-term conservation and management of fisheries targeting coastal pelagic species, refine ecosystem-based management, include approaches to protect the food web, and ensure the health and resilience of the California Current ocean ecosystem and fisheries.

We are encouraged by the Council decision to modify the Pacific sardine harvest control rule, to designate herring and jack smelt as Ecosystem Component species, and to amend the FMP to explicitly address ecological factors in developing Status Determination Criteria, Annual Catch Limits, and Annual Catch Targets. We look forward to working with NMFS and the Council to specify and incorporate ecological factors into the FMP.

Although the Council is making strides to protect important forage species, we continue to be concerned that several legally required components are missing from both the Council's final action on Amendment 13 and the process leading up to the final action. We are submitting this letter to reiterate these issues and request that NMFS use this opportunity to provide guidance to the Council on Amendment 13 in order to meet the requirements of the MSA and National Environmental Policy Act (NEPA).

1. Status Determination Criteria, including Minimum Stock Size Thresholds, are required elements of the CPS FMP.

Status determination criteria (SDC) are quantifiable factors, including Maximum Fishing Mortality Threshold (MFMT), Overfishing Limit (OFL), and Minimum Stock Size Threshold (MSST), or their proxies, that are used to determine whether overfishing has occurred and

whether the stock or stock complex is overfished. These are reference points that must be included in Fishery Management Plans for stocks that are classified as “in the fishery”.¹

The Council’s final action on Amendment 13 retained current status determination criteria for all species in the CPS FMP. This action does not meet the legal requirements of the MSA. MSSTs for all stocks in the fishery, including anchovy, jack mackerel and market squid are required. Further, MSY must be specified for northern anchovy. What is more, the MSSTs for Pacific mackerel and Pacific sardine do not meet National Standard One guidelines.²

2. Include control measures that set a maximum catch value for targeted species.

An important harvest control for commercially harvested coastal pelagic species is a maximum catch threshold (MAXCAT). The Pacific sardine control rule currently employs a maximum catch threshold of 200,000 metric tons but other targeted CPS do not have a similar control in place.

We have repeatedly requested consideration of a MAXCAT threshold for other CPS that are “in the fishery” including Pacific mackerel and Northern anchovy. This would provide an important control for mackerel and anchovy where stock assessments are either nonexistent or highly uncertain. MAXCAT guards against extremely high catch levels given errors in estimating biomass, reduces year to year variation in catch levels, and avoids overcapitalization during periods of high biomass and high harvest. Preventing overcapitalization was a key rationale for the Council including a MAXCAT for Pacific sardines in the current CPS FMP, and the same rationale applies for Pacific mackerel and anchovy.

3. The CPS FMP must ensure Optimum Yield is being achieved.

The MSA requires that fisheries achieve optimum yield (OY) on a continuing basis.³ As such, each FMP must contain management measures that achieve OY and provisions for information collection that are designed to determine the degree to which OY is achieved.⁴ There also must be a mechanism in the FMP for periodic reassessment of the OY specification.⁵ The CPS FMP adopted in the final Council action currently lacks these legally required provisions.

4. The process for the adoption of Amendment 13 to the CPS FMP does not comply with the National Environmental Policy Act (NEPA).

The FMP amendment process requires NMFS to follow the environmental review provisions of NEPA. In this instance, the Council and NMFS have developed only a partial analysis for an

¹ 50 CFR § 600.310 (c).

² See, e.g., 50 CFR § 600.310 (e)(2)(ii)(B) (MSSTs must be expressed in terms of spawning biomass or other measure of reproductive potential and should equal whichever is greater: one-half the MSY stock size, or the minimum stock size at which rebuilding to the MSY level would be expected to occur within 10 years.

³ 16 USC 1851 § 301 (a)(1).

⁴ 50 CFR § 600.310 (e)(3)(ii).

⁵ 50 CFR § 600.310 (e)(3)(v)(G).

FMP amendment and the Council took final action without providing a full draft Environmental Assessment or Environmental Impact Statement; without consideration of an adequate range of alternatives, including those repeatedly requested by stakeholders; and without inclusion of alternatives that include the legally required Status Determination Criteria for all species “in the fishery”.

This inattention to a full and transparent NEPA process seriously weakens this amendment process. As NMFS is the agency responsible for NEPA compliance, we expect that NMFS will rectify these omissions in the upcoming NEPA analysis. In light of the agency’s ongoing failure to undertake a programmatic analysis of the ecosystem impacts of West Coast fisheries, we expect that the final environmental review documents will take a hard look at both a robust range of alternatives and the potential cumulative and ecosystem-wide impacts of the Council’s preferred alternative for Amendment 13 before a final decision is made.

In closing, building off the foundation established with the management of krill, and meeting the requirements of the MSA and the new National Standard 1 guidelines, will significantly advance the long-term conservation of both the California Current ecosystem and the fisheries that depend upon a healthy ecosystem. The development of a successful CPS FMP amendment is essential in achieving both of these results and we encourage NMFS to work with the Council and the public to ensure that the mandates of both the MSFCMA and NEPA are met during the adoption of the amended FMP.

We look forward to continuing to work with you on these important matters. Do not hesitate to contact us if you have further questions.

Sincerely,

Whit Sheard
Pacific Counsel and Senior Advisor

cc. Mr. Eric Schwaab, NMFS Assistant Administrator
 Judson Feder, Southwest Regional Counsel
 Dr. Don McIsaac, PFMC Executive Director
 Mr. William Stelle, NMFS Regional Administrator, Northwest Region