



Turtle Island Restoration Network • PO Box 370 • Forest Knolls, CA 94933
P: 415.663.8590 • F: 415.663.9534
www.SeaTurtles.org • www.tirn.net • www.SpawnUSA.org • www.GotMercury.org

March 19, 2014

Ms. Dorothy Lowman, Chair
and Council Members
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

RE: April 2014 Briefing Book Public Comment -- March 2014 Decision Document - Highly Migratory Species - Drift Gillnet Monitoring, Management and Alternative Gear Report

Dear Chair Lowman and Council Members,

Please accept these public comments from Turtle Island Restoration Network (TIRN) on the decisions made at the March 2014 Pacific Fishery Management Council meeting related to Driftnet Gillnet Monitoring, Management and Alternative Gear Report. We hope that you will consider these views as you move forward on the "actions toward a goal of developing a comprehensive plan to transition the current drift gillnet fishery to a fishery utilizing a suite of more environmentally and economically sustainable gear types" that are identified in the meeting's Decision Document.

First, TIRN thanks the Council for making the decision to take action to transition the driftnet gillnet fishery to more sustainable gear types. The Council based its decision on high quality, comprehensive data presented by the HMS Team, fishery researchers and the conservation community. TIRN applauds the Council's leadership on moving the swordfish fishery to more sustainable gear and the well-informed deliberations that led to the decision.

The Council also made a strong decision not to expand the driftnet fishery into the Pacific Leatherback Conservation Area. TIRN thanks the Council for ending further action on such proposals after two years of fact finding and scrutiny.

TIRN strongly supports the transition of the driftnet gear on behalf of our more than 65,000 members and supporters. TIRN is also confident that we can continue to generate wide public support for Council action to remove driftnets from the California coast.

As the Council moves forward, TIRN hopes that you will consider these additional views on the action items spelled out in the Decision Document, in order, as follows:

1. Sending a letter to NMFS requesting reinstatement of the emergency rule that lapsed on January 31 and implementation of the Pacific Offshore Cetacean Take Reduction Team recommendations so there is no gap in application while NMFS implements permanent regulations on this matter.

TIRN wholeheartedly supports this strong conservation action to protect endangered sperm whales. We also urge the Council to comment on the permanent regulations when they are published to urge that they are at least as protective as the emergency regulations.

2. Requesting NMFS provide a report at the June Council meeting on issues and possible solutions to more comprehensively placing a transitioning swordfish fishery under MSA authority, including Federal permit options that would replace the current California State permit regime.

The Council can move forward with actions to transition the driftnet gear without removing the state's authority over fishery permits. There is no clear need for this action from a conservation or fishery management perspective.

TIRN is seriously concerned with the proposal to replace the current California state permit regime with an exclusively federal system because it would limit or remove the state's authority to set conditions on the permits as needed to protect the state's natural resources. The fishery has been managed as a joint state-federal fishery since 2004. Other states including Washington and Oregon continue to manage driftnet and other gear types and fisheries successfully. Why remove California's authority?

The state of California and the Legislature have been an asset to management of the fishery over the decades with requirements for time and area closures, gear changes and limiting effort through permit conditions. The state has also acted as a "backstop" to various federal fishery initiatives that have conflicted with longstanding state policies and statutes, such as those that limit the use of driftnets and other high bycatch gear including pelagic longlining.

The Council can better move forward to transition the driftnet fishery in collaboration with the state of California than by removing its authority over permits. TIRN urges the Council not to move forward on federalization the fishery permits for the following reasons:

1. The Council can move forward with actions to transition the driftnet fishery without removing the state's authority over fishery permits. There is no need to take this action.

2. Currently the state regulates the driftnet fishery as a limited access fishery, dating back several decades. The federal permitting scheme is open access without any limits on the permits, and could open the door to increased driftnet effort and other unintended consequences.

3. The state of California has imposed numerous conditions on the fishery over the decades through legislation and voter initiatives to protect the state's fisheries and natural resources from the wasteful nature of the driftnet gear. While these regulations were incorporated into the federal FMP, the federalization of the fishery could open the door to revising or weakening these regulations without the direct input or oversight of the people of California, including its elected officials.

4. The history of the driftnet fishery shows that National Marine Fisheries Service has acted in conflict

with the policies and interests of the state of California in the past. For example, NMFS has proposed EFPs to expand the driftnet fishery and to introduce pelagic longlining along the coast in direct conflict with longstanding California state policies. Even at the end of the Council deliberations on the driftnet fishery in March, the NMFS delegate suggested removing the shallow-set longline ban in the U.S. West Coast EEZ that was excluded from the 2004 FMP due to take of endangered sea turtles. These efforts are counterproductive to sustainable fisheries and the interests of the state of California.

The state Legislature and state agencies including the California Coastal Commission and the Ocean Protection Council have acted to oppose federal driftnet and longline fishery initiatives, which were ultimately defeated. Removing the state's permitting authority could needlessly weaken or remove the authority of these important conservation entities. Instead, the Council can benefit from the expertise and support of the state of California in pursuing its actions without removing the state's permitting authority.

3. Tasking Council staff with noticing the public that the Council would consider preliminary experimental fishing permit (EFP) approval on fishery transition proposals at the June 2014 Council meeting, and encouraging EFP submission. Further, the Council directed the Highly Migratory Species Management Team (HMSMT) to prepare research protocols to guide the evaluation of EFPs to test alternative gear types.

TIRN supports consideration for EFPs for alternative gears such as buoy gear and harpooning. TIRN also supports the development of research protocols to guide evaluation of EFPs.

However, TIRN and our allies will vigorously oppose EFPs for pelagic longlining along the U.S. West Coast EEZ as it is prohibited due to take of endangered sea turtle species. No changes in the status or populations of endangered species nor in the type or nature of the longlining warrant any further testing or research.

The recent deep-set daytime longline research conducted by NMFS in the PLCA over the past three years only reinforces the high bycatch nature of the gear. It is not a sustainable alternative to driftnets.

The Hawaii longline fisheries, both deep set and shallow set, continue to take endangered species including false killer whales, endangered sea turtles and endangered bird species at levels that have triggered closures. NMFS has increased the allowable takes of sea turtles in the Hawaii shallow-set longline fishery despite the species' continued decline, prompting ongoing litigation from conservationists. New protective measures were required this year in the Hawaii deepset longline tuna fishery due to take of endangered false killer whales. A new Biological Opinion is coming out that may require additional protections. These are problematic, high maintenance, unsustainable fisheries - not models for California.

4. Tasking Council staff, the HMSAS, and the HMSMT with initial development of a fishery transition plan and possible regulations under a typical MSA process, with the transition period being of sufficient duration to maintain a reasonable commercial flow of swordfish to domestic markets during the transition. The initial compilation of ideas was scheduled for the June 2014 Council meeting, with typical MSA process management tools to use such things as, seasons, areas, allowable gear alternatives, and integration of EFP results.

TIRN supports development of a fishery transition plan to end to the use of driftnet gear. TIRN supports programs to help the fishermen transition to other gears or enterprises.

The Council needs to define "maintain a reasonable commercial flow of swordfish to domestic

markets." What does this mean? When considering the economics of the swordfish fishery, the Council should seek clarification on this question. The Council should also ask for analysis of the economic and conservation benefits of a lower production, high value swordfish fishery caught with sustainable gears.

As part of the swordfish transition, the Council should consider partnering with the California Sustainable Seafood Initiative to promote sustainable swordfish and encourage Californians to avoid swordfish imports at least until they are required to meet U.S. standards.

Thanks again for your actions and consideration.

Sincerely yours,

A handwritten signature in black ink that reads "Teri Shore". The signature is fluid and cursive, with the first name "Teri" and last name "Shore" clearly distinguishable.

Teri Shore
Program Director
415 663 8590 ext. 108

INTERNATIONAL LAW OFFICES OF SAN DIEGO

TELEPHONE

619.232.0954

CELLULAR

619.203.5349

740 NORTH HARBOR DRIVE
SAN DIEGO, CA 92101-5806

established 1989

FACSIMILE

619.923.3618

PETER H. FLOURNOY

March 30, 2014

Pacific Fisheries Management Council
7700 NE Ambassador Place, Ste. 101
Portland, OR 97220-1384

Re: Agenda Item E. Open Comment Period

Dear Council Members:

There are no agenda items specifically dealing with HMS on the Council's Agenda, nevertheless, I believe it is important to remember some of the issues discussed at the March Council meeting so they remain fresh on everyone's mind. The June Council meeting is several months away, however, it is apparent there is important work to be done before that time.

1. There were discussions with the Council Chair and the Executive Director in March pointing out that more time and resources needed to be devoted to meetings of the Highly Migratory Species Advisory Panel. There was Council discussion and agreement to this. However, the HMS-AS has heard nothing since March in this regard. There is a fair amount of work for the HMS-AS to do in cooperation with the HMS-MT, particularly if advice is to be given to the U.S. Delegation to the IATTC and the General Advisory Committee of the IATTC U.S. Section.

2. Secondly, the HMS-MT should meet prior to the U.S. Canada negotiations set for the 16th and 17th of April. Apparently, since there is no HMS on the Council agenda for the April Council meeting, there are no plans for the HMS-MT and/or HMS-AS to meet until June. As a representative of the albacore harvesters this does not seem to be in line with the improvement we had hoped to see after the discussions in March on the need for the HMS-AS to meet more frequently. This lack of a meeting seems short sighted since the draft of a suggested U.S. proposal will likely be ready for review shortly.

3. We remain concerned about the course the Antigua Convention implementing legislation seems to be taking in Congress. Our particular point is that the draft legislation unnecessarily eliminates protections for US harvesters now in the Tuna Conventions Act.

4. Additionally, we understand the Council staff and the Western Region plan to do more work on biological reference points and harvest control rules relating to North Pacific albacore, perhaps for the submission of a paper to the U.S. Delegation to the IATTC. Both WFOA and

WEBSITE www.international-law-offices.com

EMAIL phf@international-law-offices.com

AAFA use the same scientific consultant and we would propose that he be part of whatever meetings are held in order to express the views of the harvesters from a scientific viewpoint. He is very qualified having served on the PFMC SSC and currently being a member of the Albacore Working Group of the ISC which is the scientific body that advises the WCPFC-NC.

____ 5. Finally, I personally am confused and would like clarification on the Council's position on the U.S. Canada Treaty negotiations. I thought one Council Member's statement toward the end of the discussion at the March Council meeting summed up the Council's view as "we should leave the negotiations to the excellent negotiators we have from the Departments of State and Commerce". However, reading the Council decision document which says "but elected to not take a position prior to the upcoming bilateral negotiations scheduled for mid-April 2014", it wasn't clear to me whether this meant that the Council hadn't changed its position from the last one it expressed. (I believe in November of 2012), or it truly was expressing no position.

Thank you very much for the opportunity to express these concerns, even though HMS is not on the April meeting agenda.

Sincerely,

s/Peter H. Flournoy

Peter H. Flournoy

RECEIVED

MAR 27 2014

PFMC



March 25, 2014

Via E-mail: npfmc.comments@noaa.gov
Eric Olson, Chairman
North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 306
Anchorage, Alaska 99501-2252

Via E-mail: lisa.lindeman@noaa.gov
Lisa Lindeman, Alaska Section Chief
NOAA, Office of General Counsel
709 West 9th Street, Room 909A
Juneau, Alaska 99802-7414

**Re: Proposed Amendment to Observer Provider Insurance Coverage Requirements
For Discussion at Council Meeting on April 7-15, 2014 / Anchorage, Alaska**

Dear Chairman Olson and Ms. Lindeman:

Alaskan Observers, Inc. (AOI) has been an observer provider in the North Pacific since 1988, and is writing to request the guidance of the North Pacific Fishery Management Council (Council) to amend the observer insurance requirements as set forth in 50 C.F.R. § 679.52 (the regulations governing the North Pacific Groundfish Observer Program). AOI first brought this issue to the Council's attention at the February 2014 Council meeting in Seattle. At that time, the Council directed AOI to frame this issue and return with a letter of explanation and proposal.

AOI can provide more than full insurance coverage needed to compensate observers for all (on and off vessel) work-related injuries under Maritime Employer's Liability (MEL) and States Worker's Compensation policies. Because this level of insurance fully covers observers, AOI urges the Council to take the necessary steps to amend the current requirement of buying insurance policies that cover claims arising under the Jones Act and Longshore and Harbor Workers' Compensation Act (LHWCA).

In short, given how observers are categorized under the law, as well as by the work activities observers perform, the current observer insurance requirements for the North Pacific are excessive or inapplicable.

I. NORTH PACIFIC OBSERVER INSURANCE REQUIREMENTS

There are currently no uniform national standards for observer insurance coverage. In fact, of the eight U.S. Regional Fishery Management Councils, five of the Councils have not promulgated any observer insurance regulations.¹ The three Councils that have implemented

¹ None of the following Councils have implemented any fisheries observer insurance regulations: Caribbean Council, Gulf of Mexico Council, South Atlantic Council (50 C.F.R. § 622 et seq.); Western Pacific Council (50 C.F.R. § 665 et seq.); and Mid-Atlantic Council (50 C.F.R. § 697 et seq.).

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 2 of 10

observer insurance regulations have varying levels of required coverage. The North Pacific regulations are the most onerous and costly for observer providers. A comparison of those regulatory provisions supports this finding.

Comparison of Management Councils' Observer Insurance Regulations		
NORTH PACIFIC COUNCIL	PACIFIC COUNCIL	NEW ENGLAND COUNCIL
50 C.F.R. § 679.52(b)(11) –	50 C.F.R. § 660.17(e)(vii) –	50 C.F.R. § 648.11(h)(3) –
<p>(vi) <i>Certificates of insurance.</i> Copies of “certificates of insurance” that name the NMFS Observer Program leader as the “certificate holder” shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled and verify the following coverage provisions:</p> <p>(A) Maritime Liability to cover “seamen’s” claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum);</p> <p>(B) Coverage under the U.S. Longshore and Harbor Workers’ Compensation Act (\$1 million minimum);</p> <p>(C) States Worker’s Compensation, as required; and</p> <p>(D) Commercial General Liability.</p>	<p>(C) Copies of “certificates of insurance,” that names the NMFS Catch Monitor Program leader as the “certificate holder”, shall be submitted to the Catch Monitor Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.</p> <p>(1) Coverage under the U.S. Longshore and Harbor Workers’ Compensation Act (\$1 million minimum).</p> <p>(2) States Worker’s Compensation as required.</p> <p>(3) Commercial General Liability.</p>	<p>(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers’ Compensation and Maritime Employer’s Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.</p>

When comparing the North Pacific Council’s observer insurance regulations with those of the Pacific and New England Councils, notice that the obligation to provide coverage for claims under the Jones Act is only required for the North Pacific and *is not* required in the Pacific or New England regions. Both the Pacific and New England Councils appear to acknowledge that Jones Act coverage is not applicable or necessary to fully insure observers in the course and scope of their work duties.

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 3 of 10

Furthermore, a closer inspection of the New England Council's regulations also reveals no requirement for observer providers to obtain USL&H coverage. The current version of the New England Council's regulation is a clear acknowledgement that USL&H coverage is not needed to fully insure observers. Instead, the New England Council mandates MEL and States Worker's Compensation coverage at a minimum of \$5 million.²

II. PROPOSED AMENDMENT

In lieu of implementing national standards for observer insurance requirements, AOI asks for the Council's direction in an effort to amend 50 C.F.R. § 679.52(b)(11)(vi) to remove the requirements for obsolete and/or inapplicable insurance coverages and insert a requirement – similar to the New England Council's regulation – that observer providers be required to obtain a specified level of coverage. Accordingly, AOI makes the following proposed amendment:

(vi) Certificates of insurance. Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training, briefing, debriefing, and work at shore plants), via cCopies of "certificates of insurance" that name the NMFS Observer Program leader as the "certificate holder", shall be submitted to the Observer Program Office by February 1 of each year. Marine General Liability, Maritime Employer's Liability, and States Worker's Compensation insurance coverage must be provided at a \$2 million minimum. The certificates of insurance shall state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled, and verify the following coverage provisions:

~~(A) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum);~~

~~(B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum);~~

~~(C) States Worker's Compensation, as required; and~~

~~(D) Commercial General Liability.~~

This proposed amendment not only eliminates the excessive costs of providing "over-insurance," it provides a regulatory structure that will not become obsolete in short order due to ongoing changes in the insurance industry.

III. STATEMENTS IN SUPPORT OF THE PROPOSED AMENDMENT

The proposed amendment is designed to resolve a significant problem that currently hinders North Pacific observer providers' ability to obtain insurance coverage that complies with 50 C.F.R. § 679.52(b)(11)(vi). As set forth in greater detail below, insurance policies covering

² Although AOI agrees that MEL and States Worker's Compensation coverage is all that is needed to provide full insurance coverage to compensate observers, AOI does not suggest that a minimum of \$5 million primary coverage is necessary. For instance, as a practical matter, AOI typically obtains umbrella coverage to insure observers for liabilities that may exceed the levels of primary coverage.

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 4 of 10

claims under the Jones Act and the LWHCA are not necessary to provide adequate injury and liability coverage for observers.

A. Observers Cannot File Suit under the Jones Act or Maritime Law Because They are Not “Seamen”.

The Jones Act authorizes a claim for negligence against a “seaman’s” employer when the employee is injured or killed during the course of employment, by the negligence of the employer or another employee.³ The Jones Act extends the provisions of the Federal Employers’ Liability Act (FELA)⁴ to provide similar remedies for seamen. Thus, an injured seaman can recover damages from the employer when its or a co-worker’s negligence causes an injury.⁵

To recover under the Jones Act, the worker must show that the defendant employed him or her at the time of injury.⁶ More importantly, for purposes of the Jones Act, *there can be only one employer*.⁷ Under circumstances in which the Jones Act and/or Maritime Law would *potentially* come into play for observers, such observers are deemed to be federal employees who are otherwise protected by the Federal Employee Compensation Act.

1. Observers are Federal Employees While on the Vessel.

The 1996 re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Sustainable Fisheries Act make clear at 16 U.S.C. § 1881b(c):

An observer on a vessel and under contract to carry out responsibilities under this chapter or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.).

The Federal Employee Compensation Act (FECA) coverage for observers under the MSA is explicitly limited to work on a vessel. The intent of Congress, as evidenced by 16 U.S.C. § 1881b(c), was that observers while serving on vessel are not entitled to claims under the Jones Act or Maritime Law for injuries arising from the performance of their duties. It is also clear that observers working in shore plants, during training and debriefings, and other off-vessel assignments, are not covered by the FECA. Congress apparently intended for observers under

³ See 46 U.S.C. § 30104 (personal injury to or death of seaman).

⁴ See 45 U.S.C. § 51 et seq. (a statute that provides remedies for injured railroad workers).

⁵ Under the FELA, an employee may recover damages “for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carriers[.]” See 45 U.S.C. § 51.

⁶ See *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 791, 1949 A.M.C. 783 (1949) (The U.S. Supreme Court stated that it had “no doubt that *under the Jones Act only one person, firm, or corporation can be sued as employer*,” and added that “[e]ither Cosmopolitan or the Government is that employer,” but not both.) (emphasis added).

⁷ See *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495, 1500, 1995 A.M.C. 2022 (9th Cir. 1995).

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 5 of 10

these situations to be covered by another compensation mechanism, such as states worker's compensation acts.

2. Numerous Courts have Concluded that Observers are Not Seamen.

The Jones Act applies only to workers who have "seamen" status. The essential requirements for seaman status are: (1) "the employee's duties must contribut[e] to the function of the vessel or to the accomplishment of the vessel's mission"; and (2) the employee "must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature."⁸ Since 1996, courts have consistently found that observers are not seamen. Among such cases are:

- In *Bank of America, N.A. v. PACIFIC LADY*, 2001 A.M.C. 727 (W.D. Wash. 2000), the Court found that an observer aboard a fishing vessel was not a member of the crew of the vessel or a seaman. The Court noted that, pursuant to 50 C.F.R. § 679.7(g)(7), observers could not be "require[d], pressure[d], coerce[d], or threaten[ed] . . . to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the store of the finished product." The Court noted that this regulation "strongly suggests that observers cannot be fairly regarded as seamen or crew of a vessel." Next, the Court cited the language of 16 U.S.C. § 1881b(c) that observers are Federal employees while on the vessel. The Court, therefore, concluded that the **observer was not a seaman**.
- In *Mason v. Alaskan Observers, Inc.*, 2003 A.M.C. 2555 (W.D. Wash. 2003), the legal question at issue was whether an observer was "a 'Seaman' for purposes of the Jones Act and General Maritime Law." The Court began by recognizing the two essential requirements for seaman status,⁹ and concluded that the **observer was not a seaman**. The Court reached this conclusion by reasoning that an observer's voluntary assistance to the crew in no way alters the fact that "an observer is not in service to the vessel and therefore may not be considered a seaman."
- In *Chauvin v. FURGO-GEOTEAM SA*, 2007 WL 2265233 (E.D. La. 2007), the Court dismissed a plaintiff's Jones Act lawsuit. There, the vessel at issue was "required by the government to have persons certified as Marine Mammal Observers (MMO) aboard. The sole function of these MMO personnel is to search for whales, porpoises, dolphins, and other marine animals, and if necessary, to stop the seismic testing while these animals are within the ship's range." The Court then noted that the plaintiff observer "was hired and acted solely in the role of an MMO, recording the locations and descriptions of certain marine mammals and warning the crew if these mammals were in range of the [vessel]."

⁸ See *Harbor Tug & Barge Co. v. Papai*, 520 U.S. 548, 554, 1997 A.M.C. 1817 (1997) (quotations and citations omitted).

⁹ "First . . . an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission The Jones Act's protections, like the other admiralty protections for seamen, only extend to those maritime employees who do the ship's work." *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995) (quotations and citations omitted). "Second, . . . a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." *Chandris*, 515 U.S. at 368.

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 6 of 10

The Court concluded that because plaintiff, as merely an **observer** on a scientific vessel, **she was not a seaman**.

- In *Belcher v. Sundad, Inc.*, 2008 WL 2937258 (D. Or. 2008), the Court dismissed an observer's Jones Act and Unseaworthiness claims. When applying the two-part test for seaman status, the Court concluded that the **observer was not a seaman** under the rationale that: "Despite plaintiff's claim that the observer program is legally required for the vessel to operate, *she did not contribute to the function of the vessel and she did not have a substantial connection either in its nature (commercial fishing or navigation) or in duration (she was only assigned to the [vessel] briefly). Simply because the law requires the observer, it does not grant seaman status to plaintiff.*" (emphasis added).

Prior to 1996, the Eleventh Circuit Court of Appeals was the (only) highest level federal court to have addressed this issue. In *O'Boyle v. U.S.*, 993 F.2d 211 (11th Cir. 1993), an observer on a foreign vessel argued that he was a seaman because, as the vessel could not fish without his presence, he was essential to the vessel's mission. The *O'Boyle* Court rejected this argument, noting that although the vessel could not fish without an observer, the observer's duties concerned gathering scientific information and reporting his observations to the NOAA. Ultimately, the Eleventh Circuit concluded that the **observer was not a seaman**. See *O'Boyle*, 993 F.2d at 213.¹⁰

3. Observers Cannot File Suits for Maritime Negligence Against Vessel Owners.

In *Bauer v. MRAG Americas, Inc.*, 624 F.3d 1210, 2011 A.M.C. 2537 (9th Cir. 2010), the Ninth Circuit Court of Appeals affirmed a trial court's ruling to dismiss an observer's maritime negligence lawsuit against a vessel owner, as the MSA and Marine Mammal Protection Act (MMPA)¹¹ make vessel owners immune from such litigation. In relevant part, the Ninth Circuit reasoned:

- "*The observers are considered federal employees, not employees of the vessel owner.* Having thrust these observers on board private vessels, however, Congress limited the vessel owners' liability to the observers. As a general rule, an observer 'that is ill, disabled, injured, or killed from server as an observer on that vessel may not bring a civil action . . . against the vessel owner.'¹²

¹⁰ Other pre-1996 court cases that have considered and concluded observers were not seamen, include the following: *Key Bank of Puget Sound v. F/V ALEUTIAN MIST*, Cause No. C91-107 (W.D. Wash., Jan. 10, 1992) (observers were not seamen, they were independent scientific personnel who did not perform crew functions or duties); *Arctic Alaska Fisheries Corp. v. Feldman*, Cause No. C93-42R (W.D. Wash., Mar. 5, 1993) (observer was not a seaman because observer had not been engaged to perform duties in service to the vessel); *Coyne v. Seacatcher Fisheries, Inc.*, Cause No. C93-510Z (W.D. Wash., Feb. 1, 1994) (observer was not a seaman and was barred from bringing suit against vessel owner under the MSA); *Key Bank of Washington v. F/T PACIFIC ORION*, Cause No. C93-806Z (W.D. Wash., Feb. 1, 1995) (observers were not seaman and not entitled to a preferred maritime wage lien).

¹¹ See 16 U.S.C. § 1361 et seq.

¹² See *Bauer*, 624 F.3d at 1211 (quoting 16 U.S.C. § 1383a(e)(1)) (emphasis added). The immunity provision of the MMPA further provides:

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 7 of 10

- “‘Service as an observer on that vessel’ means exactly what it says – during the period the individual is on the vessel in the capacity of an observer. Hence, if the injury arises from a period of service as an observer, then the immunity provision comes into play.”¹³
- “We conclude that this immunity provision precludes a negligence suit by a federal observer who was injured while taking a restroom break.”¹⁴

As the Ninth Circuit Court of Appeals made abundantly clear in the *Bauer* case, vessel owners are immune from observers’ maritime negligence lawsuits, so long as the observer was on the vessel in his/her capacity as an observer.

Observer providers should not be required to obtain insurance coverage for Jones Act claims and general maritime law claims. First, vessel observers are not seamen as a matter of law, as evidenced by the tide of court decisions. Second, vessel owners are immune from observers’ maritime negligence lawsuits. Finally, unlike seamen, if an observer is injured on a vessel, his/her immediate remedy is the FECA, not a Jones Act or maritime negligence lawsuit. There is no need for observer providers to obtain redundant insurance coverage that cannot, in the end, achieve its intended purpose.

It is also worth noting that, despite this immunity provision, vessel owners are currently required to provide insurance coverage for observers under their Protection and Indemnity (P&I) policies. Essentially, vessel owners are obligated to provide comprehensive insurance coverage for everyone on the vessel, regardless of employment status and the person’s ability to qualify for such coverage. A change in the regulation would therefore benefit the vessel owners, as well, by eliminating the requirement that they purchase additional insurance that serves no actual or useful purpose.

B. 50 C.F.R. § 679.52(b)(11)(vi) is Overly Broad as It Requires Observer Providers to Obtain Insurance Coverage that is Mutually Exclusive.

“It is well-settled that the Jones Act and the LHWCA are ‘mutually exclusive compensation regimes.’”¹⁵ Thus, if a worker satisfies the criteria for being a seaman, he/she is covered by the Jones Act and not the LHWCA. However, if the worker does not meet the status as seaman, he *may* be protected by the LHWCA. Under this compensatory framework, the current version of 50 C.F.R. § 679.52(b)(11)(vi) forces observer providers to obtain two separate insurance coverages that by definition cannot apply at the same time.

An observer on a vessel . . . that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner’s willful misconduct.

¹³ See *Bauer*, 624 F.3d at 1212.

¹⁴ See *Bauer*, 624 F.3d at 1211.

¹⁵ See *Becker v. Tidewater, Inc.*, 335 F.3d 376, 389, 2003 A.M.C. 1653 (5th Cir. 2003) (quoting *Harbor Tug & Barge Co. v. Papai*, 520 U.S. at 553).

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 8 of 10

At a minimum, the Council should amend 50 C.F.R. § 679.52(b)(11)(vi) to strike out subsection (A) – the Jones Act and General Maritime coverage requirements. However, the following section explains why both subsection (A) and (B) should be stricken.

C. The Requirement for USL&H Coverage Should Also Be Eliminated.

Notwithstanding the large and expensive burden that providing USL&H coverage places on observer providers, this requirement should also be eliminated because observers do not qualify as employees under the LHWCA. Moreover, there are few remaining insurance carriers that will even write an USL&H endorsement.

1. USL&H Coverage is Inapplicable Because Observers are Neither Longshore Nor Harbor Workers.

The LHWCA was originally created in 1927 because states were without power to regulate maritime employment.¹⁶ An employee's coverage under the LHWCA is determined under a two-pronged test composed of a "status" requirement and a "situs" requirement.¹⁷ The *status* prong is satisfied if the employee was "engaged in maritime employment" at the time of his injury.¹⁸ The LHWCA defines "employee" as "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor worker including a ship repairman, shipbuilder, and ship-breaker," but does not include a "master or member of a crew of any vessel."¹⁹ While the *situs* prong is met if the employee's injury occurred "upon the navigable waters of the United States (including any adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel)."²⁰

Observers do not meet the "status" requirement of the LHWCA. This is clearly the case because the work observers perform is nothing like the work performed by longshoremen or harbor workers. As this Council may be aware, observers' collect scientific, management, compliance, and other data at sea through observations of fishing operations, interviews of vessel captains and crew, photographing catch, and measurements of selected portions of the catch and fishing gear. More specifically, observers' responsibilities include: (1) conducting pre-trip safety inspections; (2) communicating observer duties and data collection needs with vessel crew; (3) collecting operational information, such as trip costs (i.e., price of fuel, ice, etc.); (4) collecting fishing gear information (i.e., size of nets and dredges, mesh sizes, and gear configurations); (5) collecting tow-by-tow information (i.e., depth, water temperature, wave height, and location and time when fishing begins and ends); (6) recording all kept and discarded catch data on observed hauls (species, weight, and disposition); (7) recording kept catch on unobserved hauls (species,

¹⁶ See *Parker v. Motor Boat Sales, Inc.*, 314 U.S. 244, 249-50 (1941) (explaining that Congress passed the LHWCA to give longshoremen a national workmen's compensation law to fill the void created by court decisions that longshoremen could not come within state compensation laws.).

¹⁷ See *Director, Office of Workers' Compensation Programs v. Perini North River Assocs.*, 459 U.S. 297 (1983).

¹⁸ See 33 U.S.C. § 902(3).

¹⁹ See 33 U.S.C. § 902(3).

²⁰ See 33 U.S.C. § 902(a).

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 9 of 10

weight, and disposition); (8) collecting actual catch weights whenever possible, or weight estimates derived by sub-sampling; (9) collecting whole specimens, photos, and biological samples (i.e., scales, ear bones, and/or spines from fish, invertebrates, and incidental takes); and (10) recording information on interactions with protected species, such as sea turtles, porpoise, dolphins, whales, and birds. None of these activities are done by longshore or harbor workers.

AOI's research has found no court orders or opinions categorizing observers as longshore or harbor workers. Thus, similar to the unnecessary coverage for Jones Act claims, coverage for USL&H is not useful to protect observers. Finally, pursuant to the Magnuson Act observers are entitled to FECA and as such not entitled to longshore workers benefits while on a vessel.

2. Few Insurers Will Endorse USL&H Coverage.

It is important to note that as of late, only two companies would write an USL&H endorsement for observer coverage. AIG, which had underwritten the USL&H endorsement as part of AOI's States Worker's Compensation coverage for more than 20 years, gave notice in Fall 2013 that it would no longer underwrite USL&H endorsements.

It is also significant to note that AOI has *never* had an USL&H claim in more than 25 years of its observer provider service. This is because all of AOI's claims over the deductible amount are covered by AOI's MEL policy. The few Jones Act lawsuits AOI has faced in the past have been summarily dismissed in court. Therefore, Jones Act and USL&H coverages are simply unnecessary to fully protect observers injured on the job.

D. AOI's Observers are Fully Covered by MEL and States Worker's Compensation.

Eliminating the Jones Act and USL&H coverage requirements will not leave observers inadequately protected from work-related accidents and injuries. As discussed above, in addition to FECA, AOI currently provides the multiple layers of insurance to fully cover observers, including: Maritime Employer's Liability (MEL) (\$1 million minimum) and State Worker's Compensation (\$1 million minimum).

AOI's MEL policy covers all work-related injuries and illnesses that exceed AOI's deductible. Specifically, this MEL policy covers observers while they are on field duty or deployment – (i.e., from the time they leave Seattle until they return). AOI's State Worker's Compensation policy insures observers while working at shore plants of each particular state, and during training, briefing, and debriefing. Put simply, AOI's current insurance coverage fully protects observers in all of the workplace situations they encounter.

As noted above, vessel owners are under a similar, economically wasteful requirement to provide insurance coverage that will not serve its intended purpose. Vessel owners are currently obligated to pay thousands of dollars for additional P&I premiums to cover observers, yet vessel owners are *immune* from observers' maritime negligence lawsuits. This requirement for vessel owners, like the insurance requirements for observer providers, simply reflects another aspect of the maritime industry that need to be changed in order to adapt to modern practices.

E. The Observers' Union Strongly Approves of This Amendment.

North Pacific Fishery Management Council
Proposed Insurance Coverage Amendment
March 25, 2014 – Page 10 of 10

In discussions with the Association for Professional Observers (APO), union representatives acknowledged the need for change to the insurance coverage regulations and the importance of this proposed amendment. Significantly, APO representatives have indicated their strong support for this amendment.

IV. CONCLUSION

The current insurance requirements as set forth in 50 C.F.R. § 679.52(b)(11)(vi) are outdated, redundant, and prohibitively expensive. Not only is this wasteful and a grossly inefficient use of the industry's resources, observer providers are facing increasing difficulty with complying with this insurance regulation, despite the fact that observers already are fully protected by MEL and States Worker's Compensation policies.

The fact remains that observers are not seamen under the law and as such do not receive any benefit from insurance coverage for Jones Act claims. Vessel owners are immune from observers' maritime negligence lawsuits. Observers also do not benefit from USL&H coverage because they do not perform the same types of work tasks that would qualify them as longshore or harbor workers. Acknowledging these principles, the New England Council has previously concluded that insurance coverage for Jones Act and USL&H claims is unnecessary.

Now is the time for the Council and the industry to address this pressing matter. AOI therefore ask the Council to undertake the steps necessary to amend 50 C.F.R. § 679.52(b)(11)(vi) so that observer providers will be allowed to obtain insurance that fully covers observers whenever and wherever they work, and eliminate the requirements to obtain unnecessary insurance coverage that cannot and does not benefit observers.

Respectfully Requested,

ALASKAN OBSERVERS, INC.

Michael Lake

Michael Lake
President

FISHING VESSEL OWNERS' ASSOCIATION INCORPORATED

4005 20TH AVE. W. ROOM 232
SEATTLE, WASHINGTON 98199-1290
PHONE (206) 284-4720 • FAX (206) 283-3341

SINCE 1914

March 24, 2014
RECEIVED

Ms. Dorothy Lowman, Chairman
Pacific Fishery Management Council
770 N.E. Ambassador Place, Suite 101
Portland, OR 97220-1384

MAR 27 2014

RE: **E-1 Open Comment / Short-Tailed Albatross**

Dear Chairman Lowman:

This letter is on behalf of the members of the Fishing Vessel Owners' Association. We have 96 family-owned longline vessels in our trade association. We have approximately 17 vessels fishing 40 tiered permits and five vessels fishing trawl sablefish from Washington to California. All of our vessels are using double tory lines in order to minimize our interactions with sea birds, particularly short-tailed albatross, which are listed as endangered.

Vessels from FVOA have donated their vessel operating time off Washington, Oregon, and California to the Sea Grant program at the University of Washington in order to help better understand bird deterrent devices such as tory lines. This year we will have two vessels working with Dr. Ed Melvin studying sink rates for those longliners that use floats on their gear. As you know, six of our member vessels worked for two years developing streamer lines in the North Pacific off Alaska. The point we would like to make is that FVOA members have worked hard to limit our interactions with sea birds. In fact, sea bird interactions have been reduced by 70% where stream lines have been deployed.

In a recent publication regarding Albatross protection, which we have attached to this letter, sponsored by Sea Grant, Oregon State and NOAA, the following comment is made:

"The short-tailed albatross is an endangered species, with fewer than 4,000 found in the North Pacific. As a result, recent management actions call for West Coast groundfish fisheries to help protect these birds. These fisheries, including all gear types, can take no more than two short-tailed albatross in a two-year period. Fishermen should also avoid catching the more common black-footed albatross, because their bycatch numbers will factor into the management policy."

The good news is that short-tailed albatross have been making a comeback. However, the fishing industry is being held to a very tight restraint on killing only two short-tailed albatross in a two-year time-frame plus being cautioned that black-footed albatross could become a management concern.

With all this concern and focus on the commercial fishing industry and its interaction with birds, it does not seem responsible not to impose some limitation on the new wind energy industry. This industry plans to have many of their machines working just out of sight from land. However, if these machines were to have bird interactions, it could result in additional restriction on the commercial fishing industry.

The members of FVOA request that the Pacific Council ask their representatives from the U.S. Fish and Wildlife Service what safeguards they are requiring of these wind energy machines relative to bird interactions. It seems to us that these wind machines should have some level of take they would be managed to similar to the commercial fishing industry. Perhaps an interim action would be to have those wind machines monitored with EM. In this technological age, we could learn if these wind machines are having any impact on endangered short-tailed albatross or other birds. We have included a picture of a wind energy farm so you can better understand the potential for interactions with migratory sea birds.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Alverson", with a long horizontal flourish extending to the right.

Robert D. Alverson
Manager

RDA:cb

Enclosure



Albatross Protection
and West Coast Groundfish
Fisheries



What Fishermen Should Know

Changes Are Coming

The short-tailed albatross is an endangered species, with fewer than 4,000 found in the North Pacific. As a result, recent management actions call for West Coast groundfish fisheries to help protect these birds. These fisheries, including all gear types, can take no more than two short-tailed albatross in a two-year period. Fishermen should also avoid catching the more common black-footed albatross, because their bycatch numbers will factor into management policy.

Starting this year, larger non-tribal longline vessels that are 55 feet or longer will be required to use streamer lines to keep seabirds away from their bait. For details see <http://alaskafisheries.noaa.gov/protectedresources/seabirds/westcoast.htm>. Longline vessels under 55 feet and tribal vessels are encouraged but not required to use streamer lines. By preventing seabird interactions now, fishermen can avoid additional restrictions in the future.





Endangered short-tailed albatross:

Large size and big, bright, bubble-gum-pink bills identify these birds, which are almost twice the size of other North Pacific albatrosses. Head and body feathers are initially dark brown. As they age, short-tailed albatross slowly acquire white plumage, but older, light-colored birds are very rare in this region. Younger, darker birds can be mistaken for the more common black-footed albatross.



Black-footed

albatross: Head and body feathers are dark brown. Bills are typically dark with a white band of feathers at the base. As the birds age, this white band expands and the feathers near the tail whiten.



Laysan albatross:

Head and body are mostly white with dark wings, dark eye patches, and pale bill. Laysan albatross are seen less often than black-footed albatross in this region.

Take the test. Identify the albatrosses on this page and the cover.

This page, top left, clockwise: short-tailed (adult), Black-footed, Laysian, Short-tailed (young)
(over) Among the smaller Northern Fulmars, top three Laysian, Short-tailed (bottom), and Black-footed Albatrosses

What You Can Do

Scientists at Washington Sea Grant and Oregon State University are researching ways to prevent seabird bycatch and working to share existing information and the information they develop with the West Coast longline fleet. We want to equip longline fishermen with practical tools and information to avoid catching albatrosses.



Save Birds, Save Bait: How to Prevent Seabird Interactions With Longlines

These simple measures will reduce seabird bycatch and costly bait loss:

- Use streamer lines. Two lines – one on either side of a sinking longline – are more effective than one. Lifting the streamers above the water is key to scaring away birds. Maximize the aerial extent of streamers by attaching them high on the vessel and affixing a float and weight to the end to create drag.
- Sink hooks as quickly as possible by making lines less buoyant, typically by adding weight. Slowing the setting speed shrinks the distance the streamer lines must protect.
- Set gear at night when seabirds are less active and less able to locate baited hooks.
- Manage discharged offal and bait to avoid attracting seabirds. Remove hooks before discharging. Avoid discharges while setting lines if possible; otherwise, direct them to draw birds away from sinking hooks. When hauling in lines, discharge aft of the hauling station or on the other side of the vessel.

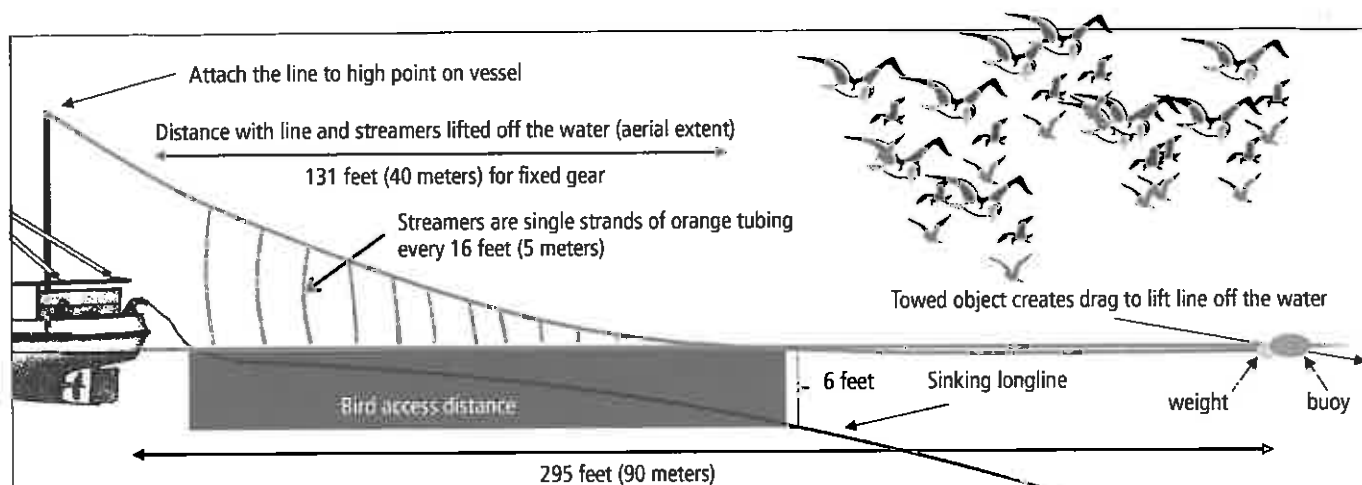
Attend Albatross-Bycatch Avoidance Training

Training in the use of streamer lines and other methods to avoid seabird bycatch will be offered at Newport, Charleston and Port Orford the first week of March 2014; Westport and Astoria the third week of March; at Eureka and Fort Bragg the first week of April; and at other ports TBD. See seabirdbycatch.washington.edu for details on these meetings, the research program, albatrosses, seabird bycatch prevention, and more.

Get Free Streamer Lines

Free streamer lines are available from LFS, 206.789.8110, seattle@lfsinc.com, or starting March 1 at England Marine Supply outlets.





Streamer Line: Streamer lines protect baited fishing gear during the set from bird attacks. The span of the line and streamers lifted off the water (aerial extent) scares birds away from baited hooks. The height of the attachment point above the water (mast, boom, poles) and the amount of drag created by a towed device (no-skid buoy with 10 pounds of weight recommended) determine the aerial extent. The aerial extent should span the distance astern that birds have access to baits—until baits reach a depth of 6 feet. Free streamer lines are available to West Coast longliners (see inside).

Join in Collaborative Research

We're looking for fishermen partners to host and help design research into practical and effective ways to prevent albatross deaths, especially on smaller vessels in the West Coast longline fleet. Our approach will be to adapt streamer lines, which have proven effective in Alaska and other longline fisheries, to the various longline gear configurations used by the West Coast fishery. We will compare the effectiveness of one versus two streamer lines on smaller vessels and evaluate streamer-line designs and performance standards on larger vessels. We will also evaluate the new seabird-bycatch avoidance requirement for larger vessels that takes effect in 2014. And we will explore new mitigation approaches proposed by host fishermen. Those that prove effective and practical will be developed into recommendations, in consultation with fishing-industry partners and other stakeholders, for consideration as management options by NMFS and the Pacific Fishery Management Council.

Tell Us About Your Gear and Vessel, and Help Shape the Research

Does the risk posed to birds and to streamer-line effectiveness vary by longline configuration (weighted vs. unweighted, with or without floats, etc.) and/or longline fishing method (tub, skate-bottom, auto-bait, snap-on, etc.)? These questions could prove important, as longline configurations and methods vary considerably in the West Coast fishery. As a first step toward answering them, we're surveying sablefish limited-entry quota holders to determine the most common gear configurations and vessel capabilities. This information will be used to shape the research program and management recommendations.

Please fill out this brief survey on-line at seabirdbycatch.washington.edu, or mail it to the address below.

Host Research on Your Vessel

The research will be staged on cooperating longline vessels catching sablefish in the 2014 fishing season. Host vessels will be compensated for each day they fish with researchers aboard. The research program will draw heavily on the experience and expertise of host captains and crews. See seabirdbycatch.washington.edu for details on hosting research on your vessel.

Please indicate your interest in hosting research on the vessel survey form.

For More

For the most up-to-date information on non-regulatory aspects of seabird bycatch, see seabirdbycatch.washington.edu or contact Ed Melvin, Washington Sea Grant, 206.543.9968 or edmelvin@uw.edu.

What To Do if You Hook an Albatross

- Report any injured, sick, or dead short-tailed albatross to the U.S. Fish & Wildlife Service at 541.867.4558 or 503.231.6179. USFWS will tell you how to handle it.
- Immediately freeze any short-tailed albatross found dead. If freezing is not available, keep it as cold as possible.
- Label it with vessel name, latitude and longitude where hooked, and the numbers and colors of any leg bands. Leg bands must be left attached.
- Surrender it as soon as possible, alive or dead, as directed by USFWS. Fisheries observers or, if no observer is on board, boat captains are responsible for carrying out these instructions.



University of Washington
3716 Brooklyn Ave. N.E.
Seattle, WA 98105-6716
wsg.washington.edu

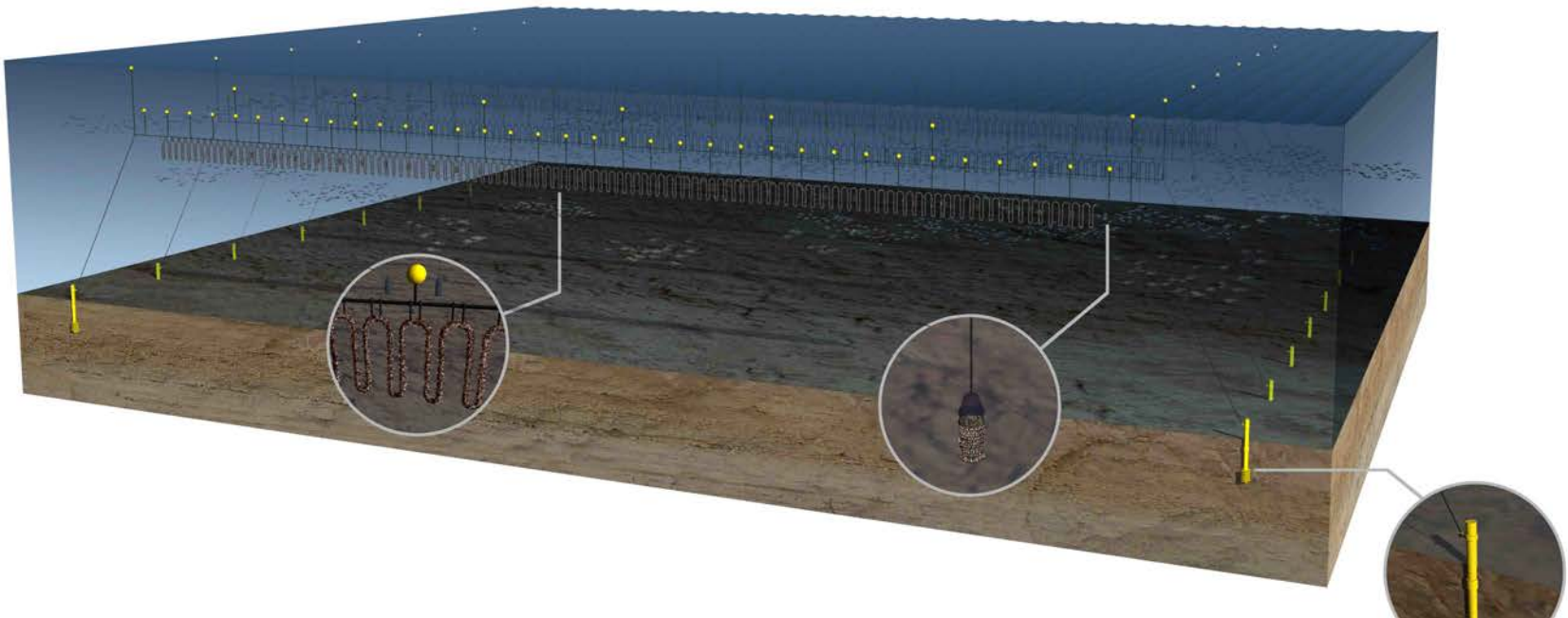
WSG-MR 14-01 • 02/14



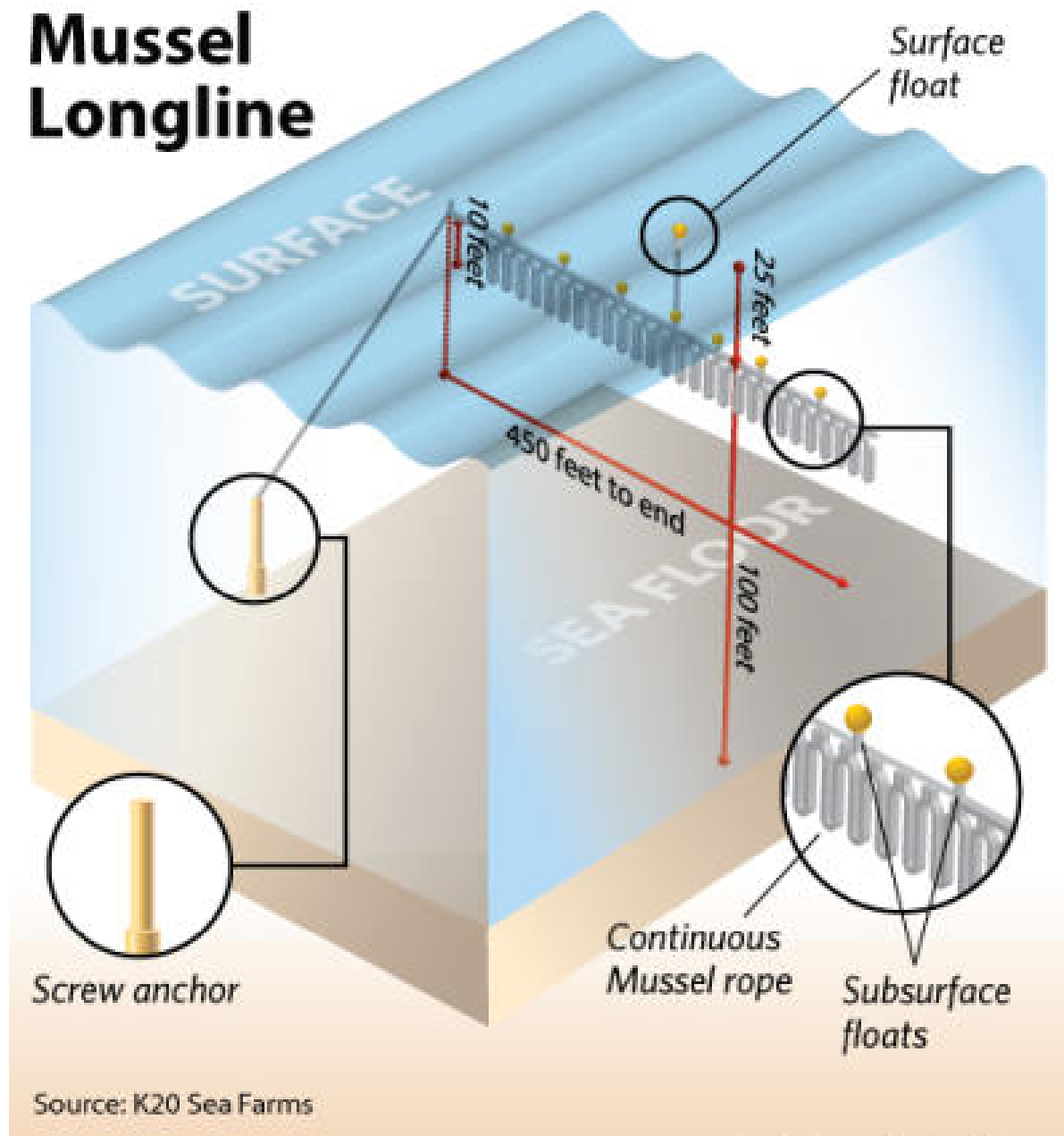


CATALINA SEA RANCH

KZO SEA FARMS



Mussel Longline



Source: K20 Sea Farms

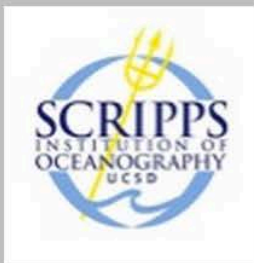
Paul Penzella Staff Artist

OFFSHORE MARICULTURE MONITORING PROGRAM

Independent research institutions, specializing in marine science and spatial planning, will develop scientific data for evaluating the environmental and social impacts of offshore shellfish mariculture.

These institutions include: The Wrigley Institute for Environmental Studies, Scripps Institution for Oceanography, National Ocean Tracking Network, NOAA's Integrated Ocean Observing System, NOAA's National Marine Fisheries Center, and Southwest Fisheries Science Center.

Lockheed Martin will provide remote sensing data and technical oversight. Verizon will provide system integration and cloud connectivity for independent and transparent scientific analysis.



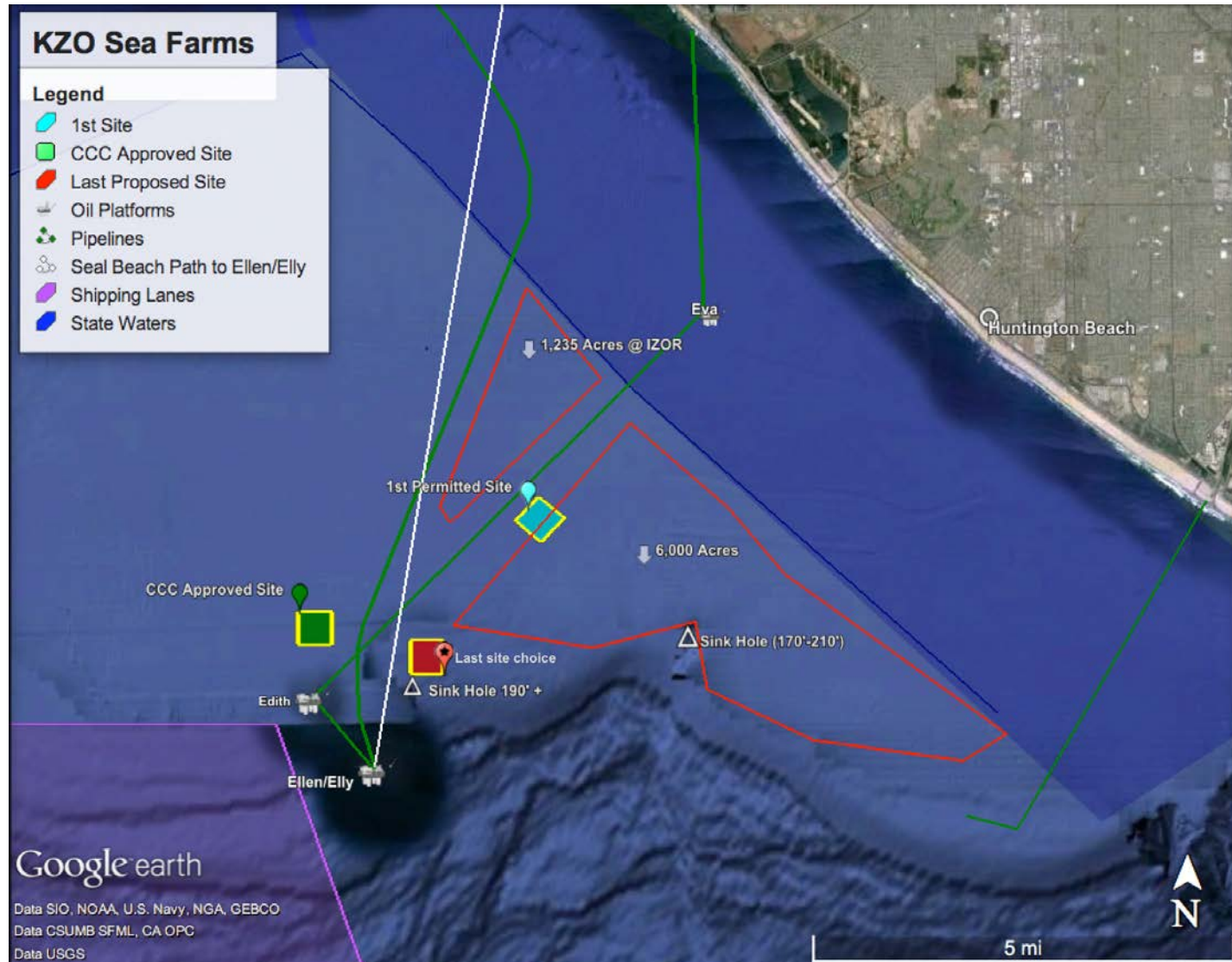
CAPTAIN JACK RESEARCH VESSEL DEDICATED TO THE MONITORING PROGRAM



Adopted Mitigation and Monitoring Plan

- Monthly monitoring of ropes, cables and equipment to avoid marine mammal entanglement and repair or replace broken ropes and material
- Monitoring program of sediments, benthic communities, fish populations, marine mammal populations, species diversity, and production of eggs and larvae from cultivated non-native species. This will include both control plots and project locations for an accurate comparison.
- A Lost/Damaged Fishing Gear Compensation Plan to compensate the fishing industry for any lost or damaged gear that becomes entangled with project structures.
- Updated NOAA charts
- Provisions for facility removal

There are 7,235 acres acceptable for shellfish ranching having a maximum depth of 150 feet and located in federal waters. The red outlined acreage complies with USCG set back safety regulatory requirements from oil platforms, pipelines and avoids crew boat transit routes.



KZO Sea Farms

Legend

- 1st Permitted Site
- 2. CCC Approved Site
- 3. March Proposed Site
- 4. April Proposed Site
- Breakwall
- Distance lines
- Oil Platforms
- Pipelines
- RNA Line
- Shipping Lanes
- State Waters
- 2 Mile Radius from Edith

Logistics & Coordinates

1.85 Miles between CCC Approved Site & 04/14 Proposed Site
0.8 Miles between 03/14 Proposed & 04/14 Proposed Site
1.9 Miles from Edith to 04/14 Proposed
530 Meters from Pipeline to 04/14 Proposed
6.1 Miles to Shore from 04/14/ Proposed

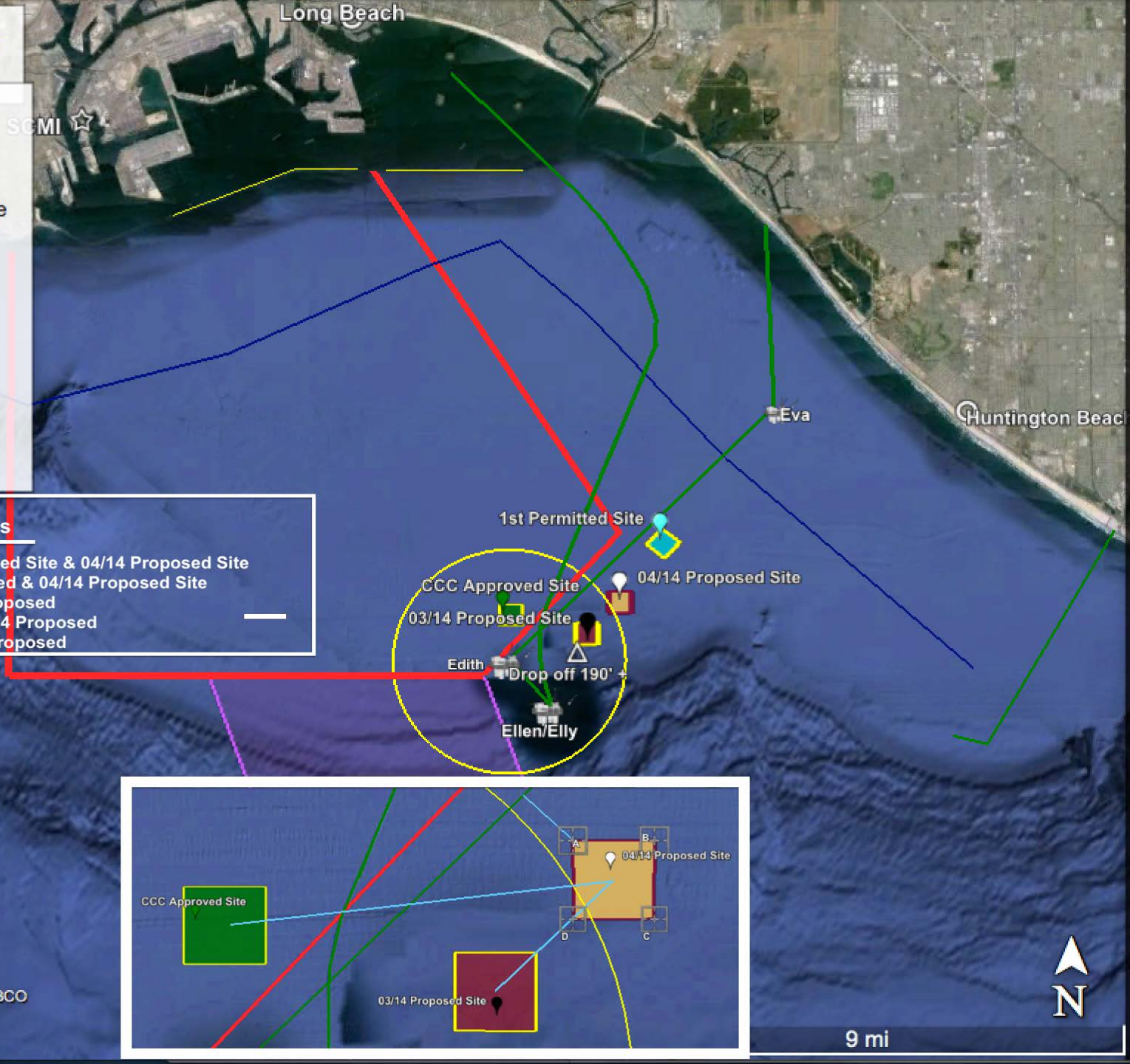
A: 138' Depth
33° 36.818'N
118° 6.710'W
B: 138' Depth
33° 36.818'N
118° 6.297'W
C: 150' Depth
33° 36.474'N
118° 6.297'W
D: 150' Depth
33° 36.474'N
118° 6.710'W

Google earth

Data SIO, NOAA, U.S. Navy, NGA, GEBCO

Data USGS

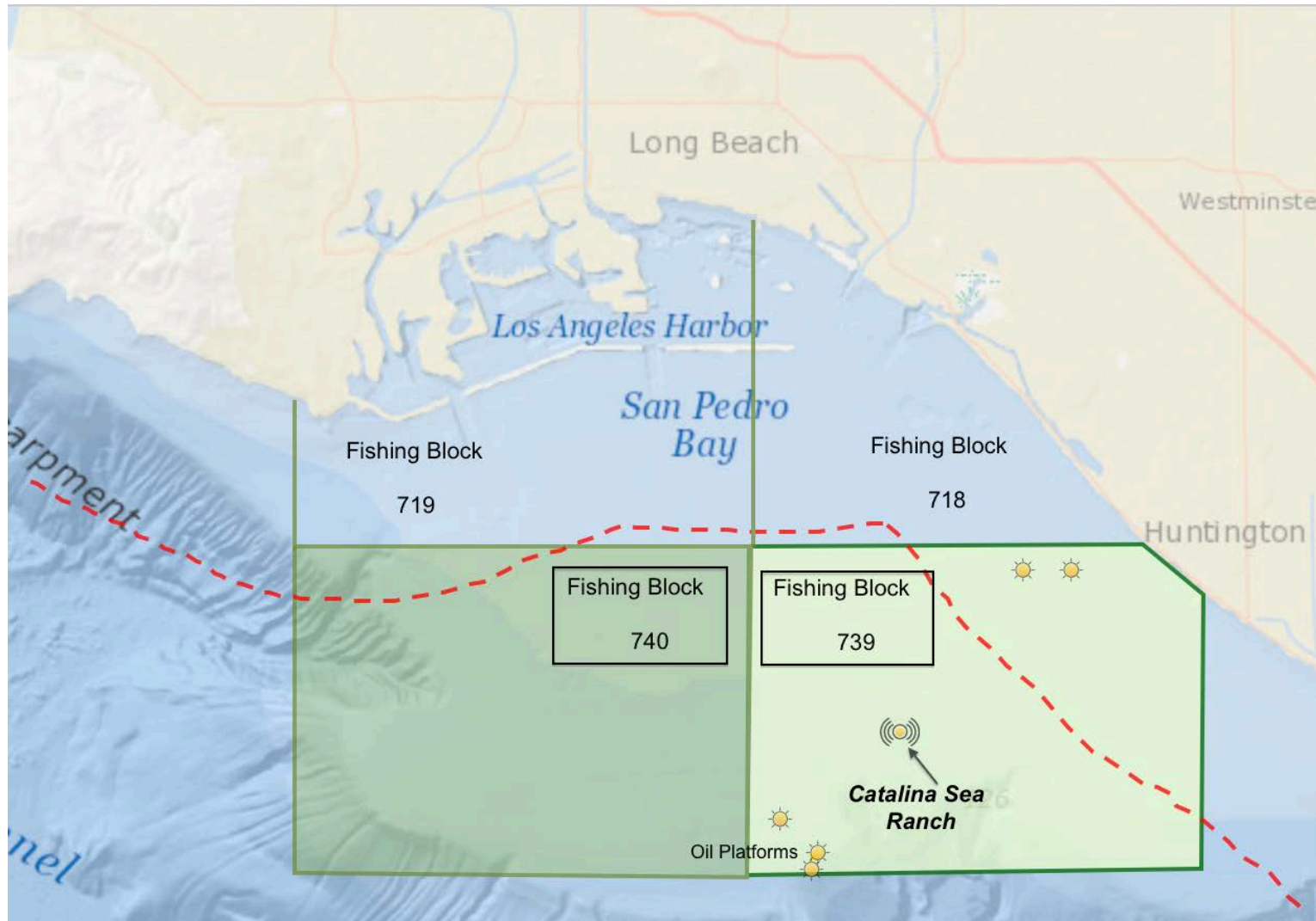
Data CSUMB SFML, CA OPC



Oil Platform Radius



100 acres amounts to 15/100ths of 1% of the area of Block 739. Comparing the takes from Block 739 to California's total takes would equal 1/4 of 10/1,000 of 1% for sardines, and 1 100/1,000 of 1% for squid.



Reported Catches from Area

New Location

Fishing Season	Catch South of Pt. Conception		Catch in the San Pedro Channel		Logbook catch inside proposed KZO shellfish farm (Short Tons)	Closest Point (mi)
	Logbook Data	CFIS Data	Logbook Data within blocks 718,719,739,740	CFIS Data Blocks 718,719,739,740		
2000-2001	79,335	113,121	1,147	2,162	0	0.68
2001-2002	75,737	91,081	1,382	1,152	0	1.94
2002-2003	14,265	18,990	380	274	0	4.15
2003-2004	32,826	40,336	514	892	0	1.71
2004-2005	39,686	47,595	0	175	0	22.45
2005-2006	61,669	78,972	6,120	6,224	0	0.72
2006-2007	33,055	37,606	1,430	1,770	0	4.70
2007-2008	46,924	50,347	4,704	4,094	0	1.22
2008-2009	32,956	39,182	284	729	0	2.22
2009-2010	51,473	92,433	522	992	0	2.54
2010-2011	54,709	109,786	4,909	11,185	0	2.02
2011-2012	57,512	117,102	3,805	9,816	0	1.03
Average	48,346	69,713	2,100	3,289	Ave Distance from KZO	3.78



Shellfish farms in New Zealand serve as mid-water artificial reefs providing a novel foraging/breeding habitat and a refuge from predators that enhance recreational and sport fishing.

SUSTAINABLE SHELLFISH MARICULTURE

This venture will:

- Create jobs
- Put a dent in the \$10 billion national seafood deficit
- Create fisheries habitat
- Bolster a vibrant working waterfront in San Pedro



HABITAT COMMITTEE REPORT ON OPEN PUBLIC COMMENT

The Habitat Committee (HC) discussed the National Marine Fisheries Service (NMFS) report submitted under Open Public Comment (E.1.a, Supplemental NMFS Report) on an initiative to determine fisheries-specific habitat objectives, and presented by NMFS members on the HC. The initiative's goal is to develop proposals for examining habitat objectives for commercially harvested stocks and for defining the process by which these objectives might be determined. The proposal is due to NMFS Office of Habitat Conservation in mid-May, therefore NMFS is seeking input from the Council on the goals and concept now.

The HC enthusiastically supports the project goals and notes they are consistent with Council research and data needs. HC suggests that the Council send a letter of support for the proposal concept by the first week of May in order to improve its chances of funding. NMFS will keep the Council informed as the proposal moves forward.

The initiative currently has limited funding, so the HC recommends any proposal consider well-studied stocks and leverage other existing habitat assessment efforts (e.g., Pacific Marine and Estuarine Fish Habitat Partnership habitat assessments). HC members noted the importance for considering impacts of climate change, and for utilizing datasets with sufficient power to detect habitat-specific signals useful for establishing objectives from spatiotemporal noise. HC members representing California Department of Fish and Wildlife and the Sanctuaries suggested their existing monitoring and datasets may help inform this proposal.

PFMC
04/05/14

PACIFIC FISHERY-SPECIFIC HABITAT CONSERVATION OBJECTIVES
A PILOT EFFORT TO REBUILD AND MAINTAIN SUSTAINABLE FISHERIES
THROUGH TARGETED HABITAT CONSERVATION

NMFS is looking to strategically target its habitat conservation resources towards achieving measurable outcomes for managed fisheries. NMFS is seeking Council support to begin a pilot effort to identify habitat conservation objectives for managed species on the West Coast.

NMFS and the Regional Fishery Management Councils (FMCs) have turned the corner on ending overfishing and are working to maximize the productivity and sustainability of fisheries and fishing communities. NMFS, RFMCs, and partners have made significant strides to establish annual catch limits, accountability measures, and rebuilding plans to achieve long-term productivity and sustainability of our nation's fisheries. Despite progress, certain stocks appear to respond poorly and/or belatedly to rebuilding measures. The health of some of these stocks may be linked to their dependence on particular habitats during critical lifestages. NMFS is increasing its efforts to strategically align and integrate habitat conservation efforts to rebuild these stocks and to support the needs of other federally-managed fish stocks.

Protecting and restoring habitat will help NMFS, FMCs, states, and partners achieve their sustainable fisheries goals. However, we must be more explicit in the identification of those habitats where we can achieve measurable benefits that will support priority, habitat-dependent fish stocks. To this end, NMFS's Office of Habitat Conservation has up to \$100K to support one or two pilot projects to establish these fishery-specific habitat objectives.

NMFS is developing a proposal for a West Coast pilot project. While still in development, the project is likely to:

1. Identify 2-5 focal species of habitat-dependent fishes. It is expected that these species will include both groundfishes and salmon.
2. Develop fishery-specific habitat conservation objectives for each species, and
3. Develop a plan for NMFS to target existing habitat conservation efforts to meet these objectives, including necessary management, monitoring, and evaluation needs.

Outcomes of this work can inform future Council EFH reviews and initiatives under its Fishery Management and Ecosystem Plans, and inform future research and data needs documents. Demonstrated success and/or lessons learned could be applied to other projects, regions, and councils. Council support for this effort is an essential ingredient for a successful pilot project. We hope we can count on that support, and will provide an update on specifics of the project proposal and its status at a future Council meeting.