HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON INTERNATIONAL ISSUES INCLUDING INTER-AMERICAN TROPICAL TUNA COMMISSION

The Highly Migratory Species Advisory Subpanel (HMSAS) advises the Council that the Inter-American Tropical Tuna Commission (IATTC) has deferred future management regimes for North Pacific Albacore to the Northern Committee to be developed with the participation of the IATTC. The U.S. IATTC delegation has several resolutions that are in the Highly Migratory Species Management Team (HMSMT) report. The HMSAS has advice on two of the resolutions under consideration.

PACIFIC BLUEFIN TUNA (PBF)

Concerning the management of the Pacific Bluefin Tuna, the HMSAS advises:

A. For the 89th IATTC meeting that will be held in Ecuador, June 29- July 3, 2015, the HMSAS offers the following recommendations for consideration for the U.S. section to the IATTC.
On the proposal IATTC-89-J-I-a Resolution to Establish a Rebuilding Plan for Pacific Bluefin Tuna (PBF).

1. Stock Assessment Status. The PBF Stock was assessed by the ISC in 2014. In this assessment, PBF migration across the North Pacific Ocean was considered by the International Fishery Organization for Tuna and Tuna-like Species (ISC). We understand that the Eastern Pacific Ocean (EPO) data was not used in determining the measure of abundance. The HMSAS recommends that for the next assessment in 2016, EPO data should be used.

2. U.S. Proposal: Rebuilding Plan for PBF. We urge the Council to support the concepts of the Proposal because of the scientific concerns that the PBF stocks are in a depleted condition, particularly in the Western Pacific Ocean (WPO). We urge the Council to support the objectives of paragraph 2 of Section 1 of this Proposal, namely (1) to maintain fishing opportunities in all existing PBF directed fisheries and (2) to maintain an equitable balance of conservation burdens among members and between the EPO and WPO. We urge the Council to support the need for scientific collaboration between the IATTC, the ISC and the Northern Committee when making evaluations of the rebuilding strategy.

B. Southwest Fisheries Science Center Report on PBF Tuna Research dated March 30, 2015 (Agenda Item E.1.a, Supplemental SWFSC Report). This Report is very encouraging to the HMSAS, in that the meeting's membership recognized that there are multiple "gaps in our knowledge of PBF tuna and their fisheries". These "gaps" are identified as including PBF tuna biology and ecology. The Report also sets forth the scientific work to be done in the short-term (1-2 years) and in the long-term (2+ years).

HMSAS notes that during the past four EPO PBF tuna seasons, fishermen and fish pilots have reported sightings of favorable abundance and availability of PBF tuna in the international waters off Baja California and Southern California. Within the past two weeks, fishermen and fish pilots have reported the presence of "thousands of tons of PBF tuna in waters off San Diego." It is our understanding that after a few weeks of fishing, Mexico reached their quota. The tuna pens in Mexico are filled with PBF tuna. PBF tuna have been landed in San Diego and San Pedro by U.S. commercial fishermen. These sightings and catches have raised questions about the validity of PBF tuna data collection and population dynamics modeling.

The SWFSC's Report identifies the "suite of gaps in our knowledge of PBF tuna; how to improve the PBF tuna stock assessment model; and how to collect more data at sea and on shore." the HMSAS is very encouraged by the promise of this Report.

BIGEYE TUNA

Concerning the Bigeye tuna (BET), the HMSAS advises that the Council should recommend to the U.S. Section to the IATTC that:

1. The BET conservation and management measure should be modified so that the country quotas should apply to all longline vessels, not just vessels over 24 meters, and that the quota for the U.S. should be increased.
2. Data collection and analysis should include all catches of BET Pacific wide.

The Council should also cooperate with the WPFMC so that there is an equitable allocation of the U.S. BET quota between vessels fishing out of Hawaii and vessels fishing from the West Coast Region.

FISH AGGREGATION DEVISE (FADs)

This is the second resolution that HMSAS is commenting on. Concerning the proposed U.S. Resolution on FADs, the HMSAS advises that any definition of FADs be carefully considered. Fishing vessels should NOT be considered as FADs.

NORTH PACIFIC ALBACORE TUNA

Concerning the 11th Northern Committee (NC) meeting in September 2015, the HMSAS was briefed on the Management Strategy Evaluation (MSE) that the U.S. is committed to supporting for North Pacific Albacore at the NC meeting last September. The HMSMT provided a number of suggested requests for inclusion in the proposed items to be investigated within the Albacore MSE framework analysis. The HMSAS concurs with these recommendations, and based on information received understand that these proposed items are within the bounds of items included in the model. The HMSAS is concerned regarding increasing the number of variables into the MSE model. The best available data for albacore are primarily catch, effort and limited biological data. These primary data all have a high level of uncertainty, such as the Chinese directed catch or bycatch of albacore. Other important stock assessment information such as the spawner-recruit relationship is unknown, substituted with assumed parameters that further

introduce error and uncertainty into the evaluation process. There are also concerns as to the effectiveness of fishery controls relative to environmental effects and also that most of the North Pacific albacore catch is not a target catch, only the North American and Japanese pole and line albacore fisheries are target fisheries, but in the Japanese fishery, albacore is of secondary importance to skipjack.

At this time the HMSAS believes the MSE process should not become too complex. The MSE process should focus on the issue of developing target reference points that are appropriate to maintain albacore abundance at or above the MSY level (historic long term average catch) and to develop control rules to achieve that result.

VMS

The HMSAS would like to bring to the attention of the Council: I**nternational Affairs; High Seas Fishing Compliance Act; Permitting and Monitoring of U.S. High Seas Fishing Vessels – April 13, 2015 Federal Register Notice of Proposed Rule.** This notice requires enhanced mobile transmitting units (EMTUs), which are two-way VMS units, for all vessels having a high-seas permit. It is HMSAS' understanding that the proposed regulation was not vetted through the Pacific Council or the West Coast Region.

The HMSAS requests that the Council send a letter requesting a re-opening of the comment period for this proposed rule so the Council, HMSAS, HMSMT, and the Scientific and Statistical Committee (SSC) can submit comments, particularly since by its own terms it suggests that the fishing fleet most impacted by the proposed rule will be the Pacific albacore fleet. As an aid to the Council, the HMSAS has attached a summary analysis of the EMTU portions of the proposed rule, but does not include the observer, groundfish and transshipment portions. The summary analysis also includes information on *International Fisheries Pacific Tuna Fisheries Establishment of Tuna Vessel Monitoring System in the Eastern Pacific Ocean.*

Appendix: Proposed Changes to the High Seas Fishing Compliance Act Regulations

On April 13, 2015, NMFS published a Proposed Rule in the Federal Register (80 FR 19611) to revise regulations pursuant to the High Seas Fishing Compliance Act. Proposed changes include adjustments to permitting and reporting procedures. It also includes requirements for the installation and operation of enhanced mobile transceiver units for vessel monitoring, carrying observers on vessels, reporting of transshipments taking place on the high seas, and protection of vulnerable marine ecosystems. **The public comment period on the Proposed Rule closed May 13, 2015.**

The Council, due to the closing date of this notice, did not have an opportunity to comment even though the albacore harvester organizations requested that the comment period be extended. There are several confusing aspects to this notice and proposed rule. This paper is only provided for the Council's information and does not represent an official HMSAS position.

Summary of the Contents of the Proposed Rule

The proposed rule also amends several existing statutes regulations. For example, the definition of a high seas fishing vessels is now:

> Consistent with 16 U.S.C. 5502(4), NMFS proposes to revise the definition of "high seas fishing vessel" in 50 CFR 300.331 by adding the word "and" as underlined below to clarify that this term means *any vessel of the United States used or intended for use: (1) On the high seas, (2) for the purpose of the commercial exploitation of living marine resources, and* (3) as a harvesting vessel, mother ship, or any other support vessel directly engaged in a fishing operation.

It is not clear whether high seas is used as defined in international law (any waters seaward of the territorial sea of a country), or is intended to exclude vessels which only fish within the U.S. EEZ. We have received oral information from Silver Spring that the intended definition of high seas is waters seaward of the U.S. EEZ.

Another important definitional change is:

> This rule proposes to revise the regulatory definition of "international conservation and management measures" by adding the following sentence from the HSFCA definition*: "Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements*." The change clarifies that commitments made by the United States at international fisheries management fora can be included in the term "international conservation and management measures" to the extent necessary and appropriate to carry out U.S. obligations under the Compliance Agreement or for purposes of the HSFCA.
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> Apparently this sentence is added to include regulations such as those under the U.S. albacore treaty with Canada and other bilateral agreements.

The proposed rule also requires the application and issuance of a new permit. The justification for an additional permit requirement is given as follows:

> In developing this proposed rule, NMFS evaluated an option to rely on fishery-specific permits for U.S. vessels operating on the high seas, other than the HSFCA permit program, to authorize high seas fishing activities. However, *by continuing to require a separate high seas fishing permit, in addition to any permit required for the authorized high seas fishery* in which the HSFCA permit applicant intends to fish, NMFS is able to maintain a separate and more precise record of vessels permitted to fish on the high seas and submit information from this record to the FAO as required in the Compliance Agreement.

Another important change would provide that NMFS can change these permits at any time. It is not clear what type of notice and or process would need to be followed. The new language is:

> Section 300.333(i) of the proposed rule would allow *NMFS to modify, suspend, or revoke high seas permits if permitted activities impact living marine resources in ways that were not foreseen* or anticipated at the time of permit issuance or are in contravention of an international conservation and management measure or are in violation of any provision of domestic law. Such flexibility is needed because high seas fishing permits are valid by law for 5 years.

Specifically authorized high seas fisheries are listed in a different section of the proposed rule. For the Pacific they are:

Fisheries Authorized on the High Seas

> NMFS issues high seas fishing permits only for fisheries where high seas fishing activities have been analyzed in accordance with the ESA, NEPA and other applicable law. Such analyses have been completed for the following fisheries:
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> - 50 CFR part 300, subpart C—Eastern Pacific Tuna Fisheries
> - 50 CFR part 300, subpart D—South Pacific Tuna Fisheries
> - 50 CFR part 660, subpart K—U.S. West Coast Fisheries for Highly Migratory Species
> - 50 CFR part 665, subpart F—Western Pacific Pelagic Fisheries
> - South Pacific Albacore Troll Fishing

With regard to the new requirement for enhanced vessel monitoring units the proposed rule states:

Requirements for Enhanced Mobile Transceiver Units (EMTUs)

NMFS published a final rule for VMS type-approval on December 24, 2014. See 79 FR 77399. Those regulations are codified at 50 CFR part 600, subpart Q (national VMS regulations). As defined in the VMS type-approval regulations, vessel monitoring system, or VMS, refers to a satellite based surveillance system designed to monitor the location and movement of vessels

using onboard transceiver units that send global positioning system location reports to a monitoring entity. *An enhanced mobile transceiver unit (EMTU) is a transceiver or communications device, including antennae, dedicated message terminal and display, and an input device such as a keyboard which is installed on a fishing vessel, and is capable of supporting two-way communication, messaging, and electronic forms transmission, and is an example of the device that provides the vessel location reports as part of a VMS.*

Under § 300.337 of this proposed rule, NMFS would require all vessels permitted to operate on the high seas, or subject to those permitting requirements, to have an installed and activated NMFS-type-approved EMTU on board. NMFS will not issue or renew a high seas fishing permit unless the vessel has an installed and activated NMFS-type-approved EMTU that reports automatically to NMFS (§ 300.333(d)(2) and (g)).

An exception to this new requirement for EMTU is set out as:

> A vessel would be exempt from these requirements and could power down the EMTU when the vessel remains at a dock or permanent mooring for more than 72 consecutive hours (referred to as the in-port exemption in the proposed rule) *or when it participates in a domestic fishery within the U.S. EEZ, for 30 or more consecutive days,* and there are no other applicable requirements for any EMTU or VMS unit operation for those activities or fishery (referred to as the long-term exemption in the proposed rule).

The italicized language seems to imply, in contradiction to the earlier statements that the "high seas" does <u>not</u> include the EEZ, that the EEZ is part of the area where the EMTUs will be required for vessels of all sizes. Being able to be "exempt" or being able to power down if you are participating in a domestic EEZ fishery for 30 consecutive days seems to imply if you break your trips up into 7 days at a time, you are required to have a EMTUs, otherwise why would you need an exemption? However, enforcement applicants clarified this by stating that there was no such implication. Rather, this provision is to reduce the burden of having an EMTU functioning at all times if, in effect, the vessel had finished fishing on the high seas and had shifted to fishing only in the U.S. EEZ, for example if it were following albacore in its eastward migration.

Vessels required to carry VMS under other regulations would be exempt from this proposed rule. VMS requirements that currently apply on the high seas include the following regulations:

- § 660.712(d) for longliners in the U.S. West Coast fisheries for highly migratory species (HMS) (these units are owned and installed by NMFS), [at the moment only the Hawaiian longline fleet]
- § 665.19 for Western Pacific pelagic fisheries (these units are owned and installed by NMFS), [the WPFMC terms its FMP for HMS "pelagic fisheries, while the PFMC terms similar fisheries HMS fisheries]
- § 300.219 for Western and Central Pacific fisheries for HMS [fishing under the WCPFC],
- § 300.45 for South Pacific tuna fisheries [fishing under the 30 year old multilateral fishing access treaty for U.S. purse seiners],

Subsequently the proposed rule says:

> High seas fishing vessels that would need to purchase, install, activate, and operate EMTUs as a result of this proposed rule include *vessels other than longliners participating in the U.S. West Coast fisheries for HMS, longline vessels less than 40 feet in length overall in the Western Pacific pelagic fisheries.*

It remains unclear whether vessels which currently have VMS, but not EMTUs, would have to replace their existing VMS units.

Additionally:

> The vessel owner or operator would be responsible for all costs associated with the purchase, installation and maintenance of the EMTU, and for all charges levied by the vendors as necessary to ensure the transmission of automatic position reports to NMFS.

In addition to greatly expanded requirements for EMTUs, this proposed rule also sets forth other new requirements for groundfish fisheries, observers and transshipping, which are too numerous to go into in any depth in the time provided. These provisions should be commented upon by the HMSAS, HMSMT, SSC, and enforcement before the rule becomes final.

Furthermore this proposed rule by its own terms conceeds that many vessels that previously were not required to carry VMS or EMTUs, will now be required to do so at considerable expense. The proposed rule provides:

> ***Installation and Operation of EMTUs***. The proposed rule would require the installation of EMTUs on all high seas fishing vessels. The EMTU would need to be operated at all times, except when the vessel will be at a dock or permanent mooring for more than 72 consecutive hours, or when the vessel will not operate on the high seas or in any fishery that requires EMTU operation for more than 30 consecutive days. Notices prior to EMTU power-down and power-up would need to be provided to NMFS.
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> Under the proposed rule, approximately 200 of the currently permitted high seas fishing vessels would need to install an EMTU. The remaining 400 or so vessels currently holding high seas fishing permits are already subject to EMTU requirements and would not bear any additional compliance costs as a result of this proposed rule.
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> ***The majority of the approximately 200 affected vessels would likely be albacore trollers operating in the Pacific Ocean.*** These vessels have generally not been subject to VMS requirements contained in other regulations. The cost of compliance with this requirement includes the cost of purchase, installation, maintenance, and operation of the EMTU. The costs of purchase and installation are treated as one-time costs because this [is] the EMTU requirement in the proposed rule. A description of the estimates and calculations used in Table 2 is provided below the table.

Table 2—Estimated Costs of Compliance With EMTU Requirements

Description	Cost
EMTU purchase	Up to $3,100.
Installation cost (one-time)	$50-400 ($400 used for estimation).
Daily position report costs (Hourly, 24/day; $0.06/report *24 reports/day)	$1.44.
Annual position report cost per vessel ($1.44/day * 365 days/year)	$525/vessel.
Annual EMTU maintenance cost	$50-100 ($100 used for estimation).
Total cost per vessel (Year 1; unit + installation + position reports)	$4025.
Total cost per vessel after reimbursement of EMTU cost (for eligible vessels only)	$925.
Cost per vessel (Year 2 and beyond; position reports and EMTU maintenance)	$625/vessel.
Number of affected vessels	200.
Total cost (Year 1; total cost per vessel before reimbursement * number of affected vessels)	$805,000.
Total cost (Year 2 and beyond; total cost per vessel * number of affected vessels)	$125,000.

Units would need to be installed by a qualified marine electrician. Based on experience in other fisheries with EMTU requirements, NMFS suggests that installation cost can range from $50 to $400, depending on the vessel, proximity to the installer, and the difficulty of the installation. For estimation purposes, $400 was used to calculate the costs of compliance with this proposed rule. NMFS is interested in receiving public comment on these values to refine estimates of the economic impacts on the affected vessels.

The cost of transmitting data through the EMTU depends on the type of EMTU installed and the communication service provider selected. For the purposes of this rulemaking, NMFS is assuming the cost of EMTU position data transmissions is approximately $0.06 per transmission. This equates to $1.44 per day for the location reports, at a rate of one transmission per hour. Providing position reports throughout the year could cost a high seas fishing vessel $525 (365 days per year * 24 position reports per day * $0.06 = $525).

In addition, some units were taken off the approved list as follows by a recent federal register notice as follows:

Skymate

- Stellar ST2500G (with messaging terminal).
- Stellar ST2500G (with closed Dell laptop).

CLS America

Thorium TST (Note - The Thorium TST A2.0 and the Thorium LEO A2.0 are still approved).

While it is clear this Council was not able to comment during the short 30 day comment period, it is unknown whether other Councils were provided such an opportunity or if they took advantage of it. There was certainly no opportunity for meaningful and organized comments from the albacore harvesters and harvesters of other HMS species. It seems odd that a "proposed rule" which has been in development for approximately 4 years, (the initial contact is listed as Rod McInnis who has been retired for over a year), was only given a 30 day comment period.

PFMC
06/13/15