

Testimony of Kitty M. Simonds
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Before the US House of Representatives
Committee on Natural Resources, Power, and Oceans
Subcommittee on Water, Power and Oceans

Hearing on H.R. 4576: “Ensuring Access to Pacific Fisheries Act”

Longworth House Office Building, Room 1334, Washington, DC
March 1, 2016, at 2:00 p.m.

Chairman Fleming and Committee Members: Aloha, Talofa, Hafa Adai, Tirow – Greetings in the official languages of the State of Hawai‘i and the US Pacific Island Territories of American Samoa and Guam and the Commonwealth of the Northern Mariana Islands (CNMI). My name is Kitty Simonds. For the last 33 years, I have served as the executive director of the Western Pacific Regional Fishery Management Council. Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, the Western Pacific Council has authority over the fisheries in the Pacific Ocean seaward of the state/territory waters of the aforementioned island areas as well as the possessions of the United States in the Pacific, which are known as the US Pacific Remote Island Areas. Prior to my current position, I worked for US Senator Hiram B. Fong of Hawai‘i, so being here and testifying on Capitol Hill brings back fond memories. Thank you for the invitation to testify today on House Bill 4576, the Ensuring Access to Pacific Fisheries Act.

My testimony today will focus on the North Pacific and South Pacific Conventions and on the Western and Central Pacific Fisheries Commission (WCPFC). The latter is of great importance to the conservation and management of tuna resources in the Western Pacific Region.

North Pacific Convention

The Western Pacific Council notes that the US ratification of the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean was adopted on February 24, 2012. Signatories include Canada, China, Chinese Taipei, Japan, Korea, Russia and the United States. Japan and Canada have deposited their instruments of ratification, and Chinese Taipei has submitted a separate instrument for the Participation of Fishing Entities. The convention will come into effect upon the fourth instrument of ratification received.

While the North Pacific Convention Area includes only the high seas of the North Pacific Ocean, the Hawai‘i Archipelago and surrounding US Exclusive Economic Zone (EEZ) around Hawai‘i, Johnston Island, and the CNMI are fully encompassed within the area of competence of the North Pacific Convention. A portion of the US EEZ around Wake Island is also found within the Convention Area. Given these geographical considerations, the United States and the Western Pacific Council have a conservation and management interest with regard to shared stocks that are covered under the North Pacific Convention.

Fisheries resources covered by the North Pacific Convention are all fish, mollusks, crustaceans and other marine species caught by fishing vessels within the Convention Area, excluding the following:

(i) sedentary species subject to the sovereign rights of coastal States and indicator species of vulnerable marine ecosystems as listed in or adopted pursuant to the North Pacific Convention;

(ii) catadromous species;

(iii) marine mammals, marine reptiles and seabirds; and

(iv) other marine species already covered by pre-existing international fisheries agreements.

To date, the North Pacific Commission has focused on high seas bottom-trawl fisheries operating on the Emperor Seamounts of the Northwestern Pacific targeting North Pacific armorhead, splendid alfonsin, oreo, and mirror dory. The Emperor Seamounts are part of the Hawaiian-Emperor Seamount chain, which stretches 3,600 miles from the Aleutian Trench in the Northwest Pacific to the Hawaiian Islands in the Central Pacific. Other fisheries that the North

Pacific Commission has identified that could be subject to its management regime include the sablefish longline fishery on the Eickelberg, Warwick, Cobb, and Brown Bear Seamounts in the Northeast Pacific. High seas fisheries for Pacific saury and flying neon squid have also been identified as being potentially managed under the North Pacific Commission.

Of particular interest to the Western Pacific Council are the bottom-trawl fisheries targeting armorhead and alfonsin. In the late 1960s, Russian and Japanese fishing vessels began bottom-trawling on the Emperor Seamount chain targeting these stocks. The vessels worked their way down the chain and fished on the northern Hawaiian ridge, including the Hancock Seamounts. By 1975, the combined catches of the former Soviet and Japan trawl fleet had reached some 1 million metric tons (mt) of armorhead harvested from the Southern Emperor-Northern Hawaiian Ridge Seamounts.

After passage of the Fishery Conservation and Management Act of 1976, which later became the Magnuson-Stevens Fishery Conservation and Management Act, the Hancock Seamounts became included within the 200-mile US Fishery Conservation and Management Zone around the Hawai'i Archipelago. A Preliminary Management Plan developed that year provided for limited foreign harvesting at the Hancock Seamounts under a permit system during 1978-1984. Japanese trawlers were the only vessels to apply for such permits and were subject to a combined annual harvest quota of 1,000 mt and required to carry a US fishery observer aboard each permitted vessel. By the end of 1984, armorhead trawl catches on the Hancock Seamounts remained low with harvest quotas never attained in any of the years during 1978-1984. When the Western Pacific Council's Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region was approved in 1986, a six-year moratorium on fishing at the Hancock Seamounts was established to aid the recovery of the armorhead, which was in poor condition. Although no domestic US fishery has ever targeted this stock, the catch by foreign vessels harvested and depleted the armorhead stock throughout its range. In 1992, the armorhead stock at the Hancock Seamounts was determined to be overfished and thus subject to a rebuilding plan. A no-catch moratorium was recommended by the Western Pacific Council every six years from 1992 to 2010. In 2010, the Western Pacific Council and NMFS established the moratorium to be in effect on an indefinite basis. This final rule prohibits fishing for bottomfish and seamount groundfish at the seamounts until the armorhead stock is rebuilt and classifies the EEZ around the Hancock Seamounts as an ecosystem management area.

This final rule will aid in rebuilding the armorhead stock and facilitate research on armorhead and other seamount groundfish.

The Council has also extensive experience monitoring the fishery at the Cross Seamount. Located approximately 140 miles to the southwest of the Big Island of Hawai‘i, the seamount rises to about 385 meters of the surface, an excellent depth for aggregating several commercially important species, such as bigeye tuna, yellowfin tuna and monchong (pomfret). The fishery has historically targeted tuna and tuna-like species. Even though the fishery accounts for only 0.5 percent of the annual non-longline pelagic effort in trips, it lands 50 percent of the non-longline bigeye tuna in the State. The Council analyzes catch and effort data and socioeconomic and human dimensions of this seamount fishery.

Mr. Chairman, I recapped the history of the armorhead and Cross Seamount fisheries in US waters to recognize the long standing interest and management history that the Western Pacific Council holds with respect to the management of seamount fisheries in the North Pacific Ocean. The proposed legislation establishes that the chair of the Western Pacific Council, or his or her designee, would be provided a mandatory US Commissioner position to the North Pacific Commission. Please note that Section 102 of the legislation describes the selection of the US Commissioners, of which two of the five are to be selected from either the Departments of Commerce or State or the US Coast Guard. According to the proposed legislation, mandating a US Commissioner position to the North Pacific Commission is expected to benefit the US ability to participate in the management of stocks. There might be more knowledgeable or experienced federal government representatives who do not work for the three mentioned federal agencies. The Committee might consider revising the language to simply state that “two of the Commissioners appointed by the President shall be an officer or employee of the federal government.”

I also draw the Committee’s attention to the Mariana Archipelago, whereby to the west of the emergent islands in the group lies a chain of seamounts within the US EEZ. These areas may hold significant fishery resources and shared stocks that are covered under the North Pacific Convention. As the Western Pacific Council manages fisheries in the US EEZ around the Mariana Archipelago, it is important for the Council to participate in the North Pacific

Commission as this would facilitate consistent conservation and management with the North Pacific Commission to the extent necessary and practicable.

Mr. Chairman and members of the Committee, passage of the bill to ratify the North Pacific Convention would enable US participation in the management and conservation of these resources for the benefit of US fisheries.

South Pacific Convention

With respect to the South Pacific Convention, the Western Pacific Council notes that, while the South Pacific Convention applies only to the high seas, the Convention Area also encompasses areas of the US EEZ around American Samoa and the US Pacific Remote Island Areas. As previously stated, these areas of the US EEZ are under the management jurisdiction of the Western Pacific Council. In this regard, ensuring that the Western Pacific Council chair, or his or her designee, is provided a mandatory position as a US Commissioner to the South Pacific Commission is prudent.

While the South Pacific Commission is mostly concerned with jack mackerel fisheries occurring in the Eastern Pacific Ocean, the Western Pacific Council has extensive experience with the fisheries management issues before the South Pacific Commission, including vessel monitoring systems, which the Council pioneered in the early 1990s. Other fishery management measures under consideration by the South Pacific Commission in which the Council has experience include appropriate levels of observer coverage; marine mammal, sea turtle and seabird bycatch mitigation; boarding and inspection procedures; and consistency with the United Nation's FAO Code of Conduct for Responsible Fisheries.

Western and Central Pacific Fisheries Convention

Mr. Chairman, I would like to take this opportunity to explain how the modifications to the Western and Central Pacific Fisheries Convention Implementation Act contained in the bill before the Committee may benefit management or conservation. In our view, the Advisory Committee to the US Commissioners to the WCPFC has been underutilized. The bill would require the Advisory Committee to transmit recommendations to the US Commissioners. In the past, advice coming from the Advisory Committee has been generally in the form of a watered down report. The current bill language in sec. 301(a)(1)(E), however, could be improved by

replacing “15 days” with “45 days” in references to the time before each annual meeting that the US Advisory Committee provides recommendations to the US Commissioners. I highlight this because, under the WCPFC Rules of Procedure, Commission members are to provide proposals for conservation and management measures at least 30 days prior to the start of the regular annual meetings of the WCPFC. It would be best that the US Advisory Committee meets at an appropriate time in the calendar year to provide meaningful advice for the development of US proposals to the WCPFC. This brings me to another concern I have in this section. It would be useful to clarify that the US Advisory Committee should be transmitting recommendations on US proposals for WCPFC conservation and management measures and not just on issues related to the agenda of the annual meeting. Improving the Advisory Committee process should facilitate clearer input to the US WCPFC Commissioners and the US government.

The bill proposes to add Section 511 to the WCPFC Implementation Act, which would instruct the US government representatives leading the US delegation to meetings of the WCPFC to minimize any disadvantages to US fishermen in relation to other members of the Commission. The Western Pacific Council was integrally involved in the development of the WCPFC and even hosted the last three Multilateral High-Level Conferences in Honolulu that led to the signing of the WCPFC Convention, otherwise known as the Honolulu Convention, in 2000. If I knew now how US fisheries would be disadvantaged as a result of the uneven playing field among members of the WCPFC, the Council’s involvement in the development of this Commission would have been different. The Hawai‘i longline fishery, for example, is the only longline fishery in the WCPFC Convention Area that has been subject to in-season closure due to reaching its bigeye tuna catch quota, which by the way, represents only 3 percent of the total catch of bigeye in the Western and Central Pacific Ocean. Closure of the Hawai‘i longline fishery has had severe impacts on fishery participants, local markets, and Hawai‘i seafood consumers. The Hawai‘i longline fishery is the most comprehensively managed and highly monitored longline fishery operating in the region, yet it faces closure every year due to a small US quota agreed to by the US government. The Hawai‘i longline fishery is a model fishery in terms of ecologically sustainable longline fishing, employing high observer coverage levels, vessel monitoring systems, a limited entry program, spatial management to minimize fishery interactions, and innovative turtle and seabird bycatch reduction methods. Indeed, the Hawai‘i fishery was evaluated and found to be overall 93 percent compliant with the United Nations

Food and Agriculture Organization's Code of Conduct for Responsible Fisheries. Well managed fisheries can also be profitable. This is evident from Honolulu being ranked consistently in the top 10 ports nationally in terms of landed, wholesale (ex-vessel) fish value, generating approximately \$100 million annually. Profitable, well-managed US fisheries in the Western Pacific and Central Ocean, such as the Hawai'i longline and US purse seine fisheries, are in danger of being lost forever due to geopolitics and being on the losing end of WCPFC negotiations. Couple this with an uneven playing field with regard to enforcement and domestic implementation of Commission measures and it is no wonder that these fisheries face a perilous future.

The domestic implementation of WCPFC conservation and management measures and the enforcement of those measures are not evenly conducted among Commission members, to the detriment of fish stocks and US fisheries. In this regard, US fisheries would benefit from the adoption by the WCPFC of an effective and transparent compliance monitoring scheme to ensure that all fishing fleets comply with the Commission's conservation and management measures. The Commission's compliance monitoring scheme would be further improved by including an independent auditing mechanism, because the current system of self-reporting and self-assessment of compliance by Commission members lacks credibility.

I would like to take this opportunity to note also that the US government has agreed to non-science based catch and effort limits in the WCPFC, to the detriment of US fisheries. Whether this was due to geopolitics, or just simply being out-negotiated, such results are unacceptable when the consequences on US fisheries are so great. In our view, the proposed bill would, in Sec. 511(2), help put a stop to this trend as it would require the US government to agree only to measures that have a strong scientific basis with regard to high seas fishing restrictions.

In closing, Mr. Chairman, I would like to reiterate that the draft legislation under consideration would benefit the Council's ability to sustainably manage fisheries in the Western Pacific Region and I express my appreciation in being allowed the opportunity to testify before the Committee today. Mahalo, Fa'afetai Tele Lava, Si Yu'us Mā'āse', Olomwaay, Thank you!

Figure 1: North Pacific Fisheries Convention Area of Application

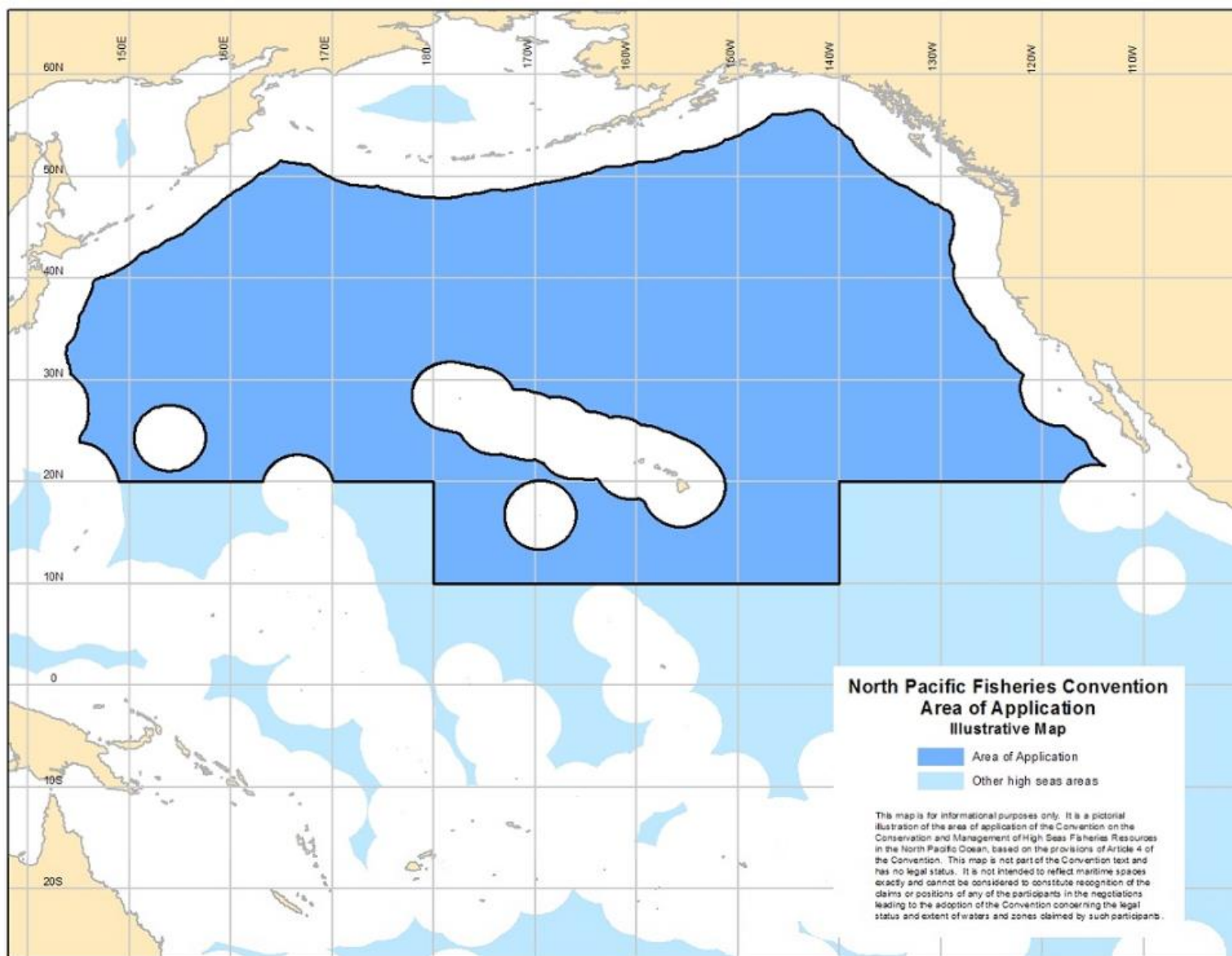


Figure 2: South Pacific Fisheries Convention Area of Application

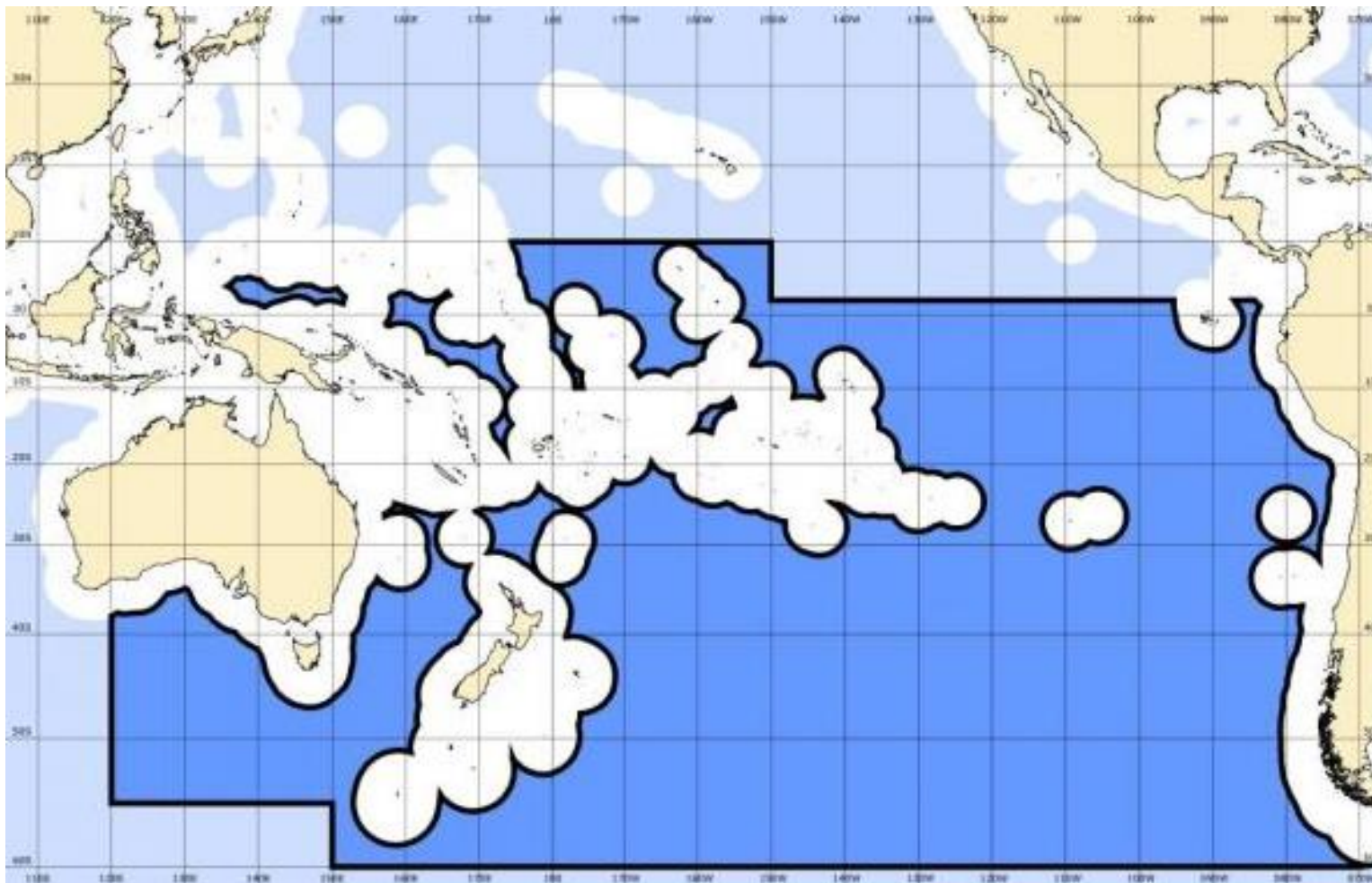


Figure 3: Regional Fishery Management Organizations in the Pacific Ocean

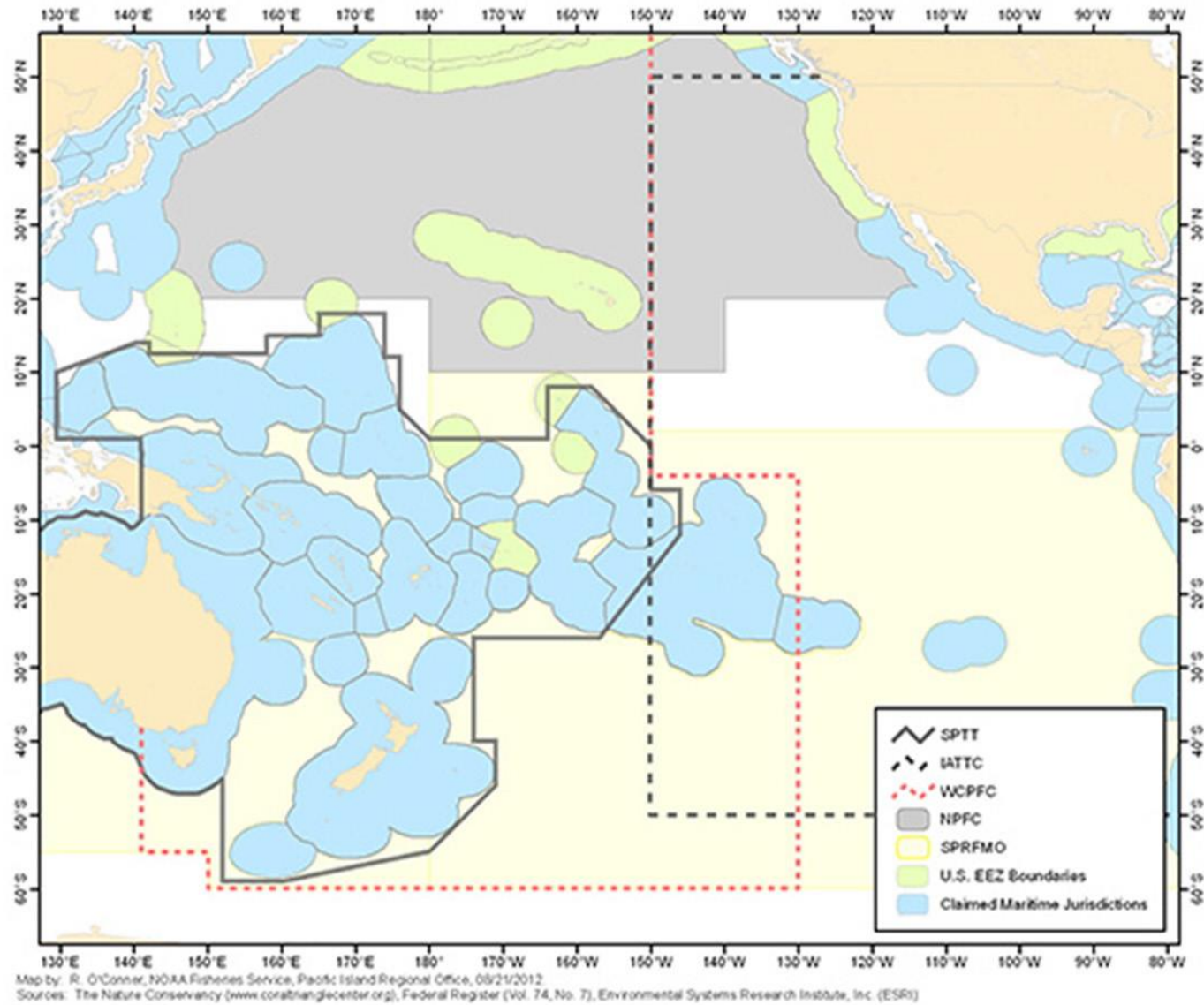
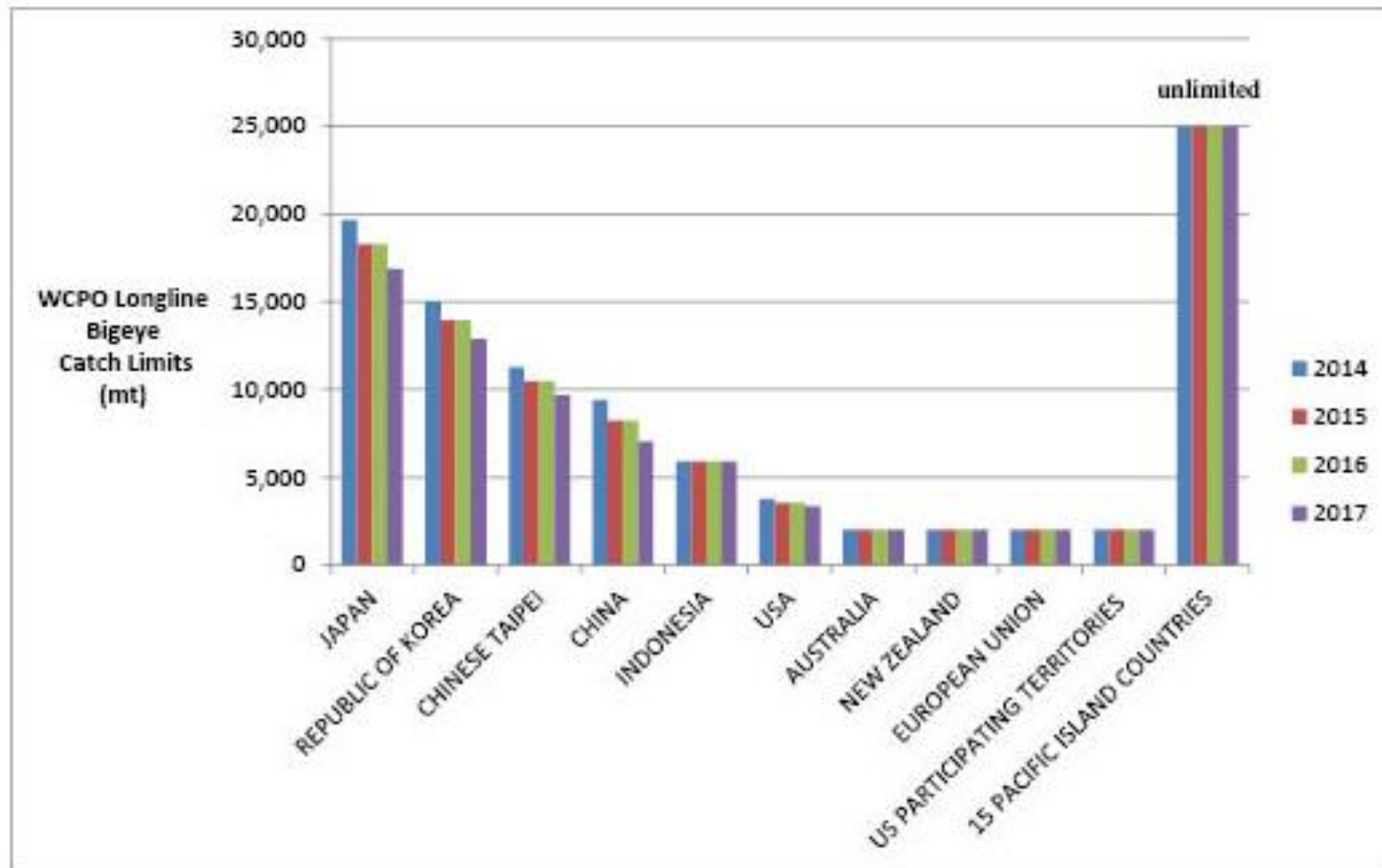


Figure 4: Western and Central Pacific Fisheries Commission Bigeye Longline Quotas



Testimony of Mr. Dan Hull, Chairman

North Pacific Fishery Management Council

Before the United States House of Representatives, Committee on Natural Resources

Subcommittee on Water, Power, and Oceans

HR 4576 - "Ensuring Access to Pacific Fisheries Act"

Implementing Legislation for the Convention on the Conservation and Management of High Seas
Resources in the North Pacific Ocean and South Pacific Ocean

Tuesday, March 1, 2016, Washington, D.C.

Introduction

Good afternoon Mr. Chairman and members of the Natural Resources Subcommittee, and thank you for the opportunity to testify regarding implementing legislation for the North Pacific Fisheries Convention. While the draft legislation would also implement the South Pacific Fisheries Convention, my comments are limited to the North Pacific Fisheries Convention, as that is the Convention of direct relevance to the interests of the North Pacific Fishery Management Council. My name is Dan Hull and I am currently the Chairman of the North Pacific Council. The North Pacific Council, one of eight regional fishery management Councils established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), manages fisheries in the U.S. EEZ off Alaska. Widely recognized as one of the most successfully managed regions in the world, the fisheries off Alaska provide over half of the Nation's annual seafood production, are the largest employer in the State of Alaska, are second only to oil in revenues, and have been sustained between 3 and 5 billion pounds annually for 40 years, since the implementation of the Magnuson-Stevens Act. These fisheries occur within the 1.1 million square nautical mile U.S. Exclusive Economic Zone (EEZ) managed by the North Pacific Council.

As Chairman of the North Pacific Council, I also participate as an invited member of the U.S. delegation to the North Pacific Fisheries Commission (NPFC), established pursuant to the Convention. Additionally, our Council is also party to the multi-lateral Western and Central Pacific Fisheries Commission, and we actively participate in the bilateral U.S./Russia Intergovernmental Consultative Committee (ICC). Three members of the North Pacific Council, including myself, are members of the ICC's Bering Sea Fisheries Advisory Board (BSFAB), and our Executive Director participates as an ex-officio member of the ICC delegation. I was also recently appointed as an alternate Commissioner to the International Pacific Halibut Commission. Regarding the NPFC specifically, we have actively participated in this forum since its inception and are keenly interested in the specific provisions of the proposed implementing legislation. While we currently do not have U.S. vessels actively participating in Convention waters, the provisions of the legislation could be relevant to future fishing activities and related marine resource conservation and management issues. The legislation could also have precedential implications for domestic fishery regulations, as well as general implications for how the

regional fishery management Councils and Advisory Committees are involved in international Commission delegations.

General Comments on the Proposed Legislation

The North Pacific Council has commented extensively on earlier drafts of proposed implementing legislation for the Convention (July 2014 letter to Senator Mark Begich, regarding the proposed ‘North Pacific Fisheries Convention Implementation Act’, and June 2015 letter to Senator Dan Sullivan regarding proposed implementing legislation which passed out of the Senate Commerce Committee). In our 2014 comments to Senator Begich on the draft ‘North Pacific Fisheries Convention Implementation Act’, two primary concerns we raised were (1) the potential application of Commission regulatory decisions beyond Convention waters, into U.S. EEZ waters managed by the Council, and into Alaska State waters; and (2) meaningful participation in the Commission process by the relevant regional fishery management Councils and associated stakeholders.

In our 2015 comments to Senator Sullivan, we recognized that revised implementing legislation as having addressed our primary concerns noted above, as well as numerous additional comments we provided on the earlier legislation. In essence, the implementing legislation now being considered by the House Resources Subcommittee is consistent with the draft legislation which passed the Senate Commerce Committee, and appears to positively address all of our comments on previous legislation. The provisions now contained in this draft legislation appear to provide for meaningful participation by the Councils and affected stakeholders, and appear to do so in a manner that would not negatively impact the Councils’ authorities to manage fisheries within U.S. domestic waters, consistent with the authorities and mandates of the Magnuson-Stevens Act. Additional comments on specific sections of the proposed legislation are provided below.

Comments on Specific Provisions

Section 101 – Definitions: The term ‘straddling stock’ (a stock of fisheries resources that migrates between, or occurs in, the EEZ of one or more parties to the Convention and the Convention Area) is important as it relates to a later section of the proposed legislation. Specifically, it relates to Section 104, ‘Authority of the Secretary of Commerce’, which requires Council approval of any regulatory measures promulgated by the Secretary which would govern such a straddling stock, in domestic waters. It is imperative that any regulatory measures adopted by the Commission which govern straddling stocks in the Convention area be limited to only the Convention area, and that any domestic regulations governing those stocks in U.S. EEZ waters be implemented only through the existing authorities and processes under the Magnuson-Stevens Act. As we understand the current language in HR 4576, it accomplishes this intent; i.e., it does not diminish the Secretary’s authority to implement Commission recommendations in Convention waters, but it does restrict application of such measures in domestic waters to the existing Council process under the Magnuson-Stevens Act.

Section 102 – U.S. Participation in the North Pacific Fisheries Convention: As we have expressed in previous comments, it is critical to the interests and authorities of the regional fishery management Councils that each Council with waters bordering the Convention area be meaningfully represented on the Commission. The proposed legislation accomplishes this by granting Commissioner status to the Chairs

(or designees) of each of the relevant Councils – the Pacific, Western Pacific, and North Pacific Councils. It also provides for funding of travel expenses for attendance, which is necessary to our ability to participate in meetings of the Commission, particularly given the remote locations in which the Commission typically meets.

The draft legislation also provides for establishment of an 11-member permanent Advisory Committee to the Commission, including a commercial fishing representative from each of the potentially affected regions, an indigenous representative from each of the same potentially affected regions, and an ‘at-large’ representative from each of the same three regions. While this creates an unusually large delegation overall, it has been our experience that it is important to include such a range of advisors in any bi-lateral or multi-lateral delegation, in order for any U.S. positions to be developed with full knowledge of the potential impacts to various stakeholders. For example, the Bering Sea Fisheries Advisory Body to the U.S./Russia ICC forum consists of 12 members – six from the State of Washington and six from the State of Alaska – which represent a wide range of expertise from the fishing industry and environmental organizations.

While all members of the BSFAB do not typically attend every meeting of the ICC (in part due to lack of government funding support), the opportunity to do so is important, and the information they provide to inform the U.S. positions on various issues is of utmost importance. Funding for travel for the Advisors is necessary in order to ensure their ability to actually participate in the process in a meaningful manner. In the case of the ICC for example, full participation of the BSFAB (advisors) has been curtailed in recent years due to the absence of State Department funding to support their travel. A similar situation has occurred in recent years with the North Pacific Anadromous Fisheries Commission (NPAFC). Funding for advisors in any of these Commission forums is necessary for meaningful participation.

Section 104 – Authority of the Secretary of Commerce: As mentioned above, it is critical to the interests and authorities of the regional fishery management Councils that measures adopted by the Commission apply to Convention waters only, and could only be applied in domestic waters through the Council process under the processes of the Magnuson-Stevens Act. The language in the proposed legislation appears to accomplish this, by allowing the Secretary the authority, in consultation with the Secretary of State, to promulgate such regulations relative to Convention waters as may be necessary to carry out U.S. international obligations pursuant to Commission decisions, but specifying that any management or regulatory measures relative to straddling stocks in domestic waters be approved by the relevant Council through the Magnuson-Stevens Act.

In summary Mr. Chairman, these are our primary comments on this proposed legislation. Other Sections of the proposed legislation not mentioned in our comments (judicial review, enforcement, etc) appear to be logically necessary provisions and do not appear to conflict or negatively affect Council interests in any way. Overall, the legislation as drafted appears to provide for appropriate participation by the regional fishery management Councils, and provides for the appropriate separation of authorities between Convention and domestic waters. Thank you once again for the opportunity to provide comment on this important implementing legislation.