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Mr. Phil Anderson, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

RE: C.1 Live Bait Fishery Allowance

Dear Chair Anderson and Council members:

At the June 2018 Pacific Fishery Management Council meeting, the Council initiated a Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) amendment process to consider removing the prohibition on directed commercial live bait fishing for overfished CPS that is specified in the FMP. The Council directed its CPS Management Team to develop alternatives for consideration and to provide additional information on the live bait fishery. Oceana remains concerned that the response to a collapsed, nearly overfished sardine population, is to consider removing key conservation and management measures in the FMP. The Council's current plan, based on its year-at-a-glance, is to expedite this process to relax management measures which may be triggered as soon as the start of the next Pacific sardine fishing season (July 1, 2019).

We write to request that you fully evaluate a reasonable range of alternatives and the environmental impacts of those alternatives as required under the National Environmental Policy Act before making a final decision. Second, we request that the Council and NMFS implement mandatory catch accounting requirements and a live bait monitoring program that allows for in-season management of the live bait fishery, consistent with other commercial fishing sectors.

This is a critical time for forage fish management; conservation and science-based limits are of paramount importance. Fish populations managed under the CPS FMP like Pacific sardine and northern anchovy are critical forage species important to the health of the California Current Ecosystem.¹ The northern subpopulation of Pacific sardine has declined 97 percent between 2006 and July 2018, and at the start of this fishing year (July 1) the population was projected to be only slightly above the 50,000 metric ton (mt) overfished level specified in the FMP.² The NMFS acoustic trawl survey estimated the Pacific sardine northern subpopulation in the summer of 2017 at 36,644 mt.³ Even with the closure of

¹ Szoboszlai AI, Thayer JA, Wood SA, Sydeman WJ, Koehn LE. (2015). Forage species in predator diets: Synthesis of data from the California Current. *Ecological Informatics*, 29:45-56.

² Hill, K.T., P.R. Crone, J.P. Zwolinski. 2018. Draft Assessment of the Pacific sardine resource in 2018 for U.S. management in 2018-19. Pacific Fishery Management Council, April 2018 Briefing Book, Agenda Item C.5. Attachment 1, Portland, Oregon. 113 p.; PFMC 2018. CPS FMP Section 4.6.2.1 Definition for Overfished Stock for Sardine, at 40.

³ *Id.* at 25.

the directed commercial sardine fishery, the population continues to decline and shows no evidence of recovery. Overall forage fish abundance is now low, with the Pacific sardine population approaching an overfished condition⁴ and anchovy at relatively low levels.

Rebuilding overfished populations is a cornerstone of the Magnuson-Stevens Fishery Conservation and Management Act. The Magnuson-Stevens Act requires that FMPs “contain the conservation and management measures . . . necessary and appropriate for the conservation and management of the fishery, to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery.”⁵ For an overfished population, an FMP must “contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery.”⁶ Further, rebuilding measures must specify a time for rebuilding the stock that is “as short as possible” and may not exceed ten years, unless, *inter alia*, the biology of the stock or other environmental conditions will not allow rebuilding within ten years.⁷ Overfishing restrictions and recovery benefits must be fairly and equitably allocated among sectors of the fishery.⁸

Accordingly, the CPS FMP states if sardine are overfished, “no directed fishing” is allowed and that the Council “is required to minimize fishing mortality on an overfished stock to the extent practicable and to undertake a rebuilding program which may be implicit to the harvest control rule or explicit.”⁹ Further, the CPS FMP has established goals for setting incidental catch allowances for overfished stocks, stating:

In order of priority, the Council’s goals in setting incidental catch allowances for overfished stocks should be to (1) minimize fishing mortality on overfished stocks, and (2) minimize discards of overfished stocks. Incidental catch allowances for overfished stocks should approximate rates of incidental catch when fishing is conducted in a manner that minimizes catch of the overfished stock.¹⁰

The FMP states, “The Council must set incidental catch allowances for all overfished stocks”¹¹ and the FMP specifies that the incidental catch allowance for overfished stocks taken in the commercial fisheries must be set no higher than 20 percent, and for the live bait fishery, it must be “set to no more than 15 percent of landed weight.”¹²

These important measures of the FMP are intended to meet the MSA requirements to rebuild overfished stocks. It remains unclear what alternative measures the Council intends to use to meet the rebuilding requirements of the MSA if current safeguards are removed or relaxed, as is being considered with Amendment 17. Rather than simply deferring such a decision to the

⁴ 50 CFR § 600.310(e)(2)(i)(G) (explaining that “[a] stock or stock complex is approaching an overfished condition when it is projected that there is more than a 50 percent chance that the biomass of the stock or stock complex will decline below the MSST within two years”).

⁵ 16 U.S.C. § 1853(a)(1)(A).

⁶ *Id.* § 1853(a)(10).

⁷ *Id.* § 1854(e)(4)(A)(i).

⁸ *Id.* at 1854(e)(4)(B).

⁹ PFMC 2018. CPS FMP Section 4.6.2.1 Definition for Overfished Stock for Sardine, at 40.

¹⁰ *Id.* at 48.

¹¹ *Id.*

¹² *Id.* at 47, section 5.1.1 (incidental catch allowance for overfished stocks in the commercial fishery) and section 5.1.4 (incidental catch allowance for overfished stocks in the live bait fishery).

annual specifications process, and future rebuilding plans, the FMP amendment should explicitly specify the management measures that will be in place to ensure rebuilding of overfished stocks as required under the MSA.

Recommendations:

Given the Council's direction toward a CPS FMP amendment to remove the current prohibition on directed live bait fishing on an overfished CPS stock and remove the live bait incidental catch allowance for overfished stocks, we request the following:

- 1. Prepare and analyze a reasonable range of alternatives and analyze the environmental impacts of those alternatives in accordance with the National Environmental Policy Act.**

The National Environmental Policy Act (NEPA) sets forth an environmental review process that is "intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment."¹³ To achieve this goal, NEPA requires federal agencies to fully consider and disclose the environmental consequences of an agency action before proceeding with that action.¹⁴ Agencies' evaluation of environmental consequences must be based on scientific information that is both "[a]ccurate" and of "high quality."¹⁵ In addition, federal agencies must notify the public of proposed projects and provide the public the opportunity to comment on the environmental impacts of their actions.¹⁶

An environmental impact statement ("EIS") is required for all "major Federal actions significantly affecting the quality of the human environment."¹⁷ It must provide a "full and fair discussion of significant environmental impacts and . . . inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."¹⁸ An agency may determine, after preparing an Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI"), that preparation of an EIS is unnecessary. However, an agency may rely on an EA/FONSI only if its proposed action will not have significant environmental effects.¹⁹

In this instance, the proposed FMP amendment alters the very mechanisms by which the Council will prevent overfishing and rebuild overfished forage species for the foreseeable future. Far from having no effect, the changes to the FMP will shape and control management of species vital to supporting the entire California Current ecosystem. The Council and NMFS should not rush to final action and ignore required environmental analyses. The environmental review should include:

- An evaluation of alternative management approaches to accomplish rebuilding objectives in the presence of a directed live bait fishery such as fishing seasons, area restrictions, and an annual

¹³ 40 C.F.R. § 1500.1(c).

¹⁴ See *id.* § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5.

¹⁵ 40 C.F.R. § 1500.1(b).

¹⁶ See *id.* § 1506.6.

¹⁷ 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4.

¹⁸ 40 C.F.R. § 1502.1.

¹⁹ 40 C.F.R. § 1508.13

catch limit allocation for the directed live bait fishery that closes the directed live bait fishery in-season if exceeded.

- Alternative approaches to incidental catch limits on live bait catch of overfished species when the annual directed live bait fishery catch limit is exceeded.
 - An evaluation of the effects of alternative catch levels on the depletion and recovery of overfished CPS, particularly in cases where the stock is very low and in a prolonged low productivity state.
 - An evaluation of the effects on dependent predators and the health of the California Current ecosystem.
 - An evaluation of the extent to which the live bait fishery is taking the southern subpopulation, with consideration of management measures for the southern sardine population in the CPS FMP, as appropriate.
 - Detailed information on the live bait fishery, dependent recreational fisheries and fishery economics to inform the decision-making process, including the uncertainty in current estimates of live bait harvest.
- 2. Implement a mandatory catch monitoring program that allows for in-season management of the live bait fishery, consistent with other directed CPS fishery sectors.**

If the Council is to amend its CPS FMP to allow a directed commercial live bait fishery that would otherwise be prohibited under the FMP, it is essential that such a fishery be managed consistent with other commercial fishery sectors. Specifically, this includes allocating a portion of the total annual catch limit to the commercial directed live bait sector and an accurate, in-season accounting of the total catch by this sector such that the directed live bait fishery would be closed if the allocation is exceeded.

The current California live bait voluntary logbook program is fundamentally inadequate for implementing such management, which is especially critical for an overfished CPS stock. Therefore, new regulatory requirements are necessary to require mandatory, real-time live bait catch monitoring and in-season management equivalent to other commercial sectors.

We request that the Council either include new mandatory catch monitoring requirements in this FMP amendment or initiate at this meeting a separate, parallel regulatory process to establish such requirements in regulation on a similar timeline to this FMP amendment such that the new requirements would be effective on or before the start of the July 1, 2019-June 30, 2020 sardine fishing season. If the Council prefers to implement these requirements outside this FMP amendment process, we ask that the Council identify and initiate that regulatory pathway at this meeting.

Thank you for your consideration of these comments.

Sincerely,



Ben Enticknap
Pacific Campaign Manager & Senior Scientist