



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

Western Pacific Regional Fishery Management Council

Report on Implementing Magnuson-Stevens Act Provisions and Other Current Activities of Interest

Status of Rebuilding Plans:

The only Western Pacific Region (WPR) MUS currently determined to be overfished and subject to a rebuilding plan is the seamount groundfish, pelagic armorhead, which has been under a complete moratorium for more than 30 years. The status of the fishery remains unchanged during the duration of the moratorium as only a small portion of fishing grounds for this fishery is within US jurisdiction located on Hancock Seamount, the northernmost end of the Hawaiian archipelago. The primary fishery takes place on the Emperor Seamount Chain in international waters northwest of Hawaii.

Other than pelagic armorhead, no other WPR MUS or species complex has been evaluated as being overfished, as opposed to being subject to overfishing, thus there are no rebuilding plans in effect.

New Management Programs under Development:

NMFS approved the Western Pacific Regional Fishery Management Council's (WPRFMC) five Fishery Ecosystem Plans (FEPs) in 2009, and since, all WPRFMC management actions have either been amendments or regulatory amendments to these FEPs. The current practice in the WPR is that WPRFMC staff draft, in their entirety, integrated amendments which also contain sections required by NEPA applicable to Environmental Assessments and Environmental Impact Statements. NMFS PIRO staff primarily conduct reviews and generally do not draft sections of documents.

In late 2011, WPRFMC staff met with PIRO SF leadership to discuss changes to the current system of developing amendment documents. Specifically, the issue of co-drafting between staffs was discussed as well as the potential use of the "living FEP document" approach. In 2010 PIRO SF contracted the review of potential living document options, but to date has yet to present that work in any detail to WPRFMC staff. There are pluses and minuses in the living document approach and WPRFMC staff wish to further explore these options with PIRO SF in early 2012. Another approach that seems to hold merit is to establish a "living source document" that is continuously updated with new environmental, socio-economic, and protected species information. Often information in FEP amendment documents become outdated, requiring significant time to update prior to transmittal. A living source document that is primarily updated by NMFS PIRO could be used to cite or incorporate by reference, thereby the latest information in the FEP amendment would be available, irrespective of the latest FEP amendment. We hope to further explore this approach in early 2012.

Other Issues of Concern from the WPR Council:

Implementation of ACLs Remain the Major Issue

NMFS should enhance their support and involvement in the Council process in addressing these issues regarding the Annual Catch Limits. Despite meeting the ACL requirements for fishing year 2012 with the specification of 94 catch limits for the different management unit species in Hawaii, American Samoa, Guam, and the Commonwealth of Northern Mariana Islands, majority of the specified ACLs are based on solely catch data with only three ACLs based on an MSY estimate generated by stock assessments. The lack of stock assessments for most of the management unit species listed in the FEPs limits the WPRFMC's ability to meet ACL management requirements with high scientific credence. This stems from a set of compounding factors, particularly: 1) assessment of stocks from a less industrialized and low value fishery are and have not been a priority of the Science Center; 2) data from which stock assessments are based on does not satisfy the basic requirements of the simplest stock assessment model; 3) data collection systems that generate fishery dependent information were not designed for stock assessment, annual catch limits based on total harvest, and real-time monitoring to apply accountability measures; and 4) there is insufficient funding to improve the data collection systems thereby limiting the ability to conduct stock assessments. Managing stocks based on catch limits require an accountability measure to ensure that ACLs are not exceeded. Unfortunately, the current fishery monitoring system was not designed to collect real-time catch landing information. The annual landing information is usually completed six months into the next fishing year. Even if there was an accountability measure established, majority of the fisheries in the WPR are almost entirely in state/territorial waters rendering any federal closure to be useless.

Protected Species Issues Continue to Add Burden on Fishery Management

1. NMFS and ESA Petitions

NMFS repeatedly fails to reject Endangered Species Act (ESA) listing petitions outright that do not contain sufficient scientific information to warrant possible listing, misinterpret available data, or apply data from one region to infer population trends or status in other regions. For example, the **petition to list scalloped hammerhead sharks** suffered from misrepresentation of Pacific and global shark data, while **petitions to list bumphead parrotfish and 83 species of coral** contained limited and biased data on wide-ranging species that are otherwise abundant and not in imminent danger of extinction. NMFS continually takes the path of least resistance and allows the petitions to move forward with a 90 day finding and request for comments. As a result, Council staff are spending increasing amount of time to research and draft responses to petitions.

2. NMFS and Best Scientific Information Available (BSIA) under the MMPA

With protected species NMFS ignores the need to use the BSIA, and will happily use unverified anecdotal information and agency discretion in management decisions by NMFS. An excellent example is the **proposed reclassification of Hawaii troll and charter fisheries from Category III to Category II in the 2012 List of Fisheries** under the Marine Mammal

Protection Act (MMPA) based on extremely limited anecdotal information on interactions with pantropical spotted dolphins. While the MMPA permits the use of anecdotal information under certain circumstances, NMFS should make every attempt to verify such information prior to inclusion in documents. Further, under MMPA actions, application of BSIA is often delayed, leading to inflexible management of marine mammal stocks based on outdated and underestimated population estimates. For example, the **False Killer Whale Take Reduction Plan (FKWTRP) for the Hawaii longline fishery** was based on outdated FKW population estimates, even though new information was emerging on higher FKW population abundances, meaning that longline takes may be a less serious issue than presupposed. There needs to be a serious evaluation of the operational aspects of the MMPA and its inflexibility.

3. Failure by NMFS to Recognize Species Recovery and Delist Species under the ESA

If species listed under the ESA recover and meet their recovery target they should be delisted. ESA listing carries with it a great deal of regulatory baggage which can be burdensome to fishermen and the public. Examples of recovered species which are still listed include the **Hawaiian green turtle**, and **North Pacific humpback whale**. There is no reason to keep these species listed under ESA, and it is a disservice to the intent of the ESA to keep them listed. Removal of ESA listing does not mean the removal of protection. The humpback whale, with a 7% annual population increase, would still enjoy the protection of the MMPA, and a State of Hawaii management plan would be required as part of the delisting process for the green turtle.

4. Return to a 'Black Box Approach' in ESA Section 7 Consultations

The Council has continued to be frustrated to gain applicant status in the ESA Section 7 consultations, despite being the agency that has had to implement fishery management measures through the MSA process. The process by which jeopardy determinations and incidental takes were developed was a mystery that confounded the Council's Scientific and Statistical Committee (SSC), which includes several expert population dynamics experts. Recently we had experienced a more open process by which the modeling procedures were explicitly presented to the SSC, and the BiOp draft shared with Council staff for comments. Unfortunately we have seen something of a return to the past practices, with NMFS unwilling to share information with the Council or its SSC regarding Biological Opinions prior to making them public. An example of this is the **re-consultation of the Hawaii shallow-set longline fishery under Amendment 18 of the Pelagic FEP**. A limited webinar presentation on a published loggerhead turtle climate-forcing model was made to the SSC, but no details were provided on unpublished components of the model (including analysis on leatherback turtles) or the development of the reasonable and prudent measures which differ substantially from the original Amendment 18 BiOp, and could have far reaching consequences for the fishery and its management.

5. Overly Conservative Measures becoming the Norm in NMFS Decisions Regarding Protected Species Actions

A petition from ENGOs has led to most of the Main Hawaiian Islands coastline and waters out to the 500-meter depth contour, including Penguin Bank, being proposed as **critical habitat for the Hawaii monk seals**. The 500-meter depth for critical habitat is excessive, given that most available data suggest that juveniles in the MHI prefer to forage within 100-meter depth and recent data showed that only *some* diving up to 489m were recorded. In addition, As

noted in WPRFMC's comments to NMFS, critical habitat designations are apparently not required for species listed prior to 1978 (monk seals were listed in 1976). Further, existing critical habitat in the NWHI has not helped in the recovery of the species, while monk seals in the MHI continue to grow without any protection from critical habitat. Despite assurances from NMFS that the critical habitat expansion will have little impact on fishing, inclusion of waters out to 500-meter depth provides a perfect attack vector for further constraints to fishing to be sought through petitioning and litigation by ENGOs. The **proposed ESA listing of Hawaiian insular false killer whales** is also another example of a conservative measure resulting from an ENGO petition, with a questionable dataset from a single aerial survey in 1989 was used to establish an unrealistically high historical abundance while all other data suggested a stable population over the last two decades.

6. Arbitrary Implementation of a Migratory Bird Treaty Act (MBTA) Permit for Hawaii Longline Fishery

A notice of a **special permit¹ for the Hawaii longline fishery under the Migratory Bird Treaty Act (MBTA)** was published in the Federal register on January 12, 2012, along with a supporting Draft Environmental Assessment (DEA), with a 30 day comment period. The WPRFMC understands that such a permitting process is at best dubious under the MBTA. The Act would need to have specific language to apply beyond the three mile limit which would have to be inserted by Congress, and therefore is inapplicable to the Hawaii longline fishery. Further if this fishery has to be permitted, then other fisheries with much larger seabird takes would need to be permitted, including the various Alaska fisheries which kill thousands of seabirds annually. This also applies to any other fishery and may indeed apply to any other federally permitted activity which presents a hazard to migratory birds such as air traffic or installation of alternative energy sources such as wind farms. The issuance of a single permit for the Hawaii longline fishery appears to meet the criterion for an arbitrary and capricious application of the MBTA in this instance.

7. Disturbing Trend by NMFS to Marginalize the MSA process Through the Use of Protected Species Statues.

The **MBTA permit for the Hawaii shallow set longline** fishery is one example of a disturbing trend by NMFS to marginalize the MSA process through the use of protected species statutes. Other examples are the **False Killer Whale Take Reduction Plan**, which includes several changes to the management of the Hawaii deep set tuna fishery, including mandatory use of circle hooks and spatial closures in the event of exceeding PBR (see item 2 above). A further example is the capitulation in litigation over **Amendment 18 to the Council's Pelagic FEP** which modified the management of sea turtle interactions in the longline fishery (see item 4 above). As a result a new BiOp has been generated and this will include a new Incidental Take Statement (ITS) and modified Recommended and Prudent Measures (RPMs). The indications

¹ Permitted activities under the MBTA include falconry, raptor propagation, scientific collecting, special purposes (rehabilitation, educational, migratory game bird propagation, and salvage), take of depredating birds, taxidermy, and waterfowl sale and disposal. There is no permitting process specifically for marine fishing activities under the MBTA, and therefore a special permit was developed for this purpose.

from NMFS are that in both cases the management measure would be implemented through direct rule making rather than as amendments to the Councils FEP.

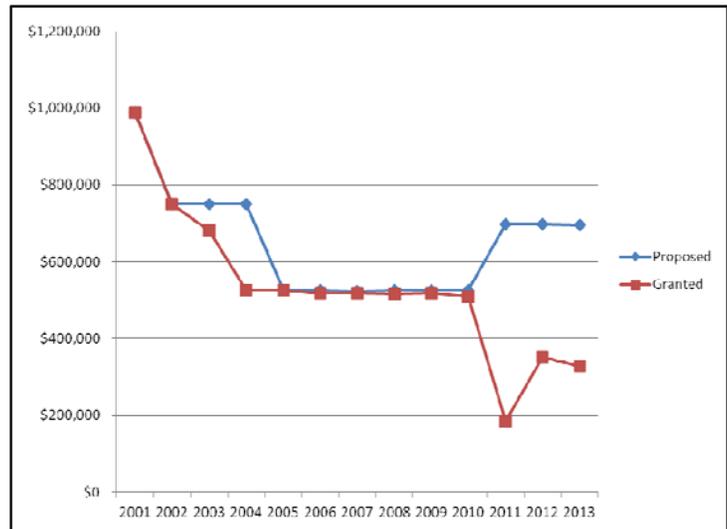
Continued Reduction in Funding for WPRFMC Programs

1. Base Funding and Ad-ons

Since the Congress removed earmarks in the budget for FY211-12, NMFS has NOT maintained adequate funding for programs/projects critically needed in our region. Although Council base funding has remained relatively consistent, NMFS decision to reduce funding of ongoing Council programs, such as Sea Turtles, has significantly impacted the Council's overall budget (see examples below). In addition, supplemental ad-ons funds for NEPA, LAPP, ACLs, Reg Streamlining, SSC, Peer Review and other mandates remain uncertain for 2012. Ad-ons accounted for \$1.2 million of the WP Council's 2011 budget. Removal of those ad-ons in 2012 could represent a 30% reduction in the Council's 2012 budget. Finally, NMFS continues to ignore funding congressionally mandated programs that benefit Western Pacific communities, such as CDPP and MET.

2. Coral Reef Funding

Throughout the duration of the Council's involvement with the NOAA Coral Reef Conservation Program (CRCP), NOAA has increasingly applied funding and programmatic constraints and restrictions on the types of coral reef conservation projects and activities that the WPRFMC is allowed to undertake. The CRCP funding is supposed to provide funds for activities that support amending the Council's fishery ecosystem plans. However, the CRCP has prohibited the WPRFMC from using these funds to support WPRFMC coral reef fishery management activities such as meetings, workshops and developing annual reports. Constraints are also placed on supporting staff that work on the Council's coral reef management program. The CRCP, instead, restricts WPRFMC coral activities to include research-based projects that for practical reasons should be undertaken by the NMFS Science Centers and other institutions with research capacity. Directing WPRFMC coral reef funding to support research directly hampers the Council's ability further coral reef management activities.



NMFS has also reduced the total funding directed to support Regional Councils over the years from \$1.5 million in 2001 to a little over \$1.0 million in 2011. Of recent concern is the selective reduction of the Council's grant proposal by NMFS. In 2011, the WPRFMC's grant was transmitted for \$698K of which only \$185K was supported. The graphic below shows how the WPRFMC's CRCP Funding (Proposed and Granted) has eroded from 2001-2013.

3. Sea Turtle Research and Conservation

The WPRFMC has been actively engaged in various conservation and management efforts to address fisheries interactions with protected species, and has achieved significant reductions in sea turtle and seabird interactions in the Hawaii-based longline fishery through the adoption of various mitigation technologies. Since 2003, the WPRFMC has continuously supported conservation projects at nesting beaches and foraging grounds for North Pacific loggerhead turtles and Western Pacific leatherback turtles, both of which are high priority subpopulations due to historically high interactions with the longline fishery. The WPRFMC has also convened and supported a number of international meetings and workshops to foster collaboration and transfer bycatch mitigation technology.

The Council's sea turtle funding in 2011 was significantly reduced by 80% compared to 2010 as earmarks were eliminated. In the past, the Western Pacific region received a total of approximately \$7 million for sea turtle research and conservation, which was divided between the Pacific Islands Regional Office, Pacific Islands Fisheries Science Center, and the Council. Given the overall reduction in regional sea turtle funding, NMFS initially cut the Council's share by 90%. Such reduction in funding would have eliminated all sea turtle research and conservation projects supported by the Council. With the 80% reduction, the WPRFMC was only able to provide funding for six long-term projects, all with significantly reduced scope and minimum budget.

Reduction of available fishing grounds for insular fishermen

1. Military Impacts

The increased military presence in the Mariana Archipelago carries with it the potential to further reduce fishing opportunities for insular fishermen fishing around the coasts and on banks and seamounts within range of their small craft. The implementation of the Navy's live firing range within the US EEZ around Guam includes the banks to the south of Guam, which has effectively closed the area to fishermen for up to 180 days of the year. The southern banks are thus an important fishing ground, and which may be open only for half of the year. Further, the closures may impose safety at sea issues given fishermen may risk fishing on the banks in periods of inclement weather to target short periods of open access.

The rate of fishermen drowning on Guam has increased as more of the coast has been closed, especially on the leeward coast, with fishing more often on the exposed windward coast. Modification of fishermen's behavior would suggest that they will take more risks to access fishing grounds if placed under additional constraints. The Centers For Disease Control NIOSH report that evaluated the impacts of coastal MPAs on fishermen fatalities support confirmed these trends.

These closures add to Guam fishermen's concerns about being increasingly restricted from traditional fishing grounds around Guam's coast through the network of military restrictions, marine protected areas and access limitation to various fishing gears.

In the CNMI, the Navy's bombing target range includes the island of Farallon de Medinilla (FDM). This island is surrounded by an extensive bank which represents one of the most important fishing grounds for fishermen in southern CNMI. Currently, fishermen are excluded from within 3 nautical miles of the island, which though a constraint is one they have adapted to. The Navy now proposes extending the FDM exclusion zone out to 12 nm, quadrupling the area closure and effectively marginalizing one of the most important fishing grounds for small scale insular fishermen in the CNMI.

2. Sanctuaries and Monuments

Other impingements on fishermen have come from the implementation of the National Marine Sanctuaries Program and the implementation of marine National Monuments. In the inhabited areas of the Western Pacific, large areas of water are now effectively off limits to fishermen through MNM establishment. These include the Northwestern Hawaiian Islands (NWHI), Rose Atoll and the top three islands of the CNMI. Further, the National Marine Sanctuaries Program (NMSP) is proposing substantial modifications to their sanctuaries in American Samoa and the main Hawaiian Islands (MHI).

In American Samoa, the NMSP has proposed to greatly expand its role beyond the current sanctuary in Fagatele Bay. This expansion would include no-take MPAs around islands such as Anun'u, an island off Tutuila which is an important reef and bottomfish fishing ground. The expansion even includes a modification of the Rose Atoll MNM western boundary to include a volcanic mudhole thousands of feet down on the seabed and accessible only to deep diving submersibles. Moreover, draft Sanctuary Management Plan contradicts itself through lauding the success of the Fagatele Bay NMS while stating that the fish stocks within the bay are overfished. Given this apparent contraction, why would additional sanctuaries within coastal waters of American Samoa be any more successful than Fagatele Bay. In addition, existing management measures in American Samoa such as banning SCUBA spearfishing have contributed to restoring coral reef fish stocks. As such, the implementation of new sanctuaries in American Samoa is facing strong opposition from the American Samoa people.

In the MHI, the NMSP is proposing to greatly expand the role and jurisdiction of the existing Humpback Whale National Marine Sanctuary, by taking an 'ecosystem approach' and including more species, such as false killer whales, green sea turtles, monk seals and coral reef species. The larger area proposed to be designated under the NMSP includes Penguin Bank, the largest area of shallow coastal shelf in the MHI, and a very important fishing ground for fishermen from Oahu, Maui and Molokai. Further, NMFS is currently engaged in the designation of critical habitat for the endangered Hawaiian monk seal, which includes Penguin Bank. Despite repeated assurances that critical habitat designation would not automatically limit fishing, it is difficult not to feel pessimistic that either critical habitat designation or NMSP will impose further limits on coastal fishermen in Hawaii.

3. Customary Exchange

From 2009 to 2010, the Council undertook an extensive public decision making process to develop draft fishing regulations for the Marianas Trench, Rose Atoll, and Pacific Remote Islands Marine National Monuments (as called for under the Proclamations establishing the

Monuments). The Council sent the draft regulations and association FEP amendments to NMFS for review in August 2010. A year later, NMFS PIRO wrote a letter stating that NOAA reviewed the draft FEP amendments and regulations and determined that the proposal lacks adequate safeguards to distinguish commercial from non-commercial fishing.

The Council's recommendation allows for non-commercial fishing in the Monuments and for non-commercial fishermen to engage in customary exchange of fish harvested in the Rose Atoll and Marianas Trench (Island Unit) Monuments, as long as it was not caught for recreational purposes (i.e. for sport or pleasure). Under the Council's definition of the customary exchange and proposed regulations, fish harvested is allowed to be exchanged with cash for the recovery of actual trip costs (e.g. ice, fuel, bait, food). Furthermore, fishery participants would have to obtain permits, submit logbooks, and certify in writing that they would not be conducting commercial fishing. This closely resembles regulations developed by the North Pacific Council for the Alaska subsistence halibut fishery. Furthermore, there is no fishing, commercial or otherwise, occurring in the Rose Atoll and Marianas Trench Monument Islands Unit, therefore there is no line to be blurred in terms of commercial vs non-commercial fishing.

NMFS has suggested that the Council look at limiting the potential cash exchanges as well as bag limits. The Council will be considering these issues at its March 2012 meeting; however, a cash limit for subsistence halibut in Alaska didn't work and was eliminated. Additionally, non-commercial bag limits for pelagic tuna species doesn't make sense either as these stocks are significantly exploited in the Western Pacific region, yet remain relatively healthy condition. What is telling about this situation is that NMFS and NOAA are playing a political game in D.C.; however, those affected are the indigenous residents of American Samoa and the Marianas, which as a result of this game, may not be able to ever again engage in fishing in their ancestral waters, which are now Monuments (established without any public process).

Coastal and Marine Spatial Planning

Coastal and Marine Spatial Planning (CMSP) is one of the nine priorities and accounts for half of the Interagency Ocean Policy Task Force's final recommendations, including (1) National Goals and Principles; (2) Regional Planning Bodies (RPBs); and (3) Legal Authorities Relating to the implementation of CMSP. The WPRFMC supports inclusion of the Council on the RPB as well as sub-panels of the RPB for the Pacific Islands, due to the geographical and cultural differences of the island areas. The WPRFMC also supports the representation of indigenous Pacific Islanders on the GCC, just as tribal nations are afforded.

In November 2011, the WPRFMC happened upon the nomination solicitation for the Ocean Research Advisory Panel (ORAP), a statutorily mandated federal advisory committee that provides senior advice to the National Ocean Research Leadership Council (NORLC), the governing body of the National Oceanographic Partnership Program (NOPP). Under the National Ocean Policy, the NOC Deputy-level Committee has assumed the responsibility of the NORLC. The ORAP provides independent advice and guidance to the NOC. The WPRFMC requested an extension to the nomination period so it could nominate representatives from the WPR. On

examining the received nominations, it was determined that the WPR was not adequately represented and thus allowed to nominate two persons, of which the status remains unknown.

On January 12, 2012, National Ocean Council released the National Ocean Policy Implementation Plan. The WPRFMC participated in the 30-minute briefing conducted that day by NOC and CEQ, who said that Plan describes 50 actions federal government will undertake with others, and includes key milestones, agencies and timeframes. Most of the public comments in the limited public comment period concerned fisheries. Public comments on the plan are due on February 27, 2012. The WPRFMC will provide comments on the draft National Ocean Policy Implementation Plan.

Consistency between Federal and Local Shark-Finishing Laws

The WPRFMC continues to wait for an opinion on the possession of shark fins and recent State and territory laws banning their possession outright. This means that possessing imported dried shark fins for the restaurant trade is banned along with the possession of fins by fishermen who want to land sharks. The completion of a legal opinion is complicated by the adoption of similar measures by the local government in Hawaii, California, Guam and CNMI. Will the opinion state that territories/states cannot arbitrarily ban shark fin possession when there are already existing fishery management plans (WPRFMC and PFMC) and laws regulating the possession of shark fins? NOAA GC PIR was supposed to complete a revised analysis prior to the Western Pacific Council's June 2011 meeting factoring in recent changes to the Shark Fin Prohibition Act and recently passed Marianas law but this has not happened. Moreover, at the October 2011 WPRFMC Meeting, NOAA GC PIR indicated that there would likely be little movement on this opinion since sharks, unlike bigeye tuna, were not a major economic resource for WPR fisheries, especially the Hawaii longline fishery which catches the greatest volume of sharks.

While this is undoubtedly true for the of the Hawaii longline fishery as a whole, an analysis of logbook data shows that substantial fractions (44-60%) of the observed catches of mako and thresher sharks were taken by less than 20% of the permitted vessels. Sharks are not a major component of the Hawaii longline fishery, comprising 0.1 -1.0% of landed volume. Sharks sell for about \$0.50/lb at the Honolulu fish auction, and the total volume traded in 2009 and 2010 was worth \$142, 000 and \$113,000 respectively. This revenue is equivalent to the fuel bill for a longliner for two or three trips. The small proportion of landings of sharks should not be an argument against preempting the shark fin laws. Longline fishing in Hawaii continues to be increasingly challenged by economic factors where the price of diesel fuel has doubled in recent years, making fuel costs 50% of trip costs as opposed to 30% in the past. Every commercially landed fish helps offset costs and legally landed sharks can play their part.