



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

JAN 18 2006

Mr. Frank McCoy
Chair, Western Pacific
Fishery Management Council
1164 Bishop Street
Honolulu, Hawaii 96813

Dear Mr. McCoy:

Thank you for your letter regarding the National Oceanic and Atmospheric Administration's (NOAA) findings concerning the Western Pacific Fishery Management Council (Council) recommendations for regulation of fishing in the proposed Northwestern Hawaiian Islands (NWHI) sanctuary. I assure you that we carefully considered the Council's recommendations and your comments on our findings. However, NOAA appropriately concluded the recommendations did not fulfill the goals and objectives of the proposed sanctuary and the purposes and policies of the National Marine Sanctuaries Act (NMSA).

As noted in my October 24, 2005, letter, NOAA is developing alternatives in the Draft Environmental Impact Statement (DEIS) for the proposed sanctuary that would enable the Council to continue to recommend management measures for the commercial bottomfish/pelagic fisheries through regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), consistent with the goals and objectives of the proposed sanctuary. While the preferred alternative has not been selected, the range of alternatives under consideration includes a regulatory regime allowing commercial bottomfishing and non-longline pelagic fishing to continue either: (1) indefinitely, (2) until 2025, or (3) for 5 years with a ban on fishing thereafter. For (1) and (2), interim catch levels and permit limits for the sanctuary consistent with the Executive Orders that created the NWHI Coral Reef Ecosystem Reserve (Executive Orders 13178 and 13196) would be established pending the development and implementation of an ecosystem management plan. For the 5-year phaseout alternative, the number of permits would be limited to those permits active at the time of designation.

In November 2005, NOAA initiated discussions with the Council regarding the possibility of establishing these catch levels and permit limits (collectively "limits") under the MSA consistent with these possible alternatives, and the timing of action to implement such limits given the anticipated designation of the proposed sanctuary by early 2007.

NOAA's first step was to determine if there is a legal basis to propose issuance of these limits under the MSA. While a factual record supporting such limits has not been fully developed, NOAA believes there is a credible basis to move forward with proposing such limits through amendment of the Bottomfish and Pelagics Fishery Management Plans (FMPs), and adoption of corresponding regulations. Of course, further record development and administrative process



would be needed under the MSA and the Administrative Procedure Act before any FMP amendment or corresponding regulations could receive final approval from the Secretary of Commerce. Nevertheless, NOAA stands ready to work with the Council in pursuit of these limits under the MSA.

In June 2006, NOAA plans to publish the DEIS and its proposed sanctuary regulations under the NMSA. If, by May 1, 2006, the Council transmits for Secretarial review an amendment to the Bottomfish and Pelagics FMPs and corresponding proposed regulations implementing these limits, and if one of the alternatives outlined above is selected as a preferred alternative, NOAA would review those MSA regulations as a potential mechanism for implementation of the limits under the preferred alternative, rather than implementing the alternative via the NMSA. To meet that timeline, the Council would need to adopt a proposed FMP amendment and corresponding regulations no later than its March 2006 meeting, with final adoption of the FMP amendment and corresponding regulations by April 14, 2006.

In pursuing an FMP amendment and corresponding regulations, the Council must be guided by MSA requirements. The Council may ultimately choose to propose MSA regulations with limits different from those included in the alternatives outlined above, or take no action. I wish to reiterate that the sanctuary designation process is ongoing, and a preferred alternative has not yet been selected. Given that fact, we must recognize the possibility that limits proposed under a preferred alternative in the sanctuary designation process may differ from those proposed by the Council. Moreover, the final outcome of the sanctuary designation process may lead NOAA to issue final regulations that differ from the proposed sanctuary regulations. Notwithstanding these potential outcomes, NOAA is offering this opportunity so the Council may give consideration to undertaking the actions outlined above, to ensure the Council has every opportunity to continue managing the bottomfish and pelagic fisheries consistent with the sanctuary designation.

I appreciate the Council continuing to work with NOAA as we proceed towards designation of the NWHI Sanctuary. Mr. Bill Robinson, Regional Administrator, will contact the Council in the next week to determine if you are interested in pursuing this approach. I look forward to your response.

Sincerely,

A handwritten signature in black ink, reading "Conrad C. Lautenbacher, Jr." in a cursive script.

Conrad C. Lautenbacher, Jr.
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for
Oceans and Atmosphere