



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

Native and Indigenous Rights Advisory Panel Meeting

19-20 April 1999

8:30 am - 4:30 pm

Western Pacific Fishery Management Council

1164 Bishop St., Rm. 1400

Honolulu, Hawaii

Henry Sesepasara, Chair

The Native and Indigenous Rights Advisory Panel recommends that the Council:

- 1) Send the attached resolution from the Advisory Panel to the Secretary of Commerce and Congressional members expressing disappointment in the Secretary's decision regarding the American Samoa area closure and recommending that this decision be reversed.
- 2) Initiate efforts to amend the Endangered Species Act so that a take of green sea turtles for cultural purposes is permitted in Hawaii, American Samoa, Guam and the Northern Mariana Islands.
- 3) Request NMFS to compile information on the research that is being conducted in each island area regarding the biological condition of green sea turtle populations.
- 4) Send a letter to Congressional members requesting that the indigenous people of the US Pacific islands be allowed access to all shoreline areas currently used by the US military for recreational purposes and other federally controlled shoreline or aquatic areas where access has been unfairly denied.
- 5) Compile a list of agencies that are available to assist eligible communities in planning and financing a Western Pacific Community Development Program or Demonstration Project.
- 6) The Advisory Panel concurs with the recommendation of the Pelagic Fisheries Advisory Panel to set aside 30 Hawaii longline limited access permits for a Western Pacific Community Development Program, without exceeding the existing number of permits in the limited entry program. This allocation will in no way diminish Kuleana rights.

7) Set aside 20 percent of the annual harvest guideline for the Northwestern Hawaiian Islands lobster fishery for a Western Pacific Community Development Program.

8) Request that the Magnuson-Stevens Act be amended to require that representatives of the indigenous peoples of the Western Pacific be appointed to the Council. These representatives should be individuals who have demonstrated a commitment to protecting and promoting the interests, including the fishing rights and interests, of indigenous peoples.

9) The Advisory Panel finds that the waste and cruelty associated with the practice of shark finning is inconsistent with traditional Native Hawaiian religious beliefs and may violate the American Indian Religious Freedom Act.

10) Amend the Council's Statement of Organization Practices and Procedures to require the Council Chairman to consult with the members of an Advisory Panel as well as the Executive Committee prior to appointing that Advisory Panel's Chairperson.

11) The Advisory Panel concurs with the recommendation of the Ecosystem and Habitat Advisory panel that detailed mapping information remain available to any interested party, but that additional effort to disseminate it broadly, such as in newsletters and web sites, should be discouraged.

12) Require all foreign vessels and all domestic fishing vessels greater than 50 ft in length that enter the EEZ of any US Pacific island to carry onboard a Council-endorsed vessel monitoring system.

13) Change the name of the Advisory Panel to Fishery Rights of Indigenous People.

14) Periodically inform members of the Advisory Panel of the status of all panel recommendations.

In addition, the Native and Indigenous Rights Advisory Panel made the following resolutions and Anon-agenda® recommendations:

1) The Advisory Panel concurs with the recommendation of the Ecosystem and Habitat Advisory Panel that sufficient insurance or a bond be required for vessels operating in HAPC to cover the cost related to potential vessel removal.

2) Prohibit the use of purse seine gear in the harvest of PMUS in the EEZ around Hawaii.

3) The Advisory Panel concurs with the recommendations of the Pelagic Fisheries Advisory Panel to recommend to DLNR to explore a minimum size for aku for commercial sale because of fishermen's concern about the exploitation of juvenile fish.

4) The Advisory Panel concurs with the recommendations of the Pelagic Fisheries Advisory Panel to

evaluate the potential effects to fisheries of the CO₂ sequestration in the Pacific Ocean.

The Advisory Panel recognizes that human activities have contributed to the pollution of the nearshore waters of island states; recognizes that the diversion of surface waters and the pumping of ground water have caused the severe reduction of coastal fresh water discharges into the nearshore waters of island states; recognizes that these conditions have adversely impacted the integrity of nearshore marine ecosystems; and further recognizes that these nearshore marine ecosystems contribute substantially to the well being of pelagic marine species.

Therefore, the Advisory Panel recommends that the Council strongly encourage island governments to curtail such practices and encourage kindred federal and state agencies to cooperate in activities designed to ensure the integrity of all nearshore marine ecosystems, which in turn will ensure the perpetuation of the managed and protected marine species in federal waters.

The Advisory Panel adopts the following mission statement:

The Pacific islands are the homes we inherited from our ancestors. We who live here choose not to be strangers in our own land. The values of love and care for the land guide our stewardship of our natural resources, which nourish our families both physically and spiritually. We live by our elders= historic legacy of powerful prayer. We honor our islands= cultural heritage and these cultures are practiced in our everyday lives. Our true wealth is measured by the extent of our generosity.

- \$ We envision strong families who steadfastly preserve, protect, and perpetuate these core Pacific island values.
- \$ We envision wise and caring communities that takes pride in their resourcefulness, self-sufficiency and resiliency.
- \$ We envision resolute Pacific islanders who are firmly in charge of the resources and destinies of their island states.
- \$ We envision Pacific islands that leave for its children a visible legacy: islands abundant with natural and cultural resources, people who help and look after one another, and communities that strive to build an even better future on the firm foundation left to us by our ancestors whose bones guard our land.



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NATIVE AND INDIGENOUS RIGHTS ADVISORY PANEL RESOLUTION CONCERNING THE DISAPPROVAL OF THE AMERICAN SAMOA AREA CLOSURE

WHEREAS acting upon the formal request of its Native and Indigenous Rights Advisory Panel, the Western Pacific Council recommended rule-making under framework provisions of the Pelagic Fisheries Management Plan to prohibit fishing for pelagic management unit species within the 100 nm closed areas around the islands of American Samoa by large vessels of more than 50 ft length overall (with an exception for large longline vessels with a history of fishing within the closed area).

WHEREAS the American Samoa Council members and Chair of the Native and Indigenous Rights Advisory Panel had reluctantly compromised the size of the closed area from 100 to 50/30 nm, relying upon an apparent assurance by NMFS that the 50/30 nm would be an acceptable compromise.

WHEREAS the harvest of pelagic fish has been an important source of both sustenance and cultural identity for the indigenous people of American Samoa since time immemorial.

WHEREAS the US Territory of American Samoa is seeking to diversify its economy and reduce its dependence on Federal financial assistance through development of its locally based fishing sector.

WHEREAS the Council adopted a precautionary approach and encouraged a rational, more easily managed use of the pelagic fishery resource by instituting measures to reduce the risk of conflict among fishermen before a crisis in the fishery occurs.

WHEREAS the US purse seine fishery operates predominantly outside the EEZ around American Samoa, however, without this measure there is a continuing risk of competitive interaction between large (. 150 ft) purse seine vessels and the emerging American Samoa small scale (. 30 ft) fishing boats.

WHEREAS without the 100 nm area closures, large US longline vessels may relocate to American Samoa and could economically marginalize the American Samoa small scale fishing boats.

WHEREAS reserving 100 nm closed areas around the islands of American

Samoa for small boats would reduce the potential for overfishing pelagic species.

WHEREAS the voting members of the Western Pacific Fishery Management Council, with the exception of the representative of NMFS, unanimously voiced strong objections to the decision by NMFS SWR Administrator, and the process by which this disapproval was communicated to the Council, which was unprecedented in the history of the Council.

WHEREAS the decision to deny the closure was made without further consultations, and the SWR Administrator gave notice of the disapproval only 3 days before the 99th Council meeting.

WHEREAS the stated rationale of NMFS that the 50/30 nm closure might jeopardize impending negotiations under both the South Pacific Tuna Treaty and the Multi-lateral High Level Conference to Conserve and Manage Highly Migratory Species in the Central and Western Pacific, is baseless, misleading and jeopardizes the social and economic benefits that the indigenous people of American Samoa receive from the region's fisheries.

WHEREAS the rationale of this disapproval could result in the longliners in Hawaii requesting the Council to revisit the basis for the existing 50/75 nm closed areas around the Main Hawaiian Islands, the elimination of which would invite a re-occurrence of gear conflict and jeopardize the Council's VMS program.

WHEREAS the Northern Mariana Islands is considering similar protective measures for their locally-based commercial subsistence, and recreational fisheries, and that Guam and Hawaii are also considering the exclusion of purse seiners from the existing closed areas.

NOW THEREFORE BE IT RESOLVED:

That the Native and Indigenous Rights Advisory Panel objects in the strongest possible terms to the arbitrary and capricious disapproval by NMFS of the proposed area closure that would have excluded most vessels greater than 50 ft in length from 50/30 nm around the islands of American Samoa.

That the Native and Indigenous Rights Advisory Panel takes great exception to the inconsiderate manner in which this decision was reached and communicated to the Council, and which undermines the partnership between the Western Pacific Council and NMFS.

That the Native and Indigenous Rights Advisory Panel demands that NMFS leadership exhibit greater sensibility toward the unique political, social, cultural and economic circumstances confronting the US Flag Territories and Commonwealths as they strive for self-reliance and self-determination.

BE IT FURTHER RESOLVED:

That the Secretary of Commerce should take immediate action to reverse this ill-conceived decision, and respond to this request within 30 days of the receipt of this Resolution.

Copies of this Resolution be delivered to the Secretary of Commerce, the Chairs of the Senate Commerce and House Resources Committees, and the Congressional delegations of American Samoa, Guam, Hawaii, and the Northern Mariana Islands.



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Report of Meeting

The AP noted that the current process for selecting AP chairs does not provide for input from the AP members. It was suggested that the Council's Statement of Organization Practices and Procedures be amended to require the Council Chairman to consult with the members of an advisory panel as well as the Executive Committee prior to appointing that panel's Chairperson.

Council staff briefly discussed the chronology of Council activities pertaining to native and indigenous fishing rights and summarized past amendments to the Magnuson Act relevant to this topic.

The AP discussed the status of past recommendations of the panel. With regard to turtles it was noted that the Council had co-sponsored a study of cultural importance of green sea turtles in the Northern Mariana Islands and helped organize a public workshop in Saipan to discuss requirements for approval of a limited take of sea turtles for cultural purposes. The AP noted that it may require an amendment to the Endangered Species Act in order for a cultural take to be allowed. At the same time, it is important for studies on the biological condition of green sea turtle populations to continue. Margaret Dupree discussed the research currently being conducted by NMFS.

The AP discussed the wording of a mission statement that could be used to guide decision-making by the panel and suggested that a committee of panel members draft such a statement.

With regard to access to marine conservation areas the AP noted the legal case brought by the Luu-wai family on Maui to acquire access to the Ahihi-Kinau Natural Area Reserve. Jim Anthony encouraged the panel to recommend that near-shore ecosystems be protected. The AP formed a committee to prepare a resolution on this subject.

The disapproval of the American Samoa area closure was discussed, and the AP recommended that a committee of panel members prepare a resolution strongly protesting the decision.

With regard to the use of VMS the AP recommended that domestic fishing vessels greater than 50 ft in length as well as all foreign vessels be required to carry onboard a Council-endorsed vessel monitoring

system.

The AP noted that the Council should seek the assistance of Congressional members to ensure that the indigenous people of the US Pacific islands be allowed access to all shoreline areas currently used by the US military for recreational purposes and other federally controlled shoreline or aquatic areas where access has been unfairly denied.

The AP discussed the recent bill introduced in the Hawaii State Legislature that would have prohibited the practice of shark finning. The appropriateness of the Council testimony submitted in opposition to the bill was questioned. The AP noted that the waste and cruelty associated with the practice of shark finning is inconsistent with traditional Native Hawaiian religious beliefs and may violate the American Indian Religious Freedom Act. Some Saipan Carolinians may also have a spiritual connection to sharks. It was suggested that the consultant currently examining the social and economic aspects of shark finning in the Western Pacific also examine the cultural aspects. The AP also noted that NMFS should develop criteria for selecting consultants who are contracted to collect information on traditional beliefs and practices of indigenous island peoples.

With regard to bathymetric maps the Advisory Panel noted that the wide distribution of detailed maps may lead to depletion of nursery grounds, etc. It was suggested that maps remain available to any interested party, but that additional effort to disseminate them broadly, such as in newsletters and web sites, should be discouraged.

The AP discussed the status of the community development program. Council staff noted that the eligibility criteria have not yet been approved by the Secretary. The AP discussed various definitions of indigenous island peoples. Craig Severance summarized the findings of the National Research Council report on the Alaska and Western Pacific community development programs. The AP suggested that a list be compiled of agencies that can assist eligible communities in planning and financing a Western Pacific community development program or demonstration project.

The AP concurred with the recommendation of the Pelagic Fisheries Advisory Panel to set aside 30 Hawaii longline limited access permits for a Western Pacific community development program, without exceeding the existing number of permits in the limited entry program. However, the AP noted that this allocation should in no way diminish Kuleana rights. The AP also recommended that the Council set aside 20 percent of the annual harvest guideline for the Northwestern Hawaiian Islands lobster fishery for a Western Pacific community development program.

To ensure that the interests and concerns of indigenous peoples are considered by the Council the AP recommended that the Magnuson-Stevens Act be amended to require that representatives of the indigenous peoples of the Western Pacific be appointed to the Council. These representatives should be individuals who have demonstrated a commitment to protecting and promoting the interests, including the fishing rights and interests, of indigenous peoples.

Puanani Burgess presented information on the requirements of grant programs administered by the Administration for Native Americans.