

## **NMFS Request to Close NWHI Lobster Fishery**

### R. Lent Declaration of 29 September:

- Proposes to close the fishery through 2001 and Area 4 through 2002
- Informs the Court of the status and schedule of the EISs (expect formal public comment period Dec-Jan), status of the fisheries, NMFS research plans for catch and release in spring 2001 (for data on life history, species distribution, and tagging), and harm to public interest from closures (economic impact to fishing industry)
- States the closure will have no impact on the recovery of the monk seal, as there is no evidence of threat by the fishery
- A new formal consultation (re impact to monk seals) will be completed before any commercial removal of lobsters

### R. Lent letter of 3 November:

- Reiterates some of the main points from her 29 September Declaration
- States NMFS closed the 2000 lobster fishery as a precautionary action to protect the resource due to increasing uncertainty in model parameter estimates and lack of appreciable population rebuilding
- States lobster stocks have not been found to be overfished or depleted, while improved stock assessment models are needed
- Notes variances in NMFS proposed lobster research plan (no experimental fishing program in 2000, catch and release proposed for Spring 2001, possible research fishery in Area 4 in 2002)
- Requests Council to approve preparation of a framework regulatory amendment to effect the NMFS proposed closures (all NWHI through 2001, Area 4 through 2002), as it promised the Court (if Council fails to approve closure, fishery will close through Secretarial Action)

### Judge King's Order of 15 November regarding lobster litigation:

- Plaintiffs claim lobster fishery threatens survival of the monk seal
- NMFS (Defendant) voluntarily closed the fishery in 2000 and proposes to keep it closed through 2001 (and Area 4 through 2002)

- NMFS not in compliance with ESA and NEPA as it has not been shown (through adequate EIS) that the fishery is not depleting the monk seal's food supply
- Notes NMFS' intention for closure, but not assured, as no FR proposed or final rule published implementing closure (need to follow Council process as requested by Lent in 3 November letter)
- Notes biological opinions issued in 1981 (original FMP), 1996 (Amendment 9) and in 1999 (informal opinion) have not elucidated the importance of lobster in the monk seal's diet; Judge does not accept NMFS' conclusion that the fishery is not likely to adversely affect monk seals
- NMFS has failed to "insure" that the lobster fishery does not result in jeopardy or adverse modification of monk seals (a violation of Section 7)
- Original EIS (with FMP) and subsequent EAs (with 10 amendments) failed to address analysis of cumulative impacts and impact to monk seals
- NMFS must complete its EIS and formal consultation prior to renewed operation of the fishery
- Court rejects NMFS harm to public interest statement as it is almost purely economic in nature (NEPA's purpose is to protect the environment, not economic interests)
- Court grants Plaintiffs' motion for a permanent injunction with respect to lobster fishery
- Court injunction protects health of lobster stocks while permitting data collection (but NMFS must notify Court)