



**WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL**

MEMORANDUM

TO: Interested Parties

June 7, 2017

FROM: Kitty M. Simonds

A handwritten signature in black ink that reads "Kitty M. Simonds".

SUBJECT: Action Items for 170th Council Meeting

- 1. Evaluation of 2016 catch to the 2016 Annual Catch Limits (ACLs)**
- 2. American Samoa Large Vessel Prohibited Area**
- 3. American Samoa Longline Permit Modifications**
- 4. Re-specification of Annual Catch Limits for the Main Hawaiian Islands Kona Crab Fishery**
- 5. Developing Fishing Regulations for the Monument Expansion Area in the Northwestern Hawaiian Islands**
- 6. Marine Conservation Plans for Guam, Northern Mariana Islands, and Pacific Remote Islands Area/Hawaii**

The Council will consider the issues summarized below, including any public comments on this initiative. The Council is expected to take action on these issues at its 170th Council Meeting to be held between June 20-22, 2017 at the Laniakea YWCA, Fuller Hall, 1040 Richards St. Honolulu, HI 96813. Written comments should be received by the Council's Executive Director by 5:00 p.m. (Hawaii time) Friday June 16, 2017, FAX or email as indicated below.

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1. Evaluation of 2016 catch to the 2016 Annual Catch Limits (ACLs)

The Council will hear a presentation on the Plan Team's evaluation of the 2016 catch to the 2016 ACLs. The Plan Team provided rationale on the overage for the SSC to review and consider. Briefly, the 2016 catches were compared to the 2016 ACL. The 2016 catches are based on the 3 year running average (2014, 2015, and 2016) based on Council recommendations from the 160th meeting. The 2016 coral reef ecosystem, spiny lobster, and Hawaii non-deep 7 ACLs are based on BAC-MSY approach as reduced by P* and SEEM factors. The territory bottomfish ACLs are based on the updated Territory Bottomfish assessment (Yau et al 2015) as reduced P* and SEEM factors. The remaining ACLs are roll-over from the previous years since no new scientific information is available.

All jurisdictions had overages in 2016:

- American Samoa exceeded its ACL of 163lbs for Siganidae (rabbitfish) with a three year average catch of 435lbs;
- Guam exceeded its reduced 2016 ACL of 21,201lbs for Carangidae (jacks) with a three year average catch of 26,607 lbs
- CNMI exceeded its ACL of 60 lbs for slipper lobster with a catch of 304 lbs
- Hawaii exceeded its ACL of [Still waiting on DAR to provide the final data]

The rationale for the overages is described in the report. Briefly, the estimated MSY for American Samoa rabbitfish was exceeded but not for Guam jacks. There is no MSY estimate for the CNMI slipper lobsters because there was no available data that can be used for any kind of data poor approach. The ACL was based on a Hawaii slipper lobster catch to EFH area proxy. The overages are mainly attributed to the improvements in the data collection and inherent mechanism in the ACL process. The overage for Guam jacks was due to the reduction in the ACL from the previous adjustment.

The Council has 2 options for the MUS groups that have exceeded the ACLs:

1) For the MUS that have catch estimates clearly affected by improvements in the fishery data collection no overage adjustment will be applied in 2018. This will result in the following ACLs:

- American Samoa Siganidae = 163 lbs
- CNMI slipper lobsters = 60 lbs

For the Guam Carangidae, the overage was due to the accountability measure process where the ACL was reduced by the amount of overage in the previous year. The three year average catch (26,607lbs) is below the estimated OFL (32,200 lbs) and ABC (29,900lbs) and therefore overfishing is prevented. The Council can recommend not taking an overage adjustment.

For Hawaii, [Still waiting on DAR to provide the final data]

2) The Council can also recommend full application of the accountability measure regardless of the rationale provided. Per the Council's Accountability Measures, the ACL in the following year will be adjusted by the amount of overage. Therefore, the ACLs in 2018 for the following MUS complex are as follows:

- American Samoa Siganidae = 0 lbs
- Guam Carangidae = 23,894 lbs

- CNMI slipper lobsters = 0 lbs
- Hawaii = [Still waiting on DAR to provide the final data]

2. American Samoa Large Vessel Prohibited Area

On March 20, 2017, the Hawaii Federal District Court ruled in favor of the Territory of American Samoa in its case against the National Marine Fisheries Service. The lawsuit was filed by the American Samoa government in March 2016 in response to NMFS' approval of a regulatory amendment to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (PFEP), as recommended by the Western Pacific Regional Fishery Management Council, that authorized US-flagged longline vessels with a valid American Samoa Longline Limited Entry an exemption to fish within the American Samoa Large Vessel Prohibited Area (LVPA) up to 12 nm from shore around Tutuila, Manua Islands, and Swains Island.

The Court decided that the Deeds of Cession require the United States to preserve American Samoa cultural fishing practices and that the Deeds constitute "other applicable law" for the purposes of the MSA. There are two Deeds of Cession, one signed in 1900 by the chiefs of Tutuila and Aunuu, and one signed in 1904 by the chiefs of the Manua Islands. The Deeds of Cession are agreements between the United States government and chiefs of Tutuila, Aunu'u, Ofu, Olosega, Ta'u, and Rose Island that cede lands and surrounding bodies of water to the United States. In 1929, Congress enacted 48 U.S.C. §1661, which accepted, ratified, and confirmed the Deeds of Cession.

To address the Court's decision, the Council will consider the steps involved in a process to identify what American Samoa cultural fishing practices means in the context of the Deeds of Cession. For example, there will be need to define what constitutes cultural fishing practices such as fishing gear used as well as the disposition of catch (e.g. subsistence or commercial sales) and how to evaluate impacts on such practices (e.g. catch rates, fishing participation, etc).

The Council will consider making initial recommendations on defining cultural fishing and directing staff to institute a process utilize the Council's advisory committees and panels and work with other groups, individuals, and the American Samoa government to accomplish this task.

3. American Samoa Longline Limited Entry Permit Modifications

In 2011, the Council recommended several modifications to the American Samoa Longline Limited Entry Permit Program (LEPP), but the modifications were not formally transmitted review and approval by the Secretary of Commerce. Before finalizing the regulatory amendment for transmittal, the Council will review its recommendations with regards to the latest information and conditions associated with the American Samoa longline fishery. The Council's recommendations (2011) to modify the LEPP program are as follows:

- a. Replace the four vessel classes with two, where Class A and B vessels would be considered "small" and Class C and D vessels would be considered "large";
- b. Restrict permit ownership to U.S. citizens and nationals only and eliminate criteria for having documented history of participation to be eligible for owning a permit, but maintain the priority ranking system based on earliest documented history of fishing participation in vessel class size if there is competition between two or more applicants for a permit;

- c. Require that permits can only be transferred to U.S. citizens or nationals, and eliminate the requirement for documented participation in American Samoa longline fishery to receive permit transfer; and
- d. Reduce the “small” vessel class minimum harvest requirement to 500 lb of pelagic MUS caught with longline gear in the EEZ around American Samoa within a 3-year period, but maintain the existing 5,000 lb harvesting requirement of pelagic MUS caught with longline gear in the EEZ around American Samoa for the “large” vessel class.

In addition to the recommendations listed above, the Council will consider the following options:

- 1). Remove vessel size classes A and B from the LEPP
- 2). Require minimum landings within Territory by vessels with valid permits
- 3). Modify 3-year minimum harvest period for transferred permits

The Council will also consider the existing LEPP framework with regards to cultural fishing in American Samoa and participation by indigenous American Samoans in the fishery.

4. Re-specification of Annual Catch Limits for the Main Hawaiian Islands Kona Crab Fishery

The Council will evaluate and make recommendations a revised Annual Catch Limits relative to the SSC recommended ABC for Hawaii Kona crab for fishing year 2017. In retrospect, at the 122nd SSC meeting held on March 2016, PIFSC summarized the results of a desktop CIE review of a 2015 Hawaii Kona crab stock assessment using landing data from 1970 to 2009. The assessment results indicated the Kona crab stock was likely to be overfished as of 2006 (biomass less than 50% of B_{msy}). The assessment model also projected median outcomes for B_{msy} from 2010–2030 under the following annual harvest scenarios: zero lb, 7,000 lb, and 8,000 lb. With a zero lb annual harvest level beginning 2010, biomass would have increased and would have reached 50% B_{msy} by 2015. With a 7,000 lb annual harvest, the stock would have taken over 18 years to reach 50% of B_{msy} , and be rebuilt. With an 8,000 lb annual harvest, the model predicted a decline in biomass in 2010 and a continuation of the overfished status of the stock. The 2015 assessment assumed a male and female catch retention fishery in 2010-2030. However, state regulations only allow a male retention fishery starting in 2007.

In their discussions, the SSC expressed concern about the impacts of state regulations for non-retention of female crabs since little is known about sex ratios, how they might bias the assessment projections and what the impacts might be from post-release mortality due to injury or predation. For these reasons, the SSC recommended maintaining an ABC of 27,600 lb, which is based on the Tier V data-poor ABC control rule and produces an ABC that is three times higher than level of catch that the 2015 stock assessment projects would extirpate the stock.

Under the best available scientific information standard, NMFS may not insist on perfection in the stock assessment before the agency is required to consider it. Additionally, NMFS may not ignore the stock assessment without identifying superior science on which to base ABC/ACL. The Tier 5 data-poor modeling approach no longer meets this standard. Therefore, at this meeting, NMFS will present alternative ABCs for the SSC to consider based on information provided in the 2015 stock assessment. Once the SSC decides on whether the information presented warrants changing the ABC, the Council will specify a new ACL based on the new ABC. The Council can specify ACL equals to the SSC recommended ABC or set the ACL lower than the ABC.

5. Options for Fishing Regulations for the Monument Expansion Area in the Northwestern Hawaiian Islands (REVISED)

Presidential Proclamation 9478 (see Appendix 1) set aside an area adjacent to the Papahānaumokuākea Marine National Monument that constituted a Monument Expansion Area (MEA). Through the proclamation, the Secretary of Commerce (NOAA), in consultation with the Secretary of Interior (USFWS), were provided responsibility for management of activities and species within the monument expansion area under their respective authorities (e.g. Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Wildlife Refuge System Administration Act, Endangered Species Act (ESA), etc.). The Proclamation prohibited commercial fishing activities and anchoring on any living or dead coral. However, it also allows for regulated fishing activities, including Native Hawaiian practices (including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices) within the MEA, and non-commercial fishing (provided that the fish harvested either in whole or in part, does not enter commerce through sale, barter, or trade, and that the resource is managed sustainably).

The Council, at its 168th Meeting in October 2016, recommended staff conduct public scoping sessions with the purpose of determining what information is available for the Council to begin the process of analyzing alternatives and recommending management regulations for the MEA. Scoping sessions were held around the state in December 2016. At these scoping sessions, the public provided potential ideas but did not propose any options for management. These ideas are addressed as options considered but not analyzed.

A report of the public scoping sessions was provided to the Council at its 169th Meeting, March 21-23, 2017. At that meeting, the Council directed staff to develop and present options to the Council at its 170th Meeting.

On September 23, 2016, the NMFS sent the Council a letter requesting the Council's recommendations for amending the Hawaii Archipelago and Pacific Pelagic FEPs to establish appropriate fishing requirements under the MSA including the prohibition on commercial fishing and the regulation of non-commercial fishing within the monument MEA. The purpose of this paper is to provide options of management measures for sustainable fisheries in the MEA that would optimize yields and provide social, economic, and cultural benefits for the fishing community, where possible. There is a need to meet the direction of Presidential Proclamation 9478 with management measures to be developed and included in a future management plan for the area.

The Council will consider the following issues related to this action: commercial fishing, non-commercial fishing, and Native Hawaiian subsistence fishing. Options for each of these issues are described below.

Issue A: Commercial Fishing Options

Commercial fishing is listed as a prohibited activity under Proclamation 9478, which says the persons shall be prohibited from conducting or causing to be conducted "commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument Expansion." Under the current guidance and statutes regarding the Proclamation, commercial fishing in the MEA is already prohibited. The following options are included to bring the Council's FEP regulations in-line with the mandate of the Proclamation.

- Option A1: No Action

Option A1 is No Action, or the status quo option. Under this option, the Council's existing regulations under the Hawaii Archipelago and Pacific Pelagic FEP would still exist on the books but not enforced in the MEA. This includes permitting and reporting for longline, precious corals, coral reef ecosystem (potentially harvested Management Unit Species), bottomfish, and crustacean fisheries. Developing and issuing regulations for prohibiting commercial fishing in the MEA would need to be done by the Secretary of Commerce (through NMFS) to meet the mandate of the Proclamation.

- Option A2: Prohibit Commercial Fishing in the MEA

Under this option, no commercial fishing would be allowed in the MEA. The Magnuson Stevens Fishery Conservation and Management Act defines "Commercial Fishing" as "fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade." This would amend the regulations in the Hawaii Archipelago and Pacific Pelagic FEPs.

Issue B: Non-Commercial Fishing Options

Proclamation 9478 also provides for Non-Commercial Fishing to be managed under the Magnuson Stevens Fishery Conservation and Management Act, "provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably." Currently, non-commercial fishing is allowed in the NWHI (under the Hawaii Archipelago and Pacific Pelagic FEPs, non-commercial fishing (including recreational, charter and subsistence) is not prohibited and crustacean and precious coral fisheries are permitted for the NWHI) but management measures are not in place specifically for non-commercial fishing within the MEA. The current Papahānaumokuākea Marine National Monument also allows sustenance fishing within its boundaries (0-50 nm). This is mainly due to the lack of information on non-commercial fishing in the MEA and management measures developed without data on catch, effort, etc., may not be suitable. The following options provide a range of options that would amend the Hawaii and Pacific Pelagic FEPs to meet the mandate of the Proclamation.

- Option B1: No Action

Option B1 is No Action, or the status quo option. Under this option, the Council would continue to manage fisheries consistent with existing regulations and under applicable laws under the Hawaii Archipelago and Pacific Pelagic FEP. Currently, this includes permitting and reporting for non-commercial fishing of precious corals and crustacean fisheries. Pelagic, bottomfish and coral reef ecosystem management unit species would not have permits and to fish for these species, the Secretary of Commerce would need to institute non-commercial fishing permits through a secretarial amendment to the FEPs.

- Option B2: Permit Non-Commercial Fishing in the MEA

Under Option B2, Federal permits and reporting would be required for non-commercial fishing in the MEA. While non-commercial fishing can be allowed in the MEA, under the proclamation, the catch cannot be sold, bartered, or traded. "Non-commercial" fishing is not defined under MSA, so the Council would need to define non-commercial fishing for the regulations in the MEA.

- Option B3: Define Non-Commercial Fishing

The Council currently uses a definition for non-commercial fishing in the other Pacific marine national monuments as follows: Non-commercial fishing is "fishing that does not meet the definition of

commercial fishing in the Magnuson Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous and recreational fishing.” Further, “recreational fishing” in the other monuments is defined as “fishing conducted for sport or pleasure, including for-hire charter fishing.” Traditional indigenous fishing, in this case, would include Native Hawaiian fishing practices.

- Option B4: Define Non-Commercial Fishing to include Customary Exchange

The Council has developed a definition of customary exchange with other island areas for their marine national monuments and may choose to include it as part of the definition of non-commercial fishing. This option would use the definition of non-commercial fishing as in option B3 but also include customary exchange to read as follows: Non-commercial fishing is “fishing that does not meet the definition of commercial fishing in the Magnuson Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, recreational fishing, and customary exchange.” Further, “recreational fishing” in the other monuments is defined as “fishing conducted for sport or pleasure, including for-hire charter fishing.” Traditional indigenous fishing, in this case, would include Native Hawaiian fishing practices. Customary exchange is defined as “the non-market exchange of marine resources between fishers and community residents for goods, services and/or social support for cultural, social, or religious reasons.” Customary exchange may also include cost recovery through monetary reimbursements and other means for actual trip expenses (e.g. ice, bait, food, fuel) that may be necessary to participate in fisheries in the NWHI MEA.

- Option B5: Prohibit Non-Commercial Fishing in the MEA

Under this option, no non-commercial fishing would be allowed in the MEA under the Hawaii Archipelago and Pacific Pelagic FEPs. Non-commercial fishing may also need to be defined under this option.

At the 170th Council Meeting, the Council may recommend a management approach for the NWHI MEA and select a preferred option which they deem most appropriate to optimize yields and socio-economic benefits for the fisheries in the Western Pacific Region. The approaches described in this document are not intended to be exhaustive and Council members may recommend other approaches for consideration and analysis.

6. Marine Conservation Plans for Guam, Northern Mariana Islands, and Pacific Remote Islands Area/Hawaii

The Marine Conservation Plans (MCPs) for Guam, Northern Mariana Islands, and the Pacific Remote Island Areas/Hawaii expire in 2017. At its 170th meeting, the Council will review the MCPs for concurrence an approval. After review by the Council, the MCPs are transmitted to the Secretary of Commerce for approval.

Section 204(e) of the MSA authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Western Pacific Regional Fishery Management Council (Council), to negotiate and enter into a Pacific Insular Area Fishery Agreement (PIAFA). A PIAFA would allow foreign fishing within the 200-mile U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, CNMI, and Guam, or the Pacific Remote Island Areas with the concurrence of, and in consultation with, the applicable Governors. According to the MSA, before entering into a PIAFA, the

appropriate Governor, with the concurrence of the Council, must develop a 3-year Marine Conservation Plan (MCP) providing details on uses for any funds collected by the Secretary under the PIAFA.

In addition to PIAFA funds, the MSA provides that fines and penalties of violations by foreign vessels occurring within the EEZ around the Pacific Insular Areas, including sums collected from forfeiture and disposition or sale of property seized by the federal government, are to be deposited into the applicable local government's treasury and to be used to implement the respective MCP. Also authorized by the MSA is the Western Pacific Sustainable Fisheries Fund, which allows the Council to use funds to implement projects contained in the MCPs.

The MSA requires that the MCPs shall be consistent with the Council's Fishery Ecosystem Plans (FEP). The MSA also requires that the MCP include, but not limited to, the following conservation and management objectives:

- (i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary determines are adequate to monitor the harvest, bycatch, and compliance with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area fishing agreements;
- (ii) conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation, and reporting;
- (iii) conservation, education, and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;
- (iv) education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and
- (v) western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation, and economic enhancement of the Pacific Insular Areas.

If approved by Council and Secretary of Commerce, the MCPs are valid for a period of three years; however, an MCP can be modified at any time and resubmitted for approval.