



**WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL**

MINUTES OF THE 130th COUNCIL MEETING of the
WESTERN PACIFIC REGIONAL
FISHERY MANAGEMENT COUNCIL

20 December 2005

Via Teleconference

Western Pacific Regional Fishery Management Council
1164 Bishop St., Suite 1400
Honolulu, HI 96813

APPROVED BY COUNCIL:

A handwritten signature in black ink, appearing to read "Frank McCoy", is written over a horizontal line.

CHAIR: Frank McCoy
Western Pacific Regional Fishery Management Council

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McCoy convened the 130th Council Meeting via teleconferencing at 11:15 a.m. December 20, 2005 at 1164 Bishop Street, Suite 1400 in Honolulu, Hawaii.

I. INTRODUCTIONS

Each attendee introduced themselves and included: Ray Tulafono, Council Member, American Samoa (telephonically); Stephen Haleck, Council Member, American Samoa (telephonically); Adrienne Loerzel, Council Member, Guam; Dan Polhemus for Peter Young, State of Hawaii Representative; Edward Ebisui, Hawaii; Sean Martin, Hawaii; Bill Robinson, NOAA Fisheries; Lieutenant Commander Mark Young, U. S. Coast Guard; Fred Duerr (telephonically); Myrick Gaffney (telephonically); Ben Sablan, Council Member, CNMI (telephonically); and Richard Seman, Council Member, CNMI (telephonically).

McCoy inquired of Guam if Duenas had arrived yet and was told no.

Myrick Gaffney was sworn in as a member of the Regional Fishery Management Council by Bill Robinson and committed to the oath.

McCoy noted that he was looking forward to Gaffney's support in the Council and providing responses as to the needs of his constituency.

McCoy noted that being a teleconference there was need of ground rules which included

- Stating one's name;
- Only one person speaking at a time; and
- Withholding of public comments until the public comment period.

McCoy also asked the speakers to speak directly into the microphone.

II. APPROVAL OF AGENDA

McCoy asked for approval of the agenda.

Sablan, moved to approve the agenda, Tulafono seconded the motion.

McCoy asked for discussion.

Polhemus, representing Peter Young and the State of Hawaii Department of Land and Natural Resources asked the reason for having the final approval of the Fishery Ecosystem Plans on the agenda and offered three reasons why it should not be:

1. The Council at its 129th Meeting in Guam voted to have final approval of these plans at its next meeting in March in order to provide sufficient time for public comment and editing of these plans. Final approval of these plans at this meeting provided insufficient time. Having gone through the December 6th version of the Hawaii Fishery Ecosystem Plan draft, numerous factual and conceptual errors were found.

These errors were brought to the attention of West Pac and while several have been corrected, additional errors remain. By giving final approval to these plans in their current form the Council essentially endorses these errors, which is not the proper thing for the Council to do.

2. Public comment, at least for the citizens of the State of Hawaii, has been seriously abbreviated and abridged in that it was only allowed within the last week on this plan. The plan has still been in a state of evolution. The State's corrections to the first set of comments on the plan were received on December 6th. By that point, several public comment meetings had already been held in Hilo and Kona. It is not at all clear that the public in certain meetings is seeing the same document as the public in other meetings.
3. The State didn't understand how public comments could be taken at this meeting for the plan and then undertake final approval of the plan in the same meeting; they didn't understand how the public's comments would be incorporated into the plan prior to its final approval.

Therefore, the State of Hawaii asked for the final approval of the plans be withdrawn from the agenda and reinstated in March as originally voted by the Council.

McCoy responded that there has been ample time to respond to the plan that was voted on a year ago. He noted that the Council was evolving into these plans and that there were not any big changes to the current state. He suggested that a broader view be taken. The plans are not carved in stone and could be changed by the Council at any time.

McCoy opened the floor for discussion.

Gaffney noted that he shared the same concerns of the State. He had responded to the draft plan via a letter to Simonds that included a number of misstatements and inaccuracies in the plan that needed clarification. He had not received a response yet from Simonds.

Gaffney felt the process was going too quickly, especially since he had been given just a week to review a thousand pages of plans, had found a number of questionable statements and a number of absolute inaccuracies. He was not comfortable on voting on the document at this meeting and wondered what the rush was.

Robinson agreed that the arguments from the State and Gaffney were legitimate points and should be considered by the Council in determining whether or not to approve the plans. He felt that the Council should proceed with the agenda so that a debate on the topic could be part of the meeting.

Polhemus corrected his statement by saying that the State had received drafts of missing chapters of the plan on the 6th of December. They did not receive a complete document from West Pac until the 14th of December, six days ago. By that time two public

hearings, one in Hilo on December 12th and another in Kona on December 13th, had been held. He didn't understand how the public could have seen the revised document.

Polhemus stated that the State had no objection to ecosystem-based management and in fact, endorsed the concept. However, they did have issue with the Fishery Ecosystem Plan in its current form and the rush to complete it. He showed a copy that had been marked by one of his biologists and noted that there were approximately 15 post-its indicating places where lists of families of organisms were included in the plan that do not occur in the Hawaiian Archipelago.

Polhemus felt it was embarrassing for the Council to approve Plans that included these inaccuracies. He felt that the Council made the right decision in Guam in deferring approval of properly edited plans until March.

McCoy asked for additional comments.

Duerr said that he would have also appreciated more time to read all the documents. While some of the documents appeared boilerplate or redundant, Duerr recalled a gentleman in Guam saying the information was incorrect and some of it had been credited to him.

Duerr reiterated that it was embarrassing to have a public hearing and vote on something inaccurate. He felt the Council should clean up the inaccuracies and do a little more research.

McCoy noted that the plans provided the starting point for the process and that the original Fishery Management Plans would continue to be used as guidelines. He felt that the current plans, while they contained some errors, were a good starting point.

Robinson suggested that the debate on the approval of the plans be held for Agenda Item 3 and that they move on with Agenda Item 2 which was the approval of the agenda.

McCoy recognized Ebisui.

Ebisui supported Robinson's comment and recommended that the discussion be closed and a vote be taken on the draft agenda.

McCoy, having a motion, second and discussion called for the approval of the agenda.

The following members voted in favor of the approval of the agenda: Ebisui, Martin, Robinson, Haleck, Tulafono, Loerzel, Sablan, Seaman, and Duerr. The following members voted against approval of the agenda: Gaffney and Polhemus.

III. WESTERN PACIFIC FISHERY MANAGEMENT PLANS

McCoy called on the Council staff to report on items A through E.

Makaiau noted that the Council was being asked to take action on measures of the Fishery Ecosystem Plans that was part of a longer process. The Plans would go through another iterative process, a NOAA review and a 60 day public comment period before implementation occurs.

Makaiau would be presenting the measures proposed in the Fishery Ecosystem Plans and present the modifications requested at the 129th meeting of the Council. This action will lay the foundation for the implementation of the ecosystem approaches to fisheries management and move the Council from single-species management to ecosystem management.

Makaiau reviewed how the Western Pacific Fisheries are currently management. The region includes the entire State of Hawaii, the Northern Marianas, Guam, the Islands of American Samoa, and in the middle of the South Pacific, a number of Pacific Remote Island Areas. The Council manages under single-species and multi-species Fishery Management Plans that include: Bottomfish and Seamount Groundfish, Crustacean, Precious Coral Ecosystem and a Pelagic Fishery Management Plans.

Makaiau noted that the push from single species to an ecosystem management approach began over 20 years ago with:

- a 1986 Ecosystem Workshop held by the National Marine Fisheries Services and Regional Fishery Management Councils;
- Ten years later the Sustainable Fisheries Act amendment was made to the Magnuson-Stevens Act. The Councils currently account for bycatch, are aware and mitigate adverse impact to fish habitat, and try to control or prevent overfishing;
- In 1999, Congress tasked the National Marine Fisheries Service with the assessment of the extent of implementation of ecosystem approaches within the fisheries. The Ecosystem Principles Advisory Panel recommended that the Councils begin development of Fishery Ecosystem Plans for their jurisdictions;
- In 2003 The Pew Ocean Commission presented a report on how to better manage using a holistic approach;
- In 2004 the U. S. Commission on Ocean Policy released the Ocean Blueprint for the 21st Century that provided advice and recommendations to the Executive Branch on ecosystem approaches;
- In 2004 President Bush released his Ocean Action Plan; and
- In 2005, NOAA announced its regional strategic plan that included ecosystem management.

Makaiau stated that the above documents were broad policy-type documents that did not provide a checklist of what goes into an ecosystem plan. What was being proposed with the action before the Council was reorganizing the existing management measures and regulations away from single-species management to a place-based management

framework. To do this the Council needed to reorganize its internal structure so that its advisory bodies could implement a place-based ecosystem approach.

Makaiau shared the following comments from the public hearings and discussions:

- Where are the bells and whistles that are needed for ecosystem based management?
- What are the indicators?
- Where is the conceptual food model?

While there are a number of ideas in scientific literature, there is not enough information on how the ecosystem functions. The actions before the Council would allow for the initial action to move towards an ecosystem approach.

Makaiau noted that the Five Fishery Ecosystem Plans were located on the back table. Four of the plans deal with the archipelagoes in the region and one with the Pacific Pelagic Fishery Ecosystem. They were proposing to take the current regulations found in each of the fishery management plans and put them into the appropriate FEP. The regulations for bottomfish, crustaceans, and precious corals would be encapsulated for a particular place. The Pelagic FMP was placed in the Pacific Pelagic Fishery Ecosystem Plan due to its international management significance as it applied to the entire Pacific region.

The 129th Council Meeting held in Guam tentatively adopted the five Fishery Ecosystem Plans and directed the staff to prepare an amendment package. That package would be submitted to the National Marine Fisheries Services for review prior to being submitted to the Secretary of Commerce for implementation. The specific modifications recommended by the Council included:

1. With respect to the Fishery Ecosystem Plan objectives:
 - a. Modify Objective 1 to include the term “biologically diverse”
 - b. Insert the term the word “protected” before the words “habitats” and “areas” in Objective 6 to read: “To manage and co-manage protected species, protected habitats and protected areas.”
 - c. Objective 8 to read: “To encourage and support compliance and enforcement with all applicable local and federal fishing regulations.”
2. Change the definition of Management Unit Species to be those current Management Unite Species that are known to be present (endemic, indigenous or successfully introduced) within the boundary of each FEP and incorporate the local names for all MUS in American Samoa, Hawaii and the Chamorro names in Guam and CNMI. The revised lists were given to the various island jurisdictions, including the State of Hawaii, for feedback and have been received by the staff.
3. The Johnston Atoll has been removed from the Hawaii Fishery Ecosystem Plan and placed in the Pacific Remote Island Area Fishery Ecosystem Plan because of

its administrative jurisdiction as recommended by the Council. The boundaries of the Pacific Remote Island Areas FEP have been clarified as asked by the Council. The Pacific Remote Island Area Fishery Ecosystem Plan now includes federal waters, the Exclusive Economic Zone, which is currently zero to 200 nautical miles.

4. Chapter 7 in each Fishery Ecosystem Plan has been changed to be applicable to each island area and entitled Coordination of Ecosystem Approaches to Fisheries Management.
5. The sections that were under development when reviewed at the last Council meeting have been updated to include all incomplete chapters:
 - a. Chapter 9 was revised to include local and other applicable laws;
 - b. Chapter 10 was added and is the draft regulations as they would appear when the reorganized from species-based to place-based management;
 - c. Chapter 11 has been updated to incorporate new references and to ensure that the references are indeed in the document.
6. Other nonsubstantive additions and corrections have been made to each plan to correct typographical and punctuation errors. Major changes included:
 - a. The term “Demersal Plan Team” has been changed to “Archipelagic Plan Team” at the request of the plan teams because there were some differences in what people considered demersal;
 - b. The relationship between the existing FMPs and the Fishery Ecosystem Plans was clarified;
 - c. Redundant descriptions of Protected Resource in Chapter 8 were deleted since they were described in Chapter 3;
 - d. The text and tense of Chapter 5 was updated. It has read that the Council was proposing certain things, which were already approved and implemented by the Secretary. This chapter included the Overfishing Control Rules; and
 - e. The Marine Mammal Protection Act has been added to the list of other applicable laws in the appropriate section.

Makaiau noted that errata dated December 15th was sent to each of the Council Members and was included in the day’s materials.

Makaiau said that a second round of public hearings was held in October 2005 in American Samoa, Guam, CNMI and Hawaii. The comments received:

- supported the move away from single-species management towards the ecosystem approach;
- Expressed a concern with regard to the lack of available information on ecosystem linkages; specifically, why all the food or prey species of the

Management Unit Species were not included and how they are linked. A trophic food web model is ideal;

- Concern about the cost of collecting the information and that it may slow management actions;
- A recommendation for the Council to adopt a precautionary objective as part of the objectives. Makaiau noted that a precautionary approach as described by FAO was included in Chapter 1;
- A recommendation that the Council use the model of effective community-based management that the West Hawaii Fishery Council has adopted; and
- Commented that the Fishery Ecosystem Plans undermine protections for the Northwestern Hawaiian Islands because they do not conform to the Executive Order, any of the Sanctuary Proposals, The State of Hawaii Marine Refuges or other proposals for the Northwestern Hawaiian Islands.

Makaiau noted that the comment period for the Draft Programmatic Environmental Impact Statement was also open and that as of December 15th, they had received 399 letters. These were essentially two types of form letters sent by individuals via e-mail expressing concerns about the Northwestern Hawaiian Islands. Eleven of the letters were sent from foreign countries, 237, for the U. S. Mainland and 151 from Hawaii.

An update of those comments as of December 19th shows a total of 696 comments: (198 + 298 = 496)

- 198 of them being a form letter entitled “Hold West Pac Accountable”;
- 298 were another form letter entitled “I support strong protections in the Northwestern Hawaiian Islands”.
- There was no area breakdown yet.

The key points covered in the two letters included:

- The Fishery Ecosystem Plans do not acknowledge the Northwestern Hawaiian Island ecosystem and is left without definition;
- Concern that the single-species management model continues to be used;
- Support for the Inspector General investigation of the Council; and
- Insufficient time to review the Fishery Ecosystem Plans.

Makaiau detailed the action items being considered at this Council meeting:

1. Fishery Ecosystem Plan objectives: these were tentatively approved at the 129th Council Meeting with the modifications to Objectives 1, 6 and 8;
2. Fishery Ecosystem Plan boundaries: American Samoa, Hawaii, the Marianas and the Pacific Remote Island Areas Fishery Ecosystem Plan boundaries include all waters and associated marine resources within the EEZ surrounding those areas. The currently approved

boundary for the Pelagic Fishery Ecosystem Plan includes all areas of pelagic fishing operations within the EEZ or on the high seas for any domestic vessel that

1. fish for, possess or transship Pelagic Management Unit Species within the EEZ waters of the Western Pacific region; or
 2. Land Pelagic Management Unit Species within the states, territories, commonwealth or unincorporated U. S. Island Possessions of the Western Pacific Region.
3. Fishery Ecosystem Plan Management Unit Species: “The Management Unit Species that are known to be present, (endemic, indigenous or successfully introduced) within the boundary of each FEP”;
4. The structure of the Council advisory bodies was discussed in detail at the 129th meeting. The advisory bodies would be named to reflect the Fishery Ecosystem Plan Advisory Panels. The Fishery Ecosystem Plan Archipelagic Plan Teams will include an Archipelagic Plan Team and a Pelagic Plan Team. The standing committees will be FEP standing committees instead of species-based standing committees;
5. Regional and international coordination and community participation: As described in Chapter 7 and as discussed at the 129th Council meeting will
1. Establish regional ecosystem advisory committees in each archipelago to establish a mechanism for the council to begin coordination with other agencies, organizations or entities through research or management planning. The ecosystem management needs to consider a number of different things such as activities that affect ocean resources that are not under the jurisdiction of the Council or the National Marine Fisheries Services.
 2. The FEPs describe ways the Council could increase its coordination and participation at international and community levels including increased participation in:
 - a. International fishery forums such as the IATTC and the Western and Central Pacific Fisheries Commission;
 - b. Meetings and workshops with the Secretariat of the Pacific Communities and the FAO; and
 - c. The Community Development Program for the Western Pacific Region and the Demonstration Project Program.

Makaiau concluded his presentation and asked for questions.

Martin stated that one of the most important advisory bodies is the Scientific and Statistical Committee (SSC) and it was not included in the presentation. He asked for clarification on the role of the SSC and if there were changes projected with the change to the FEP.

Makaiau responded that the SSC is comprised of a broad range of inter-disciplinary experts ranging from fishery biologists to economists and sociologists. The proposal at the 129th Council meeting was not to change the composition of the SSC at this time.

Polhemus clarified that in addition to Chapter 9, 10 and 11 being fixed, Guam noted that Chapter 7 was missing for the Hawaii plan and listed as “in prep”. That chapter was received on December 6.

Gaffney stated that Makaiau had said that the current Management Unit Species listed in the FEPs are those species that are known to be present within the boundary of each plan area. Did that mean virtually every species that would exist within the boundary?

Makaiau reiterated that the wording was “the current Management Unit Species”, which meant the FMPs as they exist today.

McCoy asked for additional questions, hearing none he moved onto the next agenda item.

IV. PUBLIC HEARING

McCoy turned the chair over to Martin to conduct the public hearing.

Martin asked that members of the public at any of the sites around the region see the Area Coordinator or Council Member and complete a yellow public comment card. Comments over the phone would also be accommodated.

Martin asked that comments be kept to three minutes each and that groups or organizations wishing to make the same comments consolidate those comments to one representative whenever possible. The Council staff will ring a bell to notify the meeting participants when the three minutes was up and Martin would interrupt the speaker briefly to allow them 30 seconds to conclude their comment.

Martin would go around the regions in the following order: American Samoa, CNMI, Guam, and Hawaii and take public comment from those in attendance. He would take public comment over the telephone at the end of the four areas.

McCoy noted that while there were people present in American Samoa, there were no comments at the time.

Sablan had people in CNMI wishing to make comments. Martin asked that Sablan introduce each and let Martin know when the comments were complete.

Sablan introduced Lino Olopai.

Olopai thanked the Council Members and said, “I just want to extend my support to the whole idea. I've been hoping that the Fishery Ecosystem Plan, I've been thinking of it for the long time this thing has been coming through. I'm in full support of it, and I just want to extend that. Thank you.”

Sablan noted this was the only comment.

Martin thanked Sablan and the commenter and moved on to Guam.

Loerzel noted that they had one commenter and introduced Brent Tibbetts.

Tibbetts said, “My comment is concerning the boundaries of the FEPs. Looking at the Marianas FEP plan, it appears that for the Northern Marianas federal waters are zero to two hundred. For Guam, they're three to two hundred. It looks like we're being lumped together with the Northern Marianas Islands for zero to two hundred for this FEP. I express concern that local regulatory agencies might be giving up some of their control of state over the zero to three. I would like to express a concern that we do not want to be losing regulatory power over zero to three, and that this should just extend from three to two hundred for Guam waters.”

Makaiau responded that the Marianas FEP boundary is the Exclusive Economic Zone which includes marine waters and marine resources within in the Exclusive Economic Zone as defined in the Magnuson Act. He was aware of jurisdictional issues with respect to the CNMI. Currently for CNMI, the federal government defines the EEZ as extending from the shoreline to two hundred nautical miles. For the Territory of Guam, the EEZ is recognized as three to two hundred nautical miles.

Martin asked if there were further comments from Guam, having none he moved onto Hawaii.

Dalzell noted that he had two comments and more were coming.

Martin called on Joe Dettling.

Dettling congratulated Gaffney and said, “I was just looking at this public hearing and Council meeting notice that came in the mail. I had an interesting experience in June of this year trolling up in the Northwestern Hawaiian Islands and back. On this trolling expedition, which basically was strictly pelagic, we had to discard probably in terms of poundage maybe a third of our total catch, which consisted of those things in the Northwestern Hawaiian Islands which were defined as bottomfish; that was kahala, rainbow runner, uku and ulua. I'm looking here that they're talking about reducing bottomfish catch in the Main Hawaiian Islands and considering area closures of Penguin

Bank, Middle Bank and then summer seasonal closures throughout the Main Hawaiian Islands.

It's important I think to also take -- if this comes about, to take the kahala, the uku, the rainbow runner and the ulua off the bottomfishing plan and put it over in the pelagics. Otherwise, you're going to run into a lot of discarded bycatch.

I don't know -- I'm sure Rick knows that we catch in the summer a lot of kahala off the grounds in Kona live baiting for ahi and marlin, not that that's a very valuable fish, but it just kind of violates the basic rule of fishery management, to have rules in place that would force me for no reason at all to throw away maybe two or three thousand pounds of fish caught pelagic trolling just because of an erroneous definition. That's it for me.”

Martin thanked Dettling and called on Cha Smith.

Smith said. “Aloha. I'm testifying on behalf of over 2,000 people that are part of a network of Native Hawaiian and environmental activists throughout the Hawaii and also in the U.S. This testimony precedes the written testimony that will be submitted hopefully at a time that is more appropriate and is more conducive to the National Environmental Policy Act. We feel that this process now is in severe violation of the process, in that the public is being locked out of this process in numerous ways, some of which has been pointed out to you already by the state and federal officials and other members of the Council.

But my testimony here is not going to be focused so much on the content, which of course has some serious errors and flaws, but on the procedural process, that is has limited public input and has made it virtually impossible for the public to have any kind of meaningful contribution to this process.

Starting with the public notification and the release of the documents within a few days of the beginning of the hearings, there is obvious little effort made to encourage the public to review this documentation, to provide any kind of meaningful input.

If West Pac wanted to solicit public input it seems like it would ensure there is a reasonable opportunity to do that. I think it is very significant to note that the only hearing during the day, during a workday, daytime work hours, work week, during a holiday season is a hearing on Oahu. Is that possibly because you're trying to minimize the response from the public and make it virtually impossible for the public to be here?

Because it's certainly successful. It's very difficult for the people to come out during the work week. There's certainly no real reason for that to be happening. I would really love to hear your rationale behind that.

Obviously there is an ongoing request, an open request, to investigate West Pac's kind of repeated sticking it to the public and repeated efforts to basically ignore public input, ignore management, ignore science, ignore the law even. This really has gotten to a point

where I think people have felt like enough is enough. So there is an ongoing request and a public call for a full federal investigation of West Pac, and we're in full support of that investigation.

The State established a refuge in State waters. If you are really looking at wanting to do an ecosystem plan, you need to treat that whole area as a single ecosystem and apply the same level of management concerns and protections that the State has recognized are necessary there.

It's not as though the science-based refuge plan that the State established is somehow -- that the fish are somehow (bell rings) not looking at those boundaries. I mean, if it's necessary in one area, it's certainly necessary throughout the ecosystem. That's ecosystem management.

I do not feel that the current EIS is going to provide the level of protection that's needed in the Northwestern Hawaiian Islands specifically. But certainly the errors throughout the document call into question (telephonic "ding") some of the issues that (telephonic "ding") -- find my notes, sorry.

Another serious issue that -- concern that we have is that the U.S. Fish and Wildlife Refuge boundaries are fully respected and there's no attempt to weaken or erode the refuge that is established by the Federal U.S. Wildlife. So, basically, I feel like West Pac is a bit out of step, that there is no real reason for this (telephonic bell rings) -- for this full-on fast forward of the public comment process and of hearing input from the public and also from being able to correct the errors that are in this document.

We're really strongly recommending that West Pac get back on to the March schedule and start the hearings over, allow the public an adequate amount of time to look at the documents, to provide some solid input into the documents and to have hearings that are publicly notified and well noticed by the public. Thank you.”

Martin thanked Smith and asked that the outer areas allow the timekeepers in Hawaii to keep track of the time. Martin introduced the next commenter Marti Townsend.

Townsend said, “Aloha. My name is Marti Townsend. I'm testifying on behalf of myself as an individual. Looking over the document in the brief amount of time that I had, I find it ironic that there is a lot of emphasis put on the human impact and human involvement in the ecosystem, yet humans have had very little input into this document.

I really do think you need to heed the suggestions of the public, of the State of Hawaii and your own Council Members that more time be given to public human input. It would be advisable. I mean, from my review, it looks like there is a violation of the environmental laws, specifically NEPA.

A way to avoid any lawsuit based on that is to basically stop what you're doing, freeze,

correct the mistakes, you could use State of Hawaii's edited version to help correct mistakes, republish the document and restart the clock on public comment. Because this document and this whole idea of ecosystem management is significantly different from species-based management, you should also consider giving an extended 90-day or 60-day comment period.

This Council shouldn't be voting on this document at this time. Thank you.”

Martin thanked Miss Townsend and called on the next commenter, Stephanie Fried.

Fried said, “Aloha. Thank you for this opportunity to spend three minutes of time expressing an opinion on 1200 pages of documents that were presented -- one draft of which was presented to the public on West Pac's website last Wednesday at the close of business.

So the first time the public even saw a draft was close of business, Wednesday. Public hearings began in the State of Hawaii on Monday, the following Monday, that's two working days after. There is no conceivable way that there can be informed public input on this set of documents through this process.

I would like to also state that we've heard Governor Lingle's representative here strongly object to the vote on this meeting.

We've heard the federal agency representative say that those concerns were legitimate.

We second those concerns and have strong concerns about the NEPA process being followed. The NEPA process does require public input. And again, there is **no** way that the hearings that were held last week could provide public input on 1200 pages of documents that we have not seen.

I was very interested to hear from the State's representative that other documents came out on December 14th. Of course, we haven't seen those.

This morning I saw an errata document, but of course I haven't been able to read that.

I have looked at some of these plans and they are loaded with errors. There are so many errors in them. I'd like to go through some of this information. I hope that you will bear with me.

We will be trying to submit written comments. Although, I would like to call upon a NMFS representative to consider extending the December 26th deadline for the DEIS, because frankly the heart of the DEIS are these Fishery Management Plans and there is absolutely no way to have a good detailed analysis of these plans done -- and there has been no public hearing process on this. So I echo the State's call for a March vote on this, and that should be followed by a full and open period of public comment.

One of the disadvantages of holding an emergency meeting such as this one by telephone is that those of you on the phone are not able to see in the audience that there are a number of people standing around the room holding signs saying, Investigate West Pac, Save the Monk Seals, Stop Overfishing, Protect Our Oceans and Stop the Deception, Investigate West Pac.

If you were here in person, you would see those.

This process leading to this meeting is a textbook example of why a federal investigation of West Pac's activities is fully warranted.

I will submit as part of my testimony for the record a request by the Oahu Game Fish Club and Waianae Boat Fishing Club for a Federal IG investigation.

Another troubling thing was we've heard the State initially objected (bell ringing) -- I hope you don't mind if I continue on a little bit. Thank you.

The State initially objected to this emergency meeting and was told apparently by Kitty Simonds that this meeting is not an emergency meeting.

I'm submitting for the record the Council's calendar of 2005, which makes absolutely no mention of this meeting, indicating that it was indeed done on an emergency basis. We have tremendous concerns about a potential -- there are some citations in these documents -- and again, we don't even know what documents are being voted on because we haven't seen any of the corrected versions and we don't know what is actually -- what we're supposed to be commenting on.

But there are strong concerns about statements in the Hawaii FEP talking about potential expansion of boundaries of the FEP. Our understanding is the current boundaries as proposed to take up the entire U.S. EEZ, and the only way to expand that would either be to go into international waters or into State waters or into Fish and Wildlife Refuge waters, and we're deeply concerned about that, if it's going to State waters or if it's an attempt, for example, at Midway, to extend this attempt of management into the current waters of the Fish and Wildlife Refuge.

We do call for a complete redoing of this process. We want to see an actual corrected document, not something that is so riddled with errors on the science, on the policy. We want to see a fully corrected document presented to the public, for public comment, with enough time in advance to be able to read the document. Two working days is certainly not enough time to process this kind of material.

We want to see the NEPA process followed.

And we're very, very concerned about the thought that final action will be taken today.

We're also concerned -- and this is just looking through the DEIS document. Again, need more time to analyze it. But this DEIS document appears to be promoting coral harvesting in the Northwestern Hawaiian Islands. There's a list of banks in the Northwestern Hawaiian Islands for which there is a harvest quota; Brooks Bank, 180 Fathom Bank.

It appears to be promoting lobster harvesting in the Northwestern Hawaiian Islands and potentially the expansion of bottomfishing. So we're not sure how -- in the light of NOAA's recent rejection of these sorts of plans for the Proposed Sanctuary how this can continue to come out.

It seems to us that this FEP -- the plans that we've seen so far are almost a fake ecosystem plan. I can't think of a nicer word. They appear to be all of the same old single-species plans, just cobbled together, gift wrapped with a new name, and presto, that's an ecosystem plan.

We don't see any of the complexities, any of the nuances that you would need to deal with in an ecosystem. So it just seems that this whole process is just riddled with a fake public process, a fake plan -- “

Martin asked Fried to take a minute or so to wrap up her comments.

Fried continued, “The other thing -- this whole process, the public process, has been wrought with confusion. We're under the impression -- and maybe I can ask the NMFS representative or yourself to clarify this, we're under the impression that West Pac is not an agency. We're under the impression that they are a federal advisory council, but not an agency status. Is that correct?”

Robinson was recognized by the chair and responded that Fried was correct. The Magnuson-Stevens Act establishes the councils as federal entities which are advisory bodies to the Secretary of Commerce.

Fried continued, “Right. And to an agency such as the National Marine Fisheries Service? So that's why we were very confused to see this press release on Sunday, December 11th, where West Pac announces these hearings and declares, the Council is a policy-making agency for offshore waters around the U.S. Pacific Islands.

I found five other press releases where the Council had declared itself an agency, which would trigger a NEPA requirement immediately. Otherwise, if it's not an agency, this is grossly misleading to the public and it's another example of why the need for an audit and an investigation is necessary.

Some of the confusion -- one of the reasons we request -- strongly request from NMFS a postponement of the DEIS deadline of December 26th is that there's been so much confusion about. October 27th the DEIS was published. In here it states the deadline is December 19th.

Then a Federal Register Notice came out and said, oh, there's a DEIS, and the date is December 26th. Then on November 28th the emergency meeting schedule was published with a hearing. But the hearing, it was not described. You couldn't tell, was this a hearing on the FEPs or the DEIS.

Then on December 7th, only December 7th, were the FEPs posted on West Pac's website. However, there was no public notice. I mean, I just happened to stumble across these things that were posted on that day.

So there's been just a gross, total inability to have meaningful public comment on this topic. Again -- (bell ringing) -- there's a whole list of errors that we can submit separately. But this process is rushed, and it just seems that it's -- it seems to open a lot of different folks up to all sorts of liabilities if you proceed on this. I mean, I have no idea what the fiduciary responsibility of Council Members are. I have no idea. But if you vote to accept the document, I think there was something in the bottomfish section about Lake Chad being a source for deep sea bottomfish imports, and perhaps it is. But --"

Martin thanked Fried and called for any other commenters in Hawaii. Seeing none, he asked for phone comments. To keep track of the phone comments, he would call on each region and internationally to respond. He asked that if he missed a region for the commenter to speak up.

There were no phone comments American Samoa, Guam, CNMI, the State of Hawaii, the East Coast of the U.S, the West Coast of the U.S. or internationally.

Hearing no other comments, Martin returned the chair to McCoy.

V. COUNCIL DISCUSSION AND ACTION

McCoy asked the staff to put up the Council's action items for the FEP objectives.

Ebisui moved that the Council adopt the FEP Objectives, FEP boundaries, FEP Management Unit Species, structure of Council advisory bodies and regional coordination and community participation. And prior to transmitting the FEP amendments to NMFS for Secretarial review and approval, the Council staff was tasked with

- A. Working with NOAA Fisheries staff to correct any typographical errors, factual or other type of errors;
- B. Clarifying any confusing language;
- C. Providing the State of Hawaii the opportunity to review the Hawaii Archipelago FEP after clean up and work to respond to any further concerns;
- D. Responding to public comments as appropriate;

- E. Coordinating with NOAA Fisheries the implementation schedule in relation to other regulatory issues that are in progress.

Sablan seconded the motion.

McCoy asked that Ebisui reread the motion as the Council staff put it up on the board.

Martin suggested that they go through the Council Members list to make sure no one was disconnected.

McCoy called for a five minute recess to re-install the communications.

(Brief break taken from 1:47 pm to 2:00 pm.)

McCoy called the 130th Council meeting back to order. He asked Martin to restate his comment.

Polhemus suggested that the meeting pick up where it left off and that the motion be reread.

Ebisui began reading the motion again.

McCoy interrupted and explained that they had a motion, a second and that Martin had made a comment when they got interrupted.

Polhemus asked for clarification in regard to the motion. Would this constitute a final approval of the objectives, boundaries, MUS, structure of the Council advisory bodies and regional coordination and community participation? He felt that with under the terms of the motion, the document would be substantially revised and would be far from final in form what was approved at this meeting. And, would the public be allowed another chance to comment on the revised document.

McCoy responded that, as discussed earlier, the public would be asked for comment as MSA required. He asked the staff for any input.

Robinson noted that as presented under this motion there would not be another opportunity for public review as part of the Council process, although there would be substantial cleaning up and correcting of the document prior to the Council submitting it to NOAA Fisheries for Secretarial Review.

Robinson continued that at that point, NOAA Fisheries would publish a Notice of Availability and have a 60 day comment period on the amendment package and a 30 or 45 day comment period on any proposed regulations.

Since the regulations would be reorganized, the only new regulations would be related to any reorganization. There wouldn't be regulations that would have any effect on the

fisheries, but would be only redefinitions and changes that relate to reorganization of the existing regulations. There would, however, be an opportunity for public comments under the Secretarial Review process.

Polhemus asked the author of the motion for a sense of what they intended by the motion.

Ebisui explained that as the author, he felt the motion addressed many of the concerns that were brought up not only from the State of Hawaii, but also the public.

Polhemus asked if Ebisui intended this to be a final approval.

Ebisui responded that this would be a final approval for this first step. He felt the term “final action” was somewhat misleading. The FEP made no substantive changes to any of the Fishery Management Plans that were in effect. It simply took the Plans and attempted to graft it into a place-based management plan. There were no substantive changes to any of the regulations already in place and that have been in place for many years.

Polhemus reiterated that the State had no difficulty with the concept of ecosystem-based fisheries management. The State continued to be concerned about the quality of the document and as raised by various constituents during the meeting, the factual errors in terms of questions of jurisdiction of various waters and in the limited ability of the public to make comment.

Polhemus continued that the document as it stood was flawed and did not serve West Pac well. The State could not understand why it was being rushed in terms of final action considering that the Council already previously voted to defer until March 2006. If final action was taken today, there would be a very inadequate document that would not reflect well on the Council or its process.

Gaffney asked Ebisui if the motion was structured so that Council Members who had questions about parts of the document, found factual errors or various mistakes would still have the opportunity to correct all of these prior to the document being submitted to NMFS as a work product of the Council?

Ebisui explained that the thrust of the motion was to ask the Council to embrace the concept of ecosystem-based management. In response to Gaffney’s question, yes, the Council Members would have input since there is still much work to be done by Council staff in working with NOAA Fisheries staff and also giving the State the opportunity to look at the document and for Council staff to respond to questions the State may have.

McCoy added that the motion lets the Council staff work with NOAA and NMFS to clean up the document.

Gaffney reiterated that he still had a problem with the fact that the Council was being asked to vote on something that was called the final action.

The Council was being asked to accept the FEP Objectives 1 through 10 as precisely the way they were worded; to accept that the FEP boundaries were precisely as the Council Members wanted; to vote that the Management Unit Species were absolutely correct. He had a problem with doing that.

Gaffney had hoped that as part of the Council discussion process some of the answers would be provided, that the specific language of some of the objectives discussed, the list of MUS discussed and some of the issues straightened out. He felt the Council was being asked to give carte blanche to Council staff to proceed to finish a document they had pre approved. He didn't think that was an appropriate action.

Sablan called for the question.

McCoy responded to Gaffney by saying that this was the Council's process. That it was the responsibility of the Council Members and it was up to each individual to take it to heart, use the science and common sense. He asked for further comments.

Ebisui advised Gaffney that in his time on the Council, he had been on the losing end of many votes. However, the Council has reconsidered actions, again, as part of the process.

Gaffney responded that he appreciated the input from both the Chair and Ebisui. He had known Ebisui for many years and had great respect for his knowledge of the Council process and he apologized for making the process more difficult for some people. However, he felt that the FEP was so important that the Council needed to get it right.

Gaffney remarked that this was a major transition for the Council and that it had taken 20 years for the Council to make the transition. He felt that by starting the transition with a flawed document, the Council would be making a mistake and be a laughing stock in the public's eye.

No one had explained what the rush was to complete final actions in the meeting and why the staff could not go back and take some input from the State, Council Members and the general public, fix the document and vote on it at the next Council meeting in March.

Polhemus added that the State has a certain level of scientific integrity to uphold in the process. And given that serious problems have been identified with the document, even the NOAA representative has acknowledged the problems, several other Council Members have found problems, it seems a fair number of people on the Council realize that this document is not ready for final action. It is not understood why the document was being rushed to final action or any real benefits to the Council by doing such. The State would not support the motion or final action on the document.

McCoy asked for further comments.

Martin asked Gaffney if there were specific items within the document that stood out for him to give the Council a flavor of what he might be referring to.

Gaffney asked the Chair's permission to respond and thanked Martin for providing the opportunity to bring this up.

Gaffney had language changes that he would like to make to the objectives, he had a discussion point related to pelagic boundaries that he wanted considered and had seen errors in the Management Unit Species section. He had a problem with going from a Fishery Management Plan to an FEP and adopting Management Unit Species based on commercial harvest and not on the entire ecosystem. The Council was adopting a subset of an ecosystem and that didn't make sense.

Gaffney noted that as Dettling has said, there were a number of the Management Unit Species that are not mentioned in the pelagic system that are caught in the pelagic area.

With regard to the structure of the Council bodies, Gaffney had no changes except with regard to the regional and international coordination and community participation. Chapter 7 in every one of the FEPs was very nondefinitive; he questioned what was actually going to be done.

Based on the list Gaffney had provided to Simonds, some of the items were considered in the errata document, but not all of them.

Polhemus cited another example of the problems within the document. In the draft of the Hawaii FEP and the discussion of the black coral fishery, the size and height exemption language for fisherman who have previously harvested in State waters was still retained even though Council took action to remove this exemption at its 129th meeting in Guam. The FEP should reflect current West Pac management policies and indicated this document was being rushed to completion.

McCoy thanked Polhemus and Gaffney for their comments and stated there was room for a couple more before he would call for the vote.

Tulafono requested that the author of the motion include "other jurisdictions", to read "work with NOAA Fishery staff and other jurisdictions to correct any typographical or other types of errors."

McCoy clarified that he thought Tulafono meant to include other territorial departments in the link on the cleanup and the corrections to be made. McCoy assumed the Council would be the party that would represent them.

McCoy asked the Council Members how they felt about that.

Ebisui remarked that he would have no objection to the change.

Duerr stated that he still had a problem. If voted on, the document would be approved. It said that the Council agreed with whatever the staff came up with. And although they get to review it, it was still approved. This was like writing a blank check.

Duerr would withhold his vote until he could see the document and vote on what was really there.

McCoy responded that just because the motion said that they would be working with NMFS, NOAA, the State of Hawaii, American Samoa Department of Fisheries and other entities, did not mean that they would include whatever was offered. The Council's job was to look after the interests of all of the constituencies.

McCoy said that participation was being allowed to clarify any confusing language.

Duerr clarified that the Council was taking final action saying that staff would be making changes, there would be additional input, and the Council would review it. Would the Council vote on it again? What if the Council didn't like it or was not satisfied?

McCoy reiterated that this was the process he was trying to explain.

Duenas was recognized by the Chair and stated that it was disheartening to have the document discussed so many times. This was a plan and just as the Council had provided amendments to other plans, this plan would go through many changes in the future.

Duenas appreciated the fact that this plan would tie in everything; all the stakeholders would have to work on this plan. It seemed to him that the federal government was on one side, the local government on the other and people are caught in the middle. He felt that some had a different agenda and that bothered him.

Duenas said that the people who would suffer the most would be the ones that use the water. The subsistence fishermen would suffer because of other impacts that were not addressed due to the jurisdiction of the waters. This plan provided for dialogue.

While there were problems in this plan, Duenas felt the Council needed to move forward. His experience in told him that if proposals were discussed one line at a time by the Council it would take a long time; the fish would be gone and the fishermen and other users would be gone.

Duenas called for the question. He did not feel this was a blank check, since no funds were involved and there were two Council Members to every document produced. Federal and local laws were not be circumvented and all stakeholders were being involved. He felt the issue had been postponed long enough.

McCoy remarked that they would need to end the discussion and asked all to vote their conscious.

Robinson asked to speak. The Chair recognized Robinson.

Robinson pointed out that he did not have any substantive issues with the adoption of the objectives, boundaries and Management Unit Species and noted that the structure of the Council advisory bodies and regional coordination were really Council issues, not federal actions subject to NEPA.

Robinson stated that the issue was whether Council Members believed that there were substantive issues with the objectives, boundaries or Management Unit Species that needed reconsideration or whether the motions could be adopted and all the nonsubstantive issues cleaned up on a staff-to-staff basis with review by the State of Hawaii and other Council Members.

The Fishery Ecosystem Plans were not new fishery management plans. They were amendments to the current fishery management plan that simply reorganized and re-titled the exiting plans in such a way as they transitioned from the single-species to place-based plans and set the ground work for further elaboration through Council action. For example, changes in the Management Unit Species might be the next thing that the Council addressed, or changes in boundaries, or methods of incorporating ecosystem processes.

The comment was made that these were not fully mature or evolved ecosystem plans; and that was true. There were still a number of issues and concerns remaining. One concern was jurisdictional issues. It should be made clear that the language in these FEPs did not cede any federal authority to communities, to states, to indigenous groups on a basis that would violate any federal laws or policies. It should also be made clear that the Federal Government was not usurping any authorities that the territories or the states had the right to exercise.

The only issue was whether the Council was comfortable going forward with the basic substance of the FEPs (i.e. the boundaries, Management Unit Species and the objectives) and allowing the basic clarifications and error corrections to be done by staff prior to transmitting it to the National Marine Fisheries Service, or whether the Council felt it needed to actually see each and every correction.

Robinson pointed out that he could not think of a single instance when an action had been submitted by the Council to NOAA Fisheries where the Council had not been advised of a mistake or the need for clarification. In every case after the Council took final action, there was a need for some clarification.

He thought there was some confidence among the Council Members that NOAA would work with Council staff to clear up any concerns and that by working with the State of Hawaii, their concerns would be met as well.

McCoy thanked Robinson and state there was a motion, a second and had been discussion. He called for the question.

Robinson was recognized by the chair. He added that from NOAA fisheries standpoint, they would not accept the documents for Secretarial Review unless they were comfortable that their concerns were fully addressed.

He clarified that with regard to the outcome of the motion, after the various reviews a document would be provided to NOAA. If after NOAA's review it was felt the document was not of the appropriate quality, NOAA would send it back to the Council for further work.

McCoy said Robinson's concerns were noted.

Ebisui had a procedural question. To clarify, he noted that he accepted the change to include local resource management agencies, along with NOAA, to make corrections. However, he was not sure if Sablan, who seconded the motion, also accepted the changes.

Sablan said he accept the changes.

McCoy asked that the motion be reread.

Ebisui reread the amend motion: "It is moved that the Council adopt the FEP objectives, FEP boundaries, FEP Management Unit Species, structure of Council advisory bodies and regional coordination and community participation, but prior to transmitting the FEP amendments to NMFS for Secretarial Review and approval, the Council staff is tasked with working with NOAA Fisheries staff and local resource management agency staff to correct any typographical errors, factual or other types of errors, to clarify any confusing language, to provide the State of Hawaii the opportunity to review the Hawaii Archipelago FEP after cleanup and work to respond to any further concerns; respond to public comments as appropriate; to coordinate with NOAA Fisheries implementation schedule in relation to other regulatory issues that are in progress."

McCoy called for the vote. The following voted in favor of the motion: Stephen Haleck, Ray Tulafono, Manny Duenas, Adrienne Loerzel, Ben Sablan, Richard Seaman, Sean Martin, Edwin Ebisui, Frederick Duerr, and Bill Robinson and, Frank McCoy.

Myrick Gaffney and Dan Polhemus voted against the motion.

McCoy noted the motion passed with eleven yes and two nay.

McCoy moved onto the next agenda item and called on Mark Mitsuyasu.

VI UPDATE ON HAWAII BOTTOMFISH OVERFISHING

Mitsuyasu noted that a number of things had occurred since the Council received the letter from the Secretary in May regarding the status of bottomfish fishing and overfishing occurring within the fishery:

- Draft alternatives were presented to the Council at their meeting in Guam;
- The Council recommended that letters be sent to the National Marine Fisheries Service PIRO, NMFS OLE, HDAR, the State Enforcement Agency DOCARE and the U. S. Coast Guard. These agencies were provided with the draft alternatives and asked to analyze or provide a preliminary analysis on what it would take to have those alternative put in place, monitored and enforced. Those letters were sent out on November 14th;
- The staff had received some responses, were waiting on a response from the Coast Guard, had been speaking with NMFS and working HDAR. It was understood that NMFS OLE was also going to provide analysis of the alternatives;
- The staff was targeting final action on the SEIS and the amendment package at the Council meeting in March. To do this, they had to fast track the development of both and would be providing a draft to NMFS for preliminary review on the 21st of December;
- A number of scoping meetings would be held in January under NEPA;
- In November, targeted meetings were held with bottomfish fishermen and members of the bottomfish industry (e.g. those who buy and sell bottomfish); and
- Last week the staff completed a round of public meetings for the FEP. They also took the opportunity to talk about bottomfish at these meetings. The turnout at these meetings was good. The staff spoke with a total of about 130 bottomfish fishermen, a number of tackle shops and gear dealers.

Mitsuyasu continued and said that once the draft SEIS was provided to NMFS, public scoping sessions would be held in January with the State of Hawaii. The State has been assessing their existing management regime within the Hawaiian Islands and will be presenting proposed new actions. NMFS Science Center had also been asked to participate by presenting the stock assessment they have been developing for June's SAFE Report. Again, the staff was targeting management action by the Council at its March meeting.

Polhemus added that the State had been reviewing Restricted Fishing Areas (RFAs) on bottomfish which overlap, via an agreement with West Pac, state and federal waters. Over the last seven years, multi-beam sonar bathymetry has been used to measure where the bottomfish are. A revised set of preliminary RFAs has been developed and will be out for comment in early 2006.

Polhemus was not sure if the State would coordinate with West Pac on public hearings but have agreed to have a DAR representative at the West Pac meetings so there was no confusion between what was going forward at the federal level in federal waters and what was going forward with the management plan.

The State was working closely with West Pac to make sure the proposed area and seasonal closures cross both state and federal waters.

Mitsuyasu concluded his report and asked for questions.

McCoy asked if the closures around the Penguin Banks that belong to the State were being enforced.

Polhemus replied that enforcement of all of the designated restricted fishing areas has been problematic, partly because they are offshore and partly because they are strangely shaped. The current restricted areas correspond to bottomfish habitat as it was understood seven years ago.

The new management units would be squares or rectangles that run along lines of latitude and longitude. This would make it much easier for bottomfishers with a GPS to know when they were inside or outside an RFA. Many of the new RFAs have been set in proximity to obvious onshore topographic features to be somewhat closer inshore where they can be better monitored. They are hoping to increase enforceability in the new areas, but the farther offshore a closed area is the more problematic enforcement becomes, especially given the current state and federal funding levels for enforcement.

McCoy asked how reliable the data was.

Polhemus noted that while he was new to the job, looking back over what was done during the last seven years for bottomfish in State waters, people did the best they could with the information they had. Managing bottomfish is very problematic.

The original RFAs were set up based on what was known from NOAA navigational charts and by asking fishermen, who in some cases did not tell the truth. So some of the areas were imperfect as well as the monitoring of those areas. Additional technological tools like drop or robotic cameras would help monitor these areas better.

McCoy asked for questions.

Martin congratulated the State on moving forward with revising area closures. Martin had previously asked about the effectiveness of these closures that had been established five to seven years ago and it was not known. He was hopeful the new methods would provide better information.

Having no other questions, McCoy moved onto agenda item 7.

VIII. OTHER BUSINESS

McCoy asked for other business for the Council.

Duenas commended the Council staff and all others involved in the FEP process and wished everyone a Merry Christmas and a Happy New Year.

McCoy asked for any other business.

Martin moved to adjourn.

Sablan seconded the motion.

The meeting was adjourned at 2:45 p.m.