



**WESTERN  
PACIFIC  
REGIONAL  
FISHERY  
MANAGEMENT  
COUNCIL**

MINUTES OF THE 132<sup>nd</sup> COUNCIL MEETING of the  
WESTERN PACIFIC REGIONAL  
FISHERY MANAGEMENT COUNCIL

**Held by Teleconference**

**Thursday, April 20, 2006**

**Council Office Conference Room**

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 called the meeting to order. He noted that the meeting was being conducted via teleconference.

## **1. Introductions**

Participating in the meeting were:

- Ray Tulafono (Council member, American Samoa)
- Stephen Haleck (Council member, American Samoa)
- Adrienne Loerzel (Council member, Guam)
- Manny Duenas (Council member, Guam)
- Ben Sablan (Council member, Northern Mariana Islands)
- Sylvan Igisomar (designee for Ignacio Dela Cruz, Northern Mariana Islands)
- Bill Robinson (NMFS Pacific Islands Regional Office Regional Administrator)
- Fred Duerr (Council member at-large from Hawaii)
- Sean Martin (Council member from Hawaii)
- Ed Ebisui (Council member, Hawaii)
- Peter Young (Council member, Hawaii)
- Rick Gaffney (Council member at-large from Hawaii)
- Don Palawski (US Fish and Wildlife Service)

Other participants on the conference call were:

- Judith Amesbury
- Miki Leon-Guerrero
- John Calvo
- There was no one from the West Coast, East Coast or public present at the meeting.

McCoy established the following ground rules:

1. Before any speaker may speak, he must be recognized by the Chair and he must state their name and affiliation.
2. One speaker at a time. It makes it very hard for transcription if more than one person speaks.
3. Members of the public will be given time to speak during the public period only.
4. Speak clearly and loudly into the microphone for the benefit of all those listening.

## **2. APPROVAL OF THE AGENDA**

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

Hearing no discussion McCoy called for the question. The agenda was approved.

McCoy turned the chair over to Ed Ebisui to go through the agenda dealing with the Northwestern Hawaiian Islands.

Ebisui called on Makaiau of the Council staff to provide the background information on the issues.

### **3. LIMITS TO FISHING IN THE NWHI**

Makaiau referred everyone to the printout of the presentation. He noted that there were two frames per page and the title of the document was “Proposed Limits to Fishing in the Northwestern Hawaiian Islands”.

Makaiau noted that the purpose of the meeting was to discuss and take action on measures to limit fishing in the Northwestern Hawaiian Islands. A letter dated January 18<sup>th</sup> from the Under Secretary of Commerce for National Oceanic and Atmospheric Administration provided this opportunity for additional recommendations on fishing measures for the Proposed Sanctuary via a Draft Environmental Impact Statement.

NOAA provided the scenarios of fishing indefinitely, fishing until 2025 or fishing for five years and a ban thereafter. NOAA and the Sanctuary Program are looking at implementing limited entry programs and caps, total allowable take limits on fishing. This has created programs that are complicated and difficult to put together in the limited time given. Makaiau apologized for all the information sent to the members over the last few days.

Any amendments and final recommendations were to be submitted to the Under Secretary of Commerce by May 1st, 2006. NOAA has provided additional time for the Council to complete and transmit the necessary documents for Secretarial Review to NOAA for consideration as it goes through the Sanctuary Designation Draft Environmental Impact Statement and management plan.

Makaiau’s first slide showed the sequence of the presentation:

- A review of Council actions from its 131<sup>st</sup> meeting;
- A description of outstanding issues due to the actions, e.g. the limited entry program and how permits would be issued in the fairest and most equitable way;
- Council initial action on those issues; and
- Final action on the recommendations from the 131<sup>st</sup> meeting.

Ebisui asked Makaiau to refer to the number of the slide on the bottom right hand corner to help the attendees without a view of the screen.

Makaiau continued with his presentation:

- Slide 5 provided the review of the actions taken at the 131st Council meeting:
  - o The Council recommended allowing limited fishing under the Magnuson-Stevens Act except for recreational fishing at Midway, that would be managed by the U.S. Fish and Wildlife Service. The Council had several caveats on how limited fishing would be allowed under the Magnuson-Stevens Act in the proposed Sanctuaries.

- Slide 6:
  - o A, Council recommended prohibiting fishing for crustaceans, precious corals and coral reef ecosystem species.
  - o B, require Magnuson Act permits and logbooks for all fishing.
  - o C, Council would allow recreational fishing on a case-by-case basis. For the time being the Council would not establish any caps on the fishery, but would monitor and evaluate the need for further management.
  - o D, the Council recommended a reduction in the amount of bottomfish permits available to fourteen, seven for the Mau Zone, seven for the Hoomalu Zone and two Mau Zone Community Demonstration permits would be included in the seven for the Mau.
  - o The Council also recommended limiting bottomfish catch to a total of 381,500 pounds, 85 percent of what the National Marine Fisheries Service, Pacific Islands Fisheries Science Center estimated to be the Maximum Sustainable Yield for the fishery.
  
- Slide 7:
  - o F, Council recommended allowing three nonlongline commercial pelagic fishing permits in the Northwestern Hawaiian Islands.
  - o G, the nonlongline commercial pelagic catch would be capped to a total of 180,000 pounds. The 180,000 pounds also applied to the total catch, both inclusion of the nonlongline pelagic fishing and the pelagic numbers caught by the bottomfish fishery currently operating there.
  - o H, the Council would establish no-take Marine Protected Areas around French Frigate Shoals with specific coordinates. Also, the entire area west of 174 Degrees West Longitude would be closed to fishing, with the exception of Midway, which is managed by the U.S. Fish and Wildlife Service.
  - o I, the Council voted to revoke the bottomfish use-it-or-lose-it requirements.
  - o J, the Council voted and recommended that NMFS reissue bottomfish permits using the criteria previously established by the Council.
  - o K, the Council recommended that federally-permitted research be allowed in federal waters of the Proposed Sanctuary.
  - o With respect to additional actions, the Council requested that the U.S. Fish and

Wildlife Service use the National Marine Fisheries Service data reporting protocols to collect and maintain all noncommercial fishing data at Midway Atoll.

- The Council recommended that Native Hawaiian subsistence and sustenance uses be allowed and managed under the National Marine Sanctuaries Act with appropriate data collection provided to the National Marine Fisheries Service to enhance their ecosystem monitoring.
- The Council also recommended allowing harvest by permitted research, enforcement and management. For example, marine debris cleanup vessels and Sanctuary management vessels for onboard consumption (sustenance) managed under the National Marine Sanctuaries Act with appropriate data collection, again to enhance National Marine Fisheries Service ecosystem monitoring.
- Slide 10 included the outstanding issues that arose out of those recommendations, some of the questions that we need further clarification on asked by not only the National Marine Fisheries Service, themselves, but also people who attended our meeting and had questions about certain aspects.
  - The first issue for the pelagic limited entry program was the question of the criteria the Council would use to recommend issuing the limited entry permits to these nonlongline pelagic fishermen. The Council has developed three potential ways to issue the permits. And, since the size of the vessel was not specified there was a question if one vessel could take the total 180,000 pounds of catch for pelagics.
  - The second issue deals with defining the fishing years to monitor the total catch limit.
  - The third issue was of compensation for affected fishermen, would displaced fishermen be compensated. The Council has three possible processes by which fishermen might be compensated.
  - The fourth issue that was raised, particularly by the people who will be affected by Council actions, dealt with the NOAA weather buoy. The fishermen believe that the great majority of the catch comes from the weather buoy, they don't understand how their activities affect the sanctuary resources and if the Council would consider excluding the buoy from the sanctuary boundary.
  - The fifth issue is the closure of commercial fisheries. There is a strong concern by commercial fishermen that as soon as the commercial fishermen are phased out, fishing will be allowed to other non-commercial fishing sectors. Council recommended that if commercial fishing were prohibited that non-commercial fishing should be prohibited as well.
  - The sixth issue is NOAA's Ecosystem Management Plan. In the letter of January 18th, NOAA said it would develop an Ecosystem Management Plan and the caps and permit limits would apply until the plan was put in place. It is terms of the role the

Council would play in that management plan. Did the Council want to consider some sort of recommendation on how to be a part of that implementation and development?

Makaiau called on Hamilton to describe the issues further and presented the recommended processes.

Hamilton explained that with limited entry programs there are two major issues. The first is initial permitting and the second is how new people enter the fishery.

An associated issue deals with the vessel size or operational limits. It is not enough to limit the number of vessels if they can just get bigger or increase the fishing efficiency.

In this case, the pelagic resources are not really limited. The concern was that the total allowable catch was being shared between the pelagic longline fish vessels and the bottomfish vessels, which are limited to no more than 50 feet in size. This would create unfair competition between the two groups if there was not some kind of size limit for the pelagic vessels.

Slide 13 detailed a couple of ways to do the initial permits:

- The first is first-come-first-serve. A notice is issued and the first to apply would get the permits. This provides an opportunity to a wide group of people; the successful applicants are the ones who heard about it first.
- A second potential system to use an auction. It can be open to everybody or a limited group. The permits would be priced at what the market would bear. The only real plus of this system is the return to the public in exchange for those permits.
- A third is a lottery among interested applicants. Some folks see this as a very objective way to give out permits.
- The fourth is based on historical participation, commonly used in Hawaii. This narrows the field of applicants to those who show some historical participation. It's often used to reward and sustain ongoing operations and traditional activities to folks who are currently participating or have participated in the past are only competing amongst each other for these permits.

Slide 14 dealt with new entrants: how to give out the initial permits and once those initial permit holders decide to leave, how to transfer the permits to new folks. Two basic approaches were detailed:

- The first was transferable permits. The initial permit holder can transfer it to any other person at any other time, although limits could be put on this. In some ways this is seen as a windfall. The folks who got those initial permits are now able to sell them and make money off of them. It provides some profit. It provides a lot of flexibility, and that could be a good thing. And, the transfers are done without government control.

- The second is the use-or-lose requirement with no windfall. The permits are good only as long as they are being used, then relinquished back to the government. The government reissues it to the next applicant, according to the system designed.

A major difference between these two approaches that has been a concern to the Council is that the use-or-lose permits that have been relinquished back to NMFS have not been reissued. NMFS retains the prerogative to do so at their discretion, and they haven't chosen to reissue any of the Northwestern Hawaiian Islands bottomfish permits.

Slide 15 showed some of the alternatives:

- The first one relies on transferable permits. The second is use-or-lose. All three allocate the initial permits based on historical participation in the Northwestern Hawaiian Islands.
- New entrants, under Alternative 1, would purchase the initial permit and it would be transferrable.
- Alternatives 2 and 3, rely again on historical participation. Applicants get points for landings in the Main Hawaiian Islands. There are not enough people with Northwestern Hawaiian Islands history. So to let in new entrants, some would need to come from the Main Hawaiian Islands.
- The last one uses minimum annual landings for permit renewal, not applicable to Alternative 1 and it is transferrable. Minimal landings are designed to make sure the permit revokes back to NMFS if they are not made.
- Alternative 2 has very low minimum landings, just one pound per year, essentially, one trip.
- Alternative 3 requires at least three trips and each trip lands at least 500 pounds of Northwestern Hawaiian Islands BMUS.

Slide 16 showed that all the alternatives shared the same allocation system for the initial permits based on historical participation in the Northwestern Hawaiian Islands.

- The point system would provide higher points for more recent fishing; they do get points for fishing further back in time. This was to balance the person who is making their current livelihood from the fishery and providing consideration for displacement, but also giving potential success to folks who have been in the fishery for a long time, not fished in the last two or three years.
- Lotteries are used as a tie-breaker, existing appeal process applies and permit holders may register their vessels to permits via simple notification to NMFS.

- Under the alternatives the permitholders do not have to own the boats as they do right now in the Northwestern bottomfish fishery. The idea was to provide a lot of flexibility to permitholders.

Slide 17 showed the information available on the number of vessels that have been active in the Northwesterns from 1996 to 2003.

- It is not known if these are unique vessels, that data request has been made. However, under the current Council recommendations, the top three point-holders would be allocated those initial permits.
- For minimum landings under Alternative 2, to renew a permit each year to avoid it being revoked to NMFS you would need to land one pound of the Northwesterns pelagic species each year by a vessel registered to the permit.
- Alternative 3 requires a higher level of activity: at least three trips, each trip landing at least 500 pounds.

Slide 19 showed the alternative for new entry:

- Under Alternative 1, the permits are transferable. If an initial permitholder wants to leave the fishery, they can transfer their permits to any other individual at any time by sale, barter, trade or gift. Permit transfers must be reported to NMFS.

Some programs limit this group. For American Samoa limited entry, permit transfers were restricted to people who had historical participation in the fishery. That could mean just taking one trip on a boat as a crew member. Other programs in other regions, permits could be transferred only to folks with at least six months of fishing history in the United States. So there is a potential to limit who those permits can be transferred to.

- Under Alternatives 2 and 3, entrants would receive points for fishing in the Main Hawaiian Islands and/or the Northwestern Hawaiian Islands. The points could be combined, however you can only get one set of points for each year. To get a point for that year you have to have landed at least 15,000 pounds of pelagic species.
- Why 15,000 pounds? If it is set at one pound, there would be thousands of people eligible from the Main Hawaiian Islands. Many of them are going to have the same number of points because they all landed at least one pound. A lottery used as a tie breaker, existing pelagic appeal process applies. Folks would not have to own their vessels.

Slide 22 showed results of a survey done with **Steve Huffman (phonetic)** in 1996 to arrive at the 15,000 pound limit. Operators of all kinds of vessels were interviewed. Full-time pelagic vessels reported catching between 17,000 and 30,000 pounds per year. Part-time pelagic vessels did not, in general, achieve the 15,000 pounds per year. Finally, Hawaiian Island handliners, usually ika shibi, palu ahi boat, would certainly have some years with 15,000 pounds of landed

pelagic species, which would qualify them for some points in this process.

Hamilton called on Makaiau to go present the issue of defining the fishing year.

Ebisui proposed that since there were a lot of issues, that after Makaiau finished his portion of the presentation each action item be taken one by one, with a motion, discussion, public comment and vote. He asked that those with comments hold then until that particular subject matter came up.

Makaiau noted that the Council will need specify some point in time of which it will begin tallying the proposed catch limits. It is possible to have different fishing years to start tallying the bottomfish catch and a different year to start tallying the pelagic catch. The Council may want to consider various start and end dates for both of the limited entry and limited catch fisheries.

The proposals included:

- A recommendation to begin the fishing year on October 1 and end it on September 30th of the following year. That means on October 1 would be the point in time to start counting against the proposed total catch of 381,000 pounds. The pro for this time period is the availability of bottomfish for the winter holiday season. The con against this time period is that you might run out before the end of summertime. There are some events and some things that you might want to save the quota for, or the catch limit to.
- Or, to start the fishing year on April 1st and end it on March 31st the following year. During this period you would have bottomfish available for the summertime, with the potential of hitting the catch limit during the winter holiday season.
- Or, use the calendar year, January 1 through December 31st of each year. There would likely be bottomfish for the beginning half through summer, but there would be an increased potential to run out before the winter holiday season.

The slide on page 26 showed the catch by month by zones, for the total Northwestern Hawaiian Islands and a total percentage. For the Mau Zone, there was not a big difference between months, however, between the fifth, sixth, seventh, eighth month, the catches were double-digit percentages. The trend appears to be that summertime is when the Mau Zone catches most of its fish relative to other fishing months.

The Hoomalu Zone showed a distribution of catch landings fairly equal throughout the year. However, the Hoomalu Zone on average catches twice as much fish than the Mau Zone. The two zones combined were fairly flat and static with six and seven percent in January and September, respectively, and the balance of the months running about eight to ten percent.

Under the scenarios in Admiral Lautenbacher's January 18<sup>th</sup> letter, one or more fisheries would close and there would be limits on bottomfish and pelagics also. Some of these actions will displace or negatively impact fishermen, did the Council want to consider compensating those

fishermen.

Permit buy-backs have occurred. However in our limited entry fisheries, permit buy-backs are not possible because permits were free to begin with. The permit could be bought back and NMFS could possibly issue the permit to someone else.

Two additional types of compensation were presented for the Council to consider: compensation to the vessels, and compensation to fishermen for lost income.

- The Council could consider asking or requesting NMFS buy the vessel from a willing vessel owner.
- The second alternative would be for NMFS to provide compensation to all of the affected fishermen for the stream of expected income that they would have received if they were allowed to fish. For example if the fishery is closed for five years, the fishermen are compensated for the amount of time that they could possibly have fished.
- The third alternative would be for the Council to request NMFS to buy the vessels and provide compensation for the lost income.

Makaiau showed information on the average cost of vessels. This was done by Hamilton over a decade ago. In 1994, the average length of a Mau Zone vessel was 44-foot, and the average price they spent in purchasing that vessel was \$140,000. For the Hoomalu Zone, the average vessel length was 53 feet and the average price was \$233,300. These prices have changed were not known for the current time frame.

Makaiau showed the ex-vessel revenues by year from '99 to 2003 for the Northwestern Hawaiian Islands, which ranged from a total ex-vessel value of \$68,000 to a high of \$90,000 This was based on information provided by the Council in the 2003 bottomfish annual report.

The fourth issue was the catch at the weather buoy probably constitutes the majority of the Northwestern Hawaiian Islands nonlongline pelagic landings attributed to the bottomfish fishery. The Council staff believes there is relatively little impact on the ecological parameters that NOAA has identified in their 2004 document. Therefore, the Council might want to recommend that this weather buoy be excluded from the Proposed Sanctuary.

It is not known what the impact of removing or including it will have on the total allowable catch. If the weather buoy is not part of it, how does it affect the total landings and what landings are attributed to this weather buoy?

The map on page 34 showed the approximate location of the NOAA weather buoy relative to the boundary of the Coral Reef Ecosystem Reserve, approximate 30 miles north of Nihoa and 20 miles away from the outer boundary of the Reserve.

Ebisui asked the Council members for questions.

Robinson asked Hamilton what she meant by “simple notification: and “reported to” with respect to limited entry permits and notification of NOAA Fisheries.

Hamilton explained that simple notification would not be a time-consuming process. The vessel owners or fishermen have expressed interest in being able to switch their permit between vessels. So this would just be a simple process that would be able to be carried out relatively expeditiously.

Notification of the transfers would be as described in the current regulations.

The vessel registration is the one that would be streamlined to the maximum extent possible.

Robinson said he agreed with making it very quick and easy, but suggested that permits be surrendered and reissued with the new vessel name and the new owner on a new permit.

Hamilton noted that the point was to do it expeditiously and that the vessel and new owner would require some sort of receipt if enforcement pulled them over.

Young had a question on procedure, since they were discussing the refinement of an issue, were they going to vote on the discussion or final action.

Ebisui responded that there were some items which were initial actions and some items discussed in the 131<sup>st</sup> meeting that would be final action. He said he would be careful to distinguish each in the motions.

Tulafono asked if there was a difference in the compensation alternatives presented in slide 30, especially in the combination of 1 and 2.

Makaiau said that alternative 1 would be to compensate willing fishermen for the value of their vessel. Alternative 2 would be to compensate fishermen for the lost income and the third alternative is to compensate fishermen for both their vessel and lost income.

Ebisui asked if Guam and CNMI had any questions. Duenas and Sablan said there were no questions.

Ebisui hearing no questions, commenced with the first action item.

Makaiau explained that slide 36 was an initial action on entry criteria for pelagic limited entry permits and whether or not to limit the size of vessel for this fishery. The Council will have to make an initial action at this meeting if it chooses to, and take a subsequent final action to implement.

### **3.A TRANSFERABLE PERMITS**

Ebisui read the motion:

“Regarding pelagic limited entry program, the Council recommends as its preliminary preferred alternative, Alternative 1, which are transferable permits as described by Council staff in the April 18th, 2006 memorandum with the following modifications, vessels in the Northwestern Hawaiian Islands nonlongline pelagic limited entry program may be limited to 60 feet in length overall.

The Council directs staff to further analyze this recommendation with emphasis on the potential impacts of a range of vessel size limits for consideration by the Council at their next meeting.”

Martin seconded the motion.

Ebisui called for discussion.

Simonds asked the size of the pelagic vessels whose catches are used.

Makaiau responded that staff had not looked into the issue.

Dettling offered that the biggest was seventy and the next largest was 48.

Robinson asked that if the Council identifies Alternative 1 as a preliminary preferred alternative, would the other two alternatives still be analyzed in the supporting documents.

Simonds said yes.

Robinson clarified that the other two alternatives would still be available to the Council at the point of the final decision.

Simonds again responded yes.

Martin was concerned about equity in the action and really thinking through the impact of any decision. If pelagic permittees were required to have the same vessel size limit as the bottomfishers, one or more of the bigger producers would be excluded. And if done the other way that person who has the larger pelagic vessel maybe has more ability than the bottomfish guys. He was inclined to move forward but said that careful analysis and consideration was needed for the folks in both fisheries.

Ebisui asked for comments from American Samoa, Guam and CNMI and received none. He called for public comments.

### **3.A.2 Public Comments**

Joseph Dettling, verbatim:

“My name is Joseph Dettling. I'm the owner of the Fishing Vessel DOUBLE D, which by the way, is a 70-foot fishing vessel.

In terms of restrictions on pelagics, I basically thought that we were going from President Clinton's Executive Order where he was using the year 1999 when he signed this order as a baseline, as a limit on the quota of your catch for future years. Since '99, when I've gone up there and fished, I tried to kind of follow the spirit of President Clinton's order.

I've done a polling for you people. It was nice that you put the slide up showing catch data there, because I want to illustrate something to you.

For instance, in the run that I refer to of May and June of 2002, I brought in my -- for every trip I take I write an envelope, and it's listed, has all the data on the trip in it.

In this two days of fishing, I checked my OFFA (phonetic) computer report. In two days of fishing, that accounts for 23,288 pounds.

Now, for the entire year, according to the records we get from Aquatics, because we report on their system, that go to National Marine Fisheries Service and then come over to the Council, we show -- for all vessels fishing there for the entire year in this zone, we show a total catch of maybe 34,000 pounds.

Now, I did a polling of the six other boats that fished there with me in this run, and some of them -- I was in drydock for the first three weeks. A couple of things about this.

Some of them had catches of over 80,000 pounds in that run.

None of this information apparently, after my spending some time down at the Aquatics and going through the records, none of this information has come through the Council. So when we look at, for instance, that one instance where I have personal knowledge and I was there and I fished it and I fished it next to the other boats and I saw them, I realized by going back to the printout, which I got from Aquatics, that starts for me in '93 through to the current month in 2006, we have statisticians -- Wendy is great. I'm not going to single out any person. I don't think anybody made a mistake there.

I think the only mistake that was made is that we told Aquatics in 1990 that the offshore handline ika shibi weather buoy, Northwest Hawaiian Island troll fishery needed a better system of reporting our catch, we needed a verifiable landing system.

My request at the time, since we really weren't in state jurisdiction, was to just take our fishery out of the state fish catch reporting system.

Now you go back to 2002, we have a major three-month bigeye run on Weather Buoy 1, which is all fish over 100 pounds and maybe half a million pounds caught.

When we look at the data that comes through the state among six vessels, we don't see any of it.

Now, we go back to '99, which for me would be Clinton's year, and I actually was under the misimpression in 2001 and 2002 that if I followed the spirit of this order, I should limit my catch to my '99 catches. So my fish catch report for the Northwestern Hawaiian Islands in '99 is

documented by the old State form, not the new one, and then a complete computer listing and a summary of the trip and the fish catch envelopes.

So I think you guys are doing the right thing. I don't object to what's happening here. I think it's the right thing. I'm all for conserving the resource.

But I want everybody to realize the basis that is presented to this Council as the decision that we're going to make this on is we're taking a multi -- a fishery that in a matter of weeks produces a quarter of a million or a half a million pounds of fish sporadically, no area, in pelagics. Fish move. Sometimes it's three. Sometimes it's across seamounts. Sometimes it's four. Sometimes it's two. Sometimes it's one.

A few years ago it was PFADs out of the Hilo.

But you've got to look historically at a fishery that wasn't a longline fishery, and our offshore handline pelagic troll fishery, since 1990 has never had a single turtle take, has never had one single bird interaction.

In fact, we don't catch spearfish. We don't catch marlin. We don't affect the sport fishers, even. We probably have the cleanest fishery on the Planet Earth in terms of environmental or sport fishing interaction.

There's not a lot of guys in it. It's not like the demise ika shibi fishery around the Big Island.

But I just want you guys to know that you're making your decision based on a horrible database. It could be out 80 or 90 percent.

The only answer I've come up to, and I've scratched my head a lot, is that we have statisticians taking care of our data, but we've had -- so we've had people trying to micromanage the information and they've lost the big picture completely.

So that's my comment on this. I'm glad 60 feet is just a beginning here, because it would kill me to lose the opportunity to make my troll trips up there, go to Weather Buoy 1, because I have a 70-foot vessel.

I've been up there in February trolling to Midway and back when it's blowing 70 knots. Most of the smaller boats wouldn't even make that trip.

I mean, I would like to continue in the fishery. We've got to consider the whole thing that started the sanctuary was an order signed by President Clinton, and I do believe in that order. He was saying, look at historical records.

I mean in my mind, I'm already looking at your point system and saying, okay, I'm going to have eight points.

Guys are going to have a lot of points. Bruce Fukuda is out fishing right now. Mike Abe is back out fishing. Both of these guys in these affected times have landed hundreds of thousands of

pounds.

Of course, we don't go there when it's not biting. We go there when it is biting, when it's a major run. So in terms of how the Council should treat this, I have comments on other things, but that's pretty much my take on this deal here.

The bottom line is, you're trying to restrict a fishery that doesn't have any environmental impact at all to the Sanctuary. So in essence, you are taking the concept, an idea, sanctuary, and you're trying to use that as a basis for causing economic harm.

Now, we do have the 1964 Civil Rights Act. A Governor, George Wallace, said, look, the University of Alabama is a sanctuary for white people. Okay. I don't want that black girl to go to college here. So they passed the Civil Rights Act.

But you know, I love the idea of the sanctuary. In fact, I wish they sanctuary would hire me to go up there and remove the debris that is really the problem while I'm pelagic trolling.

But in the overall picture, you see funding for the sanctuary now. It's a key word. It's a big thing. But staff changes. I'm looking at different people than I talked to 25 years ago. A few are the same, but a lot of you guys are different.

Funding at the federal level changes. Who knows 25 years from now what is going to be available for the sanctuary. But I do know this, that the Governor of the State of Hawaii and the National Marine Fisheries Service should realize that a steady, sustainable fishery that has no environmental action or consequences at all that needs the people of the State of Hawaii a reasonable product at a reasonable price just shouldn't be beat up for no reason at all.

We actually, the group of guys fishing this, are basically Big Island guys. We felt the horror of the demise of our yellowfin fishery, and that's why we moved offshore.

That's a whole other issue I'd like to talk about, because there is some good news there, but this isn't the appropriate time to make comments about it. But I'm just asking you all to be very, very careful in the decisions you make and make sure you've got about six boats, the records that say it's two are in error.

If we exempt Weather Buoy 1 and we issue three permits based on points, you've probably done your job 90 percent okay. Because a lot of people only fish Weather Buoy 1. They don't go further.

Thank you.”

Martin asked Dettling the geographic range of his operation around Weather Buoy 1.

Dettling responded that it was 34 miles in a normal current at it sits now touching the land on Nihoa. He fished within a radius of four or five miles.

Ebisui asked Robinson to address Dettling's comment on the apparent disconnection between Dettling's fish catch reports and what is reflected in the federal data and the sideboards.

Robinson said that whether it was done by his staff or the Council staff, the data that was used was the data that was available.

Ebisui clarified that this was the State catch records.

Robinson said yes.

Dettling reiterated that his catch reports did not correspond with the computer printout he got from the State.

Simonds asked that Dettling share his data so the Council staff could continue to do the research and identify the glitches.

Ebisui asked for and received no questions from American Samoa or CNMI.

Duenas remarked that he was not aware of any problems with pelagics except for the bigeye. He was not sure why there was a cap limit on pelagics. He asked Dettling to detail what species were being harvested around the FADs in the area.

Dettling responded that he also did not know why there was a cap limit either. The catch at Weather Buoy 1 is predominantly yellowfin and bigeye tuna. His catch records showed a mix of about 50/50 with fish in the 50 to the 150-pound range. There is a minor catch in ono and mahimahi. It was unfortunate for the data to be lost, particularly in the run of 2001. There was an enormous run of 100 to 200-pound bigeye up there for two months with probably 600,000 pounds harvested in that two-month period.

Simonds noted that the recommendation needed to be altered based on Robinson's comment about the need for analysis on all of the alternatives.

Ebisui asked for public comments from any other areas.

Sablan said there were no public comments from CNMI.

McCoy noted there were no public comments from American Samoa.

### **3.A.3 COUNCIL DISCUSSION AND ACTION**

Ebisui read the motion:

“Regarding the pelagic limited entry program, the Council recommends as its preliminary preferred alternative, Alternative 1, transferable permits as described by Council staff in the April 18th, 2006 memorandum with the following modification, vessels in the Northwestern Hawaiian Islands nonlongline pelagic limited entry program may be limited to 60 feet in length

overall. The Council also directs staff to provide further analysis of this recommendation with an emphasis on the potential impacts of a range of vessel size limits for consideration by the Council at their next meeting.

The Council further directs staff to include an analysis of the other two originally proposed alternatives and an analysis of an appropriate vessel length.”

Martin, second.

Ebisui asked for discussion.

Since he did not hear a strong argument for the 60 foot measure, Robinson suggested that the motion be amended to say, “vessels in the Northwestern Hawaiian Islands nonlongline pelagic limited entry program may be limited in length overall, period.” Just take out the, “to 60 feet.”

Then where it said, “staff provide further analysis with an emphasis on potential impacts or range of vessel size limits”, add “from 60 feet to X”, they should pick a number.

Simonds noted that they weren’t going limits.

Martin remarked that Robinson was trying to simplify things by analyzing a size limit.

Robinson agreed and said it could be 60 to 90 feet.

Martin said that he believed the 60 foot limit was the limit from the bottomfish fishery and because the pelagic boats would be catching fish that would count towards the pelagic limit as well as the bottomfish boats.

Martin agreed to the amendment.

Ebisui noted there was one more request for public comment and called on Marti Townsend. He asked if the comment was on transferability and possible limitation.

Townsend said it was on the general proposal. He continued, verbatim:

“My name is Marti Townsend. I'm testifying on behalf of the Northwestern Hawaiian Islands hui, which is composed of KAHEA, ILIO (phonetic) Environmental Defense and Sierra Club.

We're testifying in opposition to West Pac's proposed fishing regulations for the Northwestern Hawaiian Islands. I have five quick points.

First, it's five years into the process and West Pac is continuing to propose violations of the Northwestern Hawaiian Islands Executive Orders. The proposal -- well, the Executive Orders only allow 11 permits, and currently there are only eight fishers who are in the Northwestern Hawaiian Islands. The EO does not allow for extending stale permits to new fishers.

We also feel that fishing is inappropriate for the Northwestern Hawaiian Islands. We echo the testimony presented by OHA at the March meeting of West Pac where they strongly disagree with the misappropriation of the Hawaiian culture to justify commercial fishing.

We also point to since 1999, Hawaiians chose not to use the cultural access fishing permits in an effort to protect endangered Hawaiian monk seals.

We also point to the letters sent to Governor Lingle from Zenen Ozoa, who is a bottomfisher in the Northwestern Hawaiian Islands, who points out the low profitability, uncertainty and zero growth potential and jurisdictional land mines that provide a perfect recipe for business failure for fishing in the Northwestern Hawaiian Islands.

Second, West Pac proposes violating the Executive Orders by increasing bottomfish catch 180,000 pounds of pelagic catch is double the ten-year average of this fishery. So West Pac is proposing to vastly increase fishing in the Northwestern Hawaiian Islands, which is not acceptable.

Third, currently there are no permits for pelagic fishing in the Northwestern Hawaiian Islands. The Executive Orders allow bottomfishers to also do pelagic fishing while in transit. West Pac is proposing new separate pelagic fisheries in the Northwestern Hawaiian Islands. This is a violation of the current law.

Fourth, the Executive Orders only allow recreational fishing for grandfathered-in fishers, capped at rates of catch during the year prior to Executive Orders, 1999. West Pac proposes violating this by getting rid of the recreational fishing caps.

Finally, because West Pac continues to process regulations that violate the law we ask that NOAA continue to reject this proposal and is incompatible with the Sanctuary. Thank you.”

Ebisui turned the meeting over to Chairman McCoy.

McCoy called for a voice vote.

Ayes: Duerr, Gaffney, Martin, Ebisui, Haleck, Tulafono, Duenas, Leon-Guerrero, Igisomar for Dela Cruz, Sablan, Robinson, McCoy.

Nays: Young

McCoy returned the chair to Ebisui.

### **3.B.1 FISHING YEAR FOR MONITORING CATCHES**

Ebisui read and moved, “the Council recommends as its preliminary preferred alternative that the fishing year for monitoring the catch limits for commercial harvest of bottomfish species in the proposed Northwestern Hawaiian Islands Sanctuary begin on October 1st and end on September 30th of the following year.

The Council also directs staff to provide further analyses of this alternative, as well as an analysis of the potential impacts of using a range of fishing years for monitoring catch limits for non-longline commercial harvest of pelagic species in the proposed Northwestern Hawaiian Islands Sanctuary for consideration by the Council at their next meeting.”

Martin, second.

Ebisui called for and received no discussion from Hawaii, American Samoa, or CNMI.

### **3.B.2 Public Comment**

Ebisui called for and received no public comments from Hawaii, American Samoa, Guam, CNMI or any of the other venues. He returned the chair to McCoy.

### **3.B.3 Council Discussion and Action**

McCoy called for a voice vote.

Ayes: Duerr, Ebisui, Gaffney, Martin, Polhemus, Young, Haleck, Tulafono, Duenas, Leon-Guerrero, Igiosomar, Sablan, and McCoy

Nays: Robinson.

McCoy returned the chair to Ebisui who noted the vote was 12 for and one against.

### **3.C.1 COMPENSATION FOR AFFECTED INDIVIDUALS**

Ebisui read and moved, “the Council recommends as its preliminary preferred alternative that individuals who have been or will be affected by the implementation of the Northwestern Hawaiian Islands Sanctuary be compensated through government and/or private sources. The Council directs staff to provide further analyses of this recommendation, including available information on the differences in investments and revenues by zones for consideration by the Council at their next meeting.”

Martin, second.

Ebisui called for discussion.

Young asked if the compensation was for bottomfish fishers or all fishers.

Ebisui said it was all, whoever may be displaced.

Ebisui asked for further comments from Hawaii, American Samoa, Guam and CNMI and received none. He asked for public comments and called on Linda Paul.

### **3.C.2 Public Comments**

Paul, verbatim:

“Hi, Linda Paul. Hawaii Audubon.

Maybe it's just the lawyer in me. But what do you mean by, will be affected or have been affected? What's the meaning of the word "affected"? Is it financial? Is it they're upset about something? What do you mean by –“

Ebisui noted that compensation is for financial losses.

Paul asked if there was a range, was it the differences in what they made from previous years in that fishery in that area?

Ebisui said that it was just a statement of what the Council recommendation was, that if people are displaced, then they ought to be compensated. He was aware of several groups who have stepped forward and offered money for this.

Paul said that for example the lobster fishery was closed in 2002, were the fishermen affected?

Ebisui said in his opinion they were not. The fishery was closed well before the Sanctuary Process.

### **3.C.3 COUNCIL DISCUSSION AND ACTION**

Young suggested that the motion be amended to state that.

Ebisui said no, he thought it was a recommendation that needed to be fleshed out.

Martin disagreed. He felt there was a lobster fishery today with harvest guideline of zero. It's closed under court order, which would be lifted if there was a harvest guideline and the proper analysis was done. So it is an existing fishery and they are being affected by Council action. The document says that crustacean and precious coral fisheries will be closed indefinitely.

Young asked why it was closed.

Martin responded that it was closed because there is a zero harvest guideline from National Marine Fisheries Service.

Young asked why the zero harvest was instituted.

Pooley responded that it was because the stock assessment conducted at that time came up with inconsistent results between different indices of the status of the stock. The decision at the time was to set a zero biomass, therefore, zero harvest guideline, until that stock assessment was completed, and that remains the situation.

Young remarked that he had heard that there it was being overfished.

Pooley responded that there were many people who have asserted that it was overfished. There has never been a stock assessment that indicates that.

Pooley said that NOAA aggressively defended itself in a lawsuit having to do with the Northwestern Hawaiian Islands bottomfish and lobster fisheries on that point. That was before his tenure as director of the lab, but he was involved with the economic analysis.

Pooley noted that the stock assessment was worked on last year, underwent peer review and is undergoing revision. He has not seen it and will not see it until the process is complete.

Young stated that the context he had heard was that the lobster fishery was overfished and that was why it was closed. It would seem a real stretch to compensate for a permit based on a situation that was overfished by the permittees.

Simonds explained that the Court did not close the fishery. It told the National Marine Fisheries Service that if there was going to be fishing again the Service had to do an EIS and a biological opinion. So the National Marine Fisheries Service and the Council decided at the advice of the SSC to close the fishery and do the research. Research has been going on for the last five or six years.

Martin noted that it was implied that industry advanced some kind of activity that resulted in overfishing. The fishery was managed by quota or at 13 percent of the exploitable population, which was deemed to be conservative at that time.

The last year that there was a quota, it was quite low, 180,000 pieces. Those are numbers were set using the modeling from the Science Center and set by National Marine Fisheries Service. The fishery was operating under a valid Fishery Management Plan. However, the scientific folks had questions about the confidence, which resulted in the ending of the fishery.

There are arguments to be made that there could be a slipper fishery up there today, but the fishery is not managed as a spiny slipper fishery, it is managed as a fishery as a whole.

Young said he was very supportive of the idea for compensation for bottomfish permittees, but had a serious concern of going beyond that. He also asked the staff to do its evaluation on revenues and net operating income. If the motion remained as is, he would vote against it; if limited to the bottomfish permittees, he would vote for it.

Gaffney reminded the Council that affected fishermen would include charter sport fishermen. The Proposed Sanctuary plan could displace some charter operators that have operated up there in the past.

Ebisui turned the chair back to McCoy for the vote.

McCoy called for the vote:

Ayes: Duerr, Ebisui, Gaffney, Martin, Haleck, Tulafono, Duenas, Loerzel, Igisomar, Sablan, McCoy.

Abstain: Young, Robinson

McCoy returned the chair to Ebisui.

Ebisui noted there were two abstentions and eleven yes.

### **3.D.1 ANALYSIS ON THE IMPACT OF WEATHER BUOY FISHING**

Ebisui read and moved:

“Council directs staff to provide further analyses, including information on the impact of weather buoy fishing on Sanctuary resources and the impacts on the pelagic catch limit.”

Martin, second.

Gaffney noted that Dettling had suggested that the moving of the NOAA weather buoy outside the Sanctuary boundary be looked at. He did not know the feasibility but asked that staff look into the possibility as part of their analysis.

Martin commented that it was a valid consideration to analyze the effects on the weather buoy fishery. The public testimony indicated there was more to be considered.

Duerr suggested that if it was possible, they find out whether or not the buoy could be moved before voting.

Simonds remarked that it would be included in the analysis.

Ebisui called on American Samoa for comments, there were none.

Duenas noted that the numbers of the catch at the buoy were linked with the catch within the Sanctuary. He still did not understand the logic of the catch limits. Being selective about the harvest would cause high grading throughout the whole system.

Duenas explained that reef fish are often found inside pelagic fish. If the Sanctuary is created for pelagics, how would that affect the ecosystem. There is no science to give a final answer.

Sablan echoed the same concern.

### **3.D.2 PUBLIC COMMENTS**

Ebisui called for public comment. He called on Linda Paul.

Paul, verbatim:

“I would like to, first of all, second that suggestion that we look into either moving Weather Buoy 1 or asking the Weather Service if when they replace Weather Buoy 1, if they can replace it outside of the Sanctuary, probably 60 miles makes a good figure, because it does have a radius around it that people fish in.

But the other question I had actually has to do more with what Manny just said. The impact of weather buoy fishing on Sanctuary resources. If half the catch is bigeye, the issue is not its impact on Sanctuary resources. The issue is its impact on bigeye resources in the management area that encompasses the entire Pacific. So it's a very odd resolution, I think.

The way this is worded, this is off the mark. Thank you.”

Polhemus, verbatim:

“Dan Polhemus, Kailua, Hawaii, commenting as a private citizen.

I was trying to comment on Issue 3, which sort of shot past when they took a vote. But if we can go back to it for a moment, I'd like to remind the Council what they just voted for. So can we roll back to 3 and have a look at how it's worded.”

“Essentially, you're proposing to compensate all of Hawaii, or potentially the planet. It doesn't even say whether they're negatively affected. It doesn't point out whether they're fishermen or not. So essentially, you set up a sanctuary, lots of people are affected in lots of ways. The way this is written, you're essentially saying, well, you might be willing to compensate all of them. So I really think you might want to revisit that and tighten up your wording on that, because otherwise you just voted for something very strange.”

Ebisui noted that the Council was not compensating anyone.

Polhemus countered that the proposal was to have staff investigate this.

### **3.D.3 COUNCIL DISCUSSION AND ACTION**

Ebisui said all right. He asked if American Samoa, Guam, CNMI or other areas had comments. There were none. He turned the meeting back over to McCoy.

McCoy conducted another voice vote:

Ayes: Duerr, Ebisui, Gaffney, Martin, Young, Haleck, Tulafono, Duenas, Loerzel, Igisomar, Sablan, Robinson and McCoy.

McCoy returned the chair to Ebisui.

Ebisui noted that there were thirteen ayes and zero nays, unanimous.

### **3.E.1 ALLOWING NATIVE HAWAIIAN TRADITIONAL PRACTICES**

Ebisui read and moved:

“Regarding continued harvest of Northwestern Hawaiian Islands resources following closure of commercial fisheries, the Council recommends that no fishing be allowed except for Native Hawaiian traditional practices in the proposed Northwestern Hawaiian Islands Sanctuary following closing of associated commercial fisheries.

Martin second.

Young clarified that if someone has a permit to go up in the area, they're not allowed to catch a fish and eat it?

Martin replied, except for Native Hawaiians.

Young inquired, so if you're a Native Hawaiian, you can catch it and eat it. But if you're researcher and you go up in the Northwestern Hawaiian Islands, this proposal says that if the commercial fisheries are closed, then anybody else who is up there can't catch a fish and have it for dinner tonight?

Ebisui replied yes.

There were no questions or comments from American Samoa, Council member Tulafono.

Duenas from Guam commented, as a native Chamorro of this island, I look at assisting my people in reaping the economic benefits of anything that is surrounding us. Though he respected the Native Hawaiians for wanting to continue their traditional practices, he preferred the Council's original action on the whole fishery in the whole area regarding allowing for commercial fishing by the Native Hawaiians so that they can progress economically.

Ebisui clarified that what this motion speaks to is if NOAA decides there will be no fishing after X years, it was this Council's recommendation that it should be across the board and disallow all other types of fishing, except for what is specified in the Executive Order, that being the Native Hawaiian fishing rights.

Sablan said there was no comment by Northern Marianas.

### **3.E.2 PUBLIC COMMENT**

Public comment by Pooley, “quite often, fishing by NOAA for research purposes is not considered fishing. But for other entities, such as State of Hawaii, University of Hawaii, it probably would be considered fishing even though it's governed -- all of those activities are now governed by a variety of permits. I'm wondering whether this was targeting the issue of fishing or the issue of eating? That's a question, and you can do with as you – “

Ebisui replied, leave the question hanging, it was his opinion it was both.

### **3.E.3 COUNCIL DISCUSSION AND ACTION**

Dettling questioned, only because we've made the trip from Midway Island to Nihoa, and done a real benchmark project in yellowfin tagging up there that is probably going to change -- John Sibert is just producing a paper on subpopulations of yellowfin and Dave Itano has a project that he is asking to have funded. They had yellowfin from here all of way up to Midway and back, would this affect tag-and-release research on yellowfin? He knew there was a pending project waiting for funding.

Makaiau replied, yes, there is concern about this displacement and focusing on limiting commercial fisheries, but allowing the Sanctuary Program or other programs to go up there instead of commercial fishermen. They have been hearing this at meetings from the fishermen who say that it seems like this whole initiative is to get rid of them and create a World Heritage Site that everybody can visit and everybody can go and take except them. This is something that balances the equation and if the concern is about maintaining this ecosystem integrity and preservation of this area, then the mortality should be minimized to the utmost. If commercial fishermen contribute to mortality, so do recreational fishermen.

The Native Hawaiian is a little bit different issue because that gets into a larger political issue. This Council has always been in favor of Native Hawaiian uses. It puts into question, if the goal is to maintain this area, then eliminate all unnecessary mortality. If commercial fishing contributes to mortality, so does recreation and sustenance and therefore it is only logical to eliminate mortality from all fishing sectors.

Martin commented that one of the questions is research going to be prohibited. His intent would not be to constrain the ability to continue to do research up there. However, the way it is written does not really address that. Research results in mortality as well, but for the better good, evaluation continues.

Gaffney reminded the Council that there has been a significant amount of fishing going on in the Northwestern Hawaiian Islands which has been focused on research. Dettling touched on that. Dave Itano was able to tag 2,000 yellowfin and bigeye, as a result of the availability of the sport fishing fleet up there.

There was a wahoo tagged at Midway that traveled further than any wahoo that has ever been tagged in history, over 1800 miles. The first recorded instance of a giant trevalley traveling inter-island was recorded as a result of research fishing that was done on a sport fishing boat on Midway.

The language needs to be clear so the door is not closed to essential research. He has seen research fishing done by sport fishermen who are willing to pay for the opportunity to go fishing. The results of that are improvement to science.

Ebisui agreed that you don't want cruises sanctioned by permits ostensibly for research on some kind of a fish species catching and consuming lobsters onboard. That was the kind of activities that the motion was intended to target, not to hinder legitimate research.

Young commented that it did not say that. And it also did not allow for sustenance for those in the area to be able to take a limited number of fish relative to commercial for the same boat. Ebisui asked, if somebody gets shipwrecked, do they have the right to take and eat fish?

Young replied, not under these rules.

McCoy took a voice vote:

Ayes: Duerr, Ebisui, Martin, Haleck, Tulafono, Duenas, Loerzel, Igisomar, Sablan and McCoy.

Nays: Gaffney, Young, and Robinson.

Ebisui noted the vote was ten to three in favor; the motion was carried.

### **3.F.1 COUNCIL PARTICIPATION IN NOAA EMP**

Ebisui read and moved:

“Regarding development and implementation of NOAA's Ecosystem Management Plan, the Council recommends that the Council be included as a full participant, e.g., voting member, of any group, committee, task force, and meetings regarding this initiative. In addition, Council recommends NOAA formally consult with the Council prior to approval and implementation of any such plans for the Northwestern Hawaiian Islands.”

Young questioned what does it mean?

Ebisui replied it meant that the Council is recommending that it be part of the process.

Young asked why it did not say that.

Makaiau explained that NOAA has written and said they have an ecosystem plan and they are going to establish an ecosystem task force. This ensures that the Council is a participant to that, of any group, committee, task force or meeting, that it puts together to start development or implementation of this plan.

Young asked who this was addressed to. Did it mean that if the State has a task force and meetings, that West Pac be in all of the meetings?

Simonds explained that this was the NOAA ecosystem plan. This was in response to the Admiral's letter.

Robinson added it was always NOAA's intent to have the Council to be a full partner in that

process.

Ebisui asked for and received no comment from American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.

### **3.F.2 PUBLIC COMMENT**

Public comment by Damate representing the Association of Hawaiian Civic Clubs, verbatim:

“I just would like to make a couple of comments. One on Issue Number 6, I think I speak for our association in stating that we fully support this and feel that West Pac should be a full member of this task force.

But I would like to go back and address two other issues quickly. One is Issue 4, when you were talking about incorporating science and your research vessels. We would like to recommend that Hawaiian science also be involved in this so that the Native Hawaiian people are consulted, because we do have traditional practices that can be shared.

Finally, I would like to address a comment that was made by a previous speaker for the record for this meeting, and this deals with the misappropriation of Native Hawaiian culture in the testimony submitted by the Office of Hawaiian Affairs in your March West Pac hearing.

I'd like to ask that this packet be submitted to the Council for the record, which is the Association of the Hawaiian Civic Clubs response to OHA in regards to that comment, formally asking for an apology and asking them to retract their statement on the misappropriation of Native Hawaiian Culture because that was actually aimed at the Association of Hawaiian Civic Clubs since we were the ones who were putting on all of the Hawaiian portion to the presentation.

Just to let the Council know, we have had four meetings with the Office of Hawaiian Affairs since your Council meeting. The last one held on April 12th with the Board of Trustee Chairman, Haunani Apoliona and Clyde Namuo, Administrator, who at that time agreed to write a letter retracting -- or explaining, rather, that they did not mean -- they apologize for the misappropriation of Native Hawaiian culture comment, and in fact say that they were in full support of seasonal closures based on spawning cycles, which is the position that the Association of Hawaiian Civic Clubs has taken in regards to all closures.

In regards to the Northwestern Hawaiian Islands and Main Hawaiian Islands, we are advocating for the ahupuaa concept.

So I just wanted to go on record as stating that and to submit this letter that we sent to OHA. Thank you.”

### **3.F.3 COUNCIL DISCUSSION AND ACTION**

McCoy called for a vote. The motion was carried.

### **3.G.1 DATA ACCURACY**

Martin requested one additional issue for consideration for initial action. There was testimony today related to concerns about the accuracy of catch reporting, particularly of pelagic fisheries within the Northwestern Hawaiian Islands area, and he felt a reevaluation of the 180,000-pound pelagic catch limit as to come from and how that number was calculated was needed.

Martin moved, the Council recommends that NMFS and Council staff investigate the basis for the calculation of the 180,000-pound pelagic catch limit with emphasis on the accuracy of historical catches used in this calculation for consideration by the Council at their next meeting.”

Duerr, second.

Young asked, whose number is 180,000 pounds?

Ebisui replied, National Marine Fisheries Service.

Martin added that was one of the sideboards for the Sanctuary.

Ebisui called for and received no questions or discussion from American Samoa, Guam and CNMI.

Gaffney requested that motion be read again.

Martin read the motion “The Council recommends that National Marine Fisheries Service and Council staff investigate the basis of the calculation of 180,000 pounds pelagic catch with emphasis on the accuracy of the historical catches used in this calculation for consideration by the Council at their next meeting.”

Martin added, in reference to comments about the question of accuracy of historical catch, he would ask that the Fisheries Service and the Council staff investigate the basis of that and evaluate if they were using the best available catch data that was available when that number was put forth.

Robinson asked if the proposal was to delay final action on the 180,000 part of adopting the sideboards that was before the Council today.

Simonds replied it could be changed depending on what happens between now and June 15th when the Council votes. What was Robinson suggesting?

Robinson asked if the Council was going to vote on final action for the Northwestern Hawaiian Islands, including the 180,000 pound catch limit or if the motion was adopted, action would be delayed on the 180,000 pound pelagic catch limit.

DeRoma added that part of the final action sets the 180,000 pound limit. If there is an update at the next meeting and the Council wants to change the number, the number has to be reopened by Council action, in addition, the regulatory package that is being prepared has to be changed.

Simonds replied, right.

DeRoma clarified that the focus was on the accuracy of the data that was collected and not the actual number.

Simonds replied, according to Dettling's testimony, he has catch reports that aren't reflected in this 180,000 pounds; and that is why the Council members are saying, this should be checked.

DeRoma clarified that action would be deferred on the 180,000 pound portion of the proposed final action today until the analysis is complete.

Martin commented that it would be his preference.

DeRoma replied that the two action items should be severed.

Martin said that would be his preference.

Robinson reminded the Council that the invitation to adopt management measures, including the sideboards, was fairly specific, that there was a time constraint as it related to the process for designating the Sanctuary. So what was contemplated was the Council taking final action on these sideboards, including the 180,000, which is a higher number than that calculated by the Council staff in its earlier alternatives. To comply with the invitation from the Vice Admiral to prepare these regulations, including the sideboards, he would not be comfortable with the Council not going forward with a part of the earlier recommendation.

Simonds commented that the case would be made to the Admiral about this. The numbers that were put together were not based on what the fisherman said were his actual catch reports to the DLNR say. A reasonable person should understand that this should be looked into by National Marine Fisheries Service and the Sanctuary Office. Now there is a deadline, when last week there wasn't a deadline?

Robinson replied that there has always been some time urgency associated with the request. They had rescinded the deadline for submitting documentation of the Council's final action, but there was an expectation that the Council will take its final action at this meeting in order to meet the overall time frame put forth for the Sanctuary Process.

Ebisui posed question for legal counsel that if parallel tracks could be taken on final action on the 180,000 pound limit and concurrently do the verification process. If during the verification process it is discovered that something went wrong with the data, that the data did not capture accurately the pelagic cap. Is there a process by which the Council could go back and redefine the 180,000 pound limit?

Simonds replied that another meeting would be needed.

DeRoma added, yes, procedurally you would need two meetings. But as Robinson pointed out, the Admiral's letter clearly said a May 1 deadline for final action and a reg package. It was pretty clear the reg package did not have to squeeze under the May 1 deadline. So in a sense, the Council was taking a risk here by not approving the final full package and sending it on to the

Admiral. If the Council were to take final action on the complete package today, and send it forward to the Agency, and then reopen and send it in, it would all depend on the timing of the Sanctuary Process, which he did not have a good grip on. This was estimating against a moving target in terms of how quickly or how slowly Designation goes versus when the Council's action comes in.

The Admiral's letter said, the Agency would consider whatever the Council sent forward. So whatever the window is, so long as what the Council does falls within the window of consideration by the Agency for incorporation, if they decide to do that, into the Sanctuary Process, then all information would fairly be considered. He did not know how narrow or how wide that window was and if the Agency was going to adopt the Council's recommendations or not.

Simonds asked Aulani Wilhelm about the DEIS process, and the time frame for the Council to submit a package.

Wilhelm replied that it was consistent with Robinson's explanation. The goal was to have the DEIS out in late spring or early summer with a Final EIS out by the end of the calendar year and a Record of Decision early in 2007.

Makaiau asked with respect to this package that is being put forth, would be initial and final action. However, no final action was going to be taken today. So how was that going to be incorporated and why is that different from the 180,000 pounds?

Will the initial actions be ignored until final actions are taken? The 180,000 pound limit cannot be revisited and the criteria for establishing the start date has not been fleshed out.

Robinson replied that neither he nor the General Counsel ever said the 180,000 could not be revisited or reconsidered. What was said was the time frame was based upon the DEIS, which was the driving factor for saying the Council needed to make its final recommendation on the sideboards. If the Council makes its final recommendation on these sideboards and adopts the 180,000, there was no reason why the Council could not go back and revisit and change that recommendation. That is just a Council process; it is a two-meeting process.

Ebisui confirmed that the two motions can run parallel and concurrent.

Robinson replied, yes.

Hamilton asked if the Council was taking final action on some issues today and initial action on others. The package was not going to be completed until all of the actions were completed. The package was not constructed to be broken into two parts. She wondered how they saw this working.

Robinson did not see any reason why it all had to be wrapped up into one package. The sideboards and the basic recommendations the Council initially adopted could be adopted as one package and the follow-up action items, which simply expand on some of the implementation

issues associated with the main action, can be a follow-up regulatory action.

For one package, the Council would need to wait until June because final action could not be taken on ones where initial action was taken.

Hamilton clarified that they could go either way.

Robinson replied, yes.

Simonds suggested that action be taken on both. In the meantime, she would check on Dettling's information with the DLNR. Then, talk to the Admiral about the situation, then get back to everybody and see which way they were going, before May 1.

Ebisui clarified that Simonds meant to go ahead with Martin's motion to verify the catch data, and also move ahead with final action on the 180,000 pound limit.

Simonds replied, exactly.

Young asked if the staff would be going over the records they had or look at the accuracy with each fisher on what they reported.

Ebisui asked Dettling to confirm an earlier statement that the catch reports did not square with the summary that was provided by DLNR for that same year. There was a big discrepancy.

### **3.G.2 PUBLIC COMMENTS**

Dettling confirmed overall, for 2002, in a year where six boats have verified their catches in the neighborhood of over 200,000 or 250,000 pounds, reported catches on the DLNR were 30 or 35,000. So something was wrong.

Simonds would discuss this further with Dettling after the meeting.

### **3.G.3 COUNCIL DISCUSSION AND ACTION**

McCoy called for a voice vote on the motion:

Ayes: Duerr, Ebisui, Gaffney, Martin, Young, Haleck, Tulafono, Duenas, Loerzel, Igisomar, Sablan and McCoy.

Abstain: Robinson

The motion was carried.

Ebisui asked Makaiiau to review final action items.

### **3.H.1 FINAL ACTION ITEMS**

Makaiau went back and referred to the presentation, in particular, slide 38.

At the 131st Council meeting the recommendation was made for each scenarios NOAA selected with regards to fishing indefinitely or fishing until 2025. However, the action memo does not reflect that.

The action memo simply said, “recommends that limited fishing be allowed in federal waters.” He needed clarification from the Council members on applying this under all scenarios or do they want to split it out. They needed to say in the final action which scenario the recommendation applied to.

As it was laid out in the books, the Council's intent was: if NOAA selects a fishing alternative that would allow fishing indefinitely or until 2025, then these recommendations apply.

If NOAA selected an alternative that would close fishing in five years, then the Council would not propose the catch limits, the closed areas or the permit caps. So that was the intent, but the Council was silent on the final recommendation.

DeRoma commented that they needed to clarify what the Council's intent was when they took initial action.

Ebisui presented the motion:

“For all alternatives being considered by NOAA, the Council recommends that limited fishing be allowed in federal waters of the proposed Northwestern Hawaiian Islands National Marine Sanctuary and managed under the Magnuson-Stevens Act except for recreational fishing at Midway Atoll, which would be subject to MSA permits, but would otherwise be monitored and managed by the U.S. Fish and Wildlife consistent with all codified federal regulations and subject to the following restrictions:

- A. A closure be established indefinitely for all harvest of crustacean, precious coral and coral reef ecosystem species;
- B. All commercial and recreational fishing be subject to Magnuson-Stevens Act permit and logbook reporting requirements;
- C. Recreational fishing permits be issued on a case-by-case basis and that the Council will evaluate the need for further management;
- D. Limited entry Northwestern Hawaiian Islands bottomfish permits be capped at fourteen, with seven permits for the Hoomalu Zone and seven permits for the Mau Zone, the two Community Development Program permits for indigenous use to be included in the latter and issued as previously recommended by the Council;
- E. The annual bottomfish catch be limited to 381,500 pounds, which is 85 percent of

MSY;

- F. Nonlongline commercial pelagic fishing permits be capped at three;
- G. The annual commercial pelagic catch by the nonlongline pelagic fishery and the limited entry bottomfish fishery be limited to 180,000 pounds;
- H. No-take MPAs be established around French Frigate Shoals and West of 174 Degrees West Longitude;
- I. The use-or-lose requirements for renewal of commercial bottomfish permits be removed;
- J. Relinquished or revoked commercial bottomfish permits be reissued by NMFS in accordance with the existing procedures for Hoomalu Zone permits and as described in the Council's previous recommendation for Mau Zone permits;
- K. Federally permitted research regarding fishery and ecosystem conservation and management would be allowed in federal waters.

Martin, second.

Robinson noted that the opening sentence sounded like the motion was intended to apply to all alternatives, which was different from the way it was described initially in the March meeting: to apply to all alternatives except the one that phased out fishing for five years. This appears to apply to all of them and would adopt the sideboards for even the five-year phase-out alternative.

Martin agreed.

Young added that it was his understanding that they were working on this action because the prior regulations proposed were recognized by NOAA as inconsistent with the Sanctuary Designation Process and so they asked the Council to re-evaluate.

Ebisui replied, no. This is a clarification of the action that the Council took at the last meeting. After the meeting it was recognized that there were some disconnects.

Young questioned why the Admiral wrote in January and said there was language about acceptability, consistency.

Robinson replied that under the 304(a)(5) process, the Sanctuary Designation Process, the Council recommended fishery management regulations for the Sanctuary which were rejected in their entirety by NOAA. However, as NOAA proceeded through the Sanctuary Designation Process and was preparing their Draft Environmental Impact Statement.

NOAA and the Vice Admiral offered the Council the opportunity to develop regulations under the Magnuson Act for those alternatives that would come out in the DEIS that would allow

continued fishing for more than the five-year period.

DeRoma voiced a concern, because this was different than what was stated at the last meeting, in that the final action changes because it adds in this five-year period.

While it's not impermissible for the Council to change slightly the final action from the initial, there should be a discussion as to why it was appropriate to bring that five years in line with the initial two provisions that were discussed at the last meeting just so there is a sufficient record for why this final action isn't exactly as it was.

He did not think that discussion occurred at the last meeting so it would have to occur on the record at this meeting.

Makaiau replied that is what they were looking for clarification on. The Council's action was silent on the alternative for five years. If the Sanctuary is designated in five years, within five years the fishery gets eliminated. Then there's another process that gets initiated, the five-year review process for the Sanctuary. Is the Sanctuary going to be implemented in five years? And if the five-year review process comes out, is fishing a dead issue again?

If the Council wants it included for five years, then this covers it. If it only wants it to apply for 2025 and in perpetuity, it can be changed.

It was complicated because NOAA was providing three different alternatives. It would be easiest if this applied to all instead of coming up with another initial action to further develop other things for the five years.

Robinson added that nothing prevented the Council from expanding its initial action to the alternative that would phase out fishing in five years and propose the limits. He recalled the PowerPoint presentation that introduced the subject at the March meeting made the distinction between the five-year alternative and the other alternatives relative to what was adopted.

So the question was, did the Council adopt the motion for all of the alternatives except the five-year phase-out based upon the presentation made by staff. Or did the Council consciously adopt the initial action for all of the alternatives?

As the General Counsel said, the Council would need to explain any modifications to the decision made in March. But it can be done.

DeRoma added, if it was the Council's intent that it would apply to all three, the Council could be canvassed to determine whether that was their intent or not.

Ebisui recalled that there were two classes, the five-year one was in a class of itself, then the 20 and indefinite in another class. But they were saying, let's go across the board.

DeRoma replied, the Council just needed to make the record.

Simonds agreed that it made sense, because actually no one knows really how things are going to shake out. They should not be limiting themselves to 5 or 20 years.

Ebisui added, there was new information, new deadlines. It was a three-dimensional moving target.

DeRoma asked if it was the Council's intent, then, to extend the provision for the first two periods to the five-year period, to keep all its options open?

Young added that in the January letter the Admiral wrote said relative to the regulations that had been submitted previously, NOAA appropriately concluded the recommendations did not fulfill the goals and objectives of the Proposed Sanctuary and the purposes and policies of the National Marine Sanctuaries Act.

In the later paragraph it says, "NOAA is offering this opportunity so the Council may give consideration to undertaking actions, outlined above, to ensure the Council has every opportunity to continue managing the bottomfish and pelagic fisheries consistent with the Sanctuary Designation."

He did not think that the proposal was consistent with what the Admiral has asked us to reconsider. He did not see the Council going in that direction, they were continually trying a different approach. He cautioned them from moving forward.

Ebisui added, in that letter, the Vice Admiral has the sideboards. The sideboards have to do with catch limitations, and all that. Those are some of the specific things that are listed in A through K.

Young replied that they were talking about increasing the number of active permits from eight to fourteen and adding a whole new fishing permit category of the nonlongline pelagic. There were no permits, and a whole permit process was being added.

Ebisui responded that if the effort or the catch is capped, what difference would it make whether one vessel catches it or 25 vessels catch it? It would be capped.

Makaiau added, the goals and objectives in the September 2004 advice and recommendations document provide that bottomfish be continued, provide that recreational fishing be continued. Then based on that document, the Council submitted recommendations, which were subsequently rejected.

Since that letter came forward additional guidance has been provided:

- If NOAA selects these alternatives, bottomfishing would be allowed but we want to you cap it.
- NOAA also provided some guidelines on what the numbers they were looking at, which does differ from the current status of fishing activities.

At the last meeting NOAA said it was looking for a target range of 13 permits, 180,000 pounds

for pelagics. They were looking at 350,000 pounds for bottomfish, that does differ from the current catch. This differs from the numbers in the Executive Order.

Young noted that discussions relative to the Sanctuary from the State's perspective include a reduction of effort and catch, not an increase in the number of permittees and catch.

He had a number of possible amendments which were consistent with a number of amendments that had been proposed during the initial time. He was withholding them for the sake of time.

He asked the Council to recall the motion made by Dan Polhemus on behalf of the State calling for some stricter statements. But for the sake of time in anticipating the outcome, he was not going to formally introduce the over ten different amendments. But he asked them to recall that the State's position has been clear and consistent so that a vote opposing this shouldn't surprise anyone.

Robinson expressed one point of clarification. He had heard a couple of times that establishing the permits and sideboards for nonlongline pelagic fishery was providing a fishing opportunity. It's exactly the opposite. Right now it's an unlimited number of vessels can take an unlimited amount of catch up there. So it's actually constraining the fishery.

### **3.H.2 PUBLIC COMMENTS**

Ebisui asked for discussion/public comments from American Samoa, Commonwealth of the Northern Mariana Islands, Guam. Duenas endorsed the motion.

### **3.H.3 COUNCIL DISCUSSION AND ACTION**

There being no further discussion or public comments, McCoy called for a vote on the first action item:

Ayes: Duerr, Ebisui, Martin, Haleck, Tulafono, Duenas, Loerzel, Igisomar, Sablan, and McCoy.

Nays: Gaffney and Young.

Abstain: Robinson.

The vote was ten yes, one abstention and two no. The motion was carried.

### **3.I.1 NMFS DATA PROTOCOLS**

Ebisui moved that the Council recommends NMFS work with the Fish and Wildlife Service and request Fish and Wildlife Service to:

- A. Apply the same data reporting protocols that the fisheries Service uses in collecting fishery dependent data; and

- B. Accurately collect and maintain all noncommercial fishing data collected on Midway Atoll.

Martin, second.

Ebisui asked for discussion.

### **3.I.2 PUBLIC COMMENTS**

Detting commented, “all seven boats in the fishery, the guys I've talked to. had asked for a long time to make landing reports directly to NOAA under a reporting system like the longliners have. We're not a fishery that even exists in state waters outside of the Sanctuary, if we're fishing the Cross Seamount, weather buoy or PFADs, we're all outside at least 25, normally 100 miles. So we should just get right in there and get our reporting system done right. It's to everybody's benefit.

I can recall my good friend, Mike Cline (phonetic), when he first came over here, he got a \$10,000 fine about the second week he unloaded in Honolulu from the Big Island because when he landed he didn't have his report properly filled out. That got everybody's attention. I don't know if anybody here even realizes that.

But it emphasizes the seriousness of getting your data when you make your landing. So our fishery really does need a serious landing report. We're really not a fishery that the state would be interested in. So that should be cleaned up. Anything that you could do would be good and welcomed by everybody.”

### **3.I.3 COUNCIL DISCUSSION AND ACTION**

There bring no further discussion or public comment, McCoy called for a vote. The vote was unanimous. The motion was carried.

### **3.J.1 NATIVE HAWAIIAN SUBSISTENCE AND SUSTENANCE**

Ebisui moved, “the Council recommends that Native Hawaiian subsistence and sustenance use of Northwestern Hawaiian Islands fishery resources be allowed and managed in federal waters of the proposed Northwestern Hawaiian Islands National Marine Sanctuary under the National Marine Sanctuaries Act. However, the Council requests that National Marine Fisheries Service work with the Sanctuary Program to ensure that all catch data is collected so it can be incorporated into the Fisheries Services ecosystem assessment and monitoring of stock sustainability.”

Martin, second.

Duenas said the motion said subsistence and substance use, not traditional. If Native Hawaiians are on research vessels or Coast Guard vessels, are they allowed to fish?

Ebisui replied, it should be consistent with the Executive Order. Traditional and cultural was used in the Executive Order.

The movant and the second of the motion agreed to the change.

### **3.J.2 PUBLIC COMMENTS**

Ebisui state that there being no further discussion or public comment, the amended motion reads, “the Council recommends that traditional and cultural Native Hawaiian subsistence and sustenance use of Northwestern Hawaiian Islands fishery resources be allowed and managed in federal waters of the proposed Northwestern Hawaiian Island National Marine Sanctuary under the National Marine Sanctuaries Act.

However, the Council requests that National Marine Fisheries Service work with the National Marine Sanctuary Program to ensure that all catch data is collected so it can be incorporated into National Marine Fisheries Service ecosystem assessments and monitoring of stock sustainability.”

### **3.J.3 COUNCIL DISCUSSION AND ACTION**

McCoy called for a vote. The vote was unanimous. The motion was carried.

### **3.K.1 PROHIBITION OF HARVEST**

Ebisui moved, “Council recommends that harvests of any Northwestern Hawaiian Island fishery resources by other than Native Hawaiians as described in the previous motion or Magnuson-Stevens Act permitted vessels or for research purposes be prohibited.”

Simonds questioned if he was shortening the recommendation, but trying to include everything?

Ebisui replied, yes.

Simonds asked Young if that was okay? Permitted vessels.

Young replied, it would be permitted. However, he said it was not consistent with the original initial action, this was dealing with a reporting process and now it was changed to be a prohibition. Because the original recommendation was talking about harvests need to be reported. Now, harvests are prohibited. He preferred to go back to the original four and delete research, enforcement and management, and leave the rest the same. He stated that the State has sustenance permits that allow folks in the area’s State waters to eat fish. [Note: Since the Council meeting Dan Polhemus has clarified that Young mis-spoke and in fact the State does not have sustenance permits for State waters in the NWHI.]

Ebisui questioned why any harvest would be allowed if it has been determined that all extraction is bad.

Young responded people would have valid permits and would not take the same volume of fish as a commercial fisherman, and asked if the motivation for the amendment was to be vindictive.

Ebisui responded that it is about consistency.

Makaiau commented that all fisheries will have caps and that the Council had heard at their last meeting that the Coast Guard takes literally thousands of pounds of fish on their trips and brings it back in coolers.

Young responded that that is not sustenance, sustenance means eating fish while in the area.

DeRoma suggested that they go back to the original version, because it clearly said for harvesting onboard.

Young commented that the second line needed the words, research, enforcement and management, because then it just said, permitted vessels. Then it stays with the intent of the initial action. Now it just said, if you're a permitted vessel, report what you take.

Makaiau commented on Gaffney's original language and said that at the last Council meeting there were concerns that new categories were popping up left and right. In the Magnuson, you are either commercial or noncommercial. Now there is subsistence, sustenance, research, which is part of the reason why the specific language was brought up. He needed them to be aware they were proposing to delete the language.

Gaffney was flabbergasted and felt that they were changing what was discussed at the last meeting. They all recognized that there was sustenance fishing going on in the Northwestern Hawaiian Islands and wanted to get a measure of it.

Young added, the proposed amendment now was to take the original initial action and rather than limit by naming some suspected permits, i.e., research, enforcement or management, was to just say, if you are a permitted vessel, essentially report what you are taking. He thought that was consistent with what the intent of the initial action. However, there may be a Sanctuary education permit. Then what happens to them? They're not included. But they're a permitted vessel.

DeRoma raised the point that the Council may have to revisit this issue and amend its proposal, depending on what the Sanctuary management regulations look like. For example, if there are vessels exempted, like Coast Guard or Department of Defense, they will not be permitted vessels if they are exempted in the regs. He suggested that they leave it as is, but just recognize they might have to come back and revisit it, because they did not know if they would be in there or if they would be exempted.

Palawski commented that the Hawaiian Islands Refuge does not allow sustenance fishing in the refuge, particularly because it could happen close to shore, and he assumed as part of the Sanctuary Designation there would be some zoning or could be some zoning where there would be areas where it was not allowed.

From the Fish and Wildlife Service perspective, there would be areas where there would be no sustenance fishing, especially in Hawaiian Islands Refuge.

Simonds clarified if there was that requirement at this point.

Palawski replied, yes. They do not allow their people even on Tern Island to fish at Tern Island.

Ebisui asked Young if he was comfortable with the motion as amended.

Young replied, yes. Then it would include Don's concern, because that wouldn't be permitted. This isn't allowing everyone to do it. This is, if you are allowed to do it, then you report it.

After lengthy discussion, the motion was amended and seconded to read as follows:

“Recommends that harvest of the Northwestern Hawaiian Islands fishery resources by permitted vessels for onboard consumption, i.e., sustenance, be allowed and managed in federal waters of the Proposed Northwestern Hawaiian Islands National Marine Sanctuary under the National Marine Sanctuaries Act. However, the Council requests that NMFS work with the Sanctuary Program to ensure that all catch data is collected so it can be incorporated into the Fisheries Services ecosystem assessments and monitoring of stock sustainability.”

McCoy called for a vote.

Point of order from Duenas. They had not gone to the different island areas for discussion.

Ebisui called for discussion on the amended motion. American Samoa had no discussion.

Duenas commented that he liked the motion as it originally was stated. He was not comfortable with the fact that it put strict regulations on people that are actually supposed to go there and harvest. And, what was to stop the people that were coming back from fishing on the eight to ten lobsters every day and throw away whatever is left so they don't get busted. He did not understand sustenance. Sustenance was given to the Native Hawaiians, he did not believe anyone should have it.

He did not agree with the State of Hawaii. When it comes to fishermen, they are very strict. When it comes to, let's have our cruise liners go up there, they happen to catch some lobsters or catch some bottomfish, that's okay, because there's sustenance. You've got a boat up there that carries a crew of 20 up there for two weeks, how much sustenance are you going to live on. They don't have to bring food because they know the place is rich and full of fish. So he disagreed with changing the motion because the State requested it.

There was no comment or discussion from Commonwealth of the Northern Mariana Islands.

### **3.K.2 PUBLIC COMMENT**

### **3.K.3 COUNCIL DISCUSSION AND ACTION**

There being no public comment, McCoy called for a vote. The vote was unanimous. The motion was carried.

### **4. Public Hearing**

Martin introduced Leo Ohai, who was invited to present his public comment related to a request for consideration to issue or consider some kind of a special permit for Ohai.

Ohai, verbatim:

“I'm here today to try to secure a longline shortline permit. Some of you know that I have been - I've done longlining for many, many years, starting way in the '40s.

Back then there were no permits, you don't need a permit. I had a -- my longline consisted of seven miles of longline. Then in the '70s, I built a boat up in Seattle and one of the requirements of the state was that we do multiple fishing.

The vessel we had to be able to fish at least 1,500 miles away from the Hawaiian Islands.

Now, we did all that. We went through a lot of expense. We had to put a refrigeration system in the boat, brine chill system in the boat, build all these gear, because we were told -- and that was one of the issues, to get along at that time you would have to do multiple fishing. It's written on the contract.

So we went ahead and we built fish traps, lobster traps, crab traps, ahi line. Our main fishery was akule, even today.

Then in the late '70s or in the '80s, they came along with this permit thing. Then I couldn't get a permit because it required me to bring 80 percent of the fish that I was permitted, say they gave me an ahi permit, I would have to bring 80 percent of my catch would have to be ahi.

Most of you know, my main fishery is akule.

But I guess we were the only ones that were bringing in akule and ahi. We never came in with only ahi or only akule. We'd go out and we'd fish akule, catch so many tons of akule. Before we come back, we'd go for ahi first. You can keep ahi for a week, week and a half. So we'd go ahi for a week. Then we'd have my son do the fish spotting for us. When we would see a school of akule, we'd drop net on akule. Then we'd come back with akule and ahi. It had been going like that for years and years.

To verify my statement, you could talk to Mr. Goto at the auction block.

What I'm saying is that we were the only ones then, up to when they start issuing this permit that we're doing what we were mandated to do by the state. Here we did all that they wanted us to do, we did multiple fishing.

Still today, we have all this gear at the dock. Any one of you could come and look at it. We have ahi lines that we bought from the '60s that's still in the bag, never been used yet.

All I'm asking is that I think I should be given consideration. When they made that regulation, that new regulation, I couldn't fish ahi for almost 30 years. We only did akule fishing and shrimp fishing, trap fishing. But couldn't do longline fishing until a few months ago I heard that they were issuing out shortline -- I think it was one nautical mile.

But if I felt that I shouldn't be given this permit, I wouldn't be here today. But being that I was penalized for almost 30 years, other people could fish with a shortline. I'm not arguing about that. But I felt that my case was a unique case. Never was anything like this, never did any other fisherman have to go through what I had to go through.

So I went to the Council members once or twice to see if there was any way possible that I could use the lines that I had been using for years and years prior to the issuing of this permit. That's why I'm here today.

Any of you could go down to the dock and you could see all the equipment that we have. We have ahi lines there. We have fish traps there. We have crab traps there. We have lobster traps there. We have ahi line there. You name it.

All this, the state required us. And we got a loan to build this boat to do multiple fishing. I don't think anyone in the state, even today, ever did what we did way back then, and even today, I really feel that I should be given this permit.

So I'm asking the Council members here today to consider my case and if they feel that I should get a permit, to issue it to me. I just want a yes or no answer. That's all I'm asking. Thank you."

Ebisui asked Ohai, in the letter sent to the Council, he said his gear was seven miles long, what was the reason for it being seven miles, as opposed to, say, five miles, four miles long? What's important about the number seven?

Ohai replied it was not that important. "But you can check back with Frank Goto, he's over there. Way back then in the '40s and the '30s and the '50s, the longline, the bigger boats used 60 baskets of line. Now, it differs. Some boats use four hooks to a basket. Some boats use six hooks to a basket. But no boats went over 60 baskets.

When we started going into ahi line, being that I had all -- not one of them knew about longline, I was the only one. I made 115 baskets of longline. We were the first one in the state to use that much line available to get then.

I made a couple of trips to Japan to see how they were fishing back there. Then it's completely

different from the fishing we were doing here. So we adapted their system. We were the first one to use all this snap-on line.

Back then, your branchline was attached to the mainline. You'd have to be real fast in coiling your line. See.

Being that it was new people who never fished ahi in their life, only akule, we had to use the snap system so that they don't have to coil it. We would unsnap it and coil it.

The line measured about seven miles. We had maybe 15 baskets of extra line. About 100 -- about 100 baskets, sometimes more than that. That's why I said seven miles of line.

I even mentioned to the Council, being that we have a closed season for akule, for four months we can't fish for akule. It has small fish. You have July, August, September, October. So that would be a good time for us to go into longline. So then we go to do shrimp fishing or trap fishing, and all of that. Being that you issue one nautical mile, I thought I'd come here and state my case. That's why I'm here today.”

## **5. COUNCIL DISCUSSION AND ACTION**

Martin added that Ohai has been involved in developing fisheries around Hawaii for longer than most of them have been involved in fisheries. He appreciated Ohai's request.

Unfortunately, the Council process doesn't allow them to take a vote today and issue a permit tomorrow. There are statutory requirements that have to be met and there are considerations from other acts other than the Magnuson-Stevens Act, the Endangered Species Act that need to be considered as well.

For the benefit of Council members, the request from Mr. Ohai to be allowed to fish seven miles of line and in the closed area, were two issues. There was the issuance of a special permit that to date did not exist and there was an exemption to fish in an area that has been closed for 15 years or more. There was a process they were required to go through.

Martin suggested that Council staff and NMFS look at the question, and consider of what it would take if the Council chose to move forward. Unfortunately, it's a process that requires more than one meeting.

Martin offered as a motion:

“Directs Council staff and NMFS to evaluate the process used to implement the limited entry program and area closures for Council consideration to Mr. Leo Ohai's request, because I do think that it's important that we revisit the process and what the rationales were in implementing the area closures and the limited entry program so that we have a clear picture if we're moving forward in some direction, that we have a clear idea of what we're moving forward based upon.”

Martin amended the motion to read. . .”Directs Council staff to work with NMFS to evaluate Mr.

Ohai's request and investigate other avenues for consideration at the next Council meeting”

Simonds suggested they spell out his request that was in the letter.

Tulafono, second.

There being no further discussion or public comment, McCoy called for a vote. The vote was unanimous. The motion was carried.

## **6. OTHER BUSINESS**

Paul Dalzell reported on Pacific Council actions:

- The Council was amending the FMP to cope with overfishing of bigeye tuna and yellowfin tuna in the Western Pacific.
- The Pacific Council is also addressing the issues for bigeye tuna in the Eastern Pacific. He referred them to document 6.A, 6.A.1 and 6.A.2. They would like to use this Council's amendment to amend their FMP to address bigeye overfishing in the Eastern Pacific Ocean. A letter would be forthcoming to make the request official.
- There are broader, long term issues involve. Dalzell reminded the Council that ten years ago Ebisui was proposition to be the lead counsel on pelagic fisheries in the Pacific. At that time the request was denied by the then Administrator for Fisheries Rollie Schmitt. He believe this was an idea whose time had come given that international management of tunas has become concreted by the fact that there is a new Commission in the Western Pacific and that they are now obliged to take action to address overfishing of tunas.

He would report at the next Council meeting when we have heard from the Pacific Council.

Simonds added that the Pacific Council was trying to convert all of their swordfish gillnet fishers to longlining. Right now they only have one longline boat. So they're trying to switch swordfish fishing for gillnets into an environmentally-friendly gear using friendly gear like West Pac's.

Polhemus added that in reading over the documents he found it interesting the Pacific Council's comments and concerns on exempting fleets that were less than one percent of the fishery and how this might lead to potentially internal segregation of foreign fleets, those have not been brought up in the past.

There being no further business, the 132nd meeting of the Western Pacific Fisheries Council was adjourned at 4:55 p.m.