



**WESTERN  
PACIFIC  
REGIONAL  
FISHERY  
MANAGEMENT  
COUNCIL**

**Minutes of the 134<sup>th</sup> Council Meeting  
(held by teleconference)**

**August 30, 2006  
Council Conference Room**

**Honolulu, Hawaii**

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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Mr. Frank McCoy (Council Chair) opened the meeting 2:00 p.m (HST) on August 30, 2006 at the Council Conference Room. He began by greeting those attending in person as well as those attending by teleconference.

## **1. Introductions**

Mr. McCoy then took attendance. The following Council Members, and the Executive Director, were present at the 134<sup>th</sup> Council Meeting in Honolulu, Hawaii:

- Manny Duenas (Council member, Guam)
- Ed Ebisui (Council member, Hawaii)
- Rick Gaffney (Council member, Hawaii)
- Sean Martin (Council member, Hawaii)
- Frank McCoy (Council Chair, American Samoa)
- Don Palawski (Council member designee, USFWS)
- Peter Young (Council member, Hawaii DLNR)
- Bill Robinson (Council member, NOAA Fisheries, Pacific Islands Region)
- Lieutenant Commander Mark Young (Council member designee, US Coast Guard)
- Kitty Simonds (Executive Director)

The following Council Members, and the SSC representative, participated by teleconference:

- Fred Duerr (Council member, Hawaii)
- Stephen Haleck (Council member, American Samoa)
- Sylvan Igisomar (Council member, Northern Mariana Islands DLNR)
- Ben Sablan (Council member, Commonwealth of the Northern Mariana Islands)
- Miki Leon-Guerrero (Council member designee, Guam)
- Adrienne Loerzel (Council member, Guam)
- Craig Severance (Science and Statistical Committee Member)
- Ray Tulafono (Council member, American Samoa DMWR)

Members of the public participating by teleconference were then asked to introduce themselves. Ms. Ellen Athas with the Ocean Conservancy did so. Mr. McCoy then reviewed the groundrules for the teleconference Council meeting as follows:

If any people wish to make any comments, please fill out a card and give it to one of the staff and we'll put that in order when it's time for that. We have island coordinators who are helping out with our island Council members. So for our participants there, please make contact with them. They should be there with you. They will assist you in any way they can. I'd like to ask that each speaker be recognized by the Chair, and please identify yourself. You must state your name, your affiliation, this is for the transcriber so that our minutes reflect everything that it needs to reflect. Please, only one person at a time. Members of the public, I must ask you that you will be able to speak and make comments at the public hearing part of the meeting. Please speak loudly and clearly so that we have a good meeting and the transcriber doesn't have any difficulties in putting our words together.

## **2. Approval of Agenda**

Mr. McCoy requested an approval of the agenda. A motion was made and seconded. He asked for discussion. Hearing none, Mr. McCoy called for the question. Motion passed.

## **3. Implementation of Fishing Regulations for the NWHI Marine National Monument**

Mr. McCoy introduced Council staff member Jarad Makaiau who gave the following overview of recent activities regarding the Northwestern Hawaiian Islands (NWHI) Marine National Monument:

On the last day of the 133<sup>rd</sup> Council meeting held June 13-15, 2006 in American Samoa the President issued Proclamation No. 8031, which established the NWHI monument.

At that time we didn't really have any details about what the proclamation did or what measures were put into place. So I'm going to start briefly by summarizing some of the key points of this proclamation (see Document 3.A).

It appears that the proclamation assigns the primary management responsibility of the marine areas to the Secretary of Commerce through the National Oceanic Atmospheric Administration, (also known as NOAA) in consultation with the Secretary of the Interior. The proclamation also assigns the Secretary of Interior, through the U.S. Fish and Wildlife Service, with sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial and the Hawaiian Islands National Wildlife Refuge, again in consultation with the Secretary of Interior.

The proclamation directs the two Secretaries (of Commerce and Interior) to manage the monument in consultation with the State of Hawaii. It also clarifies that the proclamation and the monument in no way diminish the authority of the State to manage the waters that are contained within their jurisdiction.

The designation of the monument effectively ended the process that the Council was participating in as part of the designation of the NWHI as a national marine sanctuary. It was for this purpose (for the proposed NWHI sanctuary) that the Council's previous recommendations were being constructed. The President's proclamation essentially directs the Secretaries of Commerce and Interior to put in place the management regime created by the President. This includes requirements and prohibitions for access, the closed area, the annual landing limits for bottomfish and pelagic species and other management measures. It also provides the Secretary some discretion in developing additional requirement including the process of issuing permits and the reporting requirements for those allowed activities. These include the special ocean uses, what kind of reporting requirements will go along with that, and also for subsistence fishing for bottomfish and pelagic species.

Yesterday, we had a new development in that the Secretaries of Commerce and Interior jointly published through the Federal Register Notice final regulations for the monument. These regulations put into place some of those very specific measures, which include requirements for VMS, the landing limits for bottomfish and pelagic species. It also put into place the special preservation areas and ecological reserves, where certain activities are prohibited and others are regulated. You have this in your documents as well as the full language of the proclamation.

In implementing these regulations, the Secretary of Commerce in particular cited his authority under the Magnuson-Stevens Act. This is the authority that is used to implement these regulations. At the same time, the Magnuson-Stevens Act also guides our fishery management

plans. There is sort of a lingering disconnect between the FMPs and what the proclamation says.

So in order to reduce confusion among the fishermen and the public, NOAA has requested that the Council develop recommendations that will adjust portions of our federal regulations under 50 CFR 665 to comport with the nondiscretionary provisions of the proclamation. To help resolve this issue we have convened this meeting to review our pending recommendations made at our 132nd and 133rd meetings. What we plan on trying to achieve at this meeting is to amend those recommendations commensurate with the provisions of the proclamation.

What this will involve is the Council determining which of those previous recommendations will remain viable and which of those need to be modified to be commensurate with the proclamation. NOAA's Pacific Islands Regional Office (PIRO) has also recommended that we make the existing FMPs (and their regulations) congruent with the proclamation in a certain fashion (their letter is in your documents). Their advice is for the Council to first implement the nondiscretionary provisions of the proclamation and then, if the Council chooses, to send recommendations for the discretionary provisions for the proclamation at a later time.

There's a little bit of a complexity to this, because when the Council took its previous action it was a lot more broader in scope. It was for the sanctuary designation process. So we took action on a number of different things. Now what we are being asked to do is separate those that are discretionary from those that are nondiscretionary. To facilitate this development, what I plan on doing is, first, to go over all of the Council's previous recommendations from the 132nd and 133rd Council meeting in the sequence that they were made. What I will also do, referring back to Document 3.A, is to point out the portions of the proclamation that relate to those particular recommendations, and I will also provide at least some staff suggestions for Council actions that would bring the recommendations commensurate with the proclamation.

In order to make this go smoother, I will go through the entire three-page document first, and then entertain questions from the Council members after that for each individual item. That way we can get through the entire thing and then go back and focus on specifics.

[At this point Mr .McCoy clarified that Mr. Sean Martin had been re-appointed to the Council but his appointment would not be official until September 22; therefore he could not vote at this meeting. However, he could participate in Council discussions.]

Mr. Makaiiau pointed the Council members to Document 3.A's Summary Table of the Pending Recommendations in Relation to the Provisions of Proclamation No. 8031 and Proposed Council Actions to Bring the Recommendations Commensurate with the proclamation. In the left-hand column are the verbatim recommendations made by the Council at its 132<sup>nd</sup> Council meeting. He went on to say this document and the presentation begins with the recommendations from the Council's 132<sup>nd</sup> meeting, and then addresses those from the 133<sup>rd</sup> meeting. I will start with the 132<sup>nd</sup> meeting's Recommendation 1.a in which the Council recommended a closure be established indefinitely for all harvests of crustacean, precious coral and coral reef ecosystem species.

When we look at the verbatim language from the proclamation, there are two specific items that relate to that. The first is: the Secretary shall ensure that any commercial lobster fishing permit shall be subject to a zero harvest quota. The second provision that would relate to the previous recommendation is: Except as otherwise provided in this proclamation, the Secretaries shall prohibit any person from conducting or causing to be conducted within the monument the following activities, and includes removing, taking, moving, harvesting, et cetera,

et cetera, any living or nonliving monument resource.

Regarding the first provision of the proclamation dealing with lobster, I think pursuant to what we have currently on the books is that 50 CFR 665.50 provides the National Marine Fisheries Service (NMFS) regional administrator the authority to issue annual harvest guidelines -- in this case, would be similar to a quota -- for each fishing year. So, in essence, NMFS has that authority already to do so and has been issuing either a zero harvest guideline or not issuing them at all. So regarding the larger issue of the other resources, the proclamation only provides for the harvest of bottomfish and pelagic species. It does not provide for any harvesting of crustaceans, precious corals and coral reef ecosystem species specifically. Therefore, prohibiting the harvest of these species would be consistent with the proclamation.

Now, what does the Council need to do in this instance? The Council is very clear that it recommends that a closure be established. Thus the Council staff's suggestion is that no further Council action is necessary to be consistent with the proclamation.

Recommendation 1.b. the Council recommended all commercial and recreational fishing be subject to Magnuson Act permits and logbook reporting requirements. Regarding commercial fishing, the proclamation explicitly points out that commercial fishing for bottomfish and associated pelagic fishing may continue for no longer than five years provided that fishing is done in accordance with a valid commercial bottomfish permit issued by NOAA, and that such permit is effective on the date of this proclamation and is subsequently renewed pursuant to NOAA -- this is regulations at 50 CFR 660, subpart E -- as necessary. The proclamation also addresses another type of fishing. The Secretaries may permit sustenance fishing outside of any special preservation area as a term of condition of any permit that is issued for entering the monument. It also provides that the sustenance fishing that occurs would be subject to reporting requirements when developed by the Secretaries. So in that instance, there is some discretion there of what that might be. In order to make Recommendation 1.b more consistent with the proclamation, Council staff suggests that the Council recommend that all fishing within the monument be subject to Magnuson Act permit and logbook reporting requirements.

Under Recommendation 1.c., the Council recommended recreational fishing permits be issued on a case-by-case basis and that the Council will evaluate the need for further management. There a number of uncertainties in dealing with the proclamation regarding this issue. There is a provision for recreational activities within the monument, but it does not include extractive uses. A wide definition would say recreational fishing is an extractive use.

But the MSA definition of recreational fishing also includes sustenance fishing, although it is not specifically defined. The proclamation provides for sustenance fishing for bottomfish and pelagics outside of any special preservation area as a term and condition of any permit. Again, the sustenance fishing must be conducted in a manner compatible with the proclamation, including considering the extent to which the conduct of the activity may diminish monument resources quality, ecological integrity, as well as any indirect, secondary or cumulative effects of the activity and the duration of such effects. In this instance, the Council staff suggests that permits for fishing be issued on a case-by-case basis with the Council evaluating the need for further management. We feel that this is consistent with what the proclamation is saying in terms of looking at things on a case-by-case basis and carefully evaluating how sustenance fishing could take place.

Recommendation 1.d, recommend limited-entry Northwestern Hawaiian Island bottomfish permits be capped at fourteen, with seven permits for the Hoomalu Zone and seven permits for the Mau Zone, the two Community Demonstration Project permits for the indigenous use to be

included in the latter and issued as previously recommended by the Council. The proclamation provides specific language of the type of fishing that is allowed and by whom. It states that fishing can only be done in accordance with a valid commercial bottomfish permit issued by NOAA. But more to the point is, such permit is in effect on the date of this proclamation and is subsequently renewed pursuant to NOAA regulations at 50 CFR 660, subpart E. So in this instance we have a conflict. Right now the federal regulations provide for 17 limited entry bottomfish permits. The regulations also provide the NMFS regional administrator with the authority of determining when permits are available, when permits may be issued depending on the status of the stocks. So right now, the regional administrator from PIRO has that authority and has been using that authority to hold on to those permits that are -- basically, they're not being reissued. So it's already being done and there is no further Council action necessary at this time to bring to closure any discrepancies with the proclamation.

Recommendation 1.e, the Council recommended at its 132<sup>nd</sup> meeting that the annual bottomfish catch be limited to 381,500 pounds, which is calculated at 85 percent of the Maximum Sustainable Yield. The proclamation specifically states that the total landing for each fishing year may not exceed 350,000 pounds for bottomfish species.

The Council staff suggests that the total landings for each fishing year not exceed 250,000 pounds for Bottomfish Management Unit Species from the Northwestern Hawaiian Island monument.

Recommendation 1.f the Council recommended that nonlongline commercial pelagic fishing permits be capped at three. Again, the proclamation provides specific language that only those bottomfish permits that were issued by NOAA would be allowed to fish. Thus Council staff suggests that the Council withdraw the recommendation to cap commercial pelagic fishing at three, because obviously there will be no permits to cap.

Recommendation 1.g., the Council recommended that the annual commercial pelagic catch by the nonlongline pelagic fishery and the limited entry bottomfish fishery be limited to 180,000 pounds. The proclamation states that this total landing for each fishing year may not exceed 180,000 pounds. This is only for the bottomfish fishermen, because they're the only ones that are allowed to fish by the proclamation. The Council staff suggests the Council recommend that the total landing for each fishing year not exceed 180,000 pounds for Pelagic Management Unit Species caught by the Northwestern Hawaiian Islands bottomfish permit holders from the Northwestern Hawaiian Islands Monument.

Recommendation 1.h., the Council recommended that no-take marine protected areas be established around French Frigate Shoals and west of 140 degrees west longitude. However the proclamation includes different sorts of marine protected areas which it terms special preservation areas and ecological reserves. It also specifies that the Secretaries shall ensure that any commercial fishing within the monument is conducted in accordance with several restrictions and conditions.

In addition to the things like the caps, and so forth, the activity may not take place within any ecological reserve, special preservation area or the Midway Atoll special management area. The coordinates of these boundaries are provided in the proclamation. Here the staff's suggestion is for the Council to withdraw its recommendation for no-take MPAs to be established around French Frigate Shoals and west of 174 West Longitude, and simply recommend the prohibition on commercial fishing within any Ecological Reserve, Special Preservation Area or Midway Atoll Special Management Area as defined in Proclamation No. 8031.

Recommendation 1.i., the Council recommended at its 132<sup>nd</sup> meeting that the use-or-lose requirement for renewal of commercial bottomfish permits be removed. The proclamation is silent on how permits are to be reissued, it says the permits need to be reissued, but doesn't specify how. Currently we have a use-it-or-lose-it requirement. Recommendation 1.i would not be inconsistent with the proclamation and the Council staff suggests that no further action is needed to be taken on this item.

Recommendation 1.j., the Council recommended that 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. Again, the proclamation specifies who is allowed to bottomfish in the NWHI and that the commercial bottomfish permits need to be issued by NOAA and in effect on the date of this proclamation. So it obviously means that no permits can be reissued. The staff's suggestion is for the Council to withdraw this recommendation.

Recommendation 1.k., has four parts beginning with a recommendation that federally-permitted research regarding fishery and ecosystem conservation and management be allowed in Federal waters. This is not inconsistent with the proclamation, as it does allow for research designed to further understand monument resources and qualities and the staff's suggestion is that there's no further Council action necessary at this time. Part two of Recommendation 1.K recommends that NMFS work with the Fish and Wildlife Service and request them to:

A. apply the same data reporting protocol that NMFS uses in collecting fishery-dependent data; and

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

This recommendation would not be inconsistent with the proclamation and the staff suggests that no further action is necessary at this time.

Part three of 1.k recommends that traditional and cultural Native Hawaiian subsistence and sustenance use of NWHI fishery resources be allowed and managed in Federal waters of the proposed northwestern Hawaiian islands sanctuary under the National Marine Sanctuary Act. However, the Council requested that NMFS work with the sanctuary program to ensure that all catch data is collected so it can be incorporated into National Marine Fisheries Service ecosystem assessment and monitoring of stock sustainability. The proclamation actually allows for Native Hawaiian practices, and it leaves open the establishment of a committee by the Secretary to decide what those practices are. We and the proclamation envision that it could include utilization of resources. This recommendation is not inconsistent with the proclamation. However, the National Marine Sanctuaries Act is no longer the appropriate authority under which Native Hawaiian subsistence and sustenance uses would be allowed so the Council staff suggests that the Council consider a recommendation that traditional and cultural Native Hawaiian subsistence and sustenance uses of NWHI fishery resources be allowed and managed in Federal waters of the NWHI monument under Presidential Proclamation 8031, and the Magnuson-Stevens Act which governs the use of fishery resources.

Part four recommends that harvests of NWHI fishery resources by permitted vessels for onboard consumption, i.e., sustenance, be allowed and managed in federal waters of the proposed NWHI sanctuary under the National Marine Sanctuary Act. The Council also requested that NMFS work with the National Marine Sanctuary Program to ensure that all catch data is collected so it can be incorporated into NMFS's ecosystem assessment and monitoring of stock sustainability. Again, this is not inconsistent with the proclamation, as the proclamation does



allow for at least bottomfish and pelagic species to be taken for onboard consumption. However again, the National Marine Sanctuary Act is no longer the appropriate authority under which these uses would be allowed. What we suggest is that the Council consider recommending that the harvest of NWHI fishery resources by permitted vessels for onboard consumption, i.e., sustenance, be allowed and managed in Federal waters of the Northwestern Hawaiian Island monument under Presidential Proclamation No. 8031 and the Magnuson-Stevens Act.

Moving to recommendations from the 133<sup>rd</sup> Council meeting, in Recommendation 1 the Council recommended adoption of its preliminarily preferred alternative to issue the initial three permits based on historical participation in the NWHI pelagic fishery. Further, the Council recommended that these permits be transferrable, thus allowing new entrants into the fishery. At this time the Council feels it is premature to propose any vessel size limits on commercial nonlongline pelagic vessels. The proclamation is clear that this fishery is not allowed under the proclamation. So the staff suggests that the Council withdraw the recommendation to issue permits based on historical participation as there will be no permits to be issued.

Number two, at its 133<sup>rd</sup> meeting the Council recommended adoption of its preliminarily preferred alternative that the fishing year for bottomfish begin October 1 and end September 30th the following year. The Council also recommended that the fishing year for pelagic fishing begin October 1 and end September 30 the following year, consistent with the bottomfish fishing year. The proclamation states that the bottomfish fishing year (the only fishery that's allowed), begins at 0001 local time on January 1st and ends at 2400 local time on December 31st. The Council staff suggests that the Council withdraw its recommendation to define the fishing year for the bottomfish and pelagic fishery, as it's already defined by the proclamation.

Number three, at its 133<sup>rd</sup> meeting the Council recommended that NOAA compensate NWHI fishermen displaced by the designation and implementation of the National Monument by offering options for relief, which may include purchase of their vessel, fishing gear, permits and providing compensation for lost income stream. This is not inconsistent with the proclamation and the staff suggests that no further Council action is needed at this time for this recommendation. The Council further recommended that by December 31st, 2006 NOAA conduct a comprehensive economic impact study to determine fair monetary compensation and seek government and/or private sources of funding. Again, this is not inconsistent with the proclamation and we have sent letters on this to NMFS. The staff suggests that the Council consider no further action at this time.

Number four, the Council recommended that NOAA relocate Weather Buoy 1 at least 15 miles outside of the seaward boundary of the proposed monument. This is not inconsistent with the proclamation. Letters have been sent to Admiral Lautenbacher, and there is discussion on this at this time. The Council staff suggests that no further action is needed regarding this recommendation.

Number five, the Council recommended that the annual commercial pelagic catch by the nonlongline pelagic fishery and the limited entry bottomfish fishery be limited to 180,000 pounds. This is the same action as the recommendation 1.g in the 132<sup>nd</sup> Council meeting. Thus the staff suggests that to be consistent with the approach to 1.g the Council again recommend that the total landing for each fishing year not exceed 180,000 pounds for Pelagic Management Unit Species caught by the NWHI bottomfish permit holders from the monument.

Number six, at the 133<sup>rd</sup> meeting the Council recommended that all noncommercial fishing, except traditional and cultural Native Hawaiian sustenance fishing (i.e., harvest and consumption of fish within the monument), be prohibited following closure of associated

commercial fisheries.

The proclamation does allow for sustenance fishing, as well as it does for commercial fishing. But it calls for the closure of commercial bottomfish and associated pelagic fishing in five years. It does not have a sunset clause for sustenance fishing so that is up to the Council's discretion. If the Council would like its recommendation to stand as written, we would suggest that no further action is necessary at this time. It could still be revisited at another time.

Number seven, the Council at its 133<sup>rd</sup> meeting recommended the Council be included as a full participant, e.g., voting member of any group, committee, task force and meetings, regarding NOAA's ecosystem management plan. In addition, the Council recommended that NOAA formally consult with the Council prior to approval and implementation of any such plan for the Northwestern Hawaiian Islands. Remember that these recommendations were made with the sanctuary designation in mind and there was discussion and formal written notice that such a management plan would be developed, as well as some sort of group that would be formed. The proclamation similarly says that some sort of management plan will be developed and will be put out for public comment. So this recommendation is not inconsistent with the proclamation and the staff suggests that no further Council action is necessary at this point.

Number eight deals with replacing the word "Sanctuary" with "National Monument". We've done that where it occurs. At this point in time we are dealing with the monument. So there is no further action necessary at this point in time. That concludes the 132<sup>nd</sup> and 133<sup>rd</sup> previous recommendations.

There are some other nondiscretionary provisions that were put out in the proclamation that I can address at this time or we can settle all these once first and move on to the next ones, as the Council wishes.

Mr. McCoy then called for comments from the Council members. Mr. Dela Cruz requested that consistent language used when referring to the monument.

Mr. Young then asked whether Mr. McCoy was seeking comments on the specific recommendations at this point or would they be addressed after Mr. Makaiau summarized the issues. It was decided that due to the complexity of issues the Council would discuss the above issues before moving on.

Mr. DeRoma asked if Council staff were suggesting to reject further action on Recommendation 1.1 (the use-or-lose requirements) or to defer it to a different date. Mr. Makaiau responded that the intent was to leave the recommendation in place as there was no need to repeal or amend it to be commensurate with the proclamation.

Mr. Robinson stated that he didn't have any problem continuing with the summary, assuming that then the Council would go through each one starting at the beginning. He added that in his view some of the ones already covered contained nondiscretionary issues and it needed to be identified which are discretionary and which are nondiscretionary. Mr. Makaiau responded that he had a powerpoint containing the all of the suggested actions for review. He informed the Council that, based on input from PIRO, the powerpoint indicates specifically which items are discretionary versus nondiscretionary.

Mr. McCoy then called for public comments on Mr. Makaiau's summary presentation.

Ellen Athas (Ocean Conservancy) gave the following comment: "I would like to point out that there has been a lot of attention paid to the issue of sustenance, and while that may be an opening for some management under the Magnuson-Stevens Act, it is really left to be seen how the draft management plan is issued, and that might be the more opportune time for the Council to weigh in. The draft management plans are going to come out. They are going to be joint between the Department of Commerce and the Department of the Interior. They are going to represent the best alternatives that these two agencies have put forth. It seems to me that the best time for the Council to weigh in would be after they see what sustenance is. I would also like to say that the first specific recommendation, 1.a, which says that closing indefinitely is -- through a harvest quota is simply not true. There's a difference between the two of them and the proclamation should be followed. I also see that when something is not inconsistent, that we are leaving management of those issues to the Council, and that has simply not been determined. If the Council does some type of management, it's a decision that needs to be made by Admiral Lautenbacher, and at this point it is the sanctuary Program that is moving forward with implementation, and it would be really shocking if the Magnuson-Stevens Act and the Council prevailed, even where there was no inconsistency before that, and that's my comment." There were no other public comments.

Mr. Young then commented that he recommended that the Council only act on the nondiscretionary types of actions and make an initial regulation that's consistent with the proclamation only, and not further confuse the issue by coming up with some other statements that are inconsistent with the proclamation. He went on to say that there is clearly a trigger for public meetings to address any changes in these rules, and the change from a sanctuary program to a monument may trigger an update to Environmental Impact Statement, and he was not sure those issues have been addressed. Based on the regulations that were adopted for the monument, it was clear to him that it was only consistent with the proclamation and that's why it could move forward and get done now. Mr. Young further stated that he felt that it's important that the Council have fishing regulations that are consistent with the proclamation so there is not an uncertain situation for the existing fishers; and that the Council adopt the rules immediately, or make the recommendation that they be adopted immediately as long as they're consistent with the proclamation, and then spend some other time dealing with the nondiscretionary issues that are not specifically stated in the proclamation. He concluded by saying that he believes that it's a very generous step to say, well, since it's not inconsistent with the proclamation we can do it, and he wasn't sure the Council could do that on an initial rule.

Mr. Robinson then stated that he would not go along with the comment that all fisheries management, or all management of the bottomfish fishery for the next five years or as long as those vessels are still allowed to fish there, is under the authority of the sanctuary program as he believes that NOAA, broad NOAA through NOAA Fisheries and throughout the joint process, , but including the Council and the Magnuson Act, that there is latitude to take necessary management actions that are necessary to manage the fishery as long as those actions are entirely consistent with the terms of the proclamation. For example, the use-or-lose that the Council has already recommended, that is separate from anything addressed by the proclamation and addresses activities that he thinks are appropriately addressed by the Council, and those are the types of activities that he believes can move forward, in addition to implementing the terms of the proclamation. However, these will need to move forward on a different schedule because

there will be different public notice and different analytical requirements.

Mr. McCoy then asked Mr. Makaiau to go through his powerpoint of all the recommendations so that the Council could discuss each in turn. Mr. Makaiau began by presenting the recently published monument regulation which states that “the Secretary shall ensure that any commercial lobster fishing permit shall be subject to a zero harvest quota. Except as otherwise provided in this proclamation, the Secretaries shall prohibit any person from conducting or causing to be conducted within the monument following activities: 1. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or non-living monument resource”. He then presented the slide containing the staff suggestion for Recommendation 1.a, that no further Council action is necessary to be consistent with the proclamation.

Mr. Young asked if by taking no further action the recommendation of the 132<sup>nd</sup> meeting would stand. Mr. Makaiau responded that in that case we will proceed with closure of these fisheries. Mr. Young responded that the recommendation actually says closure be established indefinitely. This suggests that it could be established and that is in direct conflict with what the proclamation says.

Mr. Ebisui stated that he understood what Mr. Young was saying, but he thought there was also inconsistency in the proclamation, itself. Because if it was absolute that it would never open again, why would you have a harvest quota, but set it at zero?

Ms. Simonds added that the proclamation didn't say, close the fishery. Mr. Ebisui agreed that it says to implement harvest quota of zero and stated that he thinks the recommendation from the 132<sup>nd</sup> meeting is consistent, as a moratorium equals zero harvest.

Mr. Young added that the 132<sup>nd</sup> recommendation goes beyond crustaceans to include precious corals and coral reef ecosystem species.

Mr. Duenas requested that a motion be made to approve or disapprove the staff suggestion before the Council engaged in further discussion. A motion to approve was made and seconded.

Mr. Robinson stated that he recommended that the Council adopt a prohibition in the current regulations for the crustaceans, precious corals and coral reef ecosystem FMP fisheries and offered a motion to amend the current motion to adopt a general prohibition on the harvest of crustaceans, precious corals and coral reef ecosystem species. His motion was seconded.

Ms. Simonds then asked the lawyers under what process (e.g. the MSA) would the Council be acting if it adopted such a prohibition. She went on to explain that previous discussions following the publication of the proclamation included two different ways of dealing with this, and the Council thought that they would do their part and go ahead and do those things that could be done quickly. During those discussions PIRO stated that the measures could go straight to final rule. However [under the MSA] there are requirements for the Council such as

the two meeting process and all of those kinds of things. Mr. DeRoma stated that he believed the processes to be the same but with this one, if it is put in place as a general prohibition, at a later point there will have to be some housekeeping to go back to the individual portion of the regs that apply to these particular fisheries to bring them in line. But the general prohibition would be in line with the proclamation -- the final rule. It would be deemed consistent with the final rule and the proclamation and it's something that could be done right away. Ms. Simonds asked if Mr. DeRoma was saying that it had to be done both ways. Mr. DeRoma agreed and added that under the current approach the prohibition would go into place immediately, while the other approach would require amending the individual fishery management plans and their regulations which would take longer and would take additional comment. Whereas this one, because it falls directly in the prohibition against extracting from the monument, would go into place immediately -- or as quickly as possible. Ms. Simonds concluded by saying that at this point, with the proclamation and the proposed regulations in place, the fishery is closed. So it really doesn't matter if things are done right now or at the October meeting. Mr. DeRoma generally agreed but said that it does matter that there is a discrepancy between the 665 regulations that the fishermen look to for guidance and the 404 regulations that set the [recently published NWHI monument] final rule in place.

Mr. Young stated that he supports the amendment because it would make a regulation that is consistent with specific language within the proclamation and not have inconsistent language that may delay its immediate adoption.

Mr. Robinson told the Council that they have a choice because based upon the above logic the Council could conclude that it doesn't need to take any action because the proclamation and the joint regulations basically rule. He stated that he could make that argument for 80 percent of what is here and that for those measures the Council doesn't have to do anything if its choice is to let the proclamation rule and not revise the 665 regs to bring them into conformity.

Ms. Simonds clarified that she was only talking about timing, whether it's today or whether it's October.

Mr. Duenas stated that his concern, as a Council member is following the Magnuson Act. He said that the proclamation is an Executive Order but the Council must comply with the MSA. He is tired of looking at these fishermen every time we have a meeting saying when am I going to the Mau Zone, when am I going to the Hoomalu Zone? These are Hawaii's people. They're not Guam's people. But they're asking the Council for help. Fishermen. Now they're kicked out, period. They're suffering and nobody seems to care. If people want to read the proclamation, paste it up on the wall for somebody else, because he is tired of hearing it. The Council should follow Magnuson.

Mr. Young commented that the Council's responsibility is to come up with fishing regulations for a monument and that responsibility requires it to follow the guidelines of the proclamation, and without the clarification of a rule he believes there is uncertainty for the fishermen, and that's why he believes the Council should work on a process where we can have an immediate rule implementation regarding the fishing so that there is clarity. Otherwise, it would be an uncertain and potentially extended process.

Mr. Ebisui asked for clarification regarding whether the Council's action has to mirror the verbiage of the proclamation, and if so what's the point of doing all this? He asked someone to explain the substance of distinction between a zero harvest quota prohibition and an indefinite fishery closure.

Mr. Robinson responded that he wanted to address Mr. Ebisui's first point in that the joint regulations implementing the proclamation are in the 404 section of the Code of Federal Regulations, and the reason that it's necessary to take a look at the Magnuson Act 665 regulations is to eliminate the inconsistencies and contradictions between existing regulations and the new regulations that implement the proclamation. From the standpoint of the reader of the Code of Federal Regulations and the fishermen, there would be no confusion as to which regulations to follow, if they are the same, essentially, in those areas where they need to be the same. Again, there can be additional regulations that come through the Council that if approved by NOAA can be implemented. But it just eliminates a lot of confusion and it brings all of the regulations into conformity.

Mr. Young stated that his recommendation of regulations consistent with the proclamation is with the intent of an initial immediate implementation of rules. It does not suggest that there would not be further discussion on any further refinement of rules. He went on to say that he believes it's a multi-step process. When the Secretaries authorize the rules for the monument that were recently published, he was involved in consultation in that process and it was made clear to him that the rules on this initial phase must, essentially, mirror the proclamation so that they could be immediately implemented. If they differed in any way with the proclamation, then they would need to go through a broader process. He concluded by saying he believes it's important to have rules in place so the fishermen are clear and that it's consistent with the proclamation.

Mr. Makaiiau added that if one looks at the proclamation it says: "The Secretary shall insure that any commercial lobster fishing permit shall be subject to a zero harvest quota." Mr. Makaiiau then outlined the [FMP] regulations now in place. 50 CFR 665 says that the Regional Administrator has the authority to issue the lobster harvest guidelines for each fishing year. He continued by saying that the mechanism is already there to fulfill the proclamation that each permit will be given a zero harvest quota. The larger issue now is, is the closure what the proclamation is calling for? No, it's not what the proclamation is calling for. So how should the Council handle that? Does it need to dissect or amend 1.a to better reflect that? If the Council can agree that for lobster at least the mechanism and the regulation is already there, let's move to precious corals and see what kind of regulation needs to be done for that to be consistent, and maybe that's adopt some prohibition for the taking of precious corals. Then move on to coral reef ecosystem species for which we have an FMP that doesn't apply to the NWHI. So does the Council need to bring the NWHI into the coral reef ecosystems FMP management area only to prohibit it or can it take no action? He added that if the Council moves through things sequentially, maybe it can get past this roadblock.

Mr. Young stated that it his understanding that in this case the phrase, no further action necessary, means that the Council is continuing to recommend that a closure be established indefinitely. Mr. Makaiiau agreed.

Mr. Dela Cruz asked that the definition of a monument resource, whether living or not living, be clarified. Mr. DeRoma responded that his understanding is that it's the broadest interpretation of any item or living organism or nonliving organism that is within the monument boundary may not be extracted from the monument. For example, the removal of a piece of coral whether it's living or nonliving from the waters within the monument, would be a violation of the regulations. Or if you were to move or disturb it in any sense of the word. Mr. Dela Cruz inquired what is not a resource of the monument. Mr. DeRoma responded that marine debris may not be a resource. However some classes of marine debris artifacts, for example, which float in the monument, which would be deemed to be a monument resource. He concluded by saying that the best answer is items which are exempted from the prohibitions in the monument, for example coral for which one has a research permit and in order to study the coral you have to move it, that of course is going to be exempted from the prohibitions of the taking, movement, et cetera, of monument resources.

Mr. Ebisui asked Mr. Young to clarify his last comments and whether he was okay with no further action, as the previous action being consistent with the proclamation? Mr. Young said no, that would not be correct. He believes the previous action is inconsistent with the proclamation.

Mr. DeRoma suggested that perhaps it might help the Council in their deliberations if they chose between "no further action" as in no action at all or "deferred action" that would delay action to a later day or "action" that would recommend an action determined by the Council to be appropriate. By adding in that third option of deferring, rather than it standing, as Mr. Young takes it, you're essentially saying we're not going to leave it as is, but we're going to address it at the next meeting in October.

Mr. Young stated that if saying the Council would take no further action would mean that the 132<sup>nd</sup> Council meeting recommendation would stand then he thinks it needs to be amended. Mr. DeRoma clarified that when he suggested "defer", he meant to suspend it so it is not a pending recommendation. It is a deferred recommendation and that the recommendation hasn't been finally adopted by the Council until that later date.

Mr. Robinson added that, to be abruptly honest on this, whether any of us agree or not with the proclamation, he thinks what was intended by the writers of this proclamation was that commercial fishing be limited to bottomfish and associated pelagics for a short period of time, and then all commercial fishing would be prohibited from then on, and that's the thrust of his motion, because that's the intent of the proclamation. So it just simply makes logical sense to him then to adopt a general prohibition against fishing or the harvest of those three FMP species.

Mr. Ebisui stated that the Council works within the MSA, which does not include nonliving resources. So the Council cannot be expected to create regulations which mirror those of the proclamation. However it can make regulations that are substantively identical in those areas which are regulated under the FMPs.

Mr. Robinson clarified that the motion only applies to FMP species (crustaceans, precious corals, and coral reef ecosystem fish).

Mr. Duenas then asked the Chair to call for the question on the amendment. Mr. Makaiau responded that the proposed motion is to amend the first recommendation - to take no further action - to read instead: Adopt a general prohibition on taking of crustacean, precious corals and coral reef ecosystem species.

Mr. McCoy took a roll call vote which resulted in the motion being defeated 9:3.

Mr. Duenas then offered an amendment to the above action that would table it until the Council's October meeting. His motion was seconded and Mr. McCoy called for further discussion.

Mr. Dela Cruz inquired whether a Presidential proclamation or a congressional statute (i.e. the MSA) would prevail in the case of a conflict between the two. Mr. DeRoma responded that in the context of a Magnuson action, Magnuson requires that fishery management plans and amendments be consistent with the terms of the act and also it includes, and other applicable law. So in this case, the proclamation and the follow-on regulations would be deemed other applicable law. So it's not necessarily that one trumps the other, but that they have to be consistent with each other. He added that in his view he thinks that in the view of the Department of Commerce and the Department of the Interior, because they use the Magnuson and the Endangered Species Act and other Fish and Wildlife statutes in promulgating the monument regulations, that they believe any inconsistent prior existing regulations would yield to the current version of the regulations. So the short answer is the monument regulations trump existing Magnuson regulations that are inconsistent with at the monument regulations.

Mr. Young then asked what would happen if the Council doesn't adopt regulations, a final set of regulations, that are consistent with the proclamation now, what regulations are the fishermen subject to now that the proclamation has been formed? Mr. DeRoma responded that all members of the public are subject to the recently published proclamation regulations.

Mr. McCoy then called for the question and another roll call vote which resulted in the motion being defeated 9:3.

Mr. McCoy then called the Council's attention to the underlying recommendation (the staff suggestion to take no further action on recommendation 1.a). Following a brief discussion as to whether it was necessary to take action in order to maintain an existing recommendation, it was determined that a further vote was not necessary to do so. Mr. McCoy then asked Mr. Makaiau to continue with the Recommendation 1.b.

Mr. Makaiau then brought up the powerpoint slide with staff suggestion (that the Council recommends fishing within the monument be subject to Magnuson-Stevens Act permit and logbook reporting requirements). He noted that this had been identified as a discretionary recommendation.

Mr. Sablan made a motion to adopt the staff suggestion, the motion was seconded and Mr. McCoy called for Council discussion.



Mr. Robinson commented that his understanding is that currently both commercial and recreational fishing -- well, commercial fishing, in particular, not recreational fishing, is already regulated under the Magnuson Act. There is not a federal logbook required, but the Magnuson Act requires compliance with State reporting requirements, if I recollect. So it's a little uncertain in his mind whether this means that the State reporting requirements would be superseded by a federal logbook that the Council and PIRO will develop or not, and if that's really the intent, it seems to him that it is discretionary and it's something that needs to be developed a little more fully, and maybe it's something that could be taken up at the -- at a subsequent meeting. He went on to point out, though, that it doesn't appear to be any recreational fishing is allowed in the monument, only sustenance and commercial fishing by bottomfish fishers. He concluded by saying that he recommends tabling this issue for now and putting it in the discretionary pile for further development. He offered an amendment to do so. There was no second.

Ms. Simonds asked Mr. Robinson to clarify his meaning as the Council already voted on that provision. In addition the Council has used the term "fishing" and in its recommendation that it made earlier this year, meaning whatever kind of fishing and not limited to commercial fishing. One of the big problems with bottomfish in the NWHI is that those fishermen who went up to fish there at Midway never really reported their catch and were never given permits. And according to the Fishery Management Plan, everybody who fishes for bottomfish must have a permit. Because Fish and Wildlife Service was managing Midway, the Council asked that they share their fishery data. So that's recreational fishing and what the Council is saying refers to all fishing, whatever kind of fishing, sustenance, subsistence, whatever.

Mr. Ebisui pointed out that at the 132<sup>nd</sup> Council meeting, the recommendation for this issue was slightly different than the staff recommendation at this meeting. The staff recommendation at this meeting doesn't speak in terms of commercial, recreational or sustenance. It just says fishing. So it's much more comprehensive and it is different than the previous recommendation.

Mr. Young commented that the recently published monument regulations state that the State waters are part of the monument, and this would create a jurisdictional question of having a Magnuson permit within State waters. So the way this reads and the way that the regulation for the monument reads is that State waters are included in the monument. So the State would object to a Magnuson permit applying to the State waters. If it's amended to say Federal waters of the monument, then there is not a significant problem.

Mr. Gaffney offered an amendment to the motion that would rephrase the language to read that the Council recommends any form of fishing within federal waters of the monument be subject to the Magnuson-Stevens Act permit and logbook reporting requirements when developed by the Secretaries. The motion was seconded.

Mr. Young requested clarification as to whether sustenance and subsistence fishing are defined within Magnuson? Mr. Makaiiau responded that sustenance fishing is defined but subsistence fishing is not [it was subsequently determined that neither term is defined in the MSA].

Mr. McCoy then called for the question and a roll call vote resulted in the motion being approved 11:1.

Mr. Young then asked Mr. Robinson to explain his voting against the action. Mr. Robinson stated that it is because the language refers to fishing, and other than commercial fishing by bottomfish fishers, which is under Magnuson Act reporting requirements, he has no problem with that. The only other fishing authorized in the proclamation, as he understands it, is sustenance fishing which can be authorized by monument permits, special ocean use permits that will be monument permits, not Magnuson Act permits, for sustenance fishing. Overall his reason is that he doesn't believe that sustenance fishing is authorized in the proclamation under a Magnuson Act permit. So his only problem with that language was calling it a Magnuson Act permit.

Mr. Gaffney moved to amend the previous action to eliminate the words Magnuson-Stevens Act, and insert the word monument to replace it. The motion was seconded.

Mr. McCoy called for the question and a voice vote was taken with all members voting in favor of the amendment.

Mr. Makaiiau then presented the staff suggestion for Recommendation 1.c (that the Council recommend permits for fishing be issued on a case-by-case basis and that the Council will evaluate the need for further management). He indicated that this is also a discretionary provision.

Mr. Ebisui made a motion to accept the staff recommendation. The motion was seconded and Mr. McCoy called for discussion.

Mr. Duenas asked for clarification regarding the decision to have the monument do the permitting, will the Council be part of the process or not? If the answer is yes then he feels the Council must look at harvest limits.

Mr. DeRoma responded that his understanding is that essentially what the Council is doing is recommending that the Secretary, as part of the joint trustee or co-trustee regime under the proclamation, take into consideration that fishing permits be issued on a case-by-case basis.

Mr. Young asked what other permits would be issued given that the proclamation calls for any permit that is in effect can be in effect for another five years from the date of the proclamation. Mr. DeRoma responded that sustenance fishing permits could be issued in association with one of the five permit types. If sustenance fishing is allowed in the monument as the Secretaries for Interior and Commerce deem appropriate and which by its nature implies a case-by-case analysis of each application for an access permit, and then consideration within that permit whether or not sustenance fishing is allowed. So it's a product of that joint management regime. Mr. Young asked if that wouldn't be already covered under the 1.b process? Mr. DeRoma responded that he would say no because 1.b is says that if you do grant one of those sustenance fishing permits to recommend to the Secretary, commensurate with that permit a reporting requirement as well. So that anyone wanting to conduct a research trip must get a

research permit to access the monument, and the Secretaries have the discretion to also allow sustenance fishing with that. What 1.b does is provide us data and collect the information about what fish species, numbers, and such. Whereas without 1.b, fishing could still be allowed under 1.c on a case-by-case basis, but you'd get no data.

Mr. Young stated that he didn't understand how the existing permits would be evaluated on a case-by-case basis. Mr. Tosatto responded that they are annually renewed and evaluated for current certificates of documentation, all the checklist. Mr. Young asked in that case why is this recommendation needed? Mr. DeRoma responded that the Council is voting on whether or not it wants to recommend to the Secretary that he approach this permitting on a case-by-case basis and also preserve open the ability to provide further input by evaluating a need for further management. Mr. Tosatto added that the need for further management action could be a resource issue brought to the Council's attention, via stock assessment, via fisher input, the public process, which the Council would need to forward to appropriate management agencies.

Mr. McCoy then called for the question and a roll call vote was taken with a unanimous vote to approve the staff suggestion.

Mr. Makaiiau then presented the staff suggestion for 1.d. (that the Council take no further action on its previous recommendation to recommend limited entry NWHI bottomfish permits be capped at fourteen, with seven permits for the Hoomalu Zone and seven permits for the Mau Zone and two CDP permits for indigenous use be included in the latter and issued as previously recommended by the Council).

Mr. Robinson commented that the Council can put a ceiling or a cap at any level on the number of permits, but to bring the regulations into conformity with the proclamation, he thinks that at the very least the number of permits would have to be limited to those that were in effect as of June 15th, 2006 and are renewed according to the appropriate process as described in the current FMP regulations and the proclamation. Mr. Makaiiau responded that the staff suggestion came from examining the current FMP regulations in CFR 665 which say that the regional administrator already has the discretion on how to issue permits. In the past five years or so he has utilized that discretion to fulfill the Executive Order, by not issuing them. So the staff doesn't think that further action is necessary to provide him with this discretion. Mr. Robinson asked if under this logic, if the Council took no further action then he (as regional administrator) would be guided primarily by the requirements of the proclamation regarding the number of permits, as long as those permits are reissued consistent with our Magnuson Act regulations, which the proclamation requires.

Mr. Young asked in that case why would the Council want to continue with its recommendation that the permits be capped at 14. He feels that the Council should acknowledge the proclamation and confuse the issue with a recommendation for a higher number.

Mr. Robinson stated that he would recommend that the Council withdraw its recommendation and simply live with the existing plan as it is today, because the proclamation has already determined his ability to take applications or issue any other permits and thus there is no reason to change from 17 to 14.

Mr. Duenas responded that he is again concerned about following the MSA, as well as the threats of litigation. He believes that the Council and NMFS would be in a stronger position if they had some recommendation in response to the proclamation rather than remaining silent. He went on to say that although the proclamation calls for 8 permits, the Council's recommendation of 14 was based on the best available science and the MSA. Although the 14 would not be issued at least the Council would be on the record with its recommendation.

Mr. Robinson stated that the problem with the 14 is that now with the proclamation in place, the Council would have to go through a process of justifying and analyzing the impacts, and so forth, of making a change to the current FMP. The point he was making was that if the Council is acknowledging that the proclamation will guide his activity as Regional Administrator under the current regulations, then the current regulations don't need to be changed and the Council doesn't need to go from 17 to 14. It can stay at 17.

Mr. Duenas asked Mr. Robinson and Mr. DeRoma if withdrawing the previous recommendation would leave the FMP regulations at a cap of 17 permits. Mr. DeRoma responded that it would but added that those regulations now would be trumped by what is in the monument regulations. So only existing current issued permits would be in effect and no further permits could be issued. Mr. Ebisui commented that he would want to think more deeply about this as it is the heart of the NWHI limited entry program and could have additional ramifications.

Mr. Duerr commented that he didn't see the language as being consistent with the proclamation.

Mr. Ebisui made a motion to defer action on this issue to the next Council meeting. The motion was seconded. Mr. McCoy called for the question and a unanimous voice vote approved this deferral.

Mr. Makaiiau then presented the staff suggestion for Recommendation 1.e (that the Council recommend that total landings each fishing year not exceed 350,000 pounds for Bottomfish Management Unit Species from the NWHI monument to be consistent with the proclamation).

Mr. Young requested that the phrase "from federal waters in the monument" be used. Mr. Duenas responded that the proclamation doesn't say federal waters. Mr. Young agreed but added that the MSA only focuses on federal waters. Mr. Robinson stated that the monument overlays State waters and their NWHI refuge. This creates a problem if the State decided to get rid of the refuge and have a bottomfish fishery in State waters, then that would not, in his view, be an addition to the 350,000 pounds currently allowed in federal waters. Whatever the State allowed in its waters would be part of the 350,000 allowed in the monument.

Mr. Young responded that the proclamation did not enhance or diminish the State's jurisdiction and he wants to be consistent in every statement that the State's jurisdiction remains. He wanted the Council to understand that his objection to the language was based on jurisdictional issues.

Mr. Duenas made a motion to accept the staff suggestion as written (without the addition of the words “in federal waters”). The motion was seconded. Mr. McCoy called for the question and a voice vote approved the motion 11:1.

Mr. Makaiiau presented the staff suggestion on Recommendation 1.f (that the Council withdraw its recommendation to cap commercial pelagic fishing permits at three). Mr. Duenas moved to accept the staff suggestion. The motion was seconded and hearing no discussion Mr.McCoy called for the question. A unanimous voice vote approved the motion.

Mr. Makaiiau then presented the staff suggestion on Recommendation 1.g (that the Council recommend that total landing for each fishing year not exceed 180,000 pounds for each Pelagic Management Unit Species caught by NWHI bottomfish permit holders from the NWHI monument).

Mr. Duenas made a motion to accept the staff suggestion. The motion was seconded and Mr. McCoy called for discussion.

Ms. Simonds asked Mr. DeRoma whether the recommendation should specify that the limit applies within the monument boundaries or was the current language appropriate. Mr. DeRoma responded that saying “within the monument” was appropriate

Mr. Young noted that he had the same concerns with including State waters as before. Mr.McCoy noted his comment and called for the question. A voice vote approved the motion 11:1.

Mr. Makaiiau presented the staff suggestion for Recommendation 1.h (that the Council withdraw its recommendation that no-take MPAs be established around French Frigate Shoals and west of 174 Degrees West Longitude and recommend a prohibition on commercial fishing within any Ecological Reserves, Special Preservation Area or Midway Atoll Special Management Area as defined in Proclamation No. 8031).

Mr. Duerr made a motion to accept the staff suggestion. The motion was seconded and Mr. McCoy called for discussion.

Mr. Ebisui requested that the issue be separated into two and the motion was so modified and seconded. The first issue to be considered was the withdrawal of the recommendation on MPAs. A unanimous voice vote approved this motion. Mr. McCoy then called for discussion on the second issue of prohibiting commercial fishing within any Ecological Reserves, Special Preservation Area or Midway Atoll Special Management Area as defined in Proclamation No. 8031.

Mr. Makaiiau then reread the second staff suggestion, that the Council recommend a prohibition on commercial fishing within any ecological reserve, special preservation area or Midway Atoll special management area, as they are defined in Proclamation No. 8031. Mr. McCoy called for discussion.

Mr. Ebisui stated that the text was identical to the proclamation and asked why Council action was needed given that the requirement was already codified in the recently issued monument regulations. Mr. Young responded that it was to make the current FMP regulations consistent with the monument regulations. Mr. Duenas asked if the issue was in fact moot given the existence of the monument regulations. Mr. Robinson stated that from a philosophical standpoint it would be more consistent to take action on all issues versus picking and choosing just some of them.

Discussion continued reiterating these arguments for and against taking action on this recommendation. Ms. Simonds added a personal comment noting that these area restrictions are one of the worst provisions that the proclamation could have ever made for the NWHI fishermen. Having these ecological reserves and all of the other closures absolutely reduces their fishing for the next five years, takes away 75 percent of their fishing. She added that she is afraid it's a fast death for them, especially the few who -- where this is their livelihood and that for some of them who fish, who depend solely on fishing in the Northwestern Hawaiian Islands, this is death. Not for those who just fish occasionally, but for some such as Mr. and Mrs. Gomes, because this is their livelihood. This is what they do every day. This is what he was trained to do. So this is the worst provision in the whole proclamation.

Mr. Ebisui asked Mr. DeRoma what would happen if there were two sets of regulations which are identical, but in different parts of CFR, and one is amended, say, in a year or two from now, how do the two then interplay? And are there other complications when there are duplicate sets of regulations, identical regulations? Mr. DeRoma responded that he didn't see a problem with duplicate regulations in existence. If one set, such as the MSA set, is subsequently amended and it came to the Secretary and was found to be inconsistent with the terms of the proclamation, it would not be approved. He added that it's the view of the Departments and the Secretaries and the State of Hawaii, and he believes, with some regards, that the monument regulations are the controlling regulations.

Mr. Ebisui asked what would happen if both sets of regulations are identical, and both of them comport with the proclamation. Then a year or two down the road from here the 404 regs are amended. The FMP ones are not. What happens? Are there complications? Mr. DeRoma responded that it was hard to give an answer without a concrete example in terms of what the inconsistency is. There is a lot in 404 [the monument regulations] that has nothing to do with 665. But he agreed that it would be difficult to keep the two sets of regulation identical but that doesn't mean that there is a conflicting legal regime as he believes that 404 is what controls.

Mr. Duenas added that he had supported previous recommendations because they allowed the fishery to continue at 75 percent of MSY. However this recommendation would not give them a chance to maintain that level.

Mr. Martin added that in talking to particularly the Hoomalu Zone bottomfish fishers, the rules as they will be put in place, as related to the ecological reserves and special preservation areas, it's estimated will result in reductions of as much as 80 percent of their fishing grounds as they currently use. So when people talk about the fishermen getting five years, and all of that, they get five years in 20 or 25 percent of their existing and traditional fishing ground. So the

Council should believe that there was some concession made to allow them to exit the fishery in some orderly manner as that is not the case. He went on to say that the Hoomalu Zone is somewhat different. Their restrictions are less draconian. But, nonetheless, fishermen that fish up there fish in different areas, and what's going to happen to the fishermen as they continue to fish up there is the remaining spots in the Hoomalu Zone will be heavily targeted, unlike they used to be, because guys used to move around. They self-regulated themselves. But the idea that the five years is some kind of a concession when you talk about the ecological reserves and the special preservation areas is a fallacy. So don't anybody think that it's anything other than that.

Mr. McCoy then called for the question on the motion to recommend a prohibition on commercial fishing within any ecological reserve, special preservation area or Midway Atoll special management area as defined in Proclamation No. 8031. A roll call vote was held which resulted in the motion being defeated 9:3.

Mr. Makaiiau then presented the staff suggestion for Recommendation 1.i (that the Council take no further action on its previous recommendation to remove the use-or-lose requirements as it is not inconsistent with the proclamation). Mr. McCoy called for discussion.

Mr. Young asked Mr. DeRoma whether including this action, which is not discussed in the proclamation, would be inconsistent with the proclamation. Mr. DeRoma responded that the Council can take any action under Magnuson that it's lawfully enabled to take, so long as it's not inconsistent with the terms of the proclamation. Because it is discretionary it would require a full regulatory review, but it is something that the Council is authorized to do under the purview of the Magnuson Act. He added that he thinks that any act they do under Magnuson that is not inconsistent with the proclamation is allowed or would be approved.

Mr. Robinson stated that he believed that the previous action taken by the Council had good rationale behind it in that it did not force fishermen to continue fishing to maintain their permit. He said that he thinks the Council didn't need to take any further action on this recommendation. Mr. McCoy directed Mr. Makaiiau to continue with the next item.

Mr. Makaiiau presented the staff suggestion for Recommendation i.j (that the Council withdraw its previous recommendation that NMFS reissue relinquished or revoked commercial bottomfish permits).

Mr. Ebisui made a motion to approve the staff suggestion. The motion was seconded. Mr. McCoy called for discussion.

Mr. Young asked Mr. DeRoma how the existing recommendation would apply given the proclamation's language limiting fishing to the permits that were in effect at the time. Mr. DeRoma responded that it would enable re-issuance of permits if ever that were allowed. But in all practical effect, the permits are fixed to whatever were in effect as of the date of the proclamation. So they will be -- as the regime currently exists, there will be no further permits issued. He added that he didn't believe that the Secretary or the RA could approve that action, because it is contrary to the proclamation.

Mr. McCoy called for the question and a roll call vote resulted in unanimous approval of the staff suggestion.

Mr. Makaiiau then presented the staff suggestion on the first part of Recommendation 1.k (that the Council not take any further action on its previous recommendation to allow federally-permitted research within the monument). After a short discussion it was again determined that the Council did not need to vote in order to support staff suggestions for no further action on previous Council recommendations.

Mr. Makaiiau presented the staff suggestion on the second part of Recommendation 1.k (that the Council not take any further action on its previous recommendation to request NMFS to work with the Fish and Wildlife Service and request Fish and Wildlife Service to A.apply the same data reporting protocols that NMFS uses in collecting fishery-dependent data; and B. accurately collect and maintain all noncommercial fishing data collected on Midway). Mr. McCoy called for discussion.

Mr. Palawski stated that to be consistent with all of the other discussion earlier, it would be preferable to use the word "co-trustees" in this case, rather than singling out the Fish and Wildlife Service.

Mr. McCoy directed Mr. Makaiiau to move ahead with the third part of Recommendation 1.k.. Mr. Makaiiau presented the staff suggestion (that the Council recommend that traditional and cultural Native Hawaiian subsistence and sustenance uses of Northwestern Hawaiian Islands fishery resources be allowed and managed in Federal waters of the Northwestern Hawaiian Islands Monument under Presidential Proclamation No. 8031 and the Magnuson-Stevens Act).

Mr. Sablan moved to approve the staff suggestion. The motion was seconded. There was no discussion so Mr. McCoy called for the question. A voice vote resulted in a unanimous positive vote.

Mr. Makaiiau then presented the staff suggestion for the fourth part of Recommendation 1.k (that the Council recommend that harvest of NWHI fishery resources by permitted vessels for onboard consumption, i.e. sustenance, be allowed and managed in Federal waters of the NWHI monument under Presidential Proclamation No. 8031 and the Magnuson-Stevens Act).

Mr. Sablan made a motion to approve the staff suggestion. The motion was seconded and Mr. McCoy called for discussion.

Mr. Young asked Mr. Robinson whether he had a concern regarding the issue of management by the monument versus under the MSA. Mr. Robinson responded that the monument's sustenance provisions are laid out in the proclamation and in the joint regs. He added that the joint regs are under the joint authorities, the Antiquities Act and the Magnuson Act as well. So it's a bit of a stretch, but he believed that one could argue that the provisions would be implemented under the Magnuson Act, at least in part. Also under other authorities, as well.



Mr. Duenas asked Mr. DeRoma how this recommendation would affect the crustacean zero harvest quota. Can these vessels go in there and harvest lobster during their trip? Mr. DeRoma responded that the sustenance fishing is limited to bottomfish or pelagic species. So it would not include lobster.

Mr. Duenas asked if these vessels carry observers. Mr. DeRoma responded that they were not, as far as he was aware but the Council could make this recommendation if it was in conjunction with a Magnuson-related activity.

Mr. McCoy called for the question. A voice vote resulted in a unanimous vote to approve the motion.

Mr. Makaiiau moved onto the recommendation from the 133<sup>rd</sup> Council meeting and presented the staff recommendation for the first recommendation from that meeting (that the Council withdraw its recommendation to issue the initial three permits based on historical participation in the Northwestern Hawaiian Island pelagic fishery).

Mr. Sablan moved to approve the staff suggestion. The motion was seconded and, hearing no discussion, Mr. McCoy called for the question. A voice vote resulted in a unanimous vote to approve the motion.

Mr. Makaiiau presented the staff suggestion for the second recommendation from the 133<sup>rd</sup> Council meeting (that the Council withdraw its recommendation to define the fishing year for bottomfish and pelagic fishing, as it is already defined, one, under Magnuson-Stevens Act for bottomfish and, two, under the proclamation).

Mr. Sablan made a motion to approve the staff suggestion. The motion was seconded and hearing no discussion Mr. McCoy called for the question. A voice vote resulted in a unanimous vote to approve the motion.

Mr. Makaiiau presented the staff suggestion for the third recommendation from the 133<sup>rd</sup> Council meeting (that no further action is needed on the Council's previous recommendation that NOAA look into ways to compensate the fishermen who are affected).

Mr. Robinson commented that NMFS is having conversations with the fishing community about developing estimates of fair value that NMFS believes we will ultimately turn into some sort of a compensation package. Mr. Duenas stated that he would like to urge NMFS to assist the fishermen getting some immediate relief of all these burdensome and cumbersome items that we discussed earlier. They've lost 70 percent or 80 percent of their fishing grounds. So families' livelihoods, their homes, are in jeopardy right now and he hopes there is some immediate relief for compensation at this time.

Ms. Simonds asked Mr. Robinson whether there are any provisions in the Magnuson Act or elsewhere that would allow the Service to issue some sort of emergency relief or disaster relief right now? Mr. Robinson responded that the only provision he is aware of is the MSA 312 provisions for declaring a disaster. A fishery resource disaster that results in a commercial

fisheries failure is the basic criteria for that. But there is a provision.

Mr. McCoy added that the actions that have been taken have greatly affected the livelihood, the emotional stress etc. Some fishermen have recently bought new boats and are trying to upgrade, just pursuing the American dream. He went on to say that it's really hard, that at the stroke of a pen, they are told that they are not going to make a living here and there is nothing else reserved for them. They've been paying taxes along with everybody else. They've done the best they can. He added that there are sons that have followed the father's footsteps. Not everybody can become a doctor, a PhD, a lawyer. Some people choose fishing for a living, and there's nothing wrong with it, because they supply food to the tables of Americans. They supply food to the economy of states and he hopes that NMFS will move along with providing compensation.

Mr. Duenas stated that he was wondering if Mr. Robinson can get together with the Pew Foundation as they are said to be trying to work out a buyout program with the fishermen. Perhaps NMFS can ask them for some money to help these fishermen that they so hate, because they are part of the human race, the race they don't care for. But they should be asked if they can help out, some sort of charity. Mr. Robinson responded that PIRO has not been a part of the Pew offer that went on over the last few months. But they have been tasked by Senator Inouye to meet with the fishermen and to develop collaboratively with them a fair estimate of the value of their fishing operation and their permits and their vessels, and so on and so forth, so that that might be taken into some kind of consideration in some type of compensation package, if one were to occur.

Ms. Simonds added that what Mr. Duenas was calling for is relief now for certain fishermen whereas Mr. Robinson was talking about, because we're so very late in the Reauthorization, Appropriations, and all those kinds of things, that whatever package is put together may not make it through for '07 and would have to be for the following year. So two different situations are being discussed.

Mr. Young stated that he felt that the comments that were made against Pew, suggesting that they're not caring, were out of line. His discussions with Pew and their representatives indicate that they are actively seeking fair compensation for the fishers, and to suggest that they're not identifying fishers or others as part of the human race is just out of line. Mr. Duenas apologized to Mr. Young.

Perceiving consensus to take no additional action, Mr. McCoy directed Mr. Makaiau to present the staff suggestion for the fourth recommendation from the 133<sup>rd</sup> Council meeting (that no further action is required regarding the Council's previous recommendation to relocate Weather Buoy 1 outside of the monument).

Mr. Young stated that he was concerned that relocation would affect a long history of data collection and suggested that an alternative would be to put in a new buoy outside of the monument but leave #1 where it is. Mr. Robinson responded that the Weather Service had indicated that they would be comfortable with moving it and that doing so would not degrade the data. Because it is a man-made device that creates an artificial ecosystem, so from the standpoint

of pristineness, one might argue that moving it out of the monument would be a good thing. He went on to say that NOAA hasn't made a decision to move the weather buoy yet and there are a couple of outstanding issues that the Admiral was actually asking for some information on. One could be provided by the Council, and it is whether moving the weather buoy outside of the monument boundary for the benefit of some of the pelagic fishermen that can no longer fish within the monument would have any adverse consequence to the bottomfish fishers and their ability to catch associated pelagic species within the boundary. Mr. Robinson believes this needs to be examined, because he doesn't want to provide the benefit back to the pelagic fishermen to the detriment of the bottomfish fishermen. The other question that the Admiral had is whether the State had an interest or capability in putting a FAD in an area outside of the monument boundary.

Mr. Young asked whether there would be federal support for that, since it would be in Federal waters. Mr. Robinson responded that probably the federal government would have to transport and secure the FAD if one were provided by the State and this is one of the discussions that NOAA wanted to have before making a decision on whether to move the weather buoy or not. Mr. Young stated that he would be willing to discuss it but being in Federal waters would bring up a concern regarding ongoing maintenance. Perceiving consensus to take no additional action, Mr. McCoy directed Mr. Makaiiau to move on.

Mr. Makaiiau presented the staff suggestion on the fifth recommendation from the 133<sup>rd</sup> Council meeting (that no further action is required on the previous Council recommendation that all noncommercial fishing except for traditional and cultural Native Hawaiian sustenance fishing, i.e., harvest and consumption of fish within the NWHI National Marine monument, be prohibited following closure of associated fisheries). He pointed out this is identical to the previous recommendation from 1.g and is only here because the Council did relook at it at the 133<sup>rd</sup> Council meeting, but it had already been addressed by the Council today. Perceiving consensus to take no additional action, Mr. McCoy directed Mr. Makaiiau to move on.

Mr. McCoy called for discussion. Mr. Young stated that this is inconsistent with the proclamation. Mr. Robinson added that he would preface his remarks by saying that the Council, in an advisory mode, can obviously recommend whatever it likes. He went on to say that it is inconsistent in the sense that basically if the Council takes no action, then the Council's recommendation stands that as soon as commercial fishing ends, all fishing ends. Clearly, the proclamation in the joint regs provides for sustenance fishing associated with access permits for more than just Native Hawaiians.

Mr. Ebisui asked Mr. Robinson to clarify whether he was talking about research or other types of vessels. Mr. Robinson stated that if the monument issues a permit to the HIIALAKAI to do research, then sustenance fishing from that vessel could be authorized as part of that permit under the proclamation. Mr. DeRoma added that under the monument regulations sustenance fishing is not limited to traditional and cultural purposes. So the suggested language states that all noncommercial fishing, except that narrow category of Native Hawaiian traditional and cultural sustenance fishing, would be prohibited. This essentially recommends that all other sustenance fishing that is not Native Hawaiian traditional and cultural be precluded. He went on to say that he thinks Mr. Young's point and Mr. Robinson's point also is that that is inconsistent

with the proclamation, which opens sustenance fishing to all people that have a permit under the monument regs, not just traditional and cultural Native Hawaiians.

Mr. Duenas stated that this is one of the inconsistencies he sees in the proclamation. If you're a scientist, if you happen to be in the Coast Guard, you happen to be in the Navy, if you happen to be traveling out there, you can catch fish all you want. But if you happen to be a fisherman or without a permit, you're out of luck. You have no business being out there. Then it talks about Ecological Reserve and Preserve and MPAs, and all of this stuff. In his opinion it's good for one people, but not good for the other. So it's good for the rich and not good for the poor. He went on to say that he doesn't understand this logic and he believes these vessels should take Spam and corn beef to eat on their trips, just to be fair and maintain that ecological integrity that everyone professes to believe in.

Mr. Young made a motion to withdraw the recommendation that was made at the 133<sup>rd</sup> meeting. The motion was seconded. Mr. McCoy called for discussion.

Mr. Duenas stated that he opposed the withdrawal because it's inconsistent with the proclamation. Because the proclamation says it's going to protect that place as a monument, it doesn't allow for fishing by commercial vessels, so it shouldn't allow anybody else to go up there. It is unknown what kind of damage anybody is going to do up there so to be consistent all harvests should be stopped except for traditional uses by Native Hawaiians.

Mr. Ebisui agreed with Mr. Duenas and added that his reason is slightly different as based on his reading of the synopsis of the proclamation, it says that the Secretaries may permit sustenance. So there's discretion on their part. Because the Council is recommending that they exercise that discretion towards conservation he thinks that the staff suggestion, leaving it alone and standing pat is appropriate and he supports it.

Mr. Young commented that the motion was made because this statement is inconsistent with the proclamation, and the proclamation clearly talks about sustenance fishing being an activity that may be permitted. It does talk about protecting the resource area, and so it's appropriate to have a regulation that's consistent with the proclamation which would allow for the Secretaries to permit sustenance fishing before and after the commercial activities are permitted.

Mr. Palawski stated that he agrees with many of the statements being made about making sure that provisions such as this are done in a way that are not going to cause an overuse or unfair use of resources up there. He feels that through the Secretaries joint permitting process, one can carefully evaluate whether this is an appropriate activity and not have it just be a wide open situation up there. He agrees with some of the things that Mr. Duenas had said, and at the same time he thinks one needs to be very careful about this idea of sustenance fishing without careful evaluation.

Mr. McCoy then called for the question on Mr. Young's motion to withdraw the previous motion (which would have approved the staff suggestion). A roll call vote was taken with the following result: (approved 7:4, one Council member did not vote).

Mr. Makaiiau presented the staff suggestion on the seventh recommendation from the 133<sup>rd</sup> Council meeting (that the Council take no further action on its previous recommendation for the Council to be a full participant, e.g., voting member of any group, committee, task force and meeting regarding NOAA's Ecosystem Management Plan - and that NOAA formally consult with the Council prior to approval and implementation of any such plan for the NWHI).

Mr. MCoy called for discussion. Mr. Young asked whether the staff suggestion meant that the Council be a co-trustee in the management of the monument. Ms. Simonds clarified that this was not the case, just that the Council should be consulted.

Mr. Makaiiau presented the staff suggestion on the eighth recommendation from the 133<sup>rd</sup> Council meeting (that no further Council action is necessary regarding its previous recommendation to replace "Sanctuary" with "National Monument" wherever it occurred).

After a brief discussion it was determined that the Council would use same terms and acronym as used in the recently published monument regulations.

Mr. Makaiiau then directed the Council's attention to the second table in document 3. (a) which contains a summary of nondiscretionary provisions of the proclamation that had not yet been considered by the Council (primarily VMS and notification issues). The first issue was the requirement that all fishing vessels must carry an activated and functioning VMS unit onboard at all times whenever the vessel is in the monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and the NOAA Office of Law Enforcement as provided by an OLE-approved communication service provider. Mr. Makaiiau presented the staff suggestion on this issue (that the Council recommend that all fishing vessels carry an activated and functioning VMS unit onboard at all times whenever the vessel is in the Northwestern Hawaiian Island monument, with an operating VMS defined as one that includes an operating mobile transmitting unit approved by NOAA for use in the Northwestern Hawaiian Island monument on the vessel and a functioning communication link between the unit and the NOAA Special Agent-in-Charge as provided by an approved communications service provider).

Mr. Robinson stated that he wanted to make a distinction between fishing vessels that are just transiting the monument and fishing vessels that have a permit to access the monument. This requirement applies only to fishing vessels that have a permit to access the monument.

Mr. DeRoma commented that these provisions have not been subjected to prior public comment or Council discussion and are completely new from the proclamation. He added that they are however included in the recently published monument regulations.

Mr. Robinson clarified that the requirements apply to all permitted domestic vessels, not just fishing vessels. However the MSA limited the Council to regulating fishing vessels.

Mr. Makaiiau read from the recently published monument regulations which appeared to him to also apply the VMS requirement to all (unpermitted) vessels merely transiting the monument. Mr. Robinson informed the Council that he'd had an opportunity to go all of the

way up the chain and seek clarification of our interpretation of this. He discovered that although the transiting provision does identify the 404.5 prohibition, the 404.5 provision only applies it to permitted vessels accessing the monument. So the Agency's interpretation is that this would cover a vessel that's permitted to access the monument but who happens to be transiting. However a vessel that is not permitted to access the monument, but is simply transiting the monument without stopping anywhere, would have to comply with the notification requirement but not the VMS requirement. He went on to say that these requirements are already in effect but in acknowledgement of the time required to obtain and install the VMS units, NOAA is also working cooperatively with the individual bottomfish fishers to assist them in obtaining and installing and getting verified the required VMS. To the extent that NOAA's exercises its enforcement discretion, they will take into account how well that process is going.

Mr. Duenas made a motion to accept the staff suggestion. The motion was seconded and Mr. McCoy called for public comments.

Ms. Timm Timoney commented that she is a fisherman up in the Northwestern Hawaiian Islands and she wanted to let the Council know that the address published in the Federal Register, the e-mail address for Mr. Lockerby, does not work, that any communication with that address is returned immediately. So she was grateful to see that a letter from Dale Jones (NOAA OLE) passed out at the Council meeting with corrected addresses that will be helpful in getting a prompt reaction.

Mr. Robinson commented that the letter is to be provided individually to each and every bottomfish fisher and it contains specific instructions as to how to obtain the VMS unit and also how to get reimbursement for their purchase of it.

Hearing no more public comments or discussion Mr. McCoy called for the question. A voice vote resulted in unanimous approval of the staff suggestion.

Mr. Makaiau presented the second issue from Table 2, which is that the proclamation says that , only a VMS that has been approved by NOAA Office of Law Enforcement may be used. It provides further guidance, when installing and activating the OLE-approved VMS or when reinstalling and activating such VMS, the vessel owner and operator must: A, follow procedures indicated on an installation and abbreviated checklist, which is available from the OLE, and submit to OLE a statement certifying compliance with the checklist as prescribed on the checklist. Mr. Makaiau went on to present the staff suggestion (that the Council recommend that only a VMS unit that has been approved by NOAA OLE may be used and that only a VMS unit owned by NMFS and installed by NFMS meets this requirement).

Mr. Robinson then asked Marc Cline (NMFS OLE) that given the proclamation requirement that fishermen purchase the VMS units themselves, who will own the units. Mr. Cline responded that it is OLE's interpretation that the fishermen will own them. Mr. Robinson went on to say that given that, the staff suggestion was inconsistent with the proclamation.

A brief discussion determined that fishermen will be eligible to apply for reimbursement

for the VMS units, but not their installation. In addition, the recently published monument regulations indicate that there is only one approved unit, and only one approved vendor selling this unit. The approved unit is a top-of-the-line (and expensive unit), in contrast to those units now used on Hawaii longline vessels.

Mr. Ian Chun who is NOAA's VMS Program Manager commented that he had discussed this issue with headquarters that morning and there may be a possibility that they may relax that requirement for the Gold Unit to the Silver Unit, although that's not been determined yet.

Mr. Duenas made a motion to modify the staff suggestion to remove the word "owned". The motion was seconded. Mr. McCoy called for public comments.

Ms. Timm Timoney commented that the Federal Register notice containing the recently published monument regulations state that there is a cost to applicants of \$44,950 and she was curious about this estimate. Mr. Robinson responded that this was part of calculating the burden of new regulations on the public under the Paperwork Reduction Act and this number represented an estimation of the time cost for all participants to communicate with OLE.

Hearing no further public comments or discussion Mr. McCoy called for the question. A voice vote resulted in unanimous approval of the staff suggestion as modified by Mr. Duenas' motion to remove the word "owned".

Mr. Makaiiau then presented the third issue which deals with the proclamation language stating that when a vessel's VMS is not operating properly, the owner/operator must immediately contact OLE and follow instructions from that office. The staff suggestion for this issue is that the Council recommend that when a vessel's VMS is not operating properly, the owner or operator must immediately contact the NOAA Special Agent-in-Charge and follow instructions from that office. Similarly if notified by OLE that the vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include but are not limited to manual communicating through a location designated by OLE, the vessel's position or returning to port until the VMS is operational.

Mr. McCoy asked how the operator would tell if the unit wasn't working. Mr. Martin responded that there may be a blinking light but operators might not always notice. He went on to say that his belief that OLE is reluctant to inform vessel operators if their units stop transmitting during a fishing trip as the operator might then fish in closed areas. Mr. Gaffney added that the Gold Unit has a mechanical voice that turns on to inform the crew when the unit is not operating properly.

LCDR Young stated that he believed it was workable to include both terms, that if the owner/operator notes that it's not working, that they provide notification and if enforcement note that it's not operating, that provision be made in there, too, that they would need to get it fixed, either pulled in, or whatever.

Ms. Timoney asked how a vessel owner who is 600 miles out at sea and with a nonworking VMS who doesn't have a satellite phone onboard, would notify the Office of Law

Enforcement if their unit is not working? Her experience with using a single sideband radio is that there is no answer when at 600 miles from shore which outside of the two meg safety ban.

Mr. Martin commented that his experience in the longline fishery is that OLE has been reasonable in their enforcement of regulations. LCDR Young asked Mr. Makaiau why the staff suggestion did not include the language from the proclamation regulation that the instructions from OLE may include but are not limited to manual communicating a location designated by OLE the vessel's position or returning to port until the VMS is operational. Mr. Makaiau responded that the staff thought it preferable to leave the discretion to the Special Agent-in-Charge to dictate to the person what that action will be.

Mr. Makaiau read the proposed change “that the Council recommends that when a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office.”

Mr. McCoy asked for public comments and hearing none called for the question. A voice vote resulted in unanimous approval of the staff suggestion as modified.

Mr. Makaiau next reviewed the proclamation language stating that the Secretaries shall prohibit any person from conducting or causing to be conducted, tampering with, damaging, destroying, altering or in any way distorting, rendering useless, inoperative, ineffective or inaccurate the VMS mobile transceiver unit or VMS signal required to be installed on or transmitted by a vessel. In addition, the Secretaries shall prohibit any person from conducting or causing to be conducted making false statements, oral or written, to an authorized officer regarding the installation, use, operation or maintenance of a VMS unit or mobile transceiver unit or communication service provider. He went on to present the following staff suggestion as follows: that the Council recommend that, no person may interfere with, tamper with, alter, damage, disable or impede the operation of the VMS or attempt any of the same or move -- or remove a VMS unit without the permission of the NOAA Special Agent-in-Charge. In addition the staff suggests mirroring the current pelagic FMP regulations to state that no person may make false statements, oral or written, to an authorized officer regarding the use, operation or maintenance of a VMS unit.

Mr. Duenas made a motion to approve the staff suggestion. The motion was seconded and Mr. McCoy called for discussion.

Mr. DeRoma noted that the proposed definition is less restrictive than what is in the proclamation. Because it doesn't match exactly, for example, destroying is not in there. He also noted that the proclamation ties any of these activities to permission of the OLE. He added that this means the Council would be imposing a permission requirement that doesn't exist and he doesn't believe that under the proclamation OLE can grant permission to allow damaging, altering or destroying VMS units.

Mr. Duenas indicated that, as the maker of the motion he had no objections to revising the staff suggestion to address Mr. DeRoma's concerns. Mr. Makaiau made the changes and



presented the revised language as follows: The Council recommends that no person may conduct or cause to be conducted, tampering with, damaging, destroying, altering or any way distorting rendering useless, inoperative, ineffective or inaccurate the VMS or the transceiver unit or VMS signal required to be installed and transmitted by a vessel. In addition no person may make false statements, oral or written, to an authorized officer regarding the use, operation or maintenance of a VMS unit.

Mr. McCoy called for the question. A voice vote resulted in unanimous approval of the staff suggestion as modified above.

Mr. Makaiiau then reviewed the regulatory language from proclamation that states that any person conducting commercial fishing notify the Secretary by telephone, facsimile or electronic mail at least 72 hours before entering the monument and within 12 hours after leaving the monument. He went on to present the staff suggestion as follows: that the Council recommend that any person conducting commercial fishing in the NWHI monument notifies the NOAA Special Agent-in-Charge of a proposed entry into and departure from the NWHI monument as defined in Proclamation No. 8031.

Mr. Duenas made a motion to approve the staff suggestion. The motion was seconded and Mr. McCoy called for discussion.

Mr. DeRoma indicated that he thought that the proclamation language regarding notifying the Secretaries should be used rather than referencing the NOAA Special Agent-in-Charge. He also suggested replacing the phrase "as defined in" with "in accordance with".

Ms. Timoney asked whether the notification of leaving the monument goes to the monument office within 12 hours, and is there a phone that's staffed 24/7? If not, does leaving a message on their machine count? She also asked why operators must provide notification that they are leaving the monument given that this will be tracked by the VMS units. Mr. Tosatto responded that the proclamation is the source of these requirements and that leaving a message on the machine would be sufficient.

Mr. McCoy asked if there were any other public comments. Ms. Linda Paul commented that the recently published monument regulations section 404.4, B also say that any person passing through the monument without interruption must provide notification. This is an innocent passage kind of requirement that applies to bottomfish fishermen as well as longliners going through the monument, and all U.S. flagged vessels over which U.S. has authority -- we can't require of foreign ships -- have to do this notification.

Mr. McCoy called for the question. A voice vote resulted in unanimous approval of the staff suggestion as modified above.

#### **4. Other Business**

Mr. McCoy moved to agenda item 6 which is Other Business. Mr. Dela Cruz stated that CNMI would like to thank the Council and NOAA OLE for their anticipated receipt of the

proceeds from the prosecution of a bonded foreign vessel caught flying and fishing illegally in the CNMI federal waters last year.

The meeting was adjourned at approximately 6:30 p.m.