CHAPTER 9

RESPONSE TO PUBLIC COMMENTS

9.1 Comments Received During Scoping

The following public scoping hearings and meetings related to the FMP/DEIS were held around the Western Pacific region:

Public Scoping Hearing - Honolulu (Council Meeting)	16 June 1999
Public Scoping Hearing - Honolulu (Plan Team Meeting)	15 July 1999
Public Scoping Hearing - Guam	28 July 1999
Public Scoping Hearing - CNMI	29 July 1999
Public Scoping Hearing - Honolulu (Ecosystem and Habitat Advisory Panel (EHAP) Meeting)	5 August 1999
Public Scoping Hearing - American Samoa	19 August 1999
Public Scoping Hearing - Kona (Hawaii)	31 August 1999
Public Scoping Hearing - Honolulu (Plan Team and EHAP Meeting)	17 September 1999
Public Scoping Hearing - Honolulu (SSC Meeting)	12 October 1999
Public Scoping Hearing - Honolulu (Council Meeting)	18 October 1999
Public Meeting - American Samoa	20 December 1999
Public Meeting - Guam	28 December 1999
Public Meeting - Kona, Hawaii	28 December 1999
Public Meeting - Commonwealth of the Northern Mariana Islands	29 December 1999
Public Meeting - Hilo, Hawaii	29 December 19
Public Meeting - Kahului, Maui	4 January 2000
Public Meeting - Haleiwa, Oahu	5 January 2000
Public Meeting - Lihue, Kauai	6 January 2000
Public Meeting - Waianae	10 January 2000
Public Meeting - Lanai City, Lanai	11 January 2000
Public Meeting - Molokai	12 January 2000
Public Meeting - Honolulu	13 January 2000
Public Meeting - Honolulu (Hawaii Plan Teams and Advisory Panel Meetings)	
Public Meeting - Honolulu (Plan Team Meeting)	25 April 2000
Public Meeting - Honolulu (Joint Plan Teams and Advisory Panels Meeting)	26 April 2000
Public Comment - Honolulu (Council Meeting)	28 Feb - Mar 2 2000

Public Meeting - Honolulu (SSC Meeting)	16 - 18 May 2000
Public Comment - Maui (Council Meeting)	14 - 16 June 2000
Public Meeting - Honolulu (Council Meeting)	10 - 12 July 2000
Public Meeting - Honolulu (SSC meeting)	12 October 2000
Public Meeting - Honolulu (Council meeting)	1 December 2000

9.1.1 Comments on Fishing Permit and Reporting Requirements

1. Would like to add a management measure to the FMP that bans the possession or collection for commercial purposes of wild live rock and coral. The collection of live rock or live coral for scientific and research purposes could be allowed by permit, as well as the collection of small amounts of live coral as brood stock for captive breeding and aquaculture.

Response: The Preferred Alternative for the permit process specifies that no permits will be issued under these permit processes for the possession or collection for commercial purposes of wild "live rock" and live hexacorals (hard corals). The collection of wild live rock or live hexacoral for scientific and research purposes would be allowed by special permit. Collection of small amounts of live hexacoral as brood-stock for captive breeding/aquaculture would be allowed by special permit, except where it is not consistent with State and territorial laws regulating such collection in the adjoining State or territorial waters.

2. It is premature to ban the collection of live coral and live rock. The potential for commercial fisheries of these resources would help the local fishing communities.

Response: While prohibiting the commercial harvest of "wild" live rock and hard corals, the FMP will allow collection of small amounts for aquaculture broodstock and scientific research under a special permit, except where it is not consistent with State and territorial laws regulating such collection.. Further, the FMP will allow the commercial harvest of soft corals through a special permit provided such collection is sustainable. The harvest of other coral reef resources in Federal waters will be managed under a proposed special permit process or through collaboration with local resource agencies.

3. Concerned about standard conditions that would be attached to any permit issued for the fishery. Thinks conditions should be developed specifically for each particular fishery proposal on a case-by-case basis. Supports reporting requirements. Believes NOAA should not regulate the coral reef fishery out of business because the new fishery will provide data to the Federal government to assist in management decisions.

Response: For species/taxa that are currently harvested or that are believed to be subject to immediate harvest, a general permit will be considered as future framework option to harvest MUS outside MPAs in the EEZ, if existing local reporting systems are found to be in adequate. A special permit will be required to harvest MUS within low-use MPAs. A special permit will be required to harvest any non-targeted coral reef ecosystem taxa. Species that are less-well-known (non-targeted taxa) are managed more carefully, with a case-by-case analysis of the impact of each proposed fishing activity. This process allows for a precautionary approach for the collection of unknown or poorly understood species and for tightly controlled collection of harvested species within MPAs. For non-targeted species, appropriate levels of collection may be established once individual species or taxa are better understood. The permit process is designed to meet requirements of the Magnuson-Stevens Act (MSFCMA)

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4. Will "outsiders" be able to get a permit to harvest coral reef resources in American Samoan waters?

Response: The MSFCMA prohibit discrimination against fishermen from any state or territory fishing in EEZ waters. The American Samoan government may have local rules that apply to waters under its management authority.

5. The FMP should address the issue of indigenous rights. Will indigenous people that want to fish be subject to permits and all the Federal regulations? Native Hawaiians should have a special right to fish and not need a special license.

Response: The preferred alternatives in the FMP provide for indigenous people to continue harvesting coral reef resources with minimal new regulatory burdens and costs. For fishing on currently harvested coral reef taxa, there will be no new permits required, a general permit for fishing will be developed under a framework process if needed. In addition, special exemptions are given to indigenous people to be able to collect small amounts of live rock/coral for customary and traditional uses, as well as fishing activities allowed in low-use MPAs for indigenous people by special permit. It is important for management purposes to be able to keep accurate data on fishery resources harvested.

6. Sportfishing is much more of a threat to the coral reef resources of Hawaii than commercial fishers, because the combined impact of recreational thrill craft and sport fishers far outweighs the few commercial fishers.

Response: The permit process established in the FMP will affect all types of fishing activities. It is beyond the scope of authority in the FMP under the MSFCMA, however, to manage non-fishing recreational activities.

7. Can some executive action be taken right away to adopt permit requirements to provide a safeguard against immediate, unregulated harvest of coral reef resources?

Response: A moratorium on harvesting in the interim while the FMP is being approved would protect coral reef resources in the EEZ. However, such an action would require as much justification as an FMP, and could be delayed as long or longer than the FMP itself.

8. Requiring a special permit to fish in MPAs turns most authority over to the RA. There is a concern about the NMFS and their permitting process, given that they are the permitting authority, the approving authority, all authorities.

Response: Permits will be issued by the RA in consultation with the Council. A detailed list of information will be required to be provided with the permit application. The RA will consult with the Council and the Director of the affected state fishery management agency; the Council will then recommend approval or disapproval of the application. The applicant can appear at the Council meeting to support his application with verbal testimony.

9. The FMP should address fishing for mollusks, recreational fishing, and the collection of shellfish and coral for the jewelry and ornamental trade.

Response: Mollusks and corals are addressed in the FMP as proposed MUS, with the FMP recognizing that MUS are utilized for a variety of purposes, including food, ornamental and bioprospecting. Recreational fishing is addressed in section 3.3. of the FMP.

10. Due to the unknown nature of "permitting" new fisheries or gears, a coral reef fishery permit applicant will not likely make any substantial investment in outfitting vessels that would be used under the permit. Therefore, a lag time will likely exist after permit issuance (if issued) and before fishing can realistically commence. The proposed one year timeframe for the exploratory permit should be extended three months to accommodate preparation by the fisher.

Response: At this time, no permit timeframes have been established in the FMP.

11. There should be some mechanism established to allow for the transfer of the permit.

Response: Permit transfer is irrelevant as no limited entry fishery is proposed.

12. It might be wise to examine the extent of the impacts of small-scale subsistence fishing before exempting it from the proposed permit process, since the cumulative impacts of such fishing might be substantial.

Response: Subsistence fishing in the EEZ is not exempt from permit process under the Council's preferred alternative. There will not be additional permits required for currently harvested MUS in the populated island areas, however this applies to everyone not simply subsistence fishermen.

13. The cumulative harvest represented by the permits should represent the minimum required to obtain the data necessary to determine allowable catch limits, in keeping with the strong emphasis on the precautionary approach in the FMP. An alternative harvest policy to MSY, perhaps an ecosystem overfishing threshold (cast in terms of species composition shifts) with a buffer (for uncertainty), is needed given the unsuitability of MSY to coral reef ecosystems and the paucity of knowledge available.

Response: Overfishing thresholds based on MSY definitions are required by the MSFCMA. These are described in FMP Section 4.2, which discusses overfishing. Refinement of ecosystems monitoring parameters is a priority of the plan.

14. Does not want to pay for permits to fish around Molokai. Would like to establish a *kapu* system which the island would self-regulate, allowing people to fish in certain areas and not in others. A lot of overfishing for *onaga* and *opakapaka* is occurring around Molokai.

Response: There are no additional permits required for currently harvested taxa around Molokai, and reporting will continue to occur via local monitoring and coordination.

15. Bottomfishing should be exempted from the 50 fathom no-take rule.

Response: The 50 fathom no-take rule applies in federal waters to MPAs designated in French Frigate Shoals, Laysan, Northern half of Midway Atoll, Howland Island, Baker Island, Jarvis Island, Kingman Reef, and Rose Atoll. Under the preferred alternative, these areas would remain closed to all fishing, due to the sensitive nature of these ecosystems. For example, they contain significant monk seal pupping and breeding habitat, seabird nesting and feeding areas, and unique coral reef ecosystems as well.

16. Bottomfish boats already permitted do not have to be permitted under the new coral reef FMP?

Response: The existing FMP fisheries for bottomfish, crustacean and precious corals follow the regulations in their existing FMPs not the coral reef FMP, but cannot fish in no-take MPAs.

17. Shell collectors do a lot of damage to the coral reefs, turning over the coral looking for certain species. They can do as much damage in an area that is known to have a particular species of shell as an anchor from a boat can do. Some of the finest shell collecting in the world outside of three miles in the NWHI is.

Response: In the NWHI EEZ, no-take MPAs would extend to a depth of 10 fathoms offshore of all islands except French Frigate Shoals, Laysan and the northern half of Midway Atoll which would extend to a depth of 50 fathoms. As these areas have been designated as no-take, harvesting of shells in these areas would be prohibited. In all other areas, a special permit would be required for all emerging fisheries, and the effects on the ecosystem would be explored at that time.

18. Does a "special permit" mean the fishermen needs to specify the type of fish he is catching, or a given amount of time, or the area being fished?

Response: With a special permit, the fishermen would be required to complete a detailed logbook documenting types and quantity of gear used, number and weights of species kept, number released alive, number released unknown, area fished, length of trip, specific effort information and other information required as a condition of holding the permit.

19. If Rose Atoll is a wildlife refuge in American Samoa, and its co-managed by the Department of Marine and Wildlife Resources and U.S. Fish and Wildlife Service, what are the laws on fishing in the area, and who needs a permit?

Response: Under the Councils preferred alternative, Rose Atoll would be designated a no-take MPA and no fishing of any kind would be allowed. The only exemption to this rule is the preferred alternative of allowing take of small collections of coral reef organisms for scientific research.

20. Who is going to benefit financially from the fees that are charged to the local fishermen?

Response: Generally, the fees that are charged to the local fishermen simply cover the administrative costs of the permitting system.

21. It seems as though the small local fishermen in Guam are being lumped in with the larger commercial industry with 180 foot vessels. Most fishermen in Guam fish with 20 foot skiffs.

Response: The Magnuson Steven Act specifies that a fisherman is considered to be a commercial fisherman if he sells any portion of his catch, and the Coral Reef Ecosystem FMP must follow the guidelines of the Magnuson Stevens Act.

22. Thanks to WPRFMC for coming and discussing the future regulations for fishing. However, the locals should be able to manage the fisheries themselves without regulations from the federal government. If a fishermen wants to go out one morning and fish when it is nice weather, he should not have to first go get a permit from NMFS. It is difficult to support the Federal Government when they cannot enforce the EEZ, when they cannot stop the Chinese and Taiwanese from overfishing the waters.

Response: The Council's preferred alternative specifies that there will be no new permits required for fishing for currently harvested coral reef taxa in the populated island areas. A general permit and reporting system will be developed at a later date if there is a need, i.e. if there is a gap in the system and data are not being accurately recorded.

23. Will the permit required for trapping be above and beyond what the state requires?

Response: The Councils Coral Reef Ecosystem FMP does not apply to state waters, so if the trapping occurs within 0-3 miles from shore there will be no additional requirements. Traps are listed as an allowable gear type in the FMP, however they will be allowed in appropriate areas and with appropriate conditions (e.g., negligible habitat impact, minimize potential for derelict traps) and traps must be permanently marked to identify the owner.

24. The same regulations could be passed for state waters within a short time. The state will be getting a lot of money for coral reef research and management.

Response: The state will certainly look at the regulations imposed by the Council's Coral Reef Ecosystem FMP, however there are no laws which compel the state to adopt the same measures.

25. Regarding reporting, filling forms is time consuming and fishermen do not have time to properly fill them out.

Response: It is imperative for proper management of fisheries to have accurate reporting of the resources that are removed from the ecosystem. NMFS has attempted to streamline the permitting process so it obtains the necessary information for proper fishery management, yet is not too much of a burden on the fishermen.

26. Instead of the permitting process where fishing activity inside MPAs would be permitted by NMFS, and outside MPAs anyone who meets basic safety and citizen requirements would be eligible for a permit, the Council should institute a two-tiered permitting approach where poorly understood species are managed on a case-by-case basis, and better known species are managed using a system with built in precaution and ecosystem considerations.

Response: The Council has instituted a permit process where better known species are managed by local data collection and monitoring, using built in precaution and ecosystem considerations. Species which are poorly understood are managed by special permit.

27. Concern with the overall effects and restrictions of this FMP that would apply to existing nearshore fisheries in Hawaii and to the substantial dive and fish trap fishery in the Auou Channel between Maui, Molokai, and Lanai outside of three miles.

Response: The FMP does not apply to nearshore waters. The State of Hawaii, Department of Land and Natural Resources is responsible for managing fisheries from 0-3 nm. Fishing beyond 3 nm will be allowed for currently harvested coral reef species by the populated island areas, which will not require permits as of now. Depending on the species harvested and area fished, special permit may be required.

28. Does not support federal rules or FMPs that have provisions that are weaker than the adjacent state or territory, especially with respect to coral and live rock.

Response: The Council agrees. In fact, the regulations that will be implemented under this FMP are generally more stringent then any existing state or territorial regulations pertaining to coral reef management. Further, enforcement of federal fisheries regulation is generally more effective then state or territorial enforcement. Every effort has been made to ensure that the management measures proposed in the FMP are consistent with state/ territorial/ commonwealth laws and policies in order to simplify implementation and assist enforcement efforts.

9.1.2 Comments on Fishing Gear and Methods

1. Supports banning any kind of spearfishing using scuba. If this ban is implemented in Federal waters, would it be possible to have a similar ban in territorial waters?

Response: The FMP proposes banning the use of spear fishing with scuba at night in the EEZ around the NWHI and PRIA. The Council considered banning the use of Scuba in the EEZ around the main inhabited island groups, however this was not supported. It is beyond the authority of the WPRFMC to implement a ban on Scuba in state and territorial waters. Such a ban would be under the purview of the state/territorial/commonwealth governments.

2. Does rod-and-line (under proposed listed gear) include motorized reels?

Response: Yes, motorized reels are included under the proposed listed gear (rod-and-line).

3. Trolling and purse seining should be banned under this Plan because they are extremely destructive to coral reef resources.

Response: Neither trolling nor purse seines interact with the bottom during normal deployment and retrieval procedures. Under the FMP only non-destructive, selective gear types will be allowed. The following allowable gears are proposed in the FMP: ROV/submersibles, hand harvest, handline, hook-and-line, rod and reel, spear, slurp gun, hand net/dip net, barrier net (aquarium), hoop net (for kona crab) and surround/purse net (for targeted schools such as akule, weke, and baitfish). Nets must be tended at all times. Traps will be allowed in appropriate areas and with appropriate conditions if permanently marked to identify the owner. The gear types specified in the plan were identified by the Council as the least destructive to coral reef resources and their habitats, while being effective at targeting desired species.

4. The list of allowable fishing gear types may be far too permissive if coral reef ecosystem protection is the goal of the FMP. Passive or active fishing gears that are detrimental to any coral reef ecosystem they come into contact with should not be allowed to remain on the list of allowable gear types.

Response: The gear types specified were identified by the Council as the least destructive to coral reef resources and their habitats, while being effective at targeting desired species.

5. Supports the addition of surround/purse net (for akule and aku bait fishing only) to the list of allowable gear.

Response: Surround/purse net, with conditions, has been included on the allowable gear list.

6. Concerned that fish traps are not listed as allowable gear because, in the years that the akule do not run in inshore waters, the fishers turn to fish trapping, which occurs in some places beyond three miles. Recommends WPRFMC incorporate a limited entry program for trap fishing for existing trap fishers.

Response: Traps will be allowed by permit in appropriate areas and with appropriate conditions if permanently marked to identify the owner.

7. Allowable gear listed and existing FMP fisheries should not be exempt in coral reef ecosystem areas.

Response: The Council considered this option but selected against it. Existing EEZ fisheries are considered to be sufficiently regulated under their respective FMP which must comply with all MSFCMA and Sustainable Fisheries Act requirements. The Council's preferred alternative also includes a formal coordination process among plan teams to consider possible fishery-ecosystem impacts.

8. Traps for Kona crab and other crabs should be allowed in the EEZ.

Response: Under the Council's preferred alternative traps are allowed only in appropriate areas/conditions if permanently marked with the owners identification. "Appropriate" implies using the gear in ways that are selective, do not incur large bycatch mortality and do not damage habitat.

9. The Council should consider using performance standards for controlling which kinds of gear can be used in coral reefs, rather than using a list of allowed and/or prohibited gear types.

Response: Federal regulations require that the FMP list allowable gear types. The allowable gears listed in section 5.4 (Fishing Gears and Method) have been included due to its selective nature and minimal impact to habitat.

10. On the North Shore of Molokai, they are seeing a lot of nets from foreign fishermen.

Response: The trawl nets are coming from North Pacific fisheries, not Hawaiian. In August 2000 Hawaii held a conference where all the countries that have those fleets fisheries discussed ways to reduce marine debris.

11. Fish traps and bait nets should not be on the list of allowable gear, as they result in bycatch and habitat damage. Recommends removing fish traps, surround/purse nets, and scuba with spear from the list of allowable gear types.

Response: Fish traps are only allowed under the CREFMP under the conditions that they shall be allowed in appropriate areas and with appropriate conditions, for instance the traps must produce negligible habitat impact. To minimize the potential for derelict traps, the traps must be permanently marked to identify the owner. The preferred alternative for scuba with spear is that this method be prohibited at night in the NWHI PRIA when the fish are the most vulnerable. In developing the Councils preferred alternatives, the Council considered trade-offs of benefits between utilization of coral reef resources by controlled fishing and preservation of coral reef ecosystems. It determined that the list of allowable gear would best meet this compromise.

12. Most of the coral reef and damage is being incurred well inside of three miles. Diving beyond three miles with scuba at night would be rare.

Response: The Councils CREFMP does not have jurisdiction 0 - 3 miles from shore surrounding the populated island areas, these areas are controlled by state/territorial laws.

13. How was it determined to prohibit the use of spear with scuba at night?

Response: It was determined to prohibit the use of spear with scuba at night in the NWHI and PRIA due to the vulnerability of target species. At night, this method allows no refuge because the target species are vulnerable to capture while sleeping in their holes, and there is a much greater likelihood of certain species becoming overharvested.

14. There is a concern that the state will follow the federal regulation to ban scuba spearfishing at night. This will leave Hawaii fishermen no way to feed their families.

Response: While the state will certainly be aware of the regulations imposed by the Council in federal waters, there is no guarantee that any of the regulations will be similarly adopted in state/territorial waters 0-3 miles from shore. State will allow opportunity for public comment if such a role is proposed.

15. Nets should be allowed for weke and other fish, not just akule bait fishing.

Response: The Council modified its preferred alternative regarding nets to allow harvesting of all species on the condition that the nets do not damage coral or bottom habitat, and also that they be tended at all times.

16. Fish traps and surround or purse nets can actually cause quite a bit of damage to the ecosystem, if not used responsibly. Traps and purse nets should only be permitted when their use has been screened to insure minimal bycatch mortality, negligible habitat impacts and provisions to minimize the possibility of ghost fishing.

Response: The Council agrees, and is required by the MSFCMA to prevent, mitigate, or minimize any adverse effects from fishing gear if there is evidence that a fishing practice is having an identifiable adverse effect on essential fish habitat. Adverse fishing impacts may include physical, chemical, or biological alterations of the substrate and loss of, or injury to, benthic organisms, prey species, and their habitat and other components of the ecosystem. Controls on fishing gear are an effective tool for mitigating such impacts.

9.1.3 Comments on Marine Protected Areas

1. Is fundamentally opposed to area closures and gear restrictions.

Response: Marine protected areas (MPA) are an attractive option for ecosystem-based fisheries management because they do not require detailed knowledge of the protected species while being holistic in conserving multi-species resources and the functional attributes of marine ecosystems. They can also provide "insurance" against periods of poor recruitment at individual populations.

MPAs can range in scope and extent. They can be areas designated for limited use, seasonal use or areas that are completely restricted from consumptive use. Although completely restricted areas are thought to provide the highest degree of protection to marine ecosystems, less restrictive areas also provide some protection and may be economically and socially more acceptable. The optimum size of a MPA depends on many factors: the resources managed, the management goals, the enforcement possible and social and economic constraints.

There is little understanding of what size of MPA would provide ecologically complete coral reef ecosystem protection. Even small MPA have been shown to be effective in increasing standing stocks and sizes of reef fish, especially of species that are exceptionally vulnerable to fishing and of older individuals which are critical components of spawning stock biomass. To be of utility to fisheries and to promote the conservation of coral reef resources on a broader scale, MPA should serve as sources of reproductive output to replenish larger surrounding or down current areas. The current approach of establishing small and isolated MPA is inadequate for this purpose.

2. It is premature to designate any MPAs in CNMI waters. The WPRFMC needs to undertake a public participatory process to identify areas appropriate for designation.

Response: At this time, no MPAs are proposed in federal waters around CNMI. Any MPA designation in CNMI waters will be implemented under the FMPs amendment process. The Council is required to provide numerous opportunities for public comment and participation. The Council would seek the input and advice of local government officials, fishermen and other resource users as part of any effort to identify candidate areas as MPA in any of the areas under its jurisdiction.

3. It is premature and unnecessary to designate the Farallon de Medinilla as a Habitat Area of Particular Concern (HAPC) because it does not meet any of the four qualifying criteria.

Response: The Council has endorsed the concept of designating Habitat Areas of Particular Concern (HAPC). The FMP lists *potential* areas within the Council's jurisdiction that meet one or more of the criteria for HAPC designation. Farallon de Medinilla has been included as one of these potential areas, since the Coral Reef Ecosystem Plan Team believes the ecological function provided by the habitat is important and that the area is susceptible to human impacts.

4. Does not support closed area in Hawaii (MHI or NWHI), especially when area is closed for fishing but not marine recreation.

Response: The Council does not have the authority to restrict activities other than U.S. fishing activities in areas within its jurisdiction. The state, which has management authority over waters 0 - 3 miles from shore, may restrict such activities. The state is aware of regulations being adopted by this FMP, and may choose to adopt similar regulations.

5. There seems to be a discrepancy between the definition of the EEZ (3-200 nm) and the proposed designation for Essential Fish Habitat of 0-200 nm. Will the Federal government be managing EFH in the territorial waters of American Samoa? How does the designation of 0-200 nm as EFH affect American Samoa management of its own territorial waters?

Response: Essential Fish Habitat (EFH) identifies important areas that the fishery management unit species use at some point during their life cycles. While NMFS does not have jurisdiction over the territorial waters between 0-3 nm, it can make recommendations to minimize impacts to EFH from proposed projects within these waters that are federally-funded or require a federal permit. The recommendations, however, are not legally binding.

6. Swain's Island and Rose Atoll should be deleted as candidate areas for MPA designation.

Response: At this time, Rose Atoll is targeted under the Councils preferred alternatives as a no-take MPA. The criteria considered for the selection of MPAs included: natural resource values, human use and historical values, impacts of human activities values, and management concerns values.

7. Who are the people that would benefit from closed areas (MPAs)?

Response: Fishermen and scientists are among those who benefit from no-take zones. Marine protected areas (MPA) are an attractive option for ecosystem-based fisheries management because they do not require detailed knowledge of the protected species while being holistic in conserving multi-species resources and the functional attributes of marine ecosystems. They can also provide "insurance" against periods of poor recruitment by individual populations.

MPAs can range in scope and extent. They can be areas designated for limited use, seasonal use or areas that are completely restricted from consumptive use. Although completely restricted areas are thought to provide the highest degree of protection to marine ecosystems, less restrictive areas also provide some protection and may be economically and socially more acceptable. The optimum size of a MPA depends on many factors: the resources managed, the management goals, the enforcement possible and social and economic constraints.

There is little understanding of what size of MPA would provide ecologically complete coral reef ecosystem protection. Even small MPA have been shown to be effective in increasing standing stocks and sizes of reef fish, especially of species that are exceptionally vulnerable to fishing and of older individuals which are critical components of spawning stock biomass. To be of utility to fisheries and to promote the conservation of coral reef resources on a broader scale, MPA should serve as sources of reproductive output to replenish larger surrounding or down current areas. The current approach of establishing small and isolated MPA is inadequate for this purpose.

Few, if any, studies have sought to verify whether marine protected areas established in the U.S. Pacific islands do actually benefit nearby fisheries. It is clear that fish populations which build up in small areas (Hawaii, Philippines) temporarily closed to fishing are quickly reduced when fishing is resumed. Criticisms of the existing marine protected areas in the U.S. Pacific islands are that they are either too small and fragmented or they do not encompass sufficient depth range and high quality habitat to provide broad coral reef ecosystem protection or recruitment benefits to fisheries.

It has been suggested that linking populations among MPAs over a broad area is necessary to assure long-term sustainability of coral reef fisheries. Some argue for complete protection from fishing, whereas others believe MPAs are more valuable when they can serve as natural laboratories for fishing experiments and testing of management strategies.

8. At least 30% of the management area under consideration by the Council should be considered for no fishing zones.

Response: Under the Councils preferred alternatives, 13% of all coral reef area under Council jurisdiction in the Western Pacific region will be closed to all fishing, and 14% of all coral reefs around the NWHI would be closed. If the state takes consistent action and designates adjacent reefs around the NWHI, the percent of "no-take" area would total 24%.

9. Twenty-five percent of the species in the coral reef areas of the Hawaiian Islands are known to be endemic. These need special consideration.

Response: In the Hawaiian Islands, the entire coral reef ecosystem in the EEZ of the NWHI will be designated as no-take or low-use MPAs. Endemics will be protected from overfishing under the requirements of the MSFCMA. For endemics that do not already have a history of harvest, a special permit will be required.

10. A "no-take" MPA to 50 fathoms in the NWHI will significantly and detrimentally affect existing fisheries managed under other FMPs.

Response: In the NWHI, federal waters shallower than 10 fathoms are designated as "no-take" for all fishing. The waters shallower than 50 fathoms are designated as "no-take" at French Frigate Shoals, Laysan, and the northern half of Midway Atoll. In the other areas of the NWHI, fishermen would be required to obtain a special permit to fish for coral reef taxa. However,

vessels already fishing for species regulated under another existing FMP would be exempt from the requirements of the CREFMP exception no-take zones.

11. Establishing a MPA to 50 fathoms in the NWHI where there are existing fisheries will create enforcement problems. In areas where the bottom is relatively flat, where will the 50 fathom contour be delineated? In areas where the bank drops off steeply at 50 fathoms, where will fishers anchor to fish in deeper waters?

Response: Vessels already fishing for species regulated under another existing FMP will be exempted from the permit requirements of this FMP. Most existing permitted vessels in NWHI have VMS, which facilitates enforcement. Vessels permitted under this FMP must comply with all regulations promulgated under the FMP.

12. Existing FMP fisheries should not be exempt from MPAs.

Response: The Council considered this option and choose to exempt existing FMPs, except form no-take MPAs. If not exempted the current designation of MPAs to 50 fm in the remote atolls and NWHI and associated restrictions would represent a significant impact to existing permitted FMP fisheries. Potential impacts of existing FMP fisheries on coral reef ecosystems will be considered through formal inter-plan team consultation.

13. EPA strongly supports the designation of MPAs; identification of Essential Fish Habitat, HAPC, and fishing and non-fishing threats; and clarification of allowable coral reef harvesting gear. Because information regarding the harvest of coral reef resources in the EEZ is largely unknown, EPA would like a clearly defined research component as part of the FMP.

Response: The designation of MPAs, identification of Essential Fish Habitat, HAPC, and fishing and non-fishing threats, and list of allowable harvest gear are primary aspects of the FMP. FMP Chapter 7 discusses research, monitoring, and assessment needs. Specific research projects are identified and listed as high, medium or low priority. Research needs for EFH are also defined in the FMP. The Plan Team will continue to refine the identified research priorities of the FMP.

14. It would be useful to add up the areas that the proposed MPAs would comprise and compare it to the total area of reef under the Council's jurisdiction. The total area must be large enough to realize the intended benefits of MPA management.

Response: The Council did so, and determined that 13% of all coral reef areas in federal waters are designated as "no-take" MPAs.

15. It might be useful to integrate MPA management with traditional management systems that employed closed areas to protect fish stocks, to incorporate traditional knowledge, to respect tradition and culture, and to build confidence in the MPAs.

Response: There is increasing awareness about the value of traditional management techniques. While traditional management systems typically employed closed areas in nearshore waters, the Council may consider the possibility of working with local indigenous peoples to extend these systems into offshore waters.

16. No-take zones should be expanded to include the area up to three miles from shore.

Response: Generally, the area from the shoreline to three nautical miles offshore is managed by the State and territories and is not under the purview of the FMP. CNMI presents a special case. However, this plan proposed management regulations only for beyond 3 miles around CNMI. With a few exceptions, the nearshore areas of the NWHI are managed jointly by the State of Hawaii and Federal Department of Interior and the nearshore areas of the Pacific Remote Islands are managed jointly by WPRFMC and other Federal agencies. No-take MPAs have been proposed for 0 - 50 fathoms in EEZ waters surrounding, Jarvis Island, Howland Island, Baker Island, Kingman Reef and Palmyra Atoll (Pacific Remote Islands); Rose Atoll in American Samoa; 0 to10 fathoms in all the NWHI and up to 50 fathoms in French Frigate Shoals, Laysan and half of Midway. The Council will utilize the amendment process to modify existing MPAs and designate additional MPAs. In doing this, the Council will actively work with local island communities and appropriate local government agencies (Federal, state, territorial and/or commonwealth) to create additional MPAs of size, location, and management measures appropriate to that community and locale, and to the level of permitted fishing.

17. Want to propose a MPA for Molokai.

Response: The alternative to designate MPAs in the EEZ around the main inhabited island groups was discussed but was not preferred. In these areas, fishing activities are concentrated on adjacent nearshore reefs under state/territory government authority, and designation of no-take areas in the EEZ alone would have little impact on target resources.

18. If the coral reef plan covers zero to 50 fathoms, and all the protected areas are 0 to 50 fathoms also, then everything is a Marine Protected Area except for Guam?

Response: The CREFMP applies to all areas in the Western Pacific region under the Councils jurisdiction, which is generally from 3 - 200 miles from the shoreline in the EEZ. The preferred alternatives for MPAs are designated in the EEZ around the NWHI out to 10 fathoms, Rose Atoll in American Samoa and the PRIAs would extend form the shoreline to 50 fathoms. In the NWHI, also extended to 50 fathoms in the EEZ would be French Frigate Shoals, Laysan and the northern half of Midway.

19. Does the Council have a position on the relevance or importance of mangroves in the Main Hawaiian Islands coral reef ecosystem? In Hawaii the mangroves are an introduced species and many people want to eradicate the mangroves.

Response: Generally, mangroves do not occur in areas where the Council has jurisdiction (in federal waters, which are usually 3-200 miles from shore).

20. MPA's should be strictly no-take.

Response: While strict no-take MPAs are thought to provide the highest degree of protection for the marine ecosystem, low-use MPAs also provide protection from harvesting and in some areas may be more economically and socially feasible. The Council feels the no-take MPAs that are designated under the preferred alternatives balances the competing needs of the resource users with strong ecosystem protection.

21. The Magnuson Act does not provide authority to prevent scientific research; scientific research is excluded from the definition of fishing.

Response: While the Council does not have authority to regulate scientific collecting under FMPs, (NMFS does so directly), the Council will advise on appropriate collecting methods, case-by-case, consistent with objectives of the plan.

22. MPAs should be designated by the island group where the MPAs would be located. The specific management strategy should balance the needs of the existing fishermen with resource conservation.

Response: The Council relies heavily on public input, and strives to work closely with the residents of the areas where any regulations will be implemented.

23. A broad-based "no-take" zone for the NWHI which would result in the involuntary closure of existing fisheries is an unacceptable management strategy, as it is a precedent setting situation which closes an existing fishery. This would effect more than just Hawaii.

Response: Existing fisheries who are regulated by another FMP, such as the bottomfish, crustaceans or precious corals FMP, are exempt from the requirements of the CREFMP. However, in the zones designated "no-take" in the NWHI there is no fishing of any kind (including FMP fisheries) allowed except for small quantities for scientific research after a special permit is obtained. These areas were determined to be small enough to not severely effect existing fisheries. For example, the bottomfish fishery and precious coral fishery generally utilize areas deeper than the no-take zone within 10 fathoms. Some of the no-take areas were already designated as protected species zones under the crustacean fishery.

24. The NWHI MPAs should address the effects of coral harvesting on monk seal populations.

Response: An increasingly important issue in fishery management today is the impacts on protected species by fishing activities. The monk seal population was one of the main reasons for designating specific areas in the NWHI as MPAs. Specifically, coral harvesting is addressed in the Precious Corals FMP, and the effects of the coral harvesting on monk seal populations is explored in detail.

25. The FMP/EIS should identify what measures will be taken to protect critical fish and wildlife habitat areas from potential adverse effects of proposed management actions. The feasibility of proposed mitigation measures should be full demonstrated.

Response: The FMP describes Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPCs). In addition, the FMP proposes a management measure to designate MPAs for important coral reef resource areas. The area where critical habitat occurs in the NWHI is largely designated as a MPA. The Council does not expect the proposed management measures to detrimentally affect habitat areas; however, if damage begins to occur, then additional protective measures can be taken by the Council through the framework or regulatory process.

26. The DEIS and CREFMP may be contrary to other existing applicable Federal statutes. The greatest concern is the lack of analysis given to the significance of national wildlife refuges (NWRs) with marine boundaries. NWRs are closed to all uses until they are specifically opened for such uses. The USFWS is solely charged with making the decisions whether to open NWRs for specific uses.

Response: The USFWS has expressed uncertainty as to the authority of its marine boundaries for the NWHI NWR. The Council has asked USFWS to articulate its authority on a number of occasions, only to be told it is based on USFWS policy. Council FMP-managed commercial fishing for lobsters and bottomfish, under the authority of the MSFCMA has occurred in the NWR of the NWHI since the FMPs were implemented in 1983 and 1986, respectively. In addition, critical habitat has been designated for the Hawaiian monk seal in the NWHI out to a depth of 20 fathoms around Kure, Midway, Pearl& Hermes, Laysan, Maro, Gardner, French Frigate Shoals, Necker and Nihoa. However, fishing still occurs in these areas.

27. The DEIS and CREFMP propose some level of fishing or other types of marine extraction within established NWR boundaries at Rose, Howland, Baker, Jarvis, Johnston, NWHI and Midway. It is not possible for those refuges or any NWR to be opened to a commercial or recreational use or be liberalized by action taken under the MSFCMA. The proposed FMP seeks to close, open, or otherwise manage specific coral reef fisheries of the U.S. flag Pacific Ocean.

Response: The CREFMP would not encourage any level of fishing nor open any area to fishing, as the opportunity to fish most coral reef resources is currently open. In fact the FMP would only impose new restrictions on the allowable level of fishing, for example by closing the aforementioned areas altogether, through no-take MPAs (except recreational fishing and

subsistence take on half of Midway and subsistence take at Johnston, both already allowed by USFWS). The FMP would restrict fishing in other areas through special permit requirements and other regulatory restrictions. Currently, fishing for coral reef resources in the EEZ is nearly non-existent. Except perhaps for restrictions in NWRs of areas under DOD control, there are no other Federal regulations governing the taking of coral reef resources in the U.S. EEZ of the Pacific islands. The CREFMP is largely precautionary and proposes to prevent overfishing, and impacts to coral reef ecosystems, habitat and protected species that might occur should any possible reef-directed fisheries develop in the future. Therefore, the CREFMP in fact substantially enhances the conservation goals of the NWRs.

28. No justification is given for the selection of the proposed 'no-take' areas and depths by the Council. No-take'areas should be selected based upon a set of sound biological criteria and include representation of all reef ecosystem types found in the NWHIs, as is recommended in the National Action Plan to Conserve Coral Reefs and the President's Executive Order for Marine Protected Areas. The CREFMP does not select the proposed 'no take' areas based on a sound biological process.

Response: The Council's preferred alternative for no-take MPAs follows the Scientific and Statistical Committee recommendation for French Frigate Shoals, Laysan and the northern half of Midway to be no-take MPAs to 50 fm. These locations were selected to achieve representative habitat types characteristic of the south, middle and north subregions of the NWHI archipelago. Additionally, they balance ecological criteria with socioeconomic concerns and needs.

Further justification for the selection of no-take MPAs is described in the DEIS. For example, establishment of these no-take zones would provide a form of "insurance" against possible recruitment failure in some sub-populations of the NWHI. Closing these areas to all fishing may also provide additional protection to protected species (i.e., monk seals at FFS and Laysan).

The preferred alternatives for locations and depth ranges of no-take MPAs would conserve a large reservoir of spawning biomass and genetic material for multi-resource coral reef resources, including endemic and rare species.

Restrictions on how vessels operate in no-take areas would reduce the risk of groundings. Existing bottomfish and lobster fishing activities would be displaced from no-take areas around French Frigate Shoals and Laysan.

Further research is needed to improve understanding of ecosystem processes and to validate other criteria for establishment of MPAs. Such research is ongoing and planned by federal agencies. The 20% no-take MPA figure proposed by the National Action Plan itself needs further scientific validation to quantify actual benefits.

29. The majority of waters proposed as no-take areas under the CREFMP are already designated as no-take areas. The Council does not really need to give up much harvested

area as the access to waters from 0-10 fathoms is already tightly managed under the Hawaiian Islands and Midway Wildlife Refuges. The Council claims that if the State and federal agencies comply with their recommendations, that 24% of the area will be set aside as 'no take'. However, the bulk of the 'no take' areas being proposed are within State waters and are not under Council jurisdiction. Without the State and federal Wildlife Refuge waters included, the Council is proposing only a minimal amount of 'no take' area, which is less than 14% of the harvestable resource area.

Response: As authorized by the MSFCMA, the Western Pacific Fishery Management Council has primary responsibility for conserving and managing fisheries in federal waters, which include waters up to the shoreline at Midway. The Council also has the responsibility for essential fish habitat.

Fishery management plans developed by the Council for crustaceans, bottomfish, precious coral and pelagic fisheries have been enforced in the NWHI since the 1980s. Currently, there are no areas in the NWHI designated as total no-take zones. There are 0-to-10 fathom no-take zones for lobsters throughout the NWHI islands except at Laysan, where the no-take for lobsters is 0 to 20 miles. There are also proposed and established no-take refugia for precious coral species in the NWHI.

The Council's preferred alternatives for its Coral Reef Ecosystem FMP includes a network of no-take zones in the NWHI. The extent of the no-take zones were based on the National Action Plan for Coral Reefs, which calls for 20% no-take MPAs to be established within 10 years. The Council has taken the lead by identifying 14% of the NWHI coral reef habitat as no-take zones. These waters are in federal waters and constitutes 70 percent of the no-take MPA recommended by the National Action Plan (hardly a "minimal amount"). If the State of Hawaii and USFWS agree to similar no-take areas in state waters (0 to 3 miles, except at Midway), the additional 30 percent of the National Action Plan would nearly be met for the NWHI.

Management in waters 0 to 10 fathoms in the Hawaiian Islands NWR by USFWS appears to center around regulating the take of certain marine species by NMFS, which is conducting prey research and shark eradication to help with recovery of the Hawaiian monk seal. At Midway Atoll NWR, critical habitat for monk seals has not been designated and USFWS has signed a long-term contract with Midway Phoenix Corp., which promotes recreational and charter fishing and allows subsistence fishing. While USFWS has developed a set of fishing regulations for residents and guests at Midway Atoll NWR, they are poorly enforced and recent surveys indicate an unusually low ulua population there.

30. Reefs deeper than 10 fathoms around Kure Atoll are given no protection and this is the most isolated atoll, least impacted by fishing and at the Darwin Point. It is amongst the most fragile, complex and unique resources in the NWHIs and is a State Wildlife Sanctuary. Additional protection for this resource area should be considered and was recommended by the plan team but not adopted by the Council.

Response: The SSC recommended half of Midway over Kure for a no-take MPA to 50 fm as both atolls have similar characteristics, and Kure is considered important to commercial fishermen, while Midway has already been closed to such fishing for decades. Half of Midway has been reserved as a low-use MPA to accommodate recreational fishing for ecotourism by the USFWS.

The State could provide protection to reefs around Kure from 0-3 miles from shore, where most reef habitat occurs, but has not done so.

31. The Council has designated all waters from 10-50 fathoms as Special Permit Zones and has indicated they are to be classified as 'low take' areas. However, any vessel that is issued a permit for access to harvest targeted species is allowed to take as many of that species as they want. The restrictions are for gear types or fishing methods not for limits on harvestable quotas.

Response: Issuance of a special permit requires numerous qualifying and operating conditions. Some will require a case-by-case evaluation. The Council is mandated to prevent overfishing of any stock or species, and to restore stocks where overfishing has occurred. Fishery-dependent data will facilitate research to determine what take levels are appropriate to achieve sustainability with ecosystem sensitivity. Harvest quotas may be implemented in the future through the amendment process upon determination of the need.

9.1.4 Comments on Framework Actions

1. VMS should be required on all vessels permitted to fish coral reef resources. VMS would provide a cost-effective increase in enforcement presence.

Response: Requiring VMS on vessels is a preferred alternative for future framework action by the Council for vessels transiting MPAs, if the VMS system is federally funded by NMFS.

2. Vessels should be required to post bonds to cover removal of vessel and gear in the event of a grounding. This bonding process should be modeled after the oil spill version.

Response: Requiring permitted vessels to post bonds is one issue that was considered as a framework measure, but was rejected as infeasible. Instead, the Council developed the preferred alternative where fishing vessels operating or transiting MPAs will be required to have insurance to cover the cost of vessel removal and pollution liability in the event of a grounding, depending on type of permit and fishing area. Also, non-fishing vessels transiting the MPA would be required under the Councils preferred alternative to have insurance to cover the cost of vessel removal and pollution liability in the event of a grounding. This, however, is beyond the Council's direct authority and will require coordination with other authorities.

3. How hard is it going to be to change a non-targeted taxa to harvested? Is it included as a framework provision?

Response: That particular item is included as a framework provision, so it would take 2 Council meetings.

4. Recommends that any designation of new MPAs should be done through the formal amendment process rather than under a framework process so that people have more time to comment on proposed changes.

Response: The Council concurs. Measures such as this, which are highly controversial for the entire fishery or a substantial sector are not suited to the framework process and must be addressed through the FMP amendment process to allow sufficient public comment.

9.1.5 Comments on Non-regulatory Actions

1. Concern that comments of Coral Reef Ecosystem Plan Team members were not incorporated into subsequent drafts of the FMP.

Response: The recommendations of the Coral Reef Plan Team and Ecosystem and Habitat Advisory Panel were incorporated into a draft FMP and were reviewed by the Scientific and Statistical Committee and the Council. The current draft of the FMP describes the management measure alternatives that were endorsed including some proposed by the CREFMP and other alternatives considered by the Council.

2. There is a need to coordinate among agencies and educate decision-makers with respect to the management of coral reef resources.

Response: The FMP identifies non-regulatory measures to help with the effective management of coral reef resources, including: facilitating consistent state and territorial level management of coral reef resources; creating social, economic and political incentives for sustainable use and disincentives for unsustainable use of coral reef resources; and conducting education, public outreach, and "coral reef management diplomacy."

3. Would like every effort made to disseminate information through existing organizations and channels.

Response: Information about the FMP has been disseminated through WPRFMC's existing channels, and public meetings have been advertised in local newspapers and the *Federal Register* and notices distributed to WPRFMC's mailing list.

4. Would like WPRFMC to collaborate with the West Hawaii Fishery Council and other organizations concerned with the conservation of coral reefs to assist in gathering input from the community on the proposed FMP.

Response: The Council process provides numerous opportunities for public participation in the fishery management process. The Council endeavors to notify all interested parties of all pending council actions. One of the non-regulatory goals of the Council is the collaboration with public-private organizations concerned with reefs.

5. Concerned that rules that start in Federal waters may be adopted by the State in the future, affecting fishing in nearshore waters.

Response: This is a valid concern. The goal of the FMP, and numerous state/territory agencies is to achieve consistency in regulation, which facilitates efficiency.

6. Strongly supports objectives of the FMP, which is taking proactive action to protect Federal resources. Also supports the ecosystem-based approach and the implementation of the precautionary principle. Recognizes difficulty in fitting an innovative ecosystem-based plan into the more traditional requirements of the MSFCMA. The November U.S. Coral Reef Task Force meeting in the Virgin Islands provides an opportunity for WPRFMC to draw attention to these problems.

Response: Council Executive Director updated the task force in St. Croix regarding progress with the FMP.

7. The CRE Plan Team should have more management authority over existing FMPs/MUS and formal process for collaboration regarding ecosystem approach.

Response: The Council endorsed the formal process for inter-team collaboration. Existing FMPs sufficiently manage their respective MUS for fishery purposes.

8. Several commentary spoke in support of and encouraged the Council to accept the Plan Team's recommendations.

Response: The Council heard and carefully considered recommendations of the Plan Team; some recommendations were endorsed. Others lacked sufficient justification or were otherwise lacking in meeting the basic goals of the plan for balancing economic productivity and social acceptability with ecological integrity. Specific recommendations of the Plan Team were detailed in the October 6, 1999, and August drafts of the FMP reviewed by the Council.

9. Several commentary spoke in support of and encouraged the Council to accept the Advisory Panel's recommendations.

Response: The Council heard and carefully considered recommendations of the Advisory Panel; a number of these recommendations were endorsed. The Council preferred some adjustments to other recommendations to improve conformity with the goals of the plan. Specific

recommendations of the Advisory Panel were detailed in the October 6, 1999, and August 2000 drafts of the FMP reviewed by the Council.

10. The ecosystem concept of management needs more work.

Response: This plan manages fisheries in coral reef ecosystems, and includes measures to protect ecosystems (gear/method restrictions, MPAs, EFH). Council advisory bodies will continue to meet to better understand and incorporate ecosystem principles in coral reef fishery management; the Plan will be amended in the future to refine the ecosystem management concept. The November draft of the FMP includes an expanded review of ecosystem management concepts.

11. Impacts of proposed regulations on existing fisheries would be significant (i.e., NWHI full time fishermen).

Response: The Council's preferred alternative intends to maintain a balance between ecosystem protection and economic and social impacts. Some of the regulations proposed would indeed have had highly significant economic impacts on NWHI commercial fishermen, which is why (in part) the Council selected against them.

12. NMFS should describe, evaluate, and highlight mechanisms for integrating coral reef management and conservation measures into non-federal and non-fishing actions.

Response: These issues are addressed in Chapter 5 on "Management Measures" and Section 6.4 on "Non-Fishing Impacts" of the FMP, respectively.

13. All other FMPs developed by the WPRFMC and implemented by NMFS should be modified as necessary to meet the requirements of the Coral Reef Ecosystem FMP for activities within the coral reef ecosystem boundaries or for activities outside the boundaries that might still result in impacts on MUS.

Response: The FMP describes a formal process for coordination among plan teams to identify and address impacts of other fisheries to coral reef ecosystems. Some MUS in the FMP are included under the Council's other four FMPs, under which their MSY/OY, EFH, and other fishery characteristics are identified. For these MUS, fishery-level effects and management should be the primary responsibility of the other FMP processes, while ecosystem effects should be the primary responsibility of the coral reef ecosystem FMP process.

14. FMP species managed under other FMPs should not be excluded from the Coral Reef Ecosystem FMP if they spend all or part of their life cycles on coral reefs.

Response: Although this FMP does not necessarily address managed species under other FMPs individually, many may be part of the coral reef ecosystem during at least a portion of their life

cycles and may be key components of the system's health. Some MUS in the FMP are included under the Council's other four FMPs, under which their MSY/OY, EFH, and other fishery characteristics are identified. For these MUS, fishery-level effects and management should be the primary responsibility of the other FMP processes, while ecosystem effects should be the primary responsibility of the coral reef ecosystem FMP process. FMP Section 5.5.3 on non-regulatory measures describes a formal process for coordination among plan teams.

15. WPRFMC should institute a more formal process for future amendments to the draft FMP, wherein any changes must be approved by the recorded vote of Plan Team members.

Response: The Plan Team is one of several advisory bodies to the Council. While the Plan Team and others may recommend changes to the FMP, the Council is responsible for adopting which measures and amendments are appropriate to implement.

16. Lobster fishing should be prohibited in areas out to three miles from shore to protect lobsters and their role in the coral ecosystem and to prevent gear impacts to corals.

Response: Lobster fishing is managed under the Crustacean FMP. For these species, fishery-level effects and management should be the primary responsibility of the FMP processes, while ecosystem effects should be the primary responsibility of the coral reef ecosystem FMP process. The FMP describes a formal process for coordination among plan teams to identify and address impacts of other fisheries to coral reef ecosystems. In the NWHI, lobster fishery is prohibited from 0-10 fm.

17. Both the FMP and research component should include extensive public outreach and collaboration with the respective governments of the U.S. Pacific Islands, all potentially affected communities, and other interested private, local, State, and Federal entities.

Response: Under the management program for the Council's preferred alternative proposed management actions include facilitating consistent state/territory/commonwealth level management of coral reef resources and conducting education, public outreach and "coral reef management diplomacy". These actions are described in the FMP.

18. The DEIS should include a separate section describing specific actions and techniques which will be used to ensure coordination with U.S. Pacific Island governments, public participation, and inter-agency/intra-agency coordination throughout the FMP management and planning process.

Response: The FMP identifies non-regulatory measures to help with the effective management of coral reef resources, including: facilitating consistent state and territorial level management of coral reef resources; creating social, economic and political incentives for sustainable use and

disincentives for unsustainable use of coral reef resources; and conducting education, public outreach, and "coral reef management diplomacy."

19. NMFS should continue to coordinate with the Hawaii Department of Land and Natural Resources, American Samoa Department of Marine and Wildlife Resources, Guam Division of Aquatic and Wildlife Resources, and the CNMI Division of Fish and Wildlife regarding impacts to all native species and habitats.

Response: NMFS will continue to coordinate with local resource agencies on issues that affect native species and habitats. Interagency coordination is a goal of the Plan.

20. A range of non-fishing impacts occur withing the complex coral reef ecosystems of the Northwestern Hawaiian Islands (NWHI). The MSFCMA only authorizes the Western Pacific Regional Fishery Management Council to manage fishing activities. Non-fishing interests do not have representation in the Council Plan development process. Given different user groups interested in obtaining access to the region, strong questions remain whether a Fishery Management Council is the best way to manage federal coral reef resources where multiple uses are occurring among multiple stakeholders, some who have no say in plan development.

Response: By Federal statute the Council is the authority to manage living marine resources in the EEZ. The draft Coral Reef Ecosystem Fishery Management Plan (CREFMP) acknowledges its authority is limited to managing fishing vessels and fishing activities within Federal waters.

The MSFCMA also requires the Council to identify and describe non-fishing impacts to essential fish habitat (EFH) and recommend measures to mitigate any such impacts. The entire NWHI has been designated as EFH by the Council. The Council and NMFS are required to comment on any potential development activities, including non-fishing related activities, that may impact essential fish habitat within the NWHI.

The Council recognizes that comprehensive management of a region (e.g., the NWHI) requires interagency cooperation, considering the various agencies with respective jurisdictional authorities. The current draft of the FMP encourages such cooperation.

Amendments proposed for the re-authorization of the MSFCMA may expand the Council's authority beyond fishing activities.

The Council's advisory bodies include members with no direct connection to the fishing industry sector. The Coral Reef Ecosystem Plan Team is comprised largely of representatives from non-fishing interests, as are the Scientific and Statistical Committee and Ecosystem and Habitat Advisory Panel. Members of the public, including diverse stakeholders and non-government organization representatives, also provide public comment at Council and related meetings. In the process of developing the CREFMP, the Council has worked with the Department of Interior, the Department of Commerce, the State of Hawaii, as well as numerous other agencies.

The composition of the Council includes members from DOI, DOC, and Hawaii. This is consistent with Executive Order 13158, where the President directed the Secretary of Interior and the Secretary of Commerce to work cooperatively with these agencies to develop recommendations for protection and sustainable use of the NWHI.

9.1.6 Comments on Research, Monitoring, and Assessment:

1. There is a need for extensive mapping of the coral reef areas around American Samoa. Mapping of reefs is also a major focus of Task Force working group.

Response: Mapping of coral reef areas has been identified as a high priority research need.

2. A lot more research needs to be conducted on coral reef resources. In addition, research needs to be done on the effects of introduced species on coral reef resources.

Response: The FMP identifies recommended research, monitoring and assessment projects that will help obtain information necessary to more effectively manage coral reef resources.

3. The FMP should clearly state the baseline which will be used to evaluate the potential impacts of the various management alternatives. The baseline should be clearly defined, scientifically credible, local, and have general support from all stakeholders.

Response: Baseline is the current condition of the stocks and ecosystem. Research and monitoring are proposed to better define this. The referenced report by A. Green(1997) provides useful information on the current status of reef resources. The document on "MUS/EFH Descriptions". Also additional information is contained in the DEIS.

4. The FMP/EIS should discuss specific monitoring programs that will be implemented before and after proposed management actions to determine potential impacts on water quality and beneficial uses, and whether maintenance and protection of water quality can be guaranteed.

Response: The FMP is not expected to significantly affect water quality. The Plan Team will continue to evaluate and recommend improvements to the monitoring program after the proposed management actions are in place. An annual report will be produced that summarizes existing fishing activities and impacts.

5. There are currently fewer and fewer fish on the offshore reefs, only sharks. The fishers are not bringing in much fish on a consistent basis. Would like to see a study on the cause of these changes. Also, placing some fish aggregation devices (FADs) on the southern banks, where anchor damage has affected habitat, might help attract the fish back.

Response: The FMP identifies and prioritizes research, monitoring and assessment projects that should be undertaken to obtain information necessary to develop a sustainable coral reef fishery and effectively manage the coral reef ecosystem of the EEZ. One high priority project is to survey and assess biological resources in the EEZ, beginning with areas that are currently being fished. FADs are used to aggregate pelagic species of fish such as tunas, mahi mahi and billfish. The deployment of FADs would do little if anything to mitigate damage caused to bottom habitat caused by vessel anchoring or enhance coral reef/bottom dwelling species of fish.

6. There is a debate on the issue of overfishing in American Samoa waters. One study, using market data, concluded there was a decline in fishing resources, though it could have been an indication of market behavior at the time and not necessarily a decline in stock abundance. More research on this topic is needed.

Response: High priority research needs identified in the FMP include the survey and assessment of biological resources in the EEZ, beginning with areas that are currently being fished.

9.1.7 Comments on the Draft Environmental Impact Statement

1. The draft Environmental Impact Statement (DEIS) should address water quality implications, if any, aquatic resources, threatened and endangered species, subsequent environmental reviews, environmental justice issues, and adequate binational collaboration. Full disclosure of direct, indirect, and cumulative impacts of all proposed actions is critical. The EIS should clearly describe other past, present, and reasonably foreseeable future planning and construction activities in the project area.

Response: These issues are addressed in the revised DEIS, as appropriate.

2. The DEIS should provide full disclosure of possible funding, implementation, enforcement, and monitoring commitments, assurances, and mechanisms for the proposed management actions. The reliability of these mechanisms and legal methods to ensure implementation of FMP commitments should be evaluated. The FMP/DEIS should describe potential options if funding and/or resources prove to be inadequate to ensure full implementation of the proposed management actions.

Response: The DEIS has been prepared following standard NEPA requirements. Alternatives (options) are also discussed and evaluated.

3. The DEIS should describe the measures taken by the Council and NMFS to fully analyze the environmental effects of the proposed action on minority communities (e.g., Pacific Islanders and low-income populations), and present opportunities for affected communities to provide input into the NEPA process.

Response: These issues are addressed in the DEIS. Also see, for a detailed synopsis of community social and economic impacts is included in the FMP and in the "Fishery Impact

Statement" and Appendix B "Regulatory Impact Review and Initial Regulatory Flexibility Analysis". Public hearings will be held in low income communities.

4. The DEIS should include a section on potential effects on local, State and Federal ordinances, regulations, legislation, and laws.

Response: Every effort has been made to ensure that the management measures proposed in the FMP are consistent with state and territorial laws and policies to the degree practicable in order to simplify implementation and assist enforcement efforts.

5. The DEIS should address fishery-related impacts to fish and wildlife resources and habitats associated with each proposed geographic fishery area. USFWS recommends that particular attention be given in the DEIS to addressing fishery-related impacts on endangered and threatened species, migratory birds, coral reefs, and rare, native species and habitats.

Response: These issues are addressed in the DEIS. Fourteen percent of the NWHI reef area is designated as "no-take" zones, and fishing is already restricted in many areas of the NWHI that serve as critical habitats for monk seals and green sea turtles.

6. With regard to federally-listed endangered and threatened species, a biological assessment that (1) evaluates the impacts of the proposed and existing fisheries on listed species and (2) determines whether any such species are likely to be adversely affected by the fisheries must be prepared in accordance with the interagency consultation regulations found at 50 CFR Part 402.

Response: Under the ESA, NMFS is required to prepare and provide an impact assessment, which may serve as the biological assessment for consultation under Section 7 of the ESA, on the impacts of the fishery, as it would operate under this FMP, upon endangered and threatened species and their critical habitats. The NMFS will conduct a consultation under ESA Section 7.

7. The DEIS should identify the federally-protected resource areas that exist either within or near EEZ waters, including their established administrative boundaries. The DEIS should discuss how the impacts to these protected resources from the fisheries activities and management measures will be avoided. The DEIS should discuss the cumulative effects of these impacts over time and propose potential measures to mitigate these impacts.

Response: Impact of fishing activities are addressed in the DEIS (see "Environmental Consequences of Alternatives").

8. The DEIS should discuss the potential for removal of indigenous coral species and establishment of marine alien species, assuming that harvesting platforms and gear could serve as vectors for the introduction of marine alien species. The DEIS should assess the potential for coral reef harvesting to open up substrate for colonization by marine alien

species that already exist in the area or that might be introduced by some other vector (e.g., fishing nets) and the potential for these species to become established and proliferate.

Response: The collection of live hard coral is prohibited for commercial purposes in the plan. Most permitted vessels could be expected to be locally based thus minimizing the threat of introductions. Additional research is needed to better quantify the significance of such proposed threats.

9. Since the FMP is ecosystem-based and there is species overlap among the Plan and other existing FMPs, the DEIS should discuss how and to what extent overlapping species would be managed under various plans. In addition, the DEIS should include a discussion of how the entire coral reef ecosystem would be managed effectively on a sustainable basis under the proposed FMP.

Response: The FMP describes a formal process for coordination among plan teams to identify and address impacts of other fisheries to coral reef ecosystems. Some MUS in the FMP are included under the Council's other four FMPs, under which their MSY/OY, EFH, and other fishery characteristics are identified. For these MUS, fishery-level effects and management should be the primary responsibility of the other FMP processes, while ecosystem effects should be the primary responsibility of the coral reef ecosystem FMP process. This is also discussed in the DEIS.

10. Because of the inter-relationships, the Coral Reef Ecosystem FMP and EIS should not be dealt with separately from the other existing FMPs.

Response: Although this FMP does not necessarily address managed species under other FMPs individually, many may be part of the coral reef ecosystem during at least a portion of their life cycles and may be key components of the system's health. Some MUS in the FMP are included under the Council's other four FMPs, under which their MSY/OY, EFH, and other fishery characteristics are identified. For these MUS, fishery-level effects and management should be the primary responsibility of the other FMP processes, while ecosystem effects should be the primary responsibility of the coral reef ecosystem FMP process. FMP Section 5.5.3 on non-regulatory measures describes a formal process for coordination among plan teams.

11. The FMP may be in violation of NEPA because the commentator believes it is impossible to hold scoping sessions on an EIS when the Council has not determined what actions will be included in the final document.

Response: The scoping meetings were intended to get public input about the issues, problems and range of alternative that should be addressed in the FMP and SEIS. Public hearings and public comment periods will be forthcoming to provide an opportunity for the public to review and comment on the draft FMP/EIS.

12. The DEIS and CREFMP do not appear to adhere to standards of full disclosure when measured against the potential impacts of other draft FMPs which are now in preparation by the Council.

Response: The Council is not preparing any new FMPs aside from the CREFMP, and its accompanying DEIS does consider the impacts of existing fisheries. The Council is only preparing EISs for existing FMPs. These EISs are not associated with significant changes to the management of these fisheries.

9.1.8 Comments on Enforcement

1. At night, the local fishermen see lights out on the water, other non-local boats fishing on the offshore banks. These are the boats that need to be regulated. There is a real need for enforcement with respect to coral reef fishing.

Response: Like all other FMPs implemented by the WPRFMC, NMFS, and the U.S. Coast Guard will be jointly responsible for the enforcement of the Coral Reef Ecosystem FMP. If applicable, cooperative agreements could be developed to deputize local enforcement officers to assist in the enforcement of regulations. Both the USCG and the NMFS agencies undertake surveillance of EEZ waters and have the authority to board vessels at sea and inspect vessels when they come into port.

2. Instead of closing down fishing areas, NMFS should conduct fish surveys to determine which species have been depleted over the last 20 years at FDM, Agrihan and Esmeralda.

Response: The FMP will not close any areas in the CNMI. High priority research needs identified in the FMP include the survey and assessment of biological resources in the EEZ, beginning with areas that are currently being fished.

3. The distinction between Federal and State waters was mentioned, which brings up the concern about enforcement. If the plan is not able to effectively enforce the rules, it is meaningless.

Response: The U.S. Coast Guard and NMFS will be conducting enforcement, and the State will be doing enforcement. One of the goals of the Council is to try to maintain consistency between the actions of the Council, the federal government and the state of Hawaii.

4. The proposed plan does not require automated vessel monitoring systems (VMS) installations. It also does not require that a bond be posted to cover the immediate costs of vessel removal due to groundings. Vessel insurance should also be required for all permit holders in any area in the NWHIs, and not be dependent on the type of permit held, category of vessel, etc. as is currently proposed in the CREFMP. Given that three Council permitted fishing vessels have run aground in State waters either in the NWHIs

or in transit to the area in the past 20 months, the bonds and insurance should be mandatory.

Response: VMS, bonds and insurance were discussed at meetings of the advisory bodies with recommendations made to the Council.

All fishing vessels operating in or transiting no-take MPAs would be required to have insurance through the CREFMP so that in the event of a grounding they could pay for the cost of vessel removal and any legal liability for mitigation of habitat impacts.

VMS can be part of an effective monitoring and enforcement system for state and federal agencies, depending on category of vessel, type of permit and fishing area. A requirement for fishing vessels operating in MPAs to carry remote electronic vessel monitoring systems (VMS), if funded by NMFS, is included for future consideration, for implementation under the framework process.

Bonding was determined to be a socially and economically unfeasible alternative.

9.1.9 Other Comments

1. How will this FMP affect existing, nearshore fisheries in Hawaii?

Response: Under the MSFCMA, the Council has the authority to regulate fishing and other associated activities in federal waters. The management measures contained in the FMP apply only to fishing activities in federal waters. Management of living marine resources in state and territorial waters is the responsibility of the respective state resource management agencies; American Samoa, Department of Marine and Wildlife Resources; Guam, the Department of Aquatic and Wildlife Resources; Hawaii, the State Department of Land and Natural Resources; Northern Mariana Islands, Department of Lands and Natural Resources. The WPRFMC has designated essential fish habitat (EFH), as all bottom habitat and the adjacent water column, from the shoreline to the outer limits of the EEZ to a depth of 50 fm. The designation of EFH in and of itself will not have any biological impact. However, the proposed NMFS and Council consultation process should have an overall beneficial effect on habitats important to managed fisheries in the western Pacific region. A direct benefit of the FMP is the compilation of information on the habitats and life history characteristics of managed species. This information should facilitate the efforts of the Council and NMFS to assess cumulative impacts to EFH and propose measures to mitigate or avoid adverse impacts. Additionally, the review and compilation of the best available scientific data will serve to guide future research necessary to further describe and protect EFH. Second, EFH designation establishes a framework for NMFS and the Council to cooperatively comment on state and Federal agency actions affecting EFH. The comments of these agencies will, in turn, provide more specific guidance on how adverse impacts to EFH can be avoided or mitigated.

2. What do other countries, such as the French Territories and Fiji, do with regard to the management of their EEZ?

Response: French Territories have some closed areas. Fiji has a mixture of contemporary and traditional management, exercised through chiefly authority. The French government has given the Territorial legislature of French Polynesia full management and exploitation authority. The Ministry of Oceans, and in particular the Aquatic Resources Service (ARS) has the task of managing the total EEZ, from 0 - 200 nm, as well as lagoon and reef resources. In addition, the ARS is responsible for managing aquaculture. The Territorial legislature has the authority to negotiate bi- or multilateral fisheries arrangements, as long as the initiative, does not compromise France's international position, especially on defense. The Territorial government has the authority to establish reserves in lagoons or on reefs to protect fisheries resources. There is currently a professional lagoon fisher permit. In addition, the Ministry of the Environment sometimes gets involved when it comes to endangered species, such as sea turtles or endemic species such as the freshwater gobies in our rivers or even the "long-eared" eels. The Territorial government is in the process of establishing coastal or lagoon zone management for Moorea and Bora Bora, with appropriate legal language so that eventually some type of control and enforcement can be attached to it. In these plans there are provisions for zones of restricted activity, such as shark feeding only and no fishing. There have been efforts made to explore the possibility of same sort of reserve zone for stock replenishment in the Society Islands, (hopefully being able to overlap already established Kapu zones so as not to confound or duplicate enforcement) and the Tuamotus in an effort to sustain exploitable populations of things like giant clams, sea cucumbers, trochus, top and green snails. Fiji has reserve provision in their coastal/reef resources management plans. Fiji is an independent country within the Commonwealth of Nations and therefore has full authority of the 0-200 nm EEZ.

3. How does the management of the nearshore resources affect the offshore fisheries and vice versa?

Response: The movement and interaction between marine organisms found in shallow coastal waters and deeper offshore waters is highly species specific and dependent on a multitude of factors. Demersal species typically have a much more restrictive home range then do highly migratory pelagic species such as tuna and billfish. Therefore exchange between populations present in shallow coastal waters and those of deeper offshore waters is relatively limited. Conversely, most coral reef associated species of fish have a pelagic larval phase that may last up to several months. Tunas and other pelagic species of fish range freely throughout the ocean and are often found in shallow coastal waters. More research is needed to quantify the magnitude and importance of these relationships for most species. The Council has strived to develop and implement regulations consistent and complement existing state and territorial fishery management regulations where ever possible. Where state and federal fishery regulations are inconsistent undesirable consequences may occur. For instance, if nearshore fishery resources are mismanaged, overfishing is likely to occur. As overfishing occurs and populations of commercially important marine organisms decline in abundance, fishermen will be forced to move further offshore and in to new areas to fish. This can put unforseen pressure on the fishery

resources found in federal waters and underscores the need for implementing a management regime for coral reef resources found in federal waters.

4. Would vessels from other island areas be able to fish in the EEZ waters of CNMI?

Response: Yes, the Magnuson-Stevens prohibits discrimination between fishermen or residents from different state or territories fishing in EEZ waters. The CNMI government has the authority to promulgate rules and regulations that apply to waters under its management authority.

5. In Hawaii, what is considered State versus Federal Waters?

Response: In Hawaii, State waters extend from the shoreline to 3 nautical miles offshore. Federal waters (the EEZ) extend from 3 to 200 nautical miles offshore.

6. What is the scope of management of the FMP?

Response: The FMP proposes active management, under Federal regulations, of the coral reef fisheries in the waters of the EEZ (3-200 nm) around American Samoa, CNMI, Guam, Hawaii, and the other unincorporated U.S. Pacific Islands.

7. The WPRFMC should be concerned about reef pollution because pollution will wipe out the coral reefs.

Response: The FMP identified pollution and contamination as non-fishing impacts to coral reef resources and recommends conservation measures to minimize these impacts. The MSFCMA does not provide councils authority to regulate sources of pollution or their impacts.

8. Is the intent of WPRFMC to manage the coral reef ecosystem as a whole or simply to manage the fisheries within that ecosystem?

Response: The FMP is the first ecosystem-based plan developed by any of the eight regional Fishery Management Councils. The overall goal of the FMP is to manage coral reef ecosystem on an ecosystem basis to achieve a sustainable balance of economic productivity, ecological integrity and social acceptability. The FMP is consistent with the objectives of the MSFCMA, international *Code of Conduct for Responsible Fisheries*, the report by the NMFS Ecosystem Principles Advisory Panel, the President's Executive Order on coral reefs and the U.S. Coral Reef Task Force efforts. An ecosystem approach to fishery management shifts the burden of proof from determining if proposed harvests will be detrimental to establishing prior to harvest that such activities will not jeopardize the health and sustainability of the ecosystem. A precautionary management approach (as presented in the *Technical Guidance on the Use of Precautionary Approaches to Implementing National Standard 1 of the MSFCMA* and the FAO Fisheries Department *Code of Conduct for Responsible Fisheries*) is employed and steps are taken to ensure against unforeseen impacts to the ecosystem. Fishery management under this FMP is adaptive and builds upon local and regional experiences. A coral reef ecosystem has

ecological integrity if it retains its biological diversity, size structure and abundance over time and when all the elements in the ecosystem, along with the processes and functions that support these elements, are maintained. Solid scientific justification and the power of legal regulation must be coupled with the sincere belief by the resource users, especially those living in closest proximity to the resource, that the management policy is suitable. This suitability must take into account the culture, traditions and political perspectives of all resource users. Another goal of the FMP is to maintain consistency with state and territorial fishing regulations and landing laws, to the degree practicable.

9. Sportfishing needs to be discussed as a use of coral reef resources because it currently attracts many visitors to the management area.

Response: Charter fishing, which includes sportfishing, is discussed in the FMP.

10. How will the WPRFMC handle differences between State and Federal rules?

Response: The Council intends to maintain consistence in state/territorial laws, to the degree practicable.

11. Definition of subsistence should include displacement of indigenous peoples. Indigenous peoples who fish on a subsistence basis should be allowed to sell a portion of their catch.

Response: The FMP must follow the MSFCMA definitions. The MSFCMA defines any catch that is sold as commercial.

12. Management efforts should be based on sound scientific rationale and equitable rationale.

Response: National Standard 2 of the MSFCMA requires that conservation and management measures be based on the best scientific information available. At the same time, the precautionary principle specifies that conservation measures should be implemented even in the absence of scientific certainty that fish stocks are being overexploited. The FMP is consistent with both National Standard 2 and the precautionary principle. In addition, the permit system and other conservation and management measures will not discriminate between residents of different states and territories, consistent with National Standard 4.

13. Plan should apply different regulations to different geographic units.

Response: It does. Some proposed regulations are general for the whole region. Others are more specific, such as MPAs with geographic subzones with special requirements.

14. It is difficult to estimate MSY for most coral reef species.

Response: FMP Chapter 4 includes a section that addresses requirements to prevent overfishing. Harvested taxa with a history of exploitation have catch data that can be used to estimate MSY.

Where this is insufficient data form other similar areas can be used. Where no information exists proxies can be used for MSY with stated assumptions.

15. Restrictions on nearshore fisheries would impact fishermen who are using resources in environmentally sensitive ways.

Response: This FMP will not restrict fishing in most nearshore areas. If the state/territories implement consistent or more stringent regulations in their inshore waters (generally 0-3 nm) existing nearshore fishermen would be impacted; control of such is beyond the scope of this federal plan.

16. Ocean recreation uses and sportfishermen have greater cumulative impact than do the few commercial fishermen.

Response: This criticism has merit in terms of impacts to coral reef ecosystems, especially in nearshore state/territory waters. Management of ocean recreation users is not under the authority of the MSFCMA. Sport or recreational fishing in the EEZ will need to comply with the measures of the plan.

17. The process of developing the FMP may in itself stimulate the types of unregulated activities it seeks to prevent by describing the valuable coral reef resources currently unregulated.

Response: It may, but is assumed to be small. The fact that very little fishing for coral reef management unit species currently exist in the EEZ suggests that it is not economically attractive under present conditions. The plan is being developed as a high priority, following required timetables; regulations should be in effect by mid to late 2001.

18. The standard condition requiring the prohibition of ballast water discharge from fishing vessels should be deleted. It is the commentor's understanding that current USCG regulations fully address this issue and have required vessels to discharge ballast water in the open seas and not in static bay or lagoon environments. Prohibiting ballast discharge by fishing vessels in the EEZ is a rather extreme measure which cannot be enforced.

Response: This standard condition was proposed in an alternative measure that has since been rejected by the Council. Discharge of ballast water is regulated by the USCG, not the MSFCMA.

19. A full analysis of the present status of corals in the Western Pacific, including potential threats, present levels of harvesting, and areas needing protection, should be included in the FMP.

Response: Information about existing coral reef fishing is provided for each island area. Fishing and non-fishing impacts to Essential Fish Habitat (i.e., coral reefs) are described in the FMP. The FMP also identifies EFH and Habitat Areas of Particular Concern (HAPCs).

20. A full analysis of how the FMP complies with the recent Presidential Executive Order to protect corals to the extent practicable should be included in the FMP.

Response: The FMP discusses the relationship between the FMP and Executive Order No. 13089.

21. Concern about where the FMP will be implemented, including limitations to the FMP to federally-controlled waters (3-200 miles). If this is the case, a large portion of the NWHI, FDM, and other areas of significant importance to indigenous communities will not be afforded protection under the Plan. Under Executive Order 13089 all coral reefs should be provided protection.

Response: Executive Order No. 13089 applies to the WPRFMC only in its areas of jurisdiction. Other coral reef areas are managed by other Federal, state, territorial, and commonwealth agencies. These other Federal agencies are also subject to the directive of the Executive Order.

22. Recommends revising the definition of "subsistence fishing" to read: "harvest of resources for non-commercial use, with the exception of indigenous residents who may sell their harvest; such subsistence sales are not to exceed $30,000 per person, per year."

Response: The MSFCMA, which councils are mandated to follow defines any catch that is sold as commercial.

23. What is the definition of sportfishing, recreational fishing, commercial fishing and charter fishing? Fishermen do not support the fact that if they sell one fish during the year, they are considered commercial rather than subsistence fishermen.

Response: The Council derives it authority to manage fishing activities in federal waters from the MSFCMA. The MSFCMA defines commercial fishing as follows: The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade. Therefore, if a fishermen sells any portion of his/her catch by definition he is a commercial fishermen under the MSFCMA. The Act defines recreational fishing as "....fishing for sport or pleasure."

24. Considering the FMP document is extremely long and technical, the time period for public comments is far too short.

Response: The Administrative Procedure Act requires a 45-day comment period for proposed rules that would implement a FMP. The proposed rules for this FMP will be published for public comment with the requisite comment period after NMFS receives the proposed FMP and regulations.

25. How can the mandate of the Magnuson act regarding essential fish habitat affect the plan for polluted runoff in Hawaii? When commentor read the mandate from congress, it only specifies that the NMFS has the power to advise states and their actions, but could this be extended to advise the states in their regulation of private actions that would affect the water? In other words, how far does essential fish habitat provisions reach?

Response: The MSFCMA states that Councils are required to describe and identify essential fish habitat (EFH) based on all life stages of the managed species, with no limitations placed on the geographic location of EFH. EFH may be designated in state or federal waters depending on the biological requirements of the species. Regarding actions that occur in state waters that may adversely affect EFH, the Magnuson Act provides authority for NMFS and the Councils to provide EFH conservation recommendations. The Council has designated EFH and Habitat Areas of Particular Concern (HAPC) for its four existing FMP. The Coral Reef Ecosystem FMP proposes to designate additional areas as EFH and HAPC. Once EFH designations are approved by the Secretary of Commerce, NMFS is required to undertake consultation with federal and state agencies that authorize, fund or undertake actions that may adversely effect EFH. The MSFCMA Sections directs NMFS and the Councils to provide comments and EFH conservation recommendations to Federal or state agencies on actions that would adversely affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by that agency. The MSFCMA requires all Federal agencies to consult with NMFS on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH. Federal agencies are required to respond in writing to EFH comments. States are not required to respond to the NMFS or Council's recommendations for measures to avoid, minimize or mitigate adverse impacts to EFH, including non-point source pollution from run-off from upland areas in coastal water sheds.

26. Whatever can be done to encourage federal and state cooperation in maintaining essential fish habitat is going to be important in the future.

Response: The Council agrees. Coral reef ecosystems occur within all jurisdictional boundaries throughout the U.S. EEZ in the western Pacific. Therefore, the implementation of this FMP will require federal, state, territorial, and other governmental agencies to work together to address mutual management concerns and collaborate on the needs for effective coral reef research and management. This inter-agency collaboration is consistent with the goals of the Coral Reef Task Force, to create a nationally coordinated, long-term coral reef protection program.

27. In CNMI, all federal waters go to the shoreline. However, the Council recommends no exception be granted for subsistence fishermen from permitting and reporting requirements. There is a group of truly subsistence fishermen in Saipan Lagoon who have practiced their own sort of community bases mechanisms of management. Therefore, it is important to address this jurisdictional issue clearly in the plan.

Response: The Fishery Rights of Indigenous Peoples Advisory Panel discussed the issue of permitting and reporting for subsistence fishermen in waters under the Council's jurisdiction. They understood the reasoning for exempting subsistence fishermen from a permitting process, but felt that the information produced from reporting was necessary for effective fishery management. Therefore, the panel recommended to the Council that true subsistence fishermen should be exempt from permitting requirements, however they would be required to report catch data. The FMP intends to apply to waters 3-200 miles from shore around CNMI

28. What Guam needs is a patrol boat, as many foreign fishing boats come to the islands and fish without the VMS on. They are able to fish in rougher water when the local fishermen cannot make it out.

Response: Foreign fishing is prohibited within the EEZ unless it is authorized by an international fishery agreement that existed prior to the passage of the Magnuson Act, or it is authorized by a Governing International Fishery Agreement. However, no such agreement exists in both the CNMI and Guam. None the less, the Council does not require fishing boats to carry electronic VMS with the exception of the Hawaii-based longline fishery. A framework measure is proposed in the FMP, certain types of fishing vessels (i.e., dependent on category of vessel, type of permit or fishing area) transiting through MPAs to carry remote electronic VMS, if funded by NMFS. Regarding enforcement, the U.S. Coast Guard has 2 cutters which patrol the EEZ of Guam and the CNMI. In addition, aerial reconnaissance are also conducted by Coast Guard aircraft around both EEZs.

29. Through the coral reef initiative from the President's executive order, perhaps there could be a way to approach the Coral Reef Plan Team management and maybe modify the Magnuson Act to allow a better approach

Response: The Coral Reef Ecosystem FMP embodies many of the goals set forth in the Presidential order. The Magnuson Act is up for re-authorization and a number of modifications to the Act are being considered to help further the goal of ecosystem management.

30. In the EIS, there should be a clarification of the relationship of the U.S. federal jurisdiction and any authority of Guam of the 200 mile zone.

Response: In Guam, the relationship between territory and federal jurisdiction are clearly delineated. (0-3 miles for Territory; 3-200 miles for federal).

31. Is there some mechanism to get the U.S. Coast Guard involved, and have their resources available for groundings? In Guam, ships bearing Chinese aliens ran aground on reefs, and the U.S. Coast Guard would take responsibility until the oil that was leaking out was gone. It would not take responsibility for the damage that was occurring from the ship up on the reef.

Response: The Coast Guard's mission is for marine safety and environmental protection. Their first duty is to protect America's interests on the seas. Their response to a mission is based upon priority determined by their command. Their highest priority is protection of human life and then the environment. A decision was made to limit the expenditure of their resources to mitigating the environmental damage caused by the spill. Comments can be made directly to the U.S. Coast Guard through their regional commands or the Department of Transportation by phone, fax , mail or electronically.

32. According to the Magnuson Act, it supports cultural sensitivity, so if there was no Hawaiian cultural member of the Plan Team then the process has been in error.

Response: The MSFCMA recognizes that there are unique historical, cultural, legal, political and geographical circumstances in the Pacific Insular Areas. Individual Councils are responsible for establishing and administering plans for the management and stewardship of fisheries. The Councils are responsible for ensuring a wide participation in the process. It is a democratic process that calls for participation by the State, fishing industry, environmental organizations, consumer organizations, native representatives and other interested persons. The Council advisory panel on Native and Indigenous Rights have reviewed and comments on the plan. The Council may choose to agree with recommendations made by the participants or may not. It is the Council's decision. The Western Pacific Regional Fishery Management Council has been fair in balancing the needs of the industry with the concerns of the participants.

33. There may be an error in the statement regarding 94% of the coral reefs lies within U.S. jurisdiction. Under the Hawaiian Homes Commission Act 5F, in Hawaii some of these submerged lands exceed the three mile limit, so there is a problem with jurisdiction there.

Response: The Hawaiian Homes Commission Act was passed by the U.S. Congress in 1920. Currently, the Hawaiian Homes Commission Act is administered by the State of Hawaii with oversight by the Department of Interior. Section 5f of the Admission Act, identifies five uses that proceeds from the ceded lands trust, the former Crown and Government lands of the Kingdom of Hawaii, can be used. Submerged lands are dealt with under section 5i of the Admission Act. Submerged lands are a special class of lands defined by the U.S. Supreme Court. Submerged lands are those lands under navigable waters of the state that can be put to uses that benefit the public, e.g., piers, runways, etc. In Hawaii, it is argued that the submerged lands are part of the ceded lands trust. The 20% of the Ceded Lands trust is set aside for Native Hawaiians. Jurisdiction is an issue that remains unresolved.

34. There is a concern that the Council has intentionally excluded species listed under existing fishery management plans from coverage by the CREFMP. This decision is contrary to an ecosystem approach. The Presidential Executive Order 13089 provides that the Council must "ensure that any action authorized, funded, or carried out will not degrade the conditions of coral reef ecosystems." Therefore, the CREFMP should be developed in a manner that protects the marine ecosystems of the Western Pacific, and species listed under other FMPs must be included.

Response: Species were excluded because they were managed under another FMP. In an attempt to avoid overlapping jurisdictions they were excluded from the CREFMP. We will re-examine their exclusion and review the standards developed by the Ecosystems Principles Advisory Panel in their submission to Congress in April 1999. FMP's have been managed on a species basis. What we are finding is that there is very little research and data available for the large amount of species that are extant in the Coral Reef Ecosystem. Without sufficient data it is difficult to make recommendations for their management. The change from Management Unit Species to Ecosystem Based Management will be difficult transition. The EFH provisions of the MSFCMA requires Councils to move beyond traditional single-species and multi-species management and to begin to consider a broader, ecosystem-based approach to fishery management. The Councils are now required to begin to consider the ecological role (e.g., prey, competitors, trophic links within food webs etc) played by MUS. Further, Councils are now required to identify and minimize adverse impacts to EFH that result from both fishing and non-fishing activities. Throughout CREFMP ecosystem impacts of all FMP fisheries are consisted and addressed through a formal process of plan team coordination.

35. Would rather see money spent on stiffer regulations for longliners and tuna boats than studies on inshore fishing where mainly subsistence fishing occurs.

Response: The Longline Fishery is a managed fishery that occurs in the EEZ of the United States. The MSFCMA mandates the Council to establish Fishery Management plans for the fisheries in the U.S. EEZ - 3 to 200 miles offshore. Inshore fishing is an unregulated harvesting of the resource under the State's jurisdiction - 0 to 3 miles. We need data on shore fishing to determine the sustainable amount that can be taken from shore. What and how much is taken? How much is sold? Where is it taken?

36. It should be noted that the 200 mile zone is under protection of local Guam laws, what is the relationship of U.S. Federal jurisdiction?

Response: The Federal Government claims 3 miles to 200 miles as the U.S. EEZ. Federal laws apply in that area and are enforced by the U.S. in that area. Problems will arise where there might be conflict between federal laws and local laws governing those areas. The best way to avoid the conflicts would be to negotiate and amend those laws to reduce the conflict.

37. Providing fixed moorings is a good idea, especially in places like Palmyra and Kingman where anchor chain can damage pristine coral areas. The U.S. navigational charts list an extensive shallow coral bank as a mooring area.

Response: Fixed moorings are a good idea. There are problems associated with fixed moorings but they will be examined for applicability and are considered in the FMP as a framework option.

38. The 50 fathom rule does not make sense, because the drop off is from seven fathoms to 200 in about 10 feet around Palmyra and Kingman Reef.

Response: The 50 fathom rule was adopted because it is the extreme of where algae and coral will grow and of course there will be exceptions and amendments needed to fully protect the Coral Reef Ecosystem.

39. Sudden storms may require anchoring in shallow areas.

Response: The prevention of loss of life is provided for in Maritime Law through exemption for emergency anchoring.

40. Satellites should have been put up to identify every boat that comes within our boundaries.

Response: Identifying boats by satellite would be very difficult. However, there is an effort to establish an international Vessel Monitoring System for all vessels. Every boat owner must agree to have a VMS installed on their boat for effective and efficient monitoring. VMS is included as a framework measure for possible future implementation.

41. The regulations coming down might not affect us right now, but will before long; the market demand is always going to be there.

Response: The effort of the Council is always to balance the interests of the stakeholders in the resource, including the general public. Rules and Regulations are established to allow the sustained use of the resource for the benefit of the people.

42. Need to work out jurisdictional issues before the Council can enforce regulations in the NWHI.

Response: The effort is to get the federal and other agencies to work together in the planning for and the management of the resource, possibly through Memorandum of Agreements.

43. Ulua should be included as a management unit species list.

Response: Ulua is included as a MUS under the bottomfish FMP.

44. The current version of the Coral Reef Ecosystem Management Plan (CREFMP) still exempts existing Fishery Management Plans (primarily bottomfish, crustaceans and precious corals) from inclusion in the management measures proposed under the CREFMP. All species of groupers, jacks, and snappers (which represent the majority of apex predators) were recently moved into inclusion in the Bottomfish FMP. The organisms are clearly part of the coral reef ecosystem, and this type of fragmenting of reef organisms into separate management plans points to the inadequacies associated with the CREFMP in managing resources at an ecosystem level. Inclusion of other FMPs under the CREFMP is a necessity if the plan is to be considered as an ecosystem management plan.

Response: The current version of the FMP prohibits all fishing in no-take MPAs (i.e., no exemptions for existing FMP fisheries). Elsewhere, current fisheries are subject to management restrictions under their respective FMP, which include consideration of habitat impacts.

Prior to the establishment of the Coral Reef Ecosystem Plan Team the Council requested that all species of emperors, snappers, jacks and groupers be added to the BMUS list in the Bottomfish FMP. Most of these species are from CNMI, Guam and American Samoa and have been reported in the catch from these bottomfish fisheries for years. The required amendment has not yet been completed.

A formal process for Plan Team coordination, as recommended by the Coral Reef Ecosystem Plan Team, is included in the CREFMP to address any potential ecosystem concerns from existing fisheries.

The CREFMP was developed as a mechanism for incorporating ecosystem approaches into the present regulatory structure created through earlier FMPs for bottomfish, lobster and precious corals. The FMP is intended to serve as a demonstration "Fisheries Ecosystem Plan."

Aspects of the FMP that contribute to the ecosystem approach include: 1) measures to prevent overfishing and reef degradation; 2) prohibition on destructive and non-selective fishing methods; 3) characterization and protection of essential fish habitat; 4) no-take (i.e., no fishing) and low-use MPAs; 4) permit and reporting requirement to monitor changes in coral reef health; 6) insurance for fishing vessels in MPAs; and 7) interagency collaboration for reef protection against other impacts.

There is poor understanding of the basics, much less the intricacies, of coral reef ecosystems. Ecosystem-based management, therefore, is a long-term goal that can only be achieved over time as new information allows for improved decision-making. Collection of new data and feedback for adaptive management are key elements of the proposed FMP. Comprehensive research is necessary to support ecosystem-based management; ongoing programs must continue and be expanded.

45. Existing impacts, such as the continuous dropping of lobster traps on coral reefs, have not been addressed under the CREFMP nor are they considered under the existing Crustacean FMP. Observer data clearly show that some live coral is being brought up in the traps, yet the Council considers traps to be a non-destructive fishing gear in the CREFMP. Destruction of the coral reef habitat and substrate clearly has the potential to affect the overall integrity of the ecosystem, yet management measures to assess this impact are not addressed in either FMP. The plan also permits fishing with other types of non-selective gear such as gill nets, which and has few limitations on the types of fishing gear. Questions regarding what other impacts are not being addressed due to gaps in the plans, and the exempting the fishing specific plans from the CREFMP remain.

Response: The current draft of the CREFMP includes a "Fishing Gear Catalog", which discusses habitat impacts from lobster traps and other gear. Research is proposed to investigate such anecdotal observations.

Typically, lobster traps are set in areas of relatively low structural relief, away from coral reef habitat. If traps are set too close to coral reef and other high relief habitats, lobsters cannot be enticed to enter the traps. The occurrence of live coral in lobster traps is rare. Damage to the coral reef ecosystem is also not considered significant as the fishery typically includes less than 8 vessels and lasts only a few weeks per year.

The existing Crustaceans FMP includes a requirement to prevent significant impacts to essential fish habitat. The allowable gear list in the FMP has been chosen based on selective non-destructive characteristics of gear and its usage. Fishing for coral reef resources in the NWHI is practically non-existent outside of current FMP-regulated fisheries. Current State regulations also allow most of these gear types.

46. Coral reefs represent the most complex community of species on earth. There is a very tight inter-dependency of the organisms found on coral reefs. As such reef ecosystems are more susceptible to the impacts of any harvest than that seen with a single species. In addition, the significantly lower rates of coral growth found in the NWHI makes the area more susceptible to all impacts as the corals are at the edge of their range of tolerances. It is important to recognize these factors and develop a fisheries management plan that is truly ecosystem based, without myriad other fisheries covered by separate management plans.

Response: Fishing has occurred in the NWHI for hundreds of years yet the area is still referred by many as "pristine." Coral reefs are in good-to-excellent condition there. Commercial fishing activity is at an all-time low, due largely to regulations implemented by the Council, including limited entry. The NWHI lobster fishery is currently closed.

The coral reef ecosystem FMP was developed over a period of about six years through a collaborative effort of contractors, Council staff, Council advisory bodies and public input. Nine advisory bodies and the S.C. deliberated several times over the past two years over successive drafts of the CREFMP to formulate recommendations to the Council. The Council's present preferred alternative for the FMP represents the best balance of concerns from its diverse constituency to manage coral reef ecosystems consistent with the goal of the plan to balance ecological integrity, economic productivity and social acceptability. (Further ecosystem aspects of the plan are introduced above.)

47. The CREFMP permits harvesting of live rock and coral, despite a state law prohibiting such activity.

Response: The CREFMP prohibits the commercial take of live rock or live coral, including bulk harvesting or extractive activities, since it would result in the removal of habitat essential to fish and other benthic resources.

The Council also found it reasonable to allow take of small amounts of live rock/coral by indigenous peoples, under a special permit, for traditional and ceremonial use, and by aquaculture operators, under special permit, for use as seed stock. Limited collecting, under a special permit, would also be allowed for scientific research and management activities, including single harvest of a particular species (i.e., bioprospecting).

9.2 Public Comments and Hearings on the CREFMP DEIS

Between January 16th and February 5th, 2001, ten public hearings were held on the Coral Reef Ecosystem DEIS. Approximately 100 people attended the public hearings. The Council also received 23 written comments by February 26th, 2001, the end of the 45 day public comment period.

Agana, Guam	16 January 2001
Saipan, CNMI	17 January 2001
Kahului, Maui	19 January 2001
Kaunakakai, Molokai	22 January 2001
Kona, Hawaii	23 January 2001
Hilo, Hawaii	24 January 2001
Lihue, Kauai	25 January 2001
Lanai City, Lanai	26 January 2001
Honolulu, Oahu	29 January 2001
Fagatogo, American Samoa	05 February2001

9.2.1 Summary of Public Comments on the Draft Coral Reef Ecosystem FMP Environmental Impact Statement

Ten public hearings were held on the Coral Reef Ecosystem DEIS in American Samoa, Guam, CNMI, Hilo, Kona, Oahu, Maui, Molokai, Lanai, and Kauai between January 16, and February 5, 2001. Approximately 100 people attended the public hearings. The Council also received 23 written comments by February 26, 2001, the end of the 45-day public comment period.

Many comments recommended that the Coral Reef Ecosystem FMP and EIS be made fully consistent with President Clinton's Executive Orders 13178 and 13196 for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHI CRE Reserve). Due to the complexity of issues and uncertainties contained in the executive orders, the Secretary of Commerce has not made a final determination on the interpretation of its provisions while President George W. Bush's administration currently reviews the executive orders. The Coral Reef Ecosystem FMP and EIS now address the provisions of the executive orders to the extent possible. The NWHI Reserve will be further addressed when the Department of Commerce has clarified its interpretation of the provisions contained in the executive orders and establishes final departmental policy on all issues.

On March 8, 2001, the Coral Reef Ecosystem Plan Team and the Ecosystems and Habitat Advisory Panel was jointly convened to discuss and provide comments on public comments pertaining to the Coral Reef Ecosystem FMP and EIS. On March 12, the Council reviewed an initial draft of this document and agreed to allow more time for review of the public comments. The Coral Reef Ecosystem Plan Team met again on April 11-12, 2001 to further discussed these comments and comments provided by the Department of the Interior and make recommendations to the Council. In May, the Council's Scientific and Statistical Committee (SSC) also reviewed the public comments and provided their recommendations to the Council.

On June 21, 2001, based on evaluation of public comments and recommendations by the SSC, Plan Team and Advisory Panel, the Council endorsed the preferred alternatives of the FMP and EIS with several modifications, and directed staff to incorporate the necessary and appropriate hanges in the final documents.

The following is a list of comments submitted during the public comment period and responses prepared by Council staff as interpreted, based on the language contained in FMP and EIS and justification of the Council's preferred alternative.

9.2.2 Comments on Marine Protected Areas

1. The Council should not create a marine protected area around Rose Atoll, as Rose Atoll and its surrounding three miles are Territorial lands and seas, and the Council has no jurisdiction in these waters. Rose Atoll also makes a significant contribution to the 20% no-take marine protected area relating to Clinton's Coral Reef Initiative. (T. Sunia)

Response: The lands and waters of Rose Atoll were specifically withheld from transfer to the Territory of American Samoa. On February 1, 1975, President Gerald Ford, by Proclamation No. 4347, exempted Rose Atoll from a general conveyance of submerged lands around American Samoa to the American Samoan government. Submerged lands out to 3 miles around Rose Atoll would be under the joint jurisdiction of the Department of Commerce and the Department of Interior. Pursuant to this joint jurisdiction and in cooperation with the government of American Samoa, fishing is not permitted within the 3 mile USFWS Refuge boundary.

2. If Rose Atoll is designated a "no-take" MPA to a 50 fm depth, this action would reduce by over 90% the size of the existing no-take area already in place (Rose Atoll NWR). This would not provide the "substantial additional protection" that it claims. (National Parks Service)

Response: Designation of the 50 fathom area around Rose Atoll as an MPA does not replace or reduce the protection offered by its designation as a NWR. This provision would have an overlay effect, providing additional protection such as requiring vessel insurance.

3. Although no coral reefs occur in deeper portions of the existing refuge at Rose Atoll, that area is needed as a no-take buffer zone for enforcement purposes. Proposed MPA

boundaries facilitate poaching. A no-take buffer zone at least 1 mile wide (seaward of the 50 fm line) would improve protection from poaching. (NPS)

Response: See above two responses.

4. Proposed boundaries may impact threatened species, as Rose Atoll is probably the last remaining place in AS where green turtles nest. The proposed reduction in the Refuge would increase the potential for adverse interactions between fishing activities and turtles. (NPS)

Response See response to first comment.

5. The map of Rose Atoll is misleading, as it shows only the two small islands but neglects to show the rest of the atoll even though the whole atoll is exposed at low tide. If the missing parts are added, it shows more clearly how the fishing vessels could fish as close as about 500 m around the whole atoll under the preferred alternative. (NPS)

Response The map of Rose Atoll showing the extent of emergent land and coral reef habitat 0-50 fathoms was generated using existing NOAA Mercator projection charts.

6. How will the executive orders establishing the NWHI Coral Reef Reserve affect the MPA portion of the CREFMP? (National Audubon Society-NAS, USFWS, D. Raney, DLNR, Environmental Defense Fund (EDF) & others)

Response Discussion of executive orders 13178 and 13196 are contained in FMP Section 9.2-Other applicable laws and policies. At this time, there are numerous provisions of the orders which remain to be clarified by NOAA. In addition, the EO establishing the NWHI CRER is under review per letter received from the Secretary of Commerce dated June 30, 2001. Therefore, the FMP will be revised, as appropriate, to be consistent with NOAA's interpretation of these Executive Orders.

7. Support the use of marine zoning and establishing no-take and low-use zones in the NWHI, as it demonstrates a precautionary and proactive approach. (NAS)

Response The CREFMP incorporates the concept of marine zoning and will continue to use zoning in the management regime based on user group needs, ecosystem concepts and available scientific information.

8. The draft CREFMP helped to advance much of the no-take areas identified in EO 13178. (Center for Marine Conservation- CMC)

Response The Council recognizes this, as well as the use of the 50 mile Protected Species Zone to define the NWHI Reserve boundaries.

9. The entire NWHI should be "no take" from 0-50 fm until research can determine the needs of monk seals are met while also being able to support a commercial fishery. (W. Gilmartin)

Response: Designated as no-take, shallow water 0-10 fm represent the majority of the developed coral reef ecosystems in the NWHI which provides habitat for the majority of coral reef species of which, many are believed to be utilize by monk seals as a source of prey. Additionally, French Frigate Shoals and Laysan Islands represents important areas for monk seals and have been established as no-take MPAs from 0-50 fm along with the Northern half of Midway Atoll. Under alternative 4, the Council considered maximum additional protection to a depth of 100 fathoms however, chose to provide for a management plan which balances conservation and protection with sustainable use of resources under a special permit system in NWHI waters (10-50 fathoms).

10. The NWHI should be fully protected from all taking. (D. Dresie)

Response: See comment above. This alternative was analyzed in the EIS. Under NEPA, a range of alternatives are analyzed from a no-action alternative to a no-take designation out to 100 fm.

11. There are no "no-take" areas because 0-10 fm are all under state waters.

Response: In Federal waters, no-take areas between 0-10 fathoms occur in a number of locations including Nihoa, Necker, Lisianski Islands, French Frigate Shoals, Maro Reef Midway Atoll and other areas.

12. The NWHI are our last opportunity to save an ecosystem that needs strict and enforceable restrictions. Restrict all fishing except subsistence, tag and release off Midway, and scientific research. (Hilo Public Hearing)

Response: The reefs of the NWHI sustain a healthy ecosystem, based on numerous inter-agency studies conducted in the early 1980s and over the past few years. A comprehensive survey of the NWHI completed in late 2000, described the ecosystem as "pristine." This is true in large part because of the implementation of limited-entry fisheries under a strict management regime by the WPRFMC. Implementation of the CREFMP will provide for additional conservation and protection of coral reefs and coral reef associated species. Additionally, the CREFMP also allows for a means to assess the impacts of activities conducted in the coral reef ecosystem including commercial and subsistence fishing, tag and release, and scientific research.

13. The DEIS provides no site-specific justification for the selection of the three "no-take"areas at French Frigate Shoals (FFS), Laysan Island and the northern portion of Midway. Midway should not be included as no-take, instead, Kure Atoll and Pearl and Hermes should be designated as no-take to a depth of 50 fm.(D. Gulko)

Response: The selection of the northern half of Midway, Laysan and FFS as MPA were chosen based on a number of reasons including the Coral Reef Task Force (CRTF) recommendation that MPAs be established by criteria such as representative habitat types. French Frigate Shoals was selected as it represents unique geological characteristic as well as being an important monk seal colony. Laysan Island represents a habitat in the middle of the chain as well as a sensitive monk seal pupping location. The northern half of Midway Atoll was selected as it represents a northern coral reef habitat in the chain. The selection of these areas also takes in to account compromises by fishermen giving up other fishing grounds. This approach allows for a balance of preservation of the ecosystem in the closed area with minimal negative socioeconomic impacts, and the potential for benefits resulting from spillover. The three areas also make an important contribution towards protecting 20 percent of the NWHI, a CRTF 10 year goal. At its 77th meeting in May, the SSC found this site-specific justification to be adequate for the present and recommends continued support for the Council's preferred alternative.

14. The no-take MPAs should be 25 fathoms or deeper. (D. Gulko)

Response: The Draft CREFMP analyzed a range of alternatives, including no-take 0-100 fm. In developing the MPAs for the CREFMP, the Plan Team and Advisory Panel, recommended no-take MPAs to be established 0-10 fm because it represents the majority of the developed coral reef ecosystems in the NWHI, and is considered habitat important to both monk seals and sea turtles. Additionally, under the preferred alternative, the Council selected no-take MPA 0-50 fm around Laysan, French Frigate and the northern portion of Midway, taking into account, fishing activity, representative habitat types of the NWHI and the existing marine resources and monk seals populations located there.

15. All involved with the public hearings on the NWHI marveled at the pristine beauty of the area, and for 25 years WPRFMC has managed fisheries of the NWHI in a responsible and sustainable way. The CREFMP continues this excellence. (J. Cook)

Response: Noted.

16. The EO issued by President Clinton in his quest for legacy does not serve the interests of the American people. (S. Martin)

Response: Noted. The Council is required to abide by all existing executive orders, rules, statutes, and codified regulations.

17. The measures proposed in the DFMP should not prohibit the development of a low-impact catch and release shallow-water recreational fishery at Palmyra. Should reclassify the Palmyra designation to "low-use." (C. Cook)

Response: At its June 2001 meeting, the Council evaluated all advisory group recommendations on this comment and chose to re-designate Palmyra Atoll from a "no-take" to a "low-use" MPA.

18. A recreational fishery around Palmyra could serve as a deterrent and policing device for illegal fishing. (C. Cook)

Response: Valid point. See comment above.

19. The FMP should be revised to accept the seaward boundaries as asserted by the USFWS of all National Wildlife Refuge units in the Hawaiian islands and U.S. Pacific Remote Island Areas, including the recently established refuges at Kingman Reef and Palmyra Atoll, and acknowledge that the Refuges have the authority to manage all activities within these refuge boundaries. (E. Gilman, NAS, D. Gulko)

Response: The Department of Commerce (NMFS) has joint jurisdiction with the Department of the Interior (USFWS) in certain marine areas and will continue to work in cooperation to manage fisheries in accordance with the requirements of the MSFCMA and other applicable laws.

20. The restrictions on anchoring at Guam's southern banks is a good idea, but why is this limited to large vessels and only one location? (W. Gilmartin)

Response: The Council was made aware that this is where the problem occurs, and the source of the problem is limited to large vessels.

21. The military's activities at Farallon de Medinilla have made it a "de facto MPA", so why should fishermen be given access to an area that has been serving as a replenishment zone for years, then create new restricted MPAs in an adjacent area? (U.S. Navy)

Response: Council and SSC are unaware that FDM serves as an MPA or replenishment zone. According to the EIS- Military Training in the Marianas, the ocean areas surrounding FDM are presently accessed and used by commercial and sports fishermen. However, it is noted that access is restricted to an area of 5 km while live ammunition training is being conducted at FDM.

22. At FDM, the Navy has surveyed the nearshore marine resources and shown that the military training has had minimal impact on the marine communities. (U.S. Navy)

Response: Noted.

23. Lack of analysis is given to the significance of national wildlife refuges with marine boundaries. The DEIS proposes some level of fishing within established boundaries of some of the refuges. (USFWS, E. Gilman)

Response: See FMP section 9.3 and EIS section 5.5. The EIS does not propose fishing within any of the refuges. The Department of Commerce (NMFS) has joint jurisdiction with the Department of the Interior (USFWS) in federal waters and will continue to work in cooperation to manage fisheries in accordance with the requirements of the MSFCMA and other applicable laws.

24. Any research conducted in a no-take MPA should be directly related to the management of the no-take MPA itself. (DLNR)

Response: Noted. Bonafide research from a scientific research vessel cannot be restricted or managed under the MSFCMA. Further, studies to determine the health of fishery resources within no-take MPAs could establish a baseline which then could be used to evaluate the efficacy of the no-take MPA or to determine fishing impacts in non-MPA areas.

25. The proposed MPAs would constitute the sole ecosystem protection mechanism in the CREFMP, therefore it should be larger. (Kauai Public Hearing)

Response: Many other ecosystem protective measures are included in the preferred alternative, including permitting and data collection, allowing only selective gear and adaptive management to address unforeseen ecosystem issues should coral reef fisheries in the EEZ develop in the future.

26. In MPAs, there was no stock assessment completed to understand the biological diversity in the area, and since they are closed it will be impossible to open them again. (Guam Public Hearing)

Response: The preferred alternative would simply restrict anchoring by large vessels and not ban fishing. Further, stock assessments are most cost-effectively conducted through collaboration with existing fishing activity. Boundaries of no-take and low-use MPAs can be modified through amendment once they are better understood.

27. The public is denied access to a resource, but the scientists are getting more and more money to conduct research in the area that is closed. (Guam Public Hearing)

Response: Social and economic impacts of the no-take MPAs are considered by the plan. Designated no-take areas does not mean that the public is denied access to visit the resources, it only means that the public is not permitted to remove the resource from those particular areas.

28. Questioned the authority of Federal control over Guam's EEZ and marine resources found therein. Stated that several laws were passed in Guam claiming jurisdiction over all living and non-living resources within the entire EEZ. (Organization of People for Indigenous Rights- OPIR)

Response: Pursuant to the Territorial Submerged Lands Act of 1974, the Governments of Guam, and American Samoa own and have management responsibility for submerged lands and coral out to three geographic miles (except at Rose Atoll, American Samoa). Submerged lands and corals seaward of this three mile boundary are owned and controlled by the United States government.

9.2.3 Comments on Fishing Permits and Reporting Requirements

1. How will the general permit system assess capacity limits for the fishery, as it is ecosystem based. (DLNR)

Response: This FMP creates a framework structure to implement the general permit and facilitate specific data collection requirements for assessing fishing effort, methods, total pounds of target and all bycatch species. Additionally, as done in other fisheries, the Council, through the Secretary, may also implement other management tools such as moratoriums and limited-entry programs to address possible over capacity concerns should the data indicate such actions are necessary.

2. The reasons for denial of a general permit are inadequate, and none of the grounds for denial of a special permit deal with ecosystem-level impacts. (DLNR, D. Raney)

Response: The purpose of general permits is to monitor fishing effort and methods for given target species and associated bycatch if existing local data collection systems are deemed inadequate. Should data collected by general permits indicate ecosystem and/or resource concerns, general permits can be denied to safeguard the resource or special permits (issued on a case by case basis) may be required.

In FMP Section 5.3.1- Special Permits, the second ground for denial of special permits deal specifically with ecosystem-level impacts. Special permits may be denied if the best scientific information available indicates that harvest conducted under the permit would be significantly detrimental to the population of any species of fish.

3. There should be provisions for denying a General Permit for potential overfishing or damage to coral reef habitat. (D. Gulko)

Response: See previous comment.

4. A special permit for harvest of all coral reef resources should be implemented. (Hilo Public Hearing)

Response: At its April meeting, the CRE Plan Team also recommended the institution of special permits to harvest any resources in take areas of the EEZ (except for incidental catch). However, requiring special permit to harvest any coral reef MUS would be difficult given the varying cultural issues and current management capabilities, although representatives from each island area may request this from the Council at any time.

Under the preferred alternative, special permits are required for areas of special concern (i.e., low-use MPAs) determined by the Council as well as for resources of which virtually nothing is currently known (i.e., potentially harvested coral reef taxa anywhere where fishing is allowed.) At its 77th meeting in May, the SSC reviewed this suggestion and recommended continued support for the Council's preferred alternative.

5. Several agencies support the proposed prohibition of cruise ships and uninsured fishing vessels from operating in protected areas. (U.S. Navy)

Response: Under this plan, all fishing vessels will be required to have insurance to cover clean-up and wreck removal from accidental groundings in MPAs. However, the Council has no authority over non-fishing vessels, but has stated that it would like to consult with the proper authorities regarding operation of other vessels within the Coral Reef Ecosystem.

6. The CREFMP does not adequately cap the number of vessels or individuals fishing under special permits for potentially-harvested species. (EDF)

Response: Issuance of special permits are granted on a case-by-case basis and take into account fishing location, estimated levels of catch by trip, gear to be used and total harvest capabilities of the potential permitee. At present, fishing for coral reef resources is currently light to non-existent in the EEZ therefore, it would be premature to cap the number of vessels without a valid data and/or rationale.

7. The CREFMP affords strong protection to vulnerable areas via a rigorous permit. The plan also implements no-fishing zones around sensitive monk seal habitat. (T. Timoney)

Response: Noted.

8. Having a limited-take MPA requiring a Special Permit is a positive step. (CMC)

Response: This FMP is the first step to managing coral reefs and the management regime should be viewed as a dynamic process requiring on-going assessment.

9. The preferred alternative should not exempt all existing FMPs from requiring a special permit to fish in the NWHI. (D. Gulko)

Response: The benefit of requiring special permits for existing FMP permitted fisheries in the NWHI was not substantiated. The Council decided to have a formal process for the Coral Reef Plan Team to discuss ecosystem issues with the Plan Teams of other FMP fisheries operating in the NWHI and offer solutions to any emerging ecosystem concerns. The primary concern for requiring special permits for all existing FMP permitted fishers in the NWHI involved monitoring and reporting of CREMUS incidentally caught by those fisheries. However, reporting requirements are already mandatory for existing fisheries.

10. Concerns exist regarding the definition of "research" in terms of live rock and its possible use for commercial purposes including bioprospecting. (Hawaii hearing)

Response: The emerging field of bioprospecting is being discussed in regional, national and international fora, including code of conduct for harvest, consideration of conservation measures and property rights. However, research is not subject to control of the MSFCMA and therefore granting research permits is outside the scope of Council authority.

11. To what extent were the Ecosystem Principles Advisory Panel recommendations used in developing the preferred alternative. The Ecosystem Principles Advisory Panel recommended to place the burden of proof on the fishermen as opposed to on the resource. (K. Miller)

Response: By requiring a special permit, the FMP requires that fishermen demonstrate the burden of proof to fish for all MUS listed as Potentially Harvested Coral Reef Taxa, and if fishing is to be conducted in a low-use MPAs. Approval of a special permit will require a thorough description of all aspects of the fishing operation including gear type and deployment methods and other information prior to the permit being issued. Each application for a special permit would require NMFS and the Council's approval based upon the available scientific and commercial information and the case by the fisherman. Logbook requirements will also be defined at this time.

12. The decision not to require additional permitting or reporting requirements for harvesting of coral reef resources is questionable if the intention is to manage at an ecosystem level. (K. Miller)

Response: See responses to two previous comments. Because the harvest of coral reef ecosystem species is light to non-existent in the EEZ, the Council proposes to require special permits to fish in low-use MPAs and harvest species listed in the FMP as Potentially Harvested Coral Reef Taxa. The Council will allow local agencies to continue collecting data on those listed as Currently Harvested Coral Reef Taxa. However, should local permitting and reporting requirements be deemed inadequate, there is a framework measure in place which would allow for implementation of federal permitting under a general permit system.

In addition, the Council understands forcing dramatic changes in fishing practices among island people will likely be difficult as cooperation is essential. The Council feels that a more effective means to gather data and manage cultural/indigenous fishing practices would be to work cooperatively with these local agencies.

13. Several agencies support the permitting system proposed in the preferred alternative as this system would provide only limited opportunities to fish for poorly understood fish and to fish in the proposed low-use areas using individually reviewed special permits, while allowing general permits for better understood stocks that can sustain fishing pressure. (CMC)

Response: Noted.

14. Recommend that scientific research only be permitted to occur in no-take and low-use areas if the applicant demonstrates that it is not practicable to conduct the proposed research outside of these areas, the research will not result in significant adverse environmental impacts individually or from cumulative impacts, and the research will result in support for the conservation and sustainable management of coral reefs. (NAS)

Response: The Council concurs with the first point for no-take MPAs and with the remaining points in whole. Nevertheless, the Council and this FMP does not have authority over scientific research which is granted directly through the NMFS regional office. The Council requests to be briefed on all proposed scientific research which may be relevant to fishery management issues and advices NMFS to conduct the appropriate environmental assessments as required under NEPA.

15. No details are provided on how NMFS verifies the accuracy of the information obtained in catch reports. A different approach is needed by managing agencies to obtain accurate and reliable marine resource information on which to base management decisions. (L. Kasaoka)

Response: Inconsistencies, when they are brought to light to the Council, are discussed and appropriate action is taken. Data reporting has always been a high priority of the Council.

16. It is vital to the long-term health and sustainability of any fishery resource to have accurate data about the standing crop of the resource before allowing exploitation, yet none of the federal or state fisheries agencies can provide this for the targeted species that have FMPs and/or permit requirements. (L. Kasaoka)

Response: Closely controlled and monitored fishing is a cost-effective way to obtain information on the resource to improve management. The special permit process for potentially harvested coral reef taxa will allow collection of data on developing fisheries so as to prevent overfishing, as well as to provide valuable information on the status of the marine environment.

9.2.4 Comments on Fishing Gear and Methods

1. The ban on scuba fishing at night is consistent with other management regimes which are attempting to ban this practice in state waters around American Samoa. (American Samoa Public Hearing)

Response: Under the preferred alternative, the CREFMP prohibits spear fishing using Scuba at night only in the PRIAs and NWHI. However, regarding the recently enacted ban in territorial waters around American Samoa, the Council, after reviewing the recommendations made by its advisory bodies, chose to endorse the preferred alternative.

2. There should be a prohibition on the use of spear with Scuba at day and night in the Pacific Remote Island Areas and the NWHI. (CMC, T. Harp)

Response: The Council discussed this issue at length, and determined that it was important to protect the fish while sleeping because at this time they have no refuge from fishing gear. Prohibiting the use of spear with Scuba at night and not during the day, strikes a balance between the interests of the fishermen with concerns for potential over-harvesting of highly prized species.

3. There should not be a ban on spearfishing using scuba gear. (Hilo Public Hearing)

Response: See previous response. The CREFMP prohibits spearfishing for CREMUS with scuba at night in the EEZ of the NWHI and PRIA, but does not currently prohibit this practice during the day or around populated island areas.

4. The ban on spearfishing with Scuba or hookah at night should be expanded to a total prohibition against spearfishing with Scuba or hookah. (U.S. Navy)

Response: See above responses.

5. Supports limiting allowable gear to those types listed in the draft plan, however if the Council feels it is beneficial to provide opportunity to use unlisted gear, it is recommended that the draft plan should specify criteria for its use. Specifically, unlisted gear should not be permitted unless it provides nearly no opportunity for bycatch or habitat impacts, while maintaining an appropriate fishing capacity based on ecological and social considerations. (CMC)

Response: The list of allowable gears in the CREFMP were rated based on (1) selectivity (how it catches the target species) (2) potential impacts to EFH, and (3) refuge (does the method allow for refuge for the species. Should new gear types be considered for use in the coral reef ecosystem, a special permit application is required prior to using unlisted gear, and must fully describe the gear and method of deployment. The NMFS and the Council can then evaluate and assess the new gears or fishing methods prior to permitting the action to ensure it meets the standards listed above.

6. The CREFMP includes pursenets and lobster traps in its list of allowable "selective" gears. These are not selective gears. (DLNR, D. Gulko, T. Harp)

Response: These gear types, when used properly are selective and non-destructive to resources and habitat.

7. Should not exempt existing FMPs gear (i.e., lobster traps), does not deal with known existing gear impacts. (D. Gulko)

Response: Existing FMP fisheries are prohibited in no-take MPAs. Also, should information regarding ecosystem impacts of existing fisheries gear become available, these concerns can be considered and addressed through plan team coordination and meetings.

8. There is no mesh size listed for the lobster traps, only dimensions. (T. Harp)

Response: The lobster fishery is managed under the Crustacean FMP and existing regulations, including the size of escape vents, are detailed in that FMP. These details are included in the final version of the CREFMP gear catalogue.

9. Gillnets are not a selective type of gear. (T. Harp)

Response: Gillnets are specifically prohibited for harvesting CRE MUS in the CREFMP; they are not included in the allowable gear list.

10. Indigenous people were not using inefficient gear, they made use of materials that were available to them and took only what was needed. (T. Harp)

Response: Noted.

11. Loopholes exist in the measures proposing that vessels carry insurance in the event of a grounding. As such, they will probably be ineffective. (D. Derise)

Response: No loopholes in the plan exist for vessels under Council and NMFS jurisdiction. Any fishing vessel operating in or transiting through any designated MPA must have insurance to cover accidental groundings. The Council will also work with appropriate agencies to protect coral reefs from damage by other vessels.

12. Minimum insurance needs must be stated in the FMP.

Response: Amount of insurance required will be dependant upon category of vessel, type of permit and fishing area. Monetary cost of insurance is likely to be higher for larger vessels and vessels operating near islands (i.e., Midway harbor). This cost is to be worked out by the vessel owner and the insuring company.

9.2.5 Comments on Framework Actions

1. VMS should have the potential to be enacted even if the cost of such a system is not fully subsidized with federal funding. Under certain circumstances it may be appropriate to ask fishing vessel owners to contribute to the cost, and other private or non-federal government funding might be made available for such a program. (CMC)

Response: As a framework measure, VMS will be fully analyzed, including an environmental assessment, before it can be implemented. Thus, these options will be explored.

2. Should modify the DEIS to include a measure requiring VMS for all fishing vessels operating in the NWHI. (DLNR, D. Gulko)

Response: The Western Pacific Council was the first fishery council to implement VMS and will continue to promote its implementation as appropriate. VMS is a controversial issue nationwide and decisions regarding the nature of its implementation are ongoing. The Council plays an active participant in these negotiations.

3. The CREFMP could include requirements for automatic 24hr/7 day VMS systems which report to several agencies and to the ships captain when approaching an MPA, reef, bank or atoll, and the loss of permit privileges as a result of careless vessel operation could occur. (EDF)

Response: See above comment.

4. Criteria should be established for moving MUS from the potentially harvested to the currently harvested list. It should only happen if: there exists a reliable estimate of the unfished abundance of the species or stock or can otherwise choose a safe abundance target for management; there exists a regular and frequent monitoring to count the abundance of the species or stock; there exists an estimate or reliable proxy for the maximum sustainable yield of the species or stock; and there is good information on the likely ecosystem function of the species or stock, and knowledge that this function can be reduced without causing adverse ecosystem impacts. (CMC)

Response: These are valid points that were considered for inclusion in the Final FMP and EIS. However, due to the paucity of information on the standing stock of many coral reef species, there is a need to lump many species into categories by taxa. Therefore, as more information becomes available through fishery dependent and independent data collection, flexibility to redefine each species based upon unique aspects may be more appropriate.

5. The ban on anchoring except where the WPRFMC allows appears to be inserting a loophole. (D. Gulko)

Response: Uncertain as to what loophole is being created as there are no regulations to restrict anchoring of fishing vessels in the EEZ at this time. The framework measure to install mooring buoys and restrict anchoring where mooring buoys are available will need coordination with U.S. Coast Guard, NMFS, Navy, USFWS, fishermen and other state and federal agencies to determine their appropriate locations. None the less, fishermen are required to abide by all laws and regulations.

9.2.6 Comments on Enforcement

1. The FMP does not adequately address jurisdictional disputes regarding management of the NWHI. (NAS)

Response: Jurisdictional Issues are addressed in Section 9.3 of the FMP. Regarding the management of marine resources the NWHI, the MSFCMA tasks the Council to protect fishery resources in the U.S. Exclusive Economic Zones (generally 3-200 miles offshore). In Federal waters designated as part of the National Wildlife Refuge System, management over marine resources is shared between the Department of Commerce and the Department of the Interior. Pursuant to the Submerged Lands Act of 1953, the State of Hawaii was granted title and ownership of the lands beneath the navigable waters from the mean low water line, seaward to a distance of three geographic miles from the coast, as well as to the natural resources within such

lands and waters. For this reason, the CREFMP does not apply lands and waters owned by the State of Hawaii.

2. Increased enforcement will be needed in the NWHI once the CREFMP and the presidential EO take effect; the U.S. Coast Guard Enforcement Division is severely underfunded. (T. Harp)

Response: Noted. A goal of the FMP is to collaborate with other agencies to address enforcement concerns and to promote the importance of funding enforcement needs.

3. Patchwork of different depths that may or may not be fished promotes misconduct from commercial fisherman. (Kauai Public Hearing)

Response: Fishermen are required to abide by all codified regulations.

9.2.7 Comments on Overfishing/MSY

1. The CREFMP would lump many species into broad categories, which can mask overfishing. (EDF)

Response: Due to the paucity of information on the standing stock of many coral reef species, there is a need to lump many species into categories by taxa to facilitate data collection. As scientific and/or fishery data emerges and is analyzed, a framework process is available to address species-specific overfishing. Ecosystem overfishing will also be considered. Further, the management of the coral reef environment is a dynamic process with on-going assessments, thus the CREFMP is also a dynamic document with on-going analyses and assessments.

2. Chapter 4 contains little information on how the Council proposes to calculate MSY, OY and overfishing limits for the coral reef ecosystem as a whole. (K. Miller)

Response: Quantitative assessment cannot be made for the ecosystem as a whole. Reference points may be estimated by proxy using data collected from the fisheries. To prevent ecosystem overfishing, changes in species abundance and composition in exploited ecosystems will be monitored over time using the best available scientific and commercial information.

3. The Council should set a default OY at three-quarters of MSY for well studied fish stocks, with the potential to reduce OY based on the particular economic, social, and environmental conditions affecting any particular stock. (CMC)

Response: Noted.

4. The CREFMP does not include measures to control or measure total fishing mortality. (CMC)

Response: The plan includes adequate controls (MSY control rules) to prevent overfishing and reporting and monitoring provisions through existing mechanisms or through general or special permits. Criteria to define overfishing are based on effort as a proxy.

5. The CREFMP does not include any measures to control fishing capacity, but instead relies on gear and use restrictions. (EDF)

Response: Fishing on coral reef resources is presently light to non-existent in most of the EEZ. If expansion of the fisheries suggests that capacity limitations are needed, the FMP could be amended as such. The special permit requirements and associated controls for Potentially Harvested Coral Reef Taxa will also limit fishing capacity. Additionally, special permits are issued on a case by case basis.

6. The MSFCMA requires the overfished threshold to be set at MSY levels, but one group would prefer to see a robust control rule as a means to avoid overfishing. (CMC)

Response: Noted.

7. The Council should define overfishing as any fishing rate that is greater than MSY or any fishing mortality rate that is greater than the fishing mortality rate (i.e., percent per year). (CMC)

Response: Noted.

8. Cap maximum fishing mortality rate for stocks that are above B_{MSY}, and set it equal to F_{MSY} for stocks below B_{MSY}. If a direct estimate of F_{MSY} is unavailable, E_{MSY} may be used as a proxy, but additional precaution must be built into management somewhere to account for this uncertainty. (CMC)

Response: Noted.

9. Set F_{OY} equal to 75% of MSY for stocks that are above B_{OY} to 75% OF $\{(B-aB_{OY})/(B_{OY}-aB_{OY})\}$ MSY for stocks below B_{OY} but above B_{OY}, and to zero for stocks below a B_{OY}. In these equations, B is the current abundance level and a is the fraction of B_{OY} at which fishing ends. Values of a should range from close to 1 when there is high uncertainty to a minimum of 0.2 when uncertainty is relatively low, but should generally trend towards 0.5 or higher. (CMC)

Response: Noted.

10. Set B_{MSY} based on biology of the stock when possible. When B_{MSY} is unknown, a proxy equal to 50% of unfished biomass should be used. (CMC)

Response: Noted.

11. Set B_{OY} equal to 1.25 B_{MSY} when a direct estimate is available, or higher if we must rely on CPUE or if the stock is known to plan an especially important ecosystem role. (CMC)

Response: Noted.

12. Set MSST equal to B_{MSY}, as required under the MSFCMA. (CMC)

Response: Noted.

13. No flag is necessary. The flag identified in the draft serves no purpose because it does not trigger any management actions. It should be removed. (CMC)

Response: The minimum biomass flag is defined so that if biomass drops below it managers are then prompted to implement remedial action before biomass reaches the minimum stock size threshold.

14. Set MSY and OY based on impacts on trophic guilds one level above and below that of the species proposed for fishing. (DLNR, D. Gulko)

Response: Noted.

15. Who sets overfishing limits, and why were Napoleon wrasse and Humphead parrotfish not prohibited from take? (D. Raney)

Response: Chapter 4 of the FMP describes how Maximum Fishing Mortality Thresholds (MFMT) are determined. Although there have been observations that the Napoleon wrasse and the Humphead parrotfish are depleted in localized areas, it is not known whether these species are overfished in the EEZ. If such is the case, as identified in the first annual report for the Coral Reef Ecosystem FMP, by locality, management action is then required to place them in an overfished condition and prohibit take of these species.

9.2.8 Comments on Research, Monitoring, and Assessment

1. The CREFMP lacks a management structure that would allow the gathering of data sufficient even to assess minimal impacts of fishing on ecosystem functions. (K. Miller)

Response: The FMP proposes close coordination between the plan teams of existing FMP fisheries to identify ecosystem impacts and recommend mitigation measures. Research is also proposed to better understand and address ecosystem impacts.

2. The research from NOW RAMP 2000 expedition is not mentioned. (D. Gulko)

Response: No reports of results from the NOW-RAMP cruise are yet available from this assessment which took place in late 2000. Such information may be incorporated in the FMP when final reports become available.

3. Determining benthic productivity is unnecessary and unwarranted in most cases, and should not be included as a standard requirement. (U.S. Navy)

Response: Knowledge of benthic resource productivity is necessary and warranted for the management of coral reef resources. Ecosystem-based management requires information on numerous trophic levels and relationships, much of which is lacking.

4. The CRE-FMP should not exempt species covered under existing FMPs, or it does not achieve the ecosystem-level of management stated as a primary goal. (D. Gulko)

Response: Existing FMP fisheries have been managed successfully for decades under their respective fishery management plans. Stocks are healthy and interactions with habitat and protected species are considered, and minimized, as required by the MSFCMA, as well as the Endangered Species Act, the Marine Mammal Protection Act and the NEPA. Under the CRE-FMP, existing FMP fisheries are prohibited from fishing in no-take MPAs and are required to document and report all targeted and incidental catches, including CRE MUS.

5. Ocean CO2 sequestration projects should not be allowed at all in/around the NWHI. (T. Harp)

Response: The Council is unaware that such a project has been proposed for the NWHI. The Council's authority is restricted to the management of fishing vessels and fishing activities. However, the Council can make recommendation to the project under the EFH consultation provision should CO2 sequestration be proposed in the NWHI.

6. Need to know more about the resources before they are exploited. (L. Kasaoka)

Response: Closely controlled and monitored fishing is a cost-effective way to obtain information on the resource to improve management. The special permit process for potentially harvested coral reef taxa will allow collection of data on developing fisheries so as to prevent overfishing.

9.2.9 Overall General Comments

1. All offshore islets need to be included as HAPCs, as well as Kaliu Point and Mana Reef on Kauai, South and West Shore Reefs and embayments on Molokai, and all Kona Coast FRAs off Hawaii. (D. Gulko)

Response: To the extent that these locations fulfil the HAPC criteria for designation, the Council, may consider to include the areas as HAPC after review of the available scientific data and consultation with the various advisory groups and agencies.

2. The FMP appears to designate mangrove areas within the MHI as EFH, but if red mangrove qualify as EFH they should also qualify as HAPC. (U.S. Navy)

Response: Although mangroves themselves are not designated as EFH, mangroves do occur in areas which have been designated as EFH. In places where mangroves are native, such as American Samoa, they may provide important larval fish habitat. Should an area fulfill the HAPC criteria for designation, it may be considered for HAPC designation.

3. Is Inner Apra Harbor included in the boundaries of HAPC? (U.S. Navy)

Response: At present, the waters within Apra Harbor (0-50 fathoms) are designated as EFH. However, Inner Apra Harbor, including the Arote area has been identified as a candidate site meeting the criteria for designation as HAPC, and may be considered for designation by the Council.

4. Concerns were raised that Essential Fish Habitat provisions in the plan would hinder bottomfishing operations. (American Samoa Public Hearing)

Response: Bottomfishing under existing FMP permits is in compliance with EFH requirements.

5. Reference to Kaula Rock should be deleted, as the island and waters surrounding it are off limits to the public due to hazards from unexploded ordinances. The FMP should not promote access to this area. (U.S. Navy)

Response: Reference to Kaula Rock does not indicate the promotion of access to the waters around the area. The final FMP and EIS recognizes that the area is sanctuary for seabirds and a portion of the island is used for live fire training by the military.

6. The EPA rated the DEIS "LO, Lack of Objections", which is their highest rating, as it sufficiently addresses the environmental impacts of the proposed action. (Environmental Protection Agency-EPA)

Response: Noted.

7. The implementation of the EPAP recommendations is incomplete, i.e. the precautionary approach is not being implemented. (D. Gulko, K. Miller)

Response: Because the Council has developed a CRE FMP does not mean it is either promoting new coral reef fisheries or allowing for increased harvest of currently harvested species. Currently, there is no management of coral reef fishery resources in the EEZ. The plan proposes to establishes strong management measures for these species, including permitting and fishing requirements on a case-by-case basis. Varying degrees of resource uncertainty, resource utilization and management capabilities requires a flexible management regime as is outlined in the FMP.

8. Other Councils routinely divide allowable catch into trip limits for individual vessels, leaving some percentage of the allowable catch unallocated to prevent the trip limits from being designated as ITQs. (EDF)

Response: Unfortunately, total quotas are impractical for most species under the CRE FMP. Trip limits are a management option for Special Permit approval. Additionally, Congress has placed a moratorium on the establishment of any new ITQs until October 2002. In the future, this could be implemented into the management regime if appropriate.

9. The DOD should be included in all interagency coordination when addressing management of non-fishing related activity impacts. (US Navy)

Response: The DOD will be included.

10. It should be made clear that, except for the no-take areas, none of the management measures in the document apply to the other FMP's (the individual FMP management measures take precedence over those listed in the CREFMP). (D. Gulko)

Response: In addition to no-take areas, fishers managed by other FMPs are also required to have vessel insurance while fishing or transiting through MPAs.

11. The management plan proposes significant measures to address potential problems but is flexible to account for changing conditions in the future. NMFS and WPRFMC should be commended for integrating this FMP effort with ongoing updates to existing related FMPs in the Western Pacific Region. (EPA)

Response: Noted.

12. WPRFMC should modify its management measures to not exclude existing FMPs from coverage where they co-occur on federal coral reefs in the NWHI. (D. Gulko)

Response: Existing FMP fisheries are prohibited in no-take MPAs, are required to have vessel insurance and must document and report all species targeted and incidentally caught. Should data indicate that ecosystem impacts of existing fisheries are occurring, these concerns can be considered and addressed through plan team coordination and meetings.

13. Support objective 6 of the management plan, which seeks to collaborate with other agencies and organizations..., however feel the Council has sought to assert sole authority over the management of marine resources, including within NWR. (Sierra Club)

Response: The MSFCMA tasks the Council to protect fishery resources in the U.S. Exclusive Economic Zones. In Federal waters designated as part of the National Wildlife Refuge System, management over marine resources are shared between the Department of Commerce and the Department of the Interior.

14. It is unlawful to give preference to subsistence fishermen in American Samoa. (American Samoa Public Hearing)

Response: Nothing in the law prohibits allowing preference to a specific user group if the preference is justified and supported by administrative records. As such, this is not prohibited under the MSFCMA.

15. The Council and NMFS should suspend plans to proceed with the finalization of these documents until the NEPA process is adequately and faithfully carried out. (K. Miller)

Response: The Council has fulfilled the requirements of NEPA. EPA gave the CREFMP EIS its highest rating (lack-of objection).

16. The FMP does not comprehensively address all activities that could impact the NWHI coral reef ecosystem, and does not cover all habitats that comprise the NWHI ecosystem. As such, the plan should be titled a "fishery ecosystem plan" as it is referred to in the executive summary, not a true ecosystem-based management approach. (D. Gulko)

Response: The Council is mandated to regulate only fishing activities in the waters of the EEZ, it does not have authority to manage all activities that could impact the coral reef ecosystem. However, provisions in the MSFCMA related to conservation of EFH allow councils to make recommendations for potential non-fishing impacts regardless of jurisdictional authority.

17. WPRFMC should be commended for taking steps to move towards an improved management structure to achieve long-term conservation goals and sustainable use. (K. Miller)

Response: Noted.

18. Under NEPA, the document does not appear to adhere to standards of full disclosure when measured against the potential impacts of other draft FMP's which are now in preparation by the Council. (K. Miller)

Response: There are no other FMP's currently in preparation by the Council. Also, the Environmental Protection Agency reviewed the CREEIS and gave it a rating of "LO", meaning Lack of Objections, which is its highest rating.

19. Everyone talks about protecting the resources, but no one talks about giving back. For instance, replenishing the fish, growing seaweed, etc. (Kona Public Hearing)

Response: Noted.

20. The preferred alternative allows for continuing sustainable participation in the existing fisheries and demands consultation between the coral reef, bottomfish and crustacean plan teams to monitor these activities closely.

Response: Noted.

21. Pollution, run-off, and construction are to blame for killing the reefs, not the user groups. (OPIR)

Response: There is documentation that these activities are detrimental to coral reef ecosystems, however the MSFCMA does not provide council the authority to manage these activities directly. EFH provisions can be used to make recommendations to the appropriate agencies for non-fishing impacts to coral reefs.

22. The document is too long and has too little feeling for the Hawaiian spirit. It should coordinate with the local communities on the neighbor islands. (Hilo Public Hearing)

Response: The Council has several advisory councils and plan teams whose members represent a wide variety of groups, including indigenous peoples. In addition, the Council sought to obtain input through numerous public scoping meetings and hearings held throughout the Western Pacific Region during the development of the CREFMP.

23. It is important to seek the input from native Hawaiians, because if conservation is practiced now as it was hundreds of years ago, there would be no need for measures like the CREFMP. (Hilo Public Hearing)

Response: The Council sought input from the Fishery Rights of Indigenous Peoples Advisory Panel in the development of the CREFMP, as well as other native peoples of Hawaii, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands during the development of the CREFMP.

24. Nearly all significant adverse impacts to coral reefs occurred prior to, during or shortly after WWII. Since the 1970s most of the military's actions in the project area have had beneficial impacts, not degraded the reefs. (U.S. Navy)

Response: It is recognized that military activities, such as reclamation at Johnston Island and establishment of no access areas via Naval Defensive Seas Areas have had beneficial effects to coral reefs. However, military impacts are still reported to be significant in some areas (e.g., large anchor/chain damage in the CNMI, topsoil sedimentation due to bombing of Kaho'olawe).

25. A number of people showed support for Alternative 3, the preferred alternative, and others for Alternative 4, maximum protection. (Kauai, Kona and Maui Public Hearings, L. Kasaoka)

Response: Noted.

26. The suggestions by the Coral Reef Plan team and the new EO should be listed as alternatives. (K. Miller)

Response: These are addressed, indirectly, through the range of alternatives analyzed in the EIS (the No-action alternative, minimal additional protection, substantial additional protection and maximum additional protection).

27. This collection of words is not an ecosystem fishery management plan, simply because several species of marine-life have been excluded from consideration. (D. Gulko)

Response: See formal process for plan team coordination mentioned above.

28. It appears the Council fails to recognize that the State of Hawaii, Department of Land and Natural Resources has developed their own Fishery Management Area plan for state waters. (I. Harp)

Response: The Council has jurisdiction to manage fisheries in federal EEZ waters, not state waters. Recognition of the State of Hawaii's NWHI Fishery Management Area could be included in the CRE FMP when it is developed and released for public review.

29. The proposed FMP takes a proactive, but balanced approach to protecting coral reef ecosystems in the Western Pacific.

Response: Noted.

30. Support was given for the CREFMP, as the NWHI are a valuable asset to the people of the U.S. WPRFMC has proven to be an excellent steward to this unique region. By all accounts, the NWHI continue to be described as beautiful and pristine after 25 years of conservative and sustainable fishery management by WPRFMC. (J. Cook)

Response: Noted.

31. The coral reef ecosystems are a public trust to be administered for the benefit of current and future generations, not resources for a few under the exploitative mandate of the MSFCMA. (D. Raney)

Response: The MSFCMA was enacted by Congress to allow for the regional management and conservation of marine resources. Although the coral reef resources in certain areas of the EEZ in the western Pacific region have been minimally exploited to date, there is the potential for fisheries to expand into these areas and there are no regulations at present to conserve these resources. The CREFMP would establish management measures utilizing the precautionary approach to provide for conservation and sustainable utilization of these resources.

32. The existence value is defined in terms of fishing opportunity only, however ecosystem services provided by coral reefs can be extremely valuable. (EDF)

Response: Non-extractive values of reefs are noted in the plan.

33. The EIS focuses on negative economic impacts of conservation and management measures, and neglects the positive impacts of such measures. (EDF)

Response: The EIS considers both positive and negative impacts, as required by NEPA.

34. Given how little is known about the vulnerability of many coral reef species to overexploitaiton, the primary management principle should be conservation of biodiversity. In contrast, the goal of the CREFMP is sustainable use. (EDF)

Response: The FMP has eight major goals, including conservation and sustainable use of renewable living resources, consistent with the MSFCMA goals.

35. Exclusion of species covered by existing FMPs does not make sense, and as such the CREFMP cannot be considered an ecosystem plan. (K. Miller, D. Gulko)

Response: See formal process for plan team coordination above.

36. Preference should be given to Guam's local resource management initiatives. (Guam Public Hearing)

Response: A goal of the plan is to work collaboratively with local resource management agencies

37. None of the indigenous Chamorros groups were made aware of the Draft CREFMP or its impacts to the Chamorros. (OPIR)

Response: The Council held several public scoping hearings and public hearings in Guam and Saipan on the FMP/EIS over the years with advance notices advertised in the local papers as well as the federal register notice.

38. The conduct of the public meeting should be changed so there is dialogue between WPRFMC representatives and the attendees. (Guam Public Hearing)

Response: Noted.

9.3 Summary of Additional Comments on the Draft CREFMP/DEIS from the U.S. Department of the Interior

Additional comments on the draft CREFMP/DEIS were received from the Department of the Interior by fax 12 March (two weeks following the close of the formal public comment period). Comments are summarized below, together with draft responses.

9.3.1 Comments on Marine Protected Areas

1. Existing restrictions on fishing in the NWRs should have influenced the selection of the MPAs, yet no documentation of coordination or consideration of these is in the analysis. Recommend the DFMP include the MPA contributions made by the NWRs.

Response: Fishery resources in federal waters are under the management authority of the MSFCMA. In the NWHI, the U.S. Fish and Wildlife Service has asserted that the Hawaiian Islands NWR extends, for enforcement purposes, seaward to 10 fm around all emergent lands and 20 fm at Necker. The FMP designated all federal waters 0-10 fm in the NWHI and the northern half of Midway 0-50 fathoms as no-take MPAs. PRIAs are also MPAs to 50 fm in the FMP. The EIS also discusses environmental consequences of the alternatives for NWR resources in section 5.5. For a more detailed discussion on no-take and low-use MPAs designated by the CREFMP, see Section 5.2.

2. Recommend the MPAs be rethought with the goal of including the standards and criteria to demonstrate their function as real MPAs or be labeled, for example, as fishery areas requiring special permit."

Response: MPAs are defined by Executive Order 13158 as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." Under this definition, MPAs may include both take types (i.e., Midway Atoll) and no-take types (i.e., Howland, Baker, Jarvis Islands). Additionally, the 50 mile Protected Species Zone around the NWHI (and later overlayed by the NWHI Reserve boundary) is identified as a MPA. Therefore, MPAs identified in the CREFMP meet the definition and intent of Executive Order 13158 on MPAs.

Special permits, which are often issued for activities within MPAs, have the ability to be a powerful tool for dictating the type and amount of fishing allowed, mandating specific prohibitions and data reporting.

3. Recommend that the DFMP discuss criteria used to select and designate no-take and low-use MPAs, and identify the differences between the two classes of MPAs and why they should be applied.

Response:. A detailed discussion of MPAs is found in section 5.2 of the FMP. Selection of MPAs and MPA types take into account among other things, natural resource values, human use and historical values, impacts of human activities, management concerns and representative habitat types. The no-take MPAs in the NWHI represent habitat types characteristic of the extent of the chain. Appropriately, as new information is acquired through resource monitoring, the initial MPA designations could be adjusted and additional MPAs added in the future through the adaptive management process.

4. Recommend the DEIS clearly discuss the circumstances under which fishers would be authorized to fish in low-use MPAs without a coral reef special permit.

Response: Any vessel of the United States directly harvesting or incidentally harvesting CRE-MUS within a low-use MPA around the NWHI and PRIA is required to have a coral reef special permit. The only circumstance where a fisher would be allowed to fish in a low-use MPA without a special permit would be vessels holding permits and targeting species managed under separate FMPs (Bottomfish, Crustacean, Pelagic or Precious Corals). For a detailed discussion on special permits, see section 5.3 of the FMP and section 2.7, Discussion of the Preferred Alternative, in the EIS.

5. Recommend that the DFMP expand the proposed MPA boundaries from 50 fathoms to 100 fathoms.

Response: The 50 fathom boundary for MPAs was selected based on the Coral Reef Plan Team's recommendation as the maximum depth of coral reefs. (See response to comment #3.)

6. The DEIS does not address the NWHI Coral Reef Ecosystem Reserve.
Believe the proposed action is not consistent with conservation measures that apply throughout the Reserve (such as commercial fishing except where allowed, capping the number of permits, limiting the level of take for a fishing method so that it does not exceed the aggregate take for that type of fishing, prohibiting the issuance of permits for fishing activity for which there were no permits issued the preceding year).

The EO prohibits activities in the Reserve including anchoring, discharging, damaging any living or non-living reserve resource except under limited circumstances.

Believe the Draft Plan may make it more difficult for the Service to manage the Reserve and the NWRs in cooperation with other Federal agencies. The Reserve is managed to complement existing management of resources in the Midway Atoll NWR, Hawaiian Islands NWR, and adjacent Hawaii state waters.

Recommend the revised DEIS incorporate a full discussion of the compatibility of actions proposed in the Draft Plan with the Reserve conservation measures.

Recommend the revised DEIS discuss the coordinated management of the Reserve and the Refuge and how the proposed action may supplement and complement stated refuge conservation goals, strategies, management areas and boundaries.

Response: The Executive Order which created the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is under review, per letter received from the Secretary of Commerce dated 30 June 01. In his letter, the Secretary stated that "While the Sanctuary designation process and review of the Executive Order are underway, the Department will continue to use conservation and management measures under existing statutory authorities, including the MSFCMA, to meet the Act's requirement to manage marine resources in the NWHI consistent with the purposes and

policies of the National Marine Sanctuaries Act." The CREFMP will comply with the regulations of the order when they are finalized, as required. The CREFMP will make every effort to work with the federal agencies of the adjacent NWRs as it upholds the tenets of the MSFCMA.

7. Recommends that the DEIS clarify that the NWHI lobster fishery is now closed indefinitely due to a Federal court action and establishment of the new NWHI Reserve.

Response: The Service incorrectly asserts that Federal court action closed the lobster fishery due to overfishing and due to depleted stocks. To the contrary, the NMFS voluntarily closed the fishery for 2000 and 2001 as a precautionary measure due to uncertainty in the parameters used in the stock assessment models. Although there are uncertainties in the models, NMFS state's that there is no scientific evidence to support that the fishery is overfished.

With regard to the NWHI Reserve, there remains a number of uncertainties contained within Executive Order 13196 that have not been clarified by the National Ocean Service (NOS). In particular, lobster fishing permits have been issued to fishers for the fishing season of July 1, 1999 to December 31, 1999. As a result, NOS has yet to determine whether fisheries with active permits during the year prior to December 4, 2000 can be allowed to continue in areas not defined as Reserve Preservation Areas (0-100 fm).

8. Recommend that the DFMP discuss the use of Kaula Rock as a sanctuary for seabirds, although the Department of Defense uses a portion of the sanctuary as a bombing range.

Response: This is included in the document. Kaula Rock is designated as HAPC.

9. Recommended that the management measures proposed in the Draft Coral Reef FMP occur seaward of the 12 nmi refuge boundaries of Kingman Reef NWR and Palmyra Atoll NWR.

Response: By authority of the MSFCMA, the Department of Commerce, through the NMFS, manages fishery resource from the shoreline to 200 nm around all PRIAs. Within NWR boundaries, fishery management responsibilities are shared between the Department of Commerce and the Department of the Interior. Clarification is sought from DOC and DOI lawyers regarding the implementation of shared jurisdiction.

10. Recommend the revised DEIS include all comments concerning Service management responsibility for coral reef resources located within the management area of its NWRs in the Pacific region.

Response: The document titled *National Wildlife Refuges of the Pacific*, provided by the Department of Interior on August 29, 2000 and subsequently provided again on March 8, 2001, were included in the preparation of the CREFMP. Detailed discussion on jurisdictional issues is included in section 9.3 of the FMP.

11. Recommend that the revised DFMP discuss the management areas, fishing and harvest restrictions that apply to the Hawaiian Islands, Midway, Johnston, Jarvis, Palmyra, Kingman, Howland, Baker, and Rose NWRs.

Response: DOI's management of NWRs is addressed in section 9.2.2 and 9.3 of the FMP.

9.3.2 Comments on Permits and Reporting Requirements

1. Recommend that both General and Special Permit Forms and General and Special Coral Reef Taxa Daily Catch Reports include a specific reference to allowable by-catch, VMS, owner identification markings on all traps, and wreck or vessel removal insurance are needed in these permits.

Response: General Permits/Reporting and VMS are considered under framework for possible future implementation. See section 5.5.1 of the FMP for a detailed discussion on framework actions. Special permits will be used in areas designated as low-use MPAs, and for targeting of species listed as potentially harvested taxa. Also, NMFS can directly adjust permits and logbooks, without Council action. The MSFCMA requires bycatch to be reported and minimized. The FMP will require insurance for all fishing vessels transiting MPAs and all traps to be marked by the owner. The purpose of Special Permit Forms and Catch Reports is to evaluate each coral reef fishery harvest on a case by case basis. Requirements are determined prior to issuance of the permit and can address a wide range of concerns. Furthermore, binding regulations are counter to adaptive management which is a basis of the FMP.

2. Recommend that the DEIS discuss the potential for unrestricted and unpermitted harvest of coral reef resources beyond 50 fathoms especially areas that are part of our NWRs in the Pacific.

Response: The management area covered by the CREFMP includes the entire U.S. EEZ and therefore, all coral reef fisheries will be managed by the FMP.

3. Recommend harvest permits be issued to fishers on a per coral reef ecosystem basis to facilitate tracking and managing resource exploitation.

Response: The Special Permit is structured to allow for specific restrictions including location of fishing operation. For detailed discussion on special permits, see section 5.3.1 of the FMP and section 2.7, Discussion of the Preferred Alternative, in the EIS. Requiring this of currently practicing artisanal island fishers was determined inappropriate at this time, in favor of using existing local monitoring systems, although a framework measure in the FMP could require permits if needed.

4. Recommends that the Currently Harvested Coral Reef Taxa list contained in the DEIS indicate the status of vulnerable species as prescribed by the International Union for the Conservation of Nature (IUCN) or by Federal statutes.

Response: Status of stocks varies geographically around the Western Pacific Region and is largely unknown for most species locally. Overfishing definitions are discussed in Chapter 4 of the plan, as required. Status of species will be listed upon completion of the first annual report.

5. Recommend that depleted species be placed in a special protective category and not be targeted for harvest.

Response: To the degree this is known, species requiring special protection can be added to the prohibited list, as appropriate. Information compiled in the first annual report will contribute to this determination.

6. Recommend the DFMP include a discussion concerning information and data collection, and the need for independent verification concerning harvest data provided by fishers to insure quality control and accuracy.

Response: The CREFMP discusses reporting requirements in section 5.3. Collection of data where information is inadequate is a priority of the plan and will be addressed through research, fishery dependent and independent monitoring and special permits.

9.3.3 Comments on Fishing Gear and Methods

1. Recommend that the DFMP discuss any in-situ research involving monitoring or observations of individual traps to determine the effectiveness of prey escape in relation to trapped prey that are eaten in the traps by predators before they can escape.

Response: The Fishing Gear Catalogue (FMP Appendix A) contained in the FMP cites a study conducted by Parrish and Kazama (1992). These researchers found that while lobsters enter the traps, they were also able to exit and there were no observed mortalities associated with ghost fishing. They concluded that lobsters utilized the traps as shelter, possibly from predators. This information will be included in the FMP documents.

2. Recommend that the DFMP discuss banning gill nets and other seine nets from the list of proposed gear types to harvest reef fish.

Response: Gill nets are not on the list of allowable gear. Because any allowable gear type, if improperly used, has the potential to cause damage, specific conditions of operation are outlined in the gear description. For example, nets shall be tended at all times. If used properly, gear on the allowable list are non-damaging.

3. Recommend that the DEIS indicate whether there will be exemptions for the cultural use of natural poisons (e.g. awa or arrowroot poisons) to harvest coral reef resources.

Response: The Council's Indigenous Advisory Panel noted that the use of natural poisons are most effective in relatively shallow waters where concentration of the intoxicants are not easily diluted. Because this cultural practice is mainly conducted in state/territorial waters (0-3 miles),

the Indigenous Advisory Panel agreed that its use be banned in federal waters with no exemptions. The use of poisons and intoxicating substances are specifically banned through the FMP in all areas of the EEZ.

9.3.4 Comments on Framework Actions

1. Concerned that the DEIS does not clearly detail the insurance requirement for removing grounded and wrecked vessels. Concerned that the DEIS does not require anchoring restrictions except one small area off Guam, and concerned that VMS is not required throughout the proposed action area. Concerned that the DEIS does not discuss mitigation measures that may result in potential adverse impacts to coral reef resources.

Response: Regarding the insurance requirement, all fishing vessels operating within an area designated as MPA are required to carry insurance to cover the cost of wreck removal and pollution liability in the event of a grounding, as specified in the draft regulations (Section 8.1).

Regarding anchoring restrictions, VMS and potential adverse impacts to coral reef resources, the preferred alternative includes framework procedures for timely and regulatory adjustments based on feedback from monitoring of changing fisheries and resource conditions. Exact details of these measures will be determined upon their possible future implementation based on need.

2. Recommend that the DEIS include as a potential framework measure, prohibition of anchoring in any established MPA (including NWR, NOAA Reserves, State/territorial MPAs) unless anchoring zones are explicitly delineated by the responsible management authorities and eligible for use by the fishers.

Response: Anchoring restrictions in MPAs are considered as a framework action. (see Section 5.3.1)

9.3.5 Comments on Non-Regulatory Actions

1. Recommend the DFMP include a discussion concerning the need to cooperate with other agencies to integrate and combine proposed MPAs with those that already exist and not to undermine or add confusion interpreting other established MPAs that have the same purpose of conserving coral reef resources.

Response: A mechanism to strengthen inter-agency cooperation is outlined in the FMP. (section 5.5.3)

9.3.6 Comments on Research, Monitoring and Assessment

1. Recommend that the DFMP include new information from NOWRAMP expedition in Sept/Oct 2000.

Response: The DFMP will be revised to include this information when it becomes available.

2. Recommend that the DFMP discuss the considerable ongoing coral reef initiatives undertaken by the Service.

Response: Such details are included in section 7.3 the FMP or referenced by citation, as appropriate.

9.3.7 Comments on Overfishing/MSY

1. Harvest activities in the draft have been documented to adversely affect fish and wildlife resources similar to those that occur within and adjacent to the NWRs. Also, the DEIS fails to describe thoroughly Department trust resources and to document harvest-related impacts to those resources.

Response: No new harvest activity on coral reef resources is proposed through this EIS or FMP. The main objective of the Coral Reef Ecosystem Fishery Management Plan (CREFMP) is to implement a management regime for the conservation and protection of coral reef ecosystems in federal waters. Since there is no management regime for coral reef fisheries in place at this time, the CREFMP will immediately establish several management principles including: Management Unit Species (MUS), special permits, allowable gear types, marine protected areas and vessel insurance and reporting requirements. The CREFMP also incorporates an adaptive management approach through the framework process that can address future management needs as they arise. The EIS proposes only to monitor currently legal activities to allow for assessment of their effects. Unclear as to what deficiencies exist regarding trust resources. This EIS cannot describe all potential impacts, given essentially no coral reef fisheries currently exist near NWRs and natural fluctuations are unpredictable. EISs for existing FMP fisheries are currently being updated.

2. Recommend the revised DFMP include the sentence "There is also the need to take prompt action to head off the depletion and localized extinctions of many overfished or vulnerable species (e.g., giant clams, reef sharks, large groupers, pearl oysters, bumphead parrot fish, napoleon wrasse, lobsters, etc)."

Response: Overfishing definitions will be determined as prescribed in Chapter 4.0 of the FMP, which vary locally for species (e.g., lobsters are not overfished in the EEZ, according to NMFS). To the degree that the local EEZ status of such species is known, and based on the best available scientific and commercial data, those requiring special protection can be added to the prohibited list.

9.3.8 Comments on EFH/HAPC

1. Recommend the DFMP discuss why the HAPC is set at 10 fm for most reefs in the NWHI, yet is lowered to 50 fm for FFS, Laysan and Midway.

Response: Shallow water 0-10 fm represent the majority of the developed coral reef ecosystems in the NWHI and therefore serve an important ecological function for coral reef species including Hawaiian monk seals and sea turtles. Additionally, waters between 0-10 fathoms make up less than 10% of all of the benthic habitat found between 0-100 fathoms in the NWHI.

Further, according to the NMFS, French Frigate Shoals and Laysan Island, are sensitive pupping areas for monk seals. Since monk seals are known to prey upon a variety of coral reef ecosystem species, the Council selected these areas as HAPC and established a no-take MPA to a depth of 50 fathoms.

During the development of the CRE FMP, the Coral Reef Ecosystem Plan Team recommended that Midway Atoll be established as a HAPC is to a depth of 50 fathoms as it fulfills the criteria for designation of HAPC and due to the virtue of its existing protective status as a NWR.

2. Recommend that the DFMP add estuaries in the CNMI and Guam, and also add mangroves, patch reefs and reef communities/apron reefs and possibly sea grasses in Guam as EFH or HAPC.

Response: Currently, several areas in the CNMI and Guam with representative habitat types such as mangroves, patch reefs and sea grasses have been identified as areas which meet the criteria for designation of HAPC. See section 6.2 of the FMP for discussion on HAPC. For most areas, more information is required to validate or improve upon initial determinations. As this information becomes available, the Council will refine the extent of both EFH and HAPC.

3. Recommend that the criteria used for the candidate HAPC sites should include existing protective status, especially if the site is already established as an MPA.

Response: In designating HAPC for the DFMP, the Council included numerous areas with existing protective status including National Parks, MLCDs in the MHI, National Wildlife Refuges and CRAMP research sites. However, in determining whether an area within EFH should be designated as a HAPC, guidelines for selection provided in the MSFCMA state that one or more of the following criteria needs to be met: ecological function provided by the habitat is important; habitat is sensitive to human-induced environmental degradation; development activities are or will be stressing the habitat type; or habitat type is rare. Should an existing area designated as MPA fit the criteria outlined in the MSFCMA, it would be considered as a candidate site for HAPC designation.

9.3.9 Overall General Comments

1. The proposed action involves harvesting a wide variety of species of fish, coral, non-coral invertebrates, and algae that occur within coral-reef habitats.

Response: The CREFMP does not propose harvesting these species. The main objective of the Coral Reef Ecosystem Fishery Management Plan is to implement a management regime for the

conservation and protection of coral reef ecosystems in federal waters. Since there is no management regime for coral reef fisheries in place at this time, the CREFMP will immediately establish several management principles including: Management Unit Species, special permits, allowable gear types, marine protected areas and vessel insurance and reporting requirements. The CREFMP also incorporates an adaptive management approach through the framework process that can address future management needs as they arise.

2. The DEIS does not discuss the National Wildlife Refuge System Administration Act of 1966, nor does it analyze how that law may affect the implementation of the proposed Draft plan. Recommend that a revised DEIS completely analyze the proposed action for its compatibility with the primary purpose for which the NWR's were established, all legal instruments and the mission of the NWR system.

Response: The FMP discusses the National Wildlife Refuge System Administration Act in FMP Section 9.2- Other Applicable Laws and Policies. In addition, Section 9.3- Jurisdictional Issues addresses current jurisdictional authorities within the management area. The CREFMP proposes to prohibit the harvest of coral reef ecosystems resources via no-take MPAs within all national wildlife refuges, except those specifically requested by the U.S. Fish and Wildlife Service to be designated as low-use MPA. The MPA designations for coral reef ecosystems within refuges are consistent with the current protective status and also allows the U.S. Fish and Wildlife Service to continue recreational fishing opportunities and other wildlife dependent activities within National Wildlife Refuge Systems in the Pacific. The EIS discusses environmental consequences for National Wildlife Refuge Wilderness Resources in section 5.5. The compatibility of this Act with the MSFCMA has been discussed and requires resolution between the legal counsels of DOC and DOI. This issue and other jurisdictional issues are as yet unresolved.

3. Recommend that the revised EIS identify the Service as a cooperating agency, and request that the Service be included in future preparations of the EIS to provide input into proposed actions on or near NWRs identified in the EIS.

Response: The National Marine Fisheries Service is drafting a formal agency response for reciprocal cooperative participation between the NMFS and U.S. Fish and Wildlife Service in the preparation of NEPA documents.

4. The EIS should be revised to include complete information on the proposed action, an alternative analysis and impact assessment that is based on a commitment to avoid and minimize project-related impacts, and proposed mitigation measures that minimize unavoidable impacts and compensate for significant unavoidable impacts.

Response: The four alternative analyzed in the EIS cover a range from the No-action alternative to maximum additional protection for coral reef resources. The proposed action (1) creates a framework management plan with a permit system to allow for future management and data collection of various coral reef fisheries if and when they begin, (2) sets aside federal marine waters as no-take and low-use MPAs for the preservation of coral reef resources, (3) defines

allowable gear for any current or future coral reef fishery, and (4) requires insurance against groundings for fishing vessels transversing MPAs. This EIS is not associated with a proposed physical action and thus does not create physical impacts.

5. Each alternative, with the exception of the No-action alternative, appears to be incompatible with EO 13089 when it requires that all Federal agencies whose actions may affect U.S. coral reef ecosystems shall "ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems." The DEIS does not discuss the full impacts of the harvest activity upon target and non-target species in the coral reef ecosystem.

Recommend that the revised DEIS identify and discuss all non-target species and their relationships to target species.

Recommend the revised DEIS discuss the potential adverse effects that may result from the removal of target species and the effects of its removal upon prey/predator species.

Recommend that the revised DEIS describe each distinct coral reef ecosystem that occurs in the area of the proposed action and discuss the adverse effects upon each coral reef ecosystem that may result from the potential removal of target and non-target species.

Recommend the revised DEIS discuss mitigation for the potential unavoidable loss of target and non-target marine organisms and seabirds.

Recommend the revised DEIS discuss how vessel groundings may be reduced or eliminated from occurring in the NWHI in the future. Suggest the "safe transit corridors" be designated to allow fishing vessels to transit between the NWHI in a manner that reduces or eliminates accidental groundings.

Recommend the revised DEIS discuss compensatory mitigation as a possible consequence of causing significant adverse impacts to the federally protected resources.

Response: Under the no-action alternative, fisheries targeting coral reef ecosystem resources under the Council's jurisdiction would remain largely un-managed. There would be no management plan or regulations to balance sustainable use with protection of coral reef ecosystem resources. The proposed action is to establish a management regime that would allow for sustainable fisheries while preventing adverse impacts to coral reef ecosystems through the establishment of greater restrictions via special permit requirements, no-take MPA's, allowable gear types, management unit species, vessel insurance and reporting requirements. Therefore, management measures proposed in the CREFMP serve to mitigate potential adverse impacts to coral reef ecosystems from fishing activities.

The No-action alternative would be the least compatible with E.O. 13089. The management plan promotes interagency cooperation to address the above bulleted points. The EIS discusses

environmental consequences for target and non-target resources in section 5.2 and 5.3. Protected Species are discussed in section 3.2.4 and 5.4 of the EIS. Research on trophic level interactions are ongoing or proposed to allow more fuller description of coral reef ecosystems in parts of the region.

6. Recommend the revised DEIS address the threats of invasive species introduction, and discuss detailed measures for preventing the spread of alien species on refuge lands and waters, including eradication measures.

Response: All vessels transiting in areas adjacent to refuge lands have the potential to accidently introduce alien/invasive species. Measures to reduce the introduction of invasive species in island ecosystems are discussed in chapter 3.2.4. Alien species concerns are also discussed in section 5.5 (environmental consequences for NWR wilderness resources) of the EIS. Note that vessel removal and pollution clean up insurance is required for all fishing vessels operating in or transiting through MPAs. A discussion of EO 13112, Invasive Species, is included in Section 9.2-Other Applicable Laws and Policies.

7. Believe the actions may adversely effect the endangered Micronesian megapode, the short-tailed albatross, the green sea turtle, the hawksbill turtle, and five plants, and recommend NMFS initiate consultation under section 7 of the ESA.

Response: The establishment of management measures proposed under the preferred alternative of this plan is not likely to adversely affect the endangered Micronesian megapode, the short-tailed albatross, the green sea turtle, the hawksbill turtle, or five land-based plants. However, because all mariners have the right-of-passage in Federal waters, there is a potential for introduction of invasive species like rats, snakes, insects and plants to island ecosystems. The Council is considering an amendment process to all Fishery Management Plans under its jurisdiction to develop mitigation measures to reduce the potential introductions of invasive species to island ecosystems. Thus, for the purposes of this plan, an informal section 7 consultation under ESA may be appropriate.

8. The DFMP should not include Wake or any of the NWRs in the discussion on fishing communities, as none of the PRIAs have these which conform to the MSFCMA definitions and there is no evidence that these communities occur at these locations.

Response: The MSFCMA requires all fishing communities to be defined. A consistent population of people fish at Wake Island and for completeness the FMP describes this group. The Secretary of Commerce will determine whether this is a true fishing community and whether it should be included in the final document.

9. Recommend eliminating the phrase "all other coral reef ecosystem marine plants, invertebrates, and fishes not listed under existing FMPs."

Response: Elimination of the phrase would allow any unlisted or undescribed coral reef species to be unmanaged under this plan. Such an approach would not be consistent with an ecosystem management approach.

10. The DEIS violates NEPA by not considering the short- and long-term effects of each feasible alternative.

Response: This is considered under EIS Section 5.13.2, Resource Tradeoffs; Short-Term Uses Versus Long-Term Productivity.

11. Recommend the DEIS include discussion on the depth range and other characteristics of the bottomfish fishery.

Response: This information is already included in Section 3.3 of the EIS.

12. Recommend the DEIS discuss the adequacy of the MSFCMA to provide the Council with the ability to plan for fisheries management on an ecosystem basis.

Response: While the MSFCMA provides for fisheries to be managed on a species- or species-group basis, fisheries management is now expected to encompass an ecosystem approach. In the formulation of this plan, the Council followed the recent NMFS report to Congress by the Ecosystems Principles Advisory Panel, to the degree practicable.

13. Recommend the DFMP discuss the by-catch of sharks, and include estimated rates at which the pelagic fishery kills turtles, seals, seabirds, and discuss the Services BO for the Effects of the Hawaiian longline fishery on the short-tailed albatross.

Response: The pelagic longline fishery is restricted from within 50 nmi of the NWHI, well beyond most coral reef ecosystems. These issues are addressed in the pelagics final EIS.

9.4 Public Hearing Comments at the 109th Council Meeting, Ala Moana Hotel Honolulu, Hawaii, 13 March 2001

9.4.1 Overall General Comments

1. The Council should not take final action on the current draft CREFMP and EIS, as adequate time and attention were not given to the public comments submitted. (D. Raney)

Response: The Council voted to delay final action on the draft CREFMP and EIS to accommodate these concerns, in addition to reviewing more closely the comments from Department of Interior which were received the previous day.

2. The Council should not approve the plan before it is revised to be consistent with the EO. (S. Fried)

Response: The Council accommodated this request, and voted to delay final action on the draft CREFMP and EIS to review this issue. Currently the Coral Reef Ecosystem FMP and EIS address the provisions of the executive orders to the extent possible.

3. Recommended the Council defer final action on the CREFMP and EIS, as the document contained new information pertaining to Native Hawaiian issues that were not discussed with the Fishery Rights of Indigenous Peoples Advisory Panel or Ecosystems and Habitat Advisory Panel. (T. Harp)

Response: The Council voted to delay final action on the draft CREFMP and EIS to accommodate these concerns.

9.5 Public Hearing Comments at the 110th Council Meeting, Ala Moana Hotel Honolulu, Hawaii, 21, June 2001

9.5.1 Comments on Executive Order 13196- NWHI CRE- Reserve

1. Executive Order 13178 and 13196 is the law of the land and the CREFMP should be amended to conform with the executive orders as they are presently written. (D. Raney, S. Fried, C. Smith, I. Harp, R. Rufe- CMC letter of 18 June)

Response: Due to the complexity of issues and uncertainties contained in the executive orders, the Secretary of Commerce has not made a final determination on the interpretation of its provisions while President George W. Bush's administration currently reviews the executive orders. The Coral Reef Ecosystem FMP and EIS now address the provisions of the executive orders to the extent possible. The NWHI Reserve will be further addressed when the Department of Commerce has clarified its interpretation of the provisions contained in the executive orders and establishes final departmental policy on all issues.

2. The Council should work with the Executive Order, and not try to undermine it. (T. Harp)

Response: See response to comment # 1

3. The Council has done a good job balancing the sometimes opposing objectives of the EO and the MSFCMA in the CREFMP. (J. Gourley)

Response: Noted.

4. The Council's preferred alternative will allow the fishermen to continue with sustainable practices and offer protection to the coral reef. The EO closures restrict the fishermen's ability to react to changes in the fishing productivity of the different banks.(T. Timoney)

Response: Noted.

5. The bottomfish grounds are from 50 to 150 fathoms, and most areas in the Reserve are open to bottomfish to depths as shallow as 25 fathoms, therefore the fishery should not be affected. (S. Fried)

Response: Although deepwater bottomfish MUS are primarily caught at depths ranging from 50-150 fathoms, uku is a shallow species caught trolling in waters as shallow as 15 fathoms. In addition, due to the high bathymetric relief of most reefs and banks in the NWHI, the distance between the 25 fathom and the 100 fathom contour is sometimes as little as a few yards. To successfully target bottomfish, a vessel must be able to operate on either side of the preferred target depth. Apart from simply closing areas to fishing, the EO will constrain fishing operations in adjacent open areas.

9.5.2 Comments on Marine Protected Areas

1. Implementation of the 0-50 fathom no-take MPA for Rose Atoll would result in a 90% reduction of the existing protection provided under the National Wildlife Refuge Act. (D. Raney)

Response: Designation of Rose Atoll as an MPA does not replace the protection offered by its designation as a NWR. This provision would have an overlay effect, providing additional protection such as requiring vessel insurance.

2. The size of the boundaries of the no-take marine protected areas is a major weakness of the CREFMP. (D. Raney)

Response: In developing the MPAs for the CREFMP, the Plan Team and Advisory Panel recommended no-take MPAs to be established 0-10 fm because it represents the majority of the developed coral reef ecosystems, and is considered habitat important to both monk seals and sea turtles in the NWHI. Additionally, under the preferred alternative, the Council selected no-take MPA 0-50 fm around Laysan, French Frigate and the northern half of Midway, taking into account fishing activity, representative habitat types of the NWHI and the existing marine resources and monk seals populations located there.

3. The MPA boundaries in the CREFMP should conform with the outer boundaries of the National Wildlife Refuges and the National Park Service. (D. Raney)

Response: The Department of Commerce (NMFS) has joint jurisdiction with the Department of the Interior (USFWS) in certain marine areas and will continue to work in cooperation to manage fisheries in accordance with the requirements of the MSFCMA and other applicable laws.

4. During hurricanes, fishermen need to be able to anchor within French Frigate Shoals shallower than 50 fathoms. (W. Strickland)

Response: Regulations do not preclude anchoring in an emergency.

9.5.3 Comments on Jurisdiction

1. The CREFMP does not recognize the authorities of the State of Hawaii, U.S. Fish and Wildlife Service, or the NWHI Coral Reef Ecosystem Reserve. (I. Harp)

Response: The CREFMP recognizes the authority of the State of Hawaii to manage marine resources from 0-3 miles, and acknowledges the authority of the USFWS pursuant to the National Wildlife Refuge Act as amended. The NWHI Coral Reef Ecosystem Reserve is acknowledged and addressed in Section 9.3 of the FMP.

2. The CREFMP should recognize the sole management authority and protections currently afforded to marine resources within existing National Wildlife Refuges (NWR), and the plan should clarify that NWR authority to manage marine resources and address fishing activities within their boundaries extends throughout their full geographic extent. (R. Rufe)

Response: By authority of the MSFCMA, the Department of Commerce, through the NMFS, manages fishery resource from the shoreline to 200 nm around all PRIAs. Within NWR boundaries, fishery management responsibilities are shared between the Department of Commerce and the Department of the Interior. Clarification is sought from DOC and DOI lawyers regarding the implementation of shared jurisdiction. Jurisdictional issues are discussed in Section 9.3 of the FMP.

9.5.4 Comments on Permits and Reporting

1. The humphead parrotfish, other unidentified parrotfishes and the large Napoleon wrasse may be rare in nearshore non-federal waters surrounding Saipan and Tinian, however are not rare in other areas of CNMI, and should not be used to justify implementing special permits in federal waters. Special permits are not needed to manage coral reef MUS in CNMI federal waters. (J. Gourley)

Response: Under the preferred alternative, special permits are required for areas of special concern (i.e., low-use MPAs) determined by the Council as well as for resources of which virtually nothing is currently known (i.e., potentially harvested coral reef taxa anywhere where fishing is allowed.) Special permits are not required for currently harvested coral reef MUS. No MPAs have been designated for the CNMI.

2. The humphead parrotfish and the Napoleon wrasse should not be banned from capture in the EEZ of Guam. No studies have been conducted on the offshore banks, just inshore creel surveys. (M. Duenas)

Response: These species are not currently banned from capture in the EEZ. Available Information will be compiled and analyzed in the annual report to assess the status of these populations. If needed, further studies will be recommended.

9.5.5 Comments on Framework Action

1. The FMP is a dynamic document, and flexible enough to address unknown fishing issues as they arrive. (J. Gourley)

Response: Noted.

9.5.6 Comments on Fishing Gear and Methods

1. Scuba spearfishing during the day should not be prohibited. (J. Gourley)

Response: The Council discussed this issue at length, and determined that it was important to protect the fish while sleeping because at this time they have no refuge from fishing gear. Prohibiting the use of spear with Scuba at night and not during the day, strikes a balance between the interests of the fishermen with concerns for potential over-harvesting of highly prized species.

2. In support of the CREFMP, except for the framework provision for mirroring federal laws with the local laws with respect to spearfishing with scuba. This should not be banned, day or night. (T. Costa)

Response: See previous response.

3. Spearfishing with scuba tanks should not be banned in the EEZ. (D. Lui)

Response: Under the preferred alternative, spearfishing with scuba is banned only in the NWHI and PRIA, and only at night. This reflects a compromise between the interests of the fishermen with concerns for potential over-harvesting of highly prized species.

9.5.7 Overall General Comments

1. The NWHI serves as a replenishment area for the MHI. (I. Harp)

Response: Scientific evidence has not documented that this is the case. The circulation is very complex between the NWHI and the MHI, and does not go in one direction only. The larval transport phases also vary greatly between individual species.

2. Endemic marine mammals exist in the NWHI, and they should be given priority to take from the resource before the humans. (T. Harp)

Response: Designated as no take, shallow water 0-10 fm represent the majority of the developed coral reef ecosystems in the NWHI which provides habitat for the majority of coral reef species of which, many are believed to be utilize by monk seals as a source of prey. Additionally, French Frigate Shoals and Laysan Islands represents important areas for monk seals and have been established as no-take MPAs from 0-50 fm. Under alternative 4, the Council considered

maximum additional protection to a depth of 100 fathoms, however, chose to provide for a management plan which balances conservation and protection with sustainable use of resources under a special permit system in NWHI waters (10-50 fathoms), not designated as no-take.

3. All species should be included in an ecosystem plan, but the CREFMP does not include the deep-sea bottomfish stocks. (I. Harp)

Response: The deep-sea bottomfish stocks are managed under the bottomfish fishery management plan, and are subject to the management measures included in that FMP. In addition, existing FMP fisheries are prohibited in no-take MPAs, are required to have vessel insurance and must document and report all species targeted and incidentally caught. The FMP also includes a formal process for plan team coordination to identify and address ecosystem impacts of the existing FMPs.

9.6 Written Comments Received on the Draft Coral Reef Ecosystem FMP, Draft Environmental Impact Statement and Draft Essential Fish Habitat Fish Habitat for Management Unit Species

During the public comment period held between January 12 and February 26, 2001 (45 days), the Council received a total of 23 written public comments (provided below) on the Draft Coral Reef Ecosystem FMP, Draft Environmental Impact Statement and Draft Essential Fish Habitat Fish Habitat for Management Unit Species.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

'01 JAN 29

WESP...

Ms. Kitty Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

January 19, 2001

Dear Kitty:

The U.S. Department of the Interior will no doubt provide additional comments on the Draft Environmental Impact Statement (DEIS) for the Coral Reef Ecosystem of the Western Pacific Region.

Nevertheless, we provide the enclosed letter (and attachments) dated August 29, 2000 from the Director of the U.S. Fish and Wildlife Service to the Assistant Administrator for the National Marine Fisheries Service. These materials pertain to the jurisdictional issues raised by the DEIS and we request that the letter and the attachments be considered as "comments" on the DEIS for the record of the fishery management plan.

We appreciate the opportunity to comment on this initiative by the Western Pacific Regional Fishery Management Council and look forward to providing additional views prior to the February 26, 2001 deadline.

Sincerely,

Roger E. McManus
Senior Advisor for Oceans

cc: Susan B. Fruchter

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

In Reply Refer To:
ER 01/64

MAR 9 2001

Dr. Charles Karnella, Administrator
Pacific Islands Area Office, Southwest Region
National Marine Fisheries Service
1601 Kapiolani Blvd., Rm. 1110
Honolulu, Hawaii 96814

Dear Dr. Karnella:

The U. S. Department of the Interior (Department) has reviewed the Draft Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region (Draft Plan) and Draft Environmental Impact Statement (DEIS).

This letter has been prepared under the authority of and in accordance with provisions of the National Environmental Policy Act (NEPA) of 1969 [42 U.S.C. 4321 *et seq.*; 83 Stat. 852], as amended, the Fish and Wildlife Coordination Act of 1934 [16 U.S.C. 661 *et seq.*; 48 Stat. 401], as amended, the Endangered Species Act of 1973 [16 U.S.C. 1531 *et seq.*; 87 Stat. 884], as amended, the Migratory Bird Treaty Act (16 U.S.C. 703-711), as amended, and other authorities mandating Department concern for environmental values. Based on these authorities, the Department offers the following comments for your consideration.

Proposed Action

The proposed action involves harvesting a wide variety of species of fish, coral, non-coral invertebrates, and algae that occur within coral-reef habitats. The action proposes to authorize new gear types and methods to harvest marine organisms which include: hand harvest, spear (Scuba assisted), slurp gun, hand/dip net, hoop net for kona crab, throw net, barrier net for aquarium fish, surround/purse set net, hook-and-line (powered and unpowered handlines, rod and reel, and trolling), traps, and remotely operated vehicles/submersibles. The action proposes to govern harvest activities that may occur throughout the U.S. Exclusive Economic Zones and adjacent to the territorial waters of the State of Hawaii, the territories of American Samoa and Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). The action also proposes to direct the extraction of marine organisms from several National Wildlife Refuges (NWRs) in the Pacific region that are administered by the Department through the U.S. Fish and Wildlife Service (Service). The DEIS analyzes, among other things, various proposed

alternatives for the management of harvest activities and the environmental impacts they may have upon protected species and their habitat.

Our general comments on the Draft Plan and the DEIS are presented within this letter while our specific comments are contained in Enclosure 1. Enclosure 2 contains a summary of information on the National Wildlife Refuges of the Pacific; Enclosure 3 provides specific details on key items outlined in the main letter.

GENERAL COMMENTS

National Wildlife Refuge System Administration Act of 1966

The DEIS does not discuss the National Wildlife Refuge System Administration Act of 1966, as amended, nor does it analyze how that law may affect the implementation of the proposed Draft Plan. Similarly, the DEIS does not discuss the various Executive Orders (13178, 13196, 13089) that give the Department specific instructions for managing fish and wildlife resources that occur in the waters of the previously mentioned NWRs (Enclosure 2). The absence of a clear discussion of NWR marine boundaries, management responsibilities, and associated statutes may lead to confusion and may negatively impact federally protected resources that occur within these NWRs. We recommend that a revised DEIS fully and completely analyze the proposed action for its compatibility with the primary purpose or purposes for which the NWRs were established, all legal instruments pertaining to the establishment of the NWRs, and the mission of the National Wildlife Refuge System.

The DEIS proposes that the National Marine Fisheries Service (NMFS) administer the harvest of marine organisms that occur within the management area of many NWRs. In an August 29, 2000, memo to NMFS, the Service requested to be a cooperating agency under NEPA, if NMFS proposes actions that involve the resources within the established boundaries of NWRs. We recommend that the revised DEIS identify the Service as a cooperating agency. Furthermore, we recommend that the Service be included in future preparations of the DEIS to provide input into proposed actions on or near NWRs identified in this DEIS.

Fish and Wildlife Coordination Act

The DEIS is deficient in assessing the effects of the proposed action on fish and wildlife resources. In addition, the document does not propose mitigation measures commensurate with the range of potential adverse impacts anticipated to result from the proposed action. As a result, the deficiencies in the DEIS preclude its use as a basis for a meaningful analysis of anticipated project-related impacts to fish and wildlife resources identified in these comments. Therefore, we recommend that the DEIS be revised to include complete information on the proposed action,

an alternative analysis and impact assessment that is based on a commitment to avoid and minimize project-related impacts, and proposed mitigation measures that minimize unavoidable impacts and compensate for significant unavoidable impacts.

Harvest activities proposed in the Draft Plan and analyzed in the DEIS have been documented to adversely affect fish and wildlife resources similar to those that occur within and adjacent to the NWRs. The DEIS fails to describe thoroughly Department trust resources and to document harvest-related impacts to those resources. NWRs in the Pacific region that are potentially affected by the CREFMP include (Enclosure 2):

Hawaiian Islands NWR, Northwestern Hawaiian Islands
Midway Atoll NWR, Northwestern Hawaiian Islands
Baker Island NWR, Central Pacific
Howland Island NWR, Central Pacific
Jarvis Island NWR, Central Pacific
Johnston Atoll NWR, Central Pacific
Palmyra Atoll NWR, Central Pacific
Kingman Reef NWR, Central Pacific
Rose Atoll NWR, American Samoa
Guam NWR, Territory of Guam

Migratory Bird Act and Endangered Species Act

These NWRs support enormous numbers of nesting migratory seabirds. The NWRs provide breeding habitat for federally listed endangered Hawaiian monk seals (*Monachus shauinslandi*) and nesting habitat for threatened green sea turtles (*Chelonia mydas*). The NWRs host several plant species that include the federally listed endangered *Mariscus pennatiformis* ssp. *bryanii*, *Pritchardia remota*, *Schiedea verticillata*, *Amaranthus brownii*, and *Sesbania tomentosa*. The NWRs provide forage and shelter habitat for numerous species of migratory shorebirds and federally listed endangered Short-tailed albatrosses (*Phoebastria albatrus*), Hawksbill sea turtles (*Eretmochelys imbricata*), and Leatherback sea turtles (*Dermochelys coriacea*). The NWRs also contain rich coral-reef ecosystems that support hundreds of species of reef fishes and algae and thousands of species of invertebrates.

Executive Orders 13178 and 13196

We are concerned that the DEIS does not address the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), as established by executive orders 13178 and 13196 (Reserve EOs). We believe that the proposed action is not consistent with the conservation measures that apply throughout the Reserve. These measures prohibit commercial fishing activities in the

Reserve, except as specifically expressed in the Reserve EOs; cap the number of commercial fishing permits at the number of permits in effect the year preceding the Reserve EOs; limit the level of aggregate take for a fishing method so that it does not exceed the aggregate take for that type of fishing over the year preceding the Reserve EOs; and prohibit the issuance of permits for any particular type of fishing activity for which there were no permits issued in the year preceding the Reserve EO. The measures also cap recreational fishing effort at existing levels. Further restrictions on fishing effort, species targeted, or gear used, are possible should it become necessary to protect Reserve resources. Furthermore, the Reserve EO prohibits certain activities in the Reserve, including: anchoring on living or dead coral when the seabed can be seen; discharging or depositing any material or other matter into the Reserve; and removing, moving, taking, harvesting, or damaging any living or non-living Reserve resource except under certain limited circumstances.

In addition, the Reserve is managed to supplement and complement existing management of resources in the Midway Atoll NWR, Hawaiian Islands NWR, and adjacent Hawaii State waters to ensure coordinated conservation and management of the Northwestern Hawaiian Island (NWHI) consistent with the purposes and policies of the National Marine Sanctuaries Act, the National Marine Sanctuaries Amendments Act of 2000, and the Reserve EOs, and the authorities of the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C.668dd-668ee) and other laws with respect to management of the NWRs. We believe that the Draft Plan may make it more difficult for the U.S. Fish and Wildlife Service, and hence the Secretary of the Interior, to administer and manage the Reserve and the NWRs in cooperation with other Federal agencies. Therefore, we recommend the revised DEIS incorporate a full discussion of the compatibility of actions proposed in the Draft Plan with the Reserve conservation measures. Furthermore, we recommend the revised DEIS discuss the coordinated management of the Reserve and the Refuge, and how the proposed action may supplement and complement stated Refuge conservation goals, strategies, management areas and boundaries.

Executive Order 13089

Executive Order 13089 (EO 13089)(Coral Reef Protection) states that "All Federal agencies whose actions may affect U.S. coral reef ecosystems shall: "(c)...ensure that any actions they authorize, fund, or carry out, will not degrade the conditions of such ecosystems." Even though the Draft Plan is supposed to be ecosystem based, each alternative, with the exception of the no action alternative, appears to be incompatible with EO 13089. Alternatives 2, 3 and 4 each propose some form of harvest of coral reef resources or activities that may adversely affect coral reef resources. However, the DEIS does not discuss the full impacts of the harvest activity upon target and non-target species in the coral reef ecosystem. Therefore, we recommend that the revised DEIS identify and discuss all non-target species and their relationship to target species (e.g., prey/predators). We also recommend the revised DEIS discuss the potential adverse effects

that may result from the removal of target species and the effects of its removal upon prey predator species (*e.g.*, marine organisms and seabirds). Furthermore, we recommend that the revised DEIS describe each distinct coral reef ecosystem that occurs in the area of the proposed action and discuss the adverse effects upon each coral reef ecosystem that may result from the potential removal of target and non-target species. We also recommend that the revised DEIS discuss mitigation for the potential unavoidable loss of target and non-target marine organisms and seabirds.

The DEIS also fails to adequately assess the past and potential future impacts of fishing vessel groundings upon Federal trust resources. For instance, since 1998, two federally permitted Hawaiian longline vessels have run aground on coral reefs located within the northwestern Hawaiian Islands (Enclosure 3-1, 3-2).

In light of Executive Orders 13178 and 13196 (Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHI)) and 13089 (Coral Reef Protection), we are very concerned about adverse impacts to coral reef resources that have resulted from federally permitted fishing vessel groundings, especially in the NWHI. We recommend the revised DEIS discuss how vessel groundings may be reduced or eliminated from occurring in the NWHI in the future. We suggest that "safe transit corridors" be designated to allow fishing vessels to transit between the NWHI in a manner that reduces or eliminates accidental groundings. If future vessel groundings are an unavoidable consequence of these activities, we recommend that the revised DEIS discuss compensatory mitigation as a possible consequence of causing significant adverse impacts to federally protected resources.

Invasive Species Assessment

The DEIS lacks a discussion of how NMFS plans to prevent introductions of terrestrial and marine alien species spread by fishery-related activities and vessel groundings, especially at remote island sites within the NWRs. Introduction of alien species is one of the greatest threats to the biological health of NWRs in the Pacific. Invasive aliens, such as rats, insects, weeds or marine organisms carried in ballast water or attached to the hulls of ships, can potentially out-compete and eliminate many native species. We recommend that the revised DEIS address these threats and discuss detailed measures for preventing the spread of alien species on refuge lands and waters, including how alien species would be eradicated in the event of accidental introductions.

We believe that actions proposed in the Draft Plan may adversely effect the federally listed endangered Micronesian megapode (*Megapodius laperouse laperouse*), the short-tailed albatross and the green sea turtle, the hawksbill sea turtle and five plants including the federally listed endangered *Mariscus pennatiformis* ssp. *bryanii*, *Pritchardia remota*, *Schiedea verticillata*, *Amaranthus brownii*, and *Sesbania tomentosa*. Micronesian megapodes, which occur at

Aguiguan, Farallon de Medinilla, Anatahan, Sarigan, Guguan, Alamagan, Pagan, Agrihan, Asuncion, Maug, and Uracus, in the CNMI, are flightless birds that may be especially vulnerable to the proposed actions if these actions result in the introduction of alien species (*e.g.*, rats, insects or plants) at these islands. Rats may prey upon bird eggs or chicks and negatively effect population production rates and the species recovery. Alien insects and plants could potentially displace native plants and disrupt megapode forage items and habitat and negatively affect the species' ability to recover (Enclosure 3-3).

We recommend the National Marine Fisheries Service initiate consultation under section 7 of the Endangered Species Act for each federally listed species.

In summary, despite the density and length of the document (three volumes), significant concerns of the U.S. Fish and Wildlife Service and the Department of the Interior have not been addressed. These deficiencies preclude the use of the DEIS as a basis for a meaningful analysis of anticipated project-related impacts to certain fish and wildlife resources. As a result, we feel the release of the DEIS was premature, and recommend it be revised with more complete information, improved analyses of alternatives and potential impacts, and a clearer commitment to avoid unnecessary impacts, minimize unavoidable impacts, and compensate for significant unavoidable impacts. We believe the DEIS should provide a thorough and complete analysis of the proposed Draft Plan on existing NWRs, and identify the Service as a cooperating agency.

Thank you for the opportunity to review and comment on the Draft Plan and the DEIS. We hope that our comments are useful. If you have any questions, please contact Ken Havran in the Office of Environmental Policy and Compliance at (202) 208-7116. We look forward to working with your agency to provide data, analyses and reports that would contribute to the revised DEIS.

Sincerely,

Willie R. Taylor

Willie R. Taylor
Director
Office of Environmental Policy
and Compliance

Enclosures (3)

SPECIFIC COMMENTS

VOLUME I: Fishery Management Plan for the Coral Reef Ecosystems of the Western Pacific Region (Including Regulations) and Regulatory Impact Review/Initial Regulatory Flexibility Analysis.

Pg. 1, Executive Summary: Paragraph 5 - We recommend that the revised DFMP include this sentence: "There is also the need to take prompt action to head off the depletion and localized extinctions of many overfished or vulnerable species (*e.g.*, giant clams, reef sharks, large groupers, pearl oysters, bumphead parrot fish, napoleon wrasse, lobsters etc.)."

Pg. 2-3, Marine Protected Areas (MPAs): We recommend that the revised DFMP include a discussion concerning the need to cooperate with other agencies to integrate and combine proposed MPAs with those that already exist and not to undermine or add confusion interpreting other established MPAs that have the same purpose of conserving coral reef resources.

Pg. 3, Permits and Monitoring: Paragraph 4 - The DFMP states that fishers may be exempt from being subject to additional permit requirements to reduce coral reef incidental catch. We recommend that harvest permits be issued to fishers on a per coral reef ecosystem basis to facilitate tracking and managing resource exploitation.

Pg. 5, Frequently Asked Questions: Paragraph 1 - We believe the plan fails in its goal to "reinforce existing resource management efforts and establish consultative procedures that would improve inter-agency coordination" and may result in a regime that would actually diminish and confuse protection of coral reefs at nine NWRs in the Pacific. Therefore, we recommend that the existing management regime established for coral reefs in these NWRs be incorporated into the revised DFMP.

Pg. 5, Were diverse stakeholders and users of coral reefs considered during FMP preparation?: Paragraph 2 - We believe the proposed regime is not "a consensual management approach." We believe the Western Pacific Regional Fishery Management Council (Council), has ignored the best advice of its Draft Plan Team and has not acknowledged the relevant management responsibilities of the Service. The Department objects to any proposed regime that would undermine the Services' existing protection of coral reefs as established in their NWRs. We are dismayed that the Service is not mentioned in any of the discussions of "consensual" management. Therefore, we recommend that the revised DEIS include all comments concerning Service management responsibility for coral reef resources located within the management area of its NWRs in the Pacific region.

Pg. 5, What fisheries resources would be managed by the proposed FMP for Coral Reef Ecosystems?: Paragraph 3 - The DFMP states that "Adverse effects on the ecosystem cannot necessarily be prevented through existing FMP and island government regulations that aim to

maintain optimum yield, while preventing overfishing of target stocks. The FMP for Coral Reef Ecosystems is needed to incorporate additional ecosystem principles into the regulatory structure already established." However, nowhere in the DFMP does it explain how the addition of these "ecosystem principles" will be accomplished to meet this aim. We are concerned that this DFMP proposes to resolve the collapse of the lobster fishery in the NWHI through the addition of "ecosystem principles" as a means to sustain the harvest of lobster resources in the future. Therefore, we recommend that the revised DFMP provide a detailed discussion that addresses specific management measures to resolve current collapse of the lobster fishery.

Pg. 6, How would the proposed FMP affect existing FMP fisheries?: Paragraph 1 - The DFMP states that fishing and harvest activities, as proposed in the DFMP, would be authorized to occur within the management area of established NWRs. Currently, the management areas of NWRs are designated as *no take areas and are off limits to commercial fishing*. Harvest activities are restricted by the Service through the issuance of special use permits. Therefore we recommend that the revised DFMP discuss the management areas, fishing and harvest restrictions that apply to the Hawaiian Islands, Midway, Johnston, Jarvis, Palmyra, Kingman, Howland, Baker, and Rose NWRs

Paragraph 3 - The boundaries for the newly established Palmyra and Kingman NWRs extend 12 nautical miles (nm) offshore, well seaward of the 50 fathom contours proposed in the Draft Plan. The proposed plan would conflict with existing Service management regimes that prohibit commercial fishing within both NWRs. Therefore, we recommend that proposed Draft Plan activities be designated to occur seaward of the 12 nm management areas of both NWRs.

Pg. 7, Does the proposed FMP addresss non-fishing impacts?: Paragraph 1 - We recommend that the revised DFMP identify French Frigate Shoals, Kure Atoll, Howland Island, and Baker Island as areas that were also used or modified by the U.S. Military or Coast Guard. Kingman Reef was an anchorage for the U.S. Navy during World War II.

Pg. 7, How does the proposed FMP demonstrate an ecosystem-based approached to coral reef management?: Paragraph 2 - We recommend that the revised DFMP include a discussion concerning information and data collection, and the need for independent verification concerning harvest data provided by fishers to insure quality control and accuracy.

Pg. 7, Which places in the U.S. Pacific islands constitute "fishing communities.": Paragraph 4 - None of the Pacific Remote Island Areas (PRIAs) have "fishing communities" that conform to the Magnuson-Stevens Act (MSA) definitions. All were uninhabited at the time of western discovery, and only a few of the NWHI and Wake Atoll possess any evidence of past visits and occupation. The present day fishers at Wake Atoll and Johnston Atoll NWR are employees of the U.S. government or their contractors, without any legal or traditional property or harvesting rights, and none have aboriginal claims. Fishing at Johnston is confined to recreational take under the control of the Service which operates the refuge under a cooperative agreement with the U.S. Department of Defense. Therefore, we believe that the DFMP should not include Wake

or any of the NWRs in this dicsussion as there is no evidence that said communities occur at these locations.

Pg. 9, What criteria were used to select the MPA locations proposed in the CRE-FMP?: Paragraph 3 - The listed criteria for selecting MPAs are deficient and do not include the existence of already established MPAs. The NWRs serving as no-take MPAs for coral reefs in the Pacific should have contributed to the selection process, and yet there is no documented evidence of any coordination or consideration of this in the analysis. We recommend that the revised DFMP include the MPA contributions made by the NWRs in this discussion.

Pg. 10, Why is 50 fathoms, rather than 100 fathoms, the depth limit of the proposed MPAs?: Paragraph 1 - Although active reef growth certainly does not extend to 100 fathoms (fm), there is literature documenting the presence of reef building corals at depths approaching 100 fm. For example, deep diving submersible observations at Johnston Atoll in 1983 revealed the presence of living hermatypic corals to depths of 565 feet (92 fm) and coralline algae to 600 feet (100 fm). Furthermore, many reef fishes are known to make diurnal migrations ranging as much as 100 fathoms or more along ocean reef slopes. From an ecosystem perspective there is adequate documentation to support the deep boundaries of reefs extending to 100 fathoms. Therefore, we recommend that the revised DFMP expand the proposed MPA boundaries from 50 fathoms to depths of 100 fathoms. Please consult the U.S. Fish and Wildlife Service Honolulu Office for this documentation.

Pg.11, Low-use Marine Protected Areas: Paragraph 3 - Other than the requirement of a special permit, the DFMP does not identify measures that would be implemented within "low-use MPAs" to improve conservation or measures that could be construed as needed for maintaining any type of true MPA. In essence, the low-use MPAs represent opportunities for fishers to exploit coral reef resources instead of protecting them. There are no stated criteria or standards that demonstrate a higher level of restricted take or protection for reefs in low use MPAs. The only distinction in the document is the increase in the amount of paperwork for the fishers themselves to fill out, to gain access to the few areas designated as "low-use". We suggest that the MPAs in the Draft Plans be rethought with the goal of including the standards and criteria to demonstrate their function as real MPAs or be labeled as something else (*e.g.* "fishery areas requiring a special permit").

Pg. 14, History of Coral Reef Resource Use and Management (also at p 20 par 1.3.4): Paragraph 2 - We recommend that the DFMP elaborate on the other Pacific Remote Islands Areas, not just Wake Atoll. Also, statements should be included to the effect that there is no physical evidence of recent or any occupation on any of the 18 reefs, atolls, or islands by aboriginal islanders except for a few of the NWHI and via legends for Wake Atoll. All were uninhabited at the time of their discovery over the past two centuries, including a) Nihoa, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisianski, Pearl and Hermes, Midway, Kure in the NWHI; b) Johnston, Jarvis, Palmyra, Kingman Reef in the Line Islands; c) Howland and Baker in the Phoenix Islands, d) Rose Atoll in American Samoa, and f) Wake off the northern end of

the Marshall Islands.

Pg. 15, Purpose and Need for Action: Paragraph 4 - We believe that the revised DFMP must include Department concerns regarding the potential for overfishing via existing FMPs (*e.g.* NWHI lobster fishery) and destructive fishing (*e.g.* use of nets, traps, explosives, poisons). The revised DFMP should require all commercial fishing ventures to be authorized by special permits and not just be subject to reporting requirements or a general permit. Also, in addition to record-keeping and reporting, each permitee should be bound, via a permitting procedure, to honor all restrictions that protect coral reefs or face the penalty of being denied future fishing rights and access. The Department wants all fishing, not just some in the "low-use" regime to be bound and controlled, via special permits.

Pg. 16, Ecosystem Effects of Established Fisheries: Paragraph 4 - We concur that non-selective gear (tangle nets) is destructive to precious coral habitats. We also support current proposals to amend existing FMPs and prohibit non-selective fishing gear.

Pg. 19, Live Rock Harvest: Paragraph 1 - The DEIS states that local governments prohibit live rock collection in their jurisdictional areas which has been unregulated in adjacent federal (EEZ) waters. However, the DFMP appears to authorize the harvest of live rock in these adjacent Federal waters. This statement indicates that the DFMP is not consistent with local government efforts to conserve live rock resources. Therefore, we recommend that the DFMP be revised to preclude harvest of live rock from Federal waters where such harvest in adjacent territory or state waters has been prohibited.

Pg. 21-22, 1.4, Management Plan Objectives: This section - We recommend that the revised DFMP discuss the management plan objectives and mention the role and opportunity for collaboration and cooperation with the Service that exists to meet these objectives, especially for objective 1 ("precautionary approach for ecosystem-based management"), objective 6 ("collaborate with other agencies and organizations"), and objective 7 (" to encourage and promote improved surveillance and enforcement"). To date, none of these objectives have been met by the DFMP.

Pg. 24, Assess the ecological, human, and institutional elements of the ecosystem which most significantly affect fisheries, and are outside Council/Department of Commerce authority. Included should be a strategy to address those influences in order to achieve both FMP and FEP objectives. (Also at p. 138, 1st para): Paragraph 4 - Regarding "*Management Plan Approaches*" the DFMP has failed to adequately assess and discuss the "institutional elements," such as those of the Service. The DFMP does not discuss the opinions of the Service, nor has it included the institutional elements suggested by the Draft Plan Team and other reviewers. Therefore, we recommend that the revised DFMP incorporate Service and Draft Plan Team comments concerning institutional elements.

Pg. 28, Hawaii: Paragraph 2 & 3 - Based on the results of recent expeditions to the NWHI (NOW-RAMP September to October 2000), the Service has documented that the best reef

growth and live coral cover are concentrated in sheltered and partially sheltered habitats. Also there are now about 60 true species of stony corals reported from all of Hawaii, and the Service has documented about 45 species from the NWHI and over 30 new records. We recommend that the revised DFMP reflect this new and relevant information.

Pg. 29, Island Areas: Paragraph 6 - Giant clams (*Tridacna spp*), have now been reported in abundance on the ocean reef slopes of Howland, Baker, and also in the lagoon of Kingman Reef as a result of recent expeditions to those areas (Townsend Cromwell, Spring 2000). IUCN lists all species of *Tridacna* as depleted or threatened. We recommend that the DFMP discuss the status of giant clams in a protected legal context for the above mentioned locations. We also recommend that the revised DFMP note that these species are protected under CITES .

Pg. 30, 1.6.2 Management Unit Taxa: Paragraph 1 - We recommend that the revised DFMP cite the original references with regard to coral and reef observations at Johnston Atoll NWR. The Service (Honolulu FWO) can provide the correct citations for these references upon request.

Pg 32, Potentially Harvested Coral Reef Taxa: Table - We recommend that *Tubiphora* be changed to *Tubipora* to reflect the correct spelling of this coral.

Pg. 33, Potentially Harvested Coral Reef Taxa: Table, last line - The catch-all phrase "All other coral reef ecosystem marine plants, invertebrates and fishes not listed under existing FMPs" is unreasonable. It implies that a coral reef ecosystem can be managed without specifically identifying the species targeted for fishing and management. Moreover, this catch-all allows fishers to request fishing permits for species not on the list. The wording is such that seabirds, whales, turtles, dolphins, porpoises and other marine species with any association with reefs can be added to the list without proper justification. Therefore, we recommend that the revised DFMP eliminate the catch-all phrase.

Pg. 35, Coral Reef Ecosystems: Paragraph 2 - Over 400 species of corals have been reported from the Great Barrier Reef (Veron 1986, 2000). We recommend that the revised DFMP reflect this relevant information.

Paragraph 3 - We recommend that atoll and barrier reefs be addressed in the discussion of the revised DFMP. Atolls are reported in American Samoa (Rose), the NWHI (French Frigate Shoals, Maro Reef, Pearl and Hermes Reef, Midway Atoll, and Kure Atoll), and the PRIAs (Palmyra Atoll, Kingman Reef, Johnston Atoll, and Wake Atoll). Also, according to the Atlas of Hawaii (1998), barrier reefs are found in the Main Hawaiian Islands (MHI) (Kaneohe Bay and Mana off Na Pali).

Pg. 37, Reef Productivity: Paragraph 1 - Not all the PRIAs are dry. Both Palmyra and Kingman get about 175 inches of rain per year (4,300 mm), and Rose Atoll is similar to that although Kingman lacks any permanent vegetated land. Thus, Palmyra and Rose are unique in being the only wet atolls under U.S. jurisdiction and among the few wet atolls in the world, that are not permanently inhabited. We recommend that the revised DFMP include this information.

Pg. 42, Long-term Ecosystem Variability: Paragraph 5 - We recommend that the revised DFMP include a discussion of Laysan Island and note that the reduced quotas and access to Laysan did not stem the decline of the NWHI lobster fishery in terms of catch (numbers), average size, and catch per unit effort. The NMFS closed the lobster fishery in 2000 due to a Federal court case that had the potential to close the lobster fishery as an outcome of the case.

Pg. 51, Data Available: Paragraph 3 - We recommend that the revised DFMP discuss why the DFW suspended creel surveys in 1996.

Pg. 51& 52, Data Available: Paragraph 5 - We recommend that the revised DFMP indicate whether the logbook requirements will apply to both special and general permit holders. We also recommend that the revised DFMP indicate whether the Draft Plan annual reports will include data from both special and general permit holders.

Pg. 55, Pacific Remote Island Areas: Paragraph 3 - Kingman Reef was transferred to the Service and established as a NWR via Department of Interior (DOI) Secretarial Order, which became effective on January 18, 2001, as published in the federal register. We recommend that you include this point in the revised DFMP.

Pg. 56, Pacific Remote Island Areas: Paragraph 1 - The Nature Conservancy completed the purchase of Palmyra Atoll in November 2000, and a Department Secretarial Order established the Palmyra NWR, which became effective on January 18, 2001. We recommend that you include this point in the revised DFMP.

Pg. 56, Pacific Remote Island Areas (and also at Pg. 97, 2nd Paragraph): Paragraph 3 - The description of the recent history at Johnston Atoll NWR is incomplete and misleading. In keeping with the DFMP's goal to strengthen MPAs in the region, we recommend that the revised DFMP discuss the fact that the refuge was established in 1926, well before the military interest, modification, and occupation of Johnston Atoll beginning in the late 1930s.

Pg. 56, Pacific Remote Island Areas: Paragraph 4 - Sport diving and snorkeling during daylight hours is even more popular than night diving at MidwayAtoll NWR, and refuge regulations prohibit collecting or capture of any reef life. We recommend that the revised DFMP discuss Service management activities concerning marine resources at Midway Atoll NWR.

Pg. 57, 3.3.2 Estimated value of coral reef resources: Paragraph 4 - We recommend that the revised DFMP indicate whether the present estimated level of the federal fishery is about $2 million or less per year. We also recommend that the revised DFMP include a table providing the estimated value of the Federal coral reef fishery over the past 20 years. We also recommend that the revised DFMP discuss the value of coral reef resources for purposes other than for harvest. For example, what is the value placed on coral reef resources by U.S. citizens knowing that they are protected from resource exploitation in no-take protected areas.

Pg. 58-64, Summary of Fisheries Annual Ex-vessel Value ($1,000/year): These tables are redundant and provided in three separate places in the 3 volume DFMP/EIS. These and many other sections are repeated several times in the DEIS without considering other options such as incorporating them by reference in various places within the DEIS or the DFMP, as stressed in the President's Council on Environmental Quality regulations for implementing the NEPA (40 CFR 1500-1508). The repetitive and overly excessive nature of the 3-volume document discourages public review and input, contrary to the NEPA regulations. We recommend that it would be fairly simple to condense the volumes to two by combining both the plan and the DEIS in a first volume and using a second volume for the lengthy Essential Fish Habitat descriptions, the catalogue of fishing gears, and other wordy or lengthy peripheral material that could be placed in an appendix volume and referenced in the text of the first volume.

Pg. 73, Remote US Pacific Islands: Paragraphs 5 & 6 - The earlier practices of shipping coolers full of reef fish back to Hawaii by "recreational" fishermen and workers at Johnston Atoll was stopped after the Service succeeded in obtaining concurrence from military management at the atoll. Likewise the collection of live corals by recreational divers and their shipment off island were stopped. The Service's long-standing presence and the NWR status of the atoll were instrumental in compelling the military to cooperate and enforce these conservation measures. We recommend that the revised DFMP acknowledge the benefits of cooperative management between Federal agencies to conserve coral reef resources.

Pg. 74, 3.5 Description of Fishing Gear Used and Associated Bycatch: Paragraph 4 - We suspect low survival rates for "regulatory discards of undersized or egg bearing females" of lobsters because of learned behavior by sharks and other apex predators to follow the fishing vessels and feed off the discards. In turn, low survival of discards should have prompted the fishery to reduce catch quotas. There are many potential reasons for the collapse of the NWHI lobster fishery, and we recommend that the DFMP present a neutral appraisal of what went wrong, including the summary graphs of the lobster fishery statistics presented earlier in 2000 at a multi-advisory/plan team meeting.

Pg. 77, Fish Traps: Paragraphs 1 & 2 - We recommend that the revised DFMP discuss the effectiveness of regulatory discards noted above, and any research results on the effectiveness of "small holes in the trap walls to allow undersized lobster and other small bycatch species to escape." The DFMP should also discuss the effectiveness of "seawater-degradable pins or panels built into traps and any research that may verify that such traps lose their ability to hold fish." Also, we recommend that the DFMP discuss any in-situ research involving repeated monitoring or observations of individual traps to determine the effectiveness of prey escape in relation to trapped prey that are eaten in the traps by predators before they can escape.

Pg. 79, Bycatch Reduction: Paragraph 3 - The DFMP states that "More difficult are gillnets and other seines where fish are gilled or tangled and release (sic) without serious damage is just not feasible." We believe that this statement suggests that a complete ban on such nets should be considered. Therefore, we recommend that the DFMP discuss banning "gillnets and other seine nets" from the list of proposed gear types to harvest reef fish as part of the proposed alternatives.

Pg. 80, Local Fishing Communities: Paragraph 4 - The DFMP states that "Furthermore there are no coral reef resources being harvested in the Northwest Hawaiian Islands." We believe this statement is misleading. In 1999, a federally permitted fishing vessel harvested sharks with longline gear at French Frigate Shoals, Hawaiian Islands NWR. Also, in 1999, federally permitted vessels harvested lobsters in the NWHI. Finally, for many years up to the present time, federally permitted bottomfishing vessels, on occasion, have harvested shallow reef fish in the NWHI. We recommend that this statement be removed from the DFMP.

Pg. 82-83, Major Geographic, Demographic and Economic Characteristics of American Samoa, Guam, Hawaii and the Commonwealth of the Northern Mariana Islands.: Tables - We recommend that the Pacific Remote Island Areas be added to these tables.

Pg. 91, Island of Niihau: Paragraph 7 - Although the Department of Defense uses a portion of Ka'ula Rock as a bombing range for US military aircraft, it is primarily used by seabirds for roosting and nesting purposes. Furthermore, the State of Hawaii manages Ka'ula Rock as a sanctuary for seabirds. We recommend that the revised DFMP discuss the uses of Ka'ula Rock as a sanctuary for seabirds.

Pg. 80 –104, Major Geographic, Demographic and Economic Characteristics of American Samoa, Guam, Hawaii and the Commonwealth of the Northern Mariana Islands.
Pg. 96-97, Major Geographic, Demographic and Economic Characteristics of American Samoa, Guam, Hawaii and the Commonwealth of the Northern Mariana Islands.: Palmyra, Midway, and Johnston are described, inferring that they are fishing communities. We believe that this inference is misleading. The fishers of all three are workers, mostly seasonal or temporary, with no legal rights to remain after retirement, no land ownership, no traditional rights to fish, no commercial fishing rights, and no permission to fish commercially. Although recreational fishing is allowed at all three locations, it is mostly catch and release, with a minor amount retained only for on-island consumption. The Service manages the recreational fishing program at Johnston and Midway NWRs, and both The Nature Conservancy and Service will be playing key roles in establishing a public use plan for recreational fishing at Palmyra NWR.

Pg. 123-124, The Northwestern Hawaiian Islands (& pg. 171, Paragraph 5): This section - We recommend that the revised DFMP discuss the new NWHI Coral Reef Ecosystem Reserve, and that it recognizes certain fishing rights for native Hawaiians and has garnered substantial support from native Hawaiians.

Pg. 143, 5.3.1.1.2 Low-use Marine Protected Areas: Paragraph 1 - We recommend that the revised DFMP discuss the criteria used to select and designate no-take and low-use MPAs. The discussion should identify the key differences between the two classes of MPAs and why they should be applied at a given location.

Pg 160, 5.3.2.2 General Permit & Pg. 161, 5.3.2.3 Special Permit (Paragraph 1): Paragraph 2 - We recommend that the revised DFMP discuss criteria used to classify potential applicants for general vs special permits. The discussion should include differences in reporting, licensing, and regulatory guidelines.

Pg 179, Geomorphic Table: Table - We recommend that the revised DFMP add estuaries in the CNMI and Guam, and also add Mangroves, Patch Reefs, and Reef Communities/Apron Reefs, and possibly Seagrasses in Guam.

Pg 193, 6.2 Habitat Area of Particular Concern: NWHI portion of HAPC Table - The rationale for selection of the NWHI sites in this table was not presented. We recommend that the revised DFMP discuss why the HAPC is set at a base of 10 fathoms for most reefs in the NWHI, but is lowered to 50 fathoms for French Frigate Shoals, Laysan, and Midway. We also recommend that the revised DFMP discuss, in detail, why the north and south sides of Midway Atoll NWR were differentiated in the proposed actions.

Pg 195-197, 6.2 Habitat Area of Particular Concern: Tabular listing of candidate HAPC sites - Similarly, the rationale for selection of candidate sites is not presented. We recommend that the criteria used for the candidate HAPC sites should include existing protective status, especially if the sites are already established MPAs.

Pg 195, 6.2 Habitat Area of Particular Concern: Table - The reference to "Tierna" bank is incorrect. The correct spelling is Taema.

Pg 195, 6.2 Habitat Area of Particular Concern: Table - We recommend that the revised DFMP include the criteria "susceptibility for human impacts" and "likelihood of developmental impacts" for Laysan, Pearl and Hermes, Maro Reef, and Midway Atoll. We also recommend that the susceptibility criterion should also apply to Jarvis, Howland, and Baker islands.

Pg 199, Human Threats to Coral Reefs in the US Pacific Islands: Table- We recommend that the revised DFMP add "destructive fishing" as a threat to the NWHI and PRIAs.

Pg. 212, Ongoing Coral Reef Initiatives: Table "Ongoing coral reef initiatives" - We recommend that the revised DFMP discuss the considerable ongoing initiatives undertaken by the Service, as noted below.

(1) Monitoring – established in 2000-2001 monitoring at all NWRs in the region except Guam.

(2) Fishing impacts – estimated in cooperation with NMFS at all NWRs except Guam, Johnston, & Rose.

(3) MPAs – Management plans for Palmyra & Kingman NWRs are in progress.

(4) Education – Status reports, Websites, habitat & jurisdictional maps, brochures and Scientific publications have or are being prepared for the Hawaiian Islands, Howland, Baker, Jarvis, Palmyra and Kingman Reef NWRs.

(5) Mapping – In cooperation with the National Ocean Service and the NMFS, mapping of NWHI, Guam, Howland, Jarvis, Baker, Palmyra, and Kingman Reef NWRs is in progress.

(6) Land pollution – Initiatives to control pollution at Tern, Pearl and Hermes, Midway, Johnston, Palmyra, Baker, Laysan, Guam, and Rose NWRs are on-going.

We also recommend that the revised DFMP discuss another category in the table concerning reef restoration in response to removal of wrecked fishing vessels at Rose Atoll NWR and Pearl and Hermes Reef, HI NWR; removal of marine debris from the NWHI, and mooring buoy installation for recreational boats at Johnston Atoll NWR.

Pg. 215, Summary of Council - Proposed Research: Tabular summary - We recommend that the revised DFMP discuss a cooperative, multi-agency and institutional partners effort, that includes the Service.

Pg. 218, No-take Marine Protected Areas: Paragraph 4 - We recommend that the revised DFMP discuss how a cooperative, multi-agency effort, which includes the Service, should be convened to identify and designate MPAs to ensure the full weight of the Federal government is brought to bear on the establishment and management of MPAs.

Pg. 221, 7.2 Other Research Addressing Ecosystem Management: Paragraph 4 - When referencing the Service, it should read "U.S. Fish and Wildlife Service."

Pg. 222, 7.2 Other Research Addressing Ecosystem Management: Paragraph 1 - The proposed "Omnibus Research Proposal" has not been reviewed by the Service. We recommend that the revised DFMP discuss how future research proposals and planning efforts will include the Service as a cooperator.

Pg. 224, 7.2 Other Research Addressing Ecosystem Management: Last Paragraph - The paragraph for the HCRI Research Program lacks information for FY2000-2001. During that period, an expedition to the NWHI completed fifty seven ship days of research, involving 170 assessment sites, 200 km of tow board surveys, 40 scientists, 90 remote sensing ground-truth surveys, oceanographic surveys, and collection of 50 contaminant samples. Analyses include precise habitat mapping of the NWHI and a publication on the status and importance of the reefs and key organisms, web sites and several publications, and numerous findings that update and correct earlier impressions and studies. Nine organizations are participating in the effort with the Service, NMFS, and the State of Hawaii as co-leads. Substantial matching support from NOS (Wash. D.C.), UC Santa Cruz, Oceanic Institute, University of Hawaii, Bishop Museum, and others was secured. We recommend that this information be incorporated into a revised DFMP.

Pg. 231, 8.0 References: Citations for Maragos 1993 and Maragos and Payri 1997 are listed twice while citations for Maragos 1977 and 1995 are cited in the text (volume & 3) but missing from the references.

Pg. 255-257, Executive Order No. 13178 - Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve: Last Paragraph - We believe the entire summary for the Northwest Hawaiian Islands Coral Reef Ecosystem Reserve is outdated and now inaccurate. We recommend that the revised DFMP discuss Reserve EOs in their final form.

Pg. 258, State, Local and Other Applicable Laws and Policies: Paragraph 4 - The citation for "Green (1977)" should instead be "Green (1997)".

Pg. 261, US Fish and Wildlife Service Refuges and Units: We recommend that the revised DFMP discuss the summary for Executive Order 1019 (Hawaiian Islands NWR) in terms of its important reference to "reefs."

Pg. 262, US Fish and Wildlife Service Refuges and Units: We recommend that the revised DFMP include a discussion of Howland, Baker, Jarvis, Rose, Guam, Palmyra and Kingman Reef NWRs

Pg. 263, State of Hawaii: Paragraph 1 - We believe that this discussion does not accurately reflect the current cooperative relationship that exists between the State of Hawaii and the Service. We recommend that the views of the State of Hawaii and the Service be accurately articulated. Also, note that the reference to "reefs and islets" is misquoted as "reefs and inlets."

Pg. 264, PRIAs: Paragraph 3 - We believe the statement in the DFMP: "Management authority is currently unresolved because no clear baseline boundary has been designated for which the seaward boundary of the PRIAs are measured", is incorrect. The Department believes that the seaward boundaries for the PRIAs have been established and that administration of NWRs in the PRIAs is the responsibility of the Service. We recommend that the revised DFMP incorporate these points.

Pg. 268, General Permit Form and Pg. 270 - 273, Special Permit Form: Information on vessel removal insurance is not included in the permit form. Insurance is now required and should be included on the forms. For example, the name of the insurance company, policy number, amount and period of coverage should be included. We recommend that a copy of the policy be attached to the permit form. In addition, specific references to allowable by-catch, vessel monitoring system, owner identification markings on traps etc. should be included on the form. We recommend that these points be included in the revised DFMP.

General and Special Permit Forms & General and Special Coral Reef Taxa Daily Catch Reports - We recommend that a specific reference to by-catch, VMS, owner identification markings on traps, and wreck or vessel removal insurance are needed in these permits. In particular the insurance is now required, and must be somehow included in the application forms, e.g. "do you

have hull removal insurance? Policy number? Company? Amount ? Dates or period of coverage? Copy of the policy attached?," etc. We recommend that these points be included into the revised DFMP.

Pg. 305, Gear Table: Table - We recommend the DFMP indicate that the by-catch for a lobster trap is likely to be high, not low.

Pg. 340, Habitat Impacts: Paragraph 3 - It is stated in the DFMP that "pelagic longline gear does not adversely affect essential fish habitat." We disagree since gears can break free or be lost at sea and eventually drift and join up with the thousands of tons of derelict fishing gear that has accumulated on many reefs. In turn the gear could snag on or smother coral; hook seals, turtles, and seabirds; and impede circulation and sunlight on the reefs themselves. We recommend that the revised DFMP clearly discuss the above referenced points of adverse effects to coral reefs.

Pg. 341, Habitat Impacts: This section omits some relevant and important information. We recommend that the revised DFMP discuss the by-catch of sharks, including a ratio per 1,000 hooks for the Pelagic fishery. Also the revised DFMP should include estimated rates at which the pelagic fishery (e.g. the Hawaiian longline fishery) kills turtles, seals, seabirds. Finally, we recommend that the revised DFMP discuss the Service's 2000 Biological Opinion for the Effects of the Hawaiian Longline Fishery on the Short-tailed albatross (*Phoebastria albatrus*).

Pg. 1, RIR/IRFA: Introduction: Economic Analysis of Regulatory Alternatives: Pg.1 of the Appendix - The DFMP states that requirements to "assess all costs and benefits of available regulatory measures, including the alternatives of not regulating (EO 12866, Section 1 were not met nor adequately assessed. The DFMP does not discuss less costly alternatives recommended by the Draft Plan Team nor does it consider adjusting the fishery regime and MPA boundaries to conform to those of the existing National Wildlife Refuges and the NWHI Reserve. We recommend that more effort be made to collaborate with the Service and others to pool resources and reach consensus on the scope, schedules, and partners for a long-range assessment, monitoring, and research program.

Pg. 66, RIR/IRFA: 2.5 Identification of Duplicating, Overlapping, and Conflicting Federal Rules: Item 1 - No mention is made of the obvious conflicts between the proposed action and established National Wildlife Refuge and NWHI Reserve rules and boundaries. These conflicts account for 10 separate MPAs for reefs and 25 percent of all the reef areas in the U.S. Western Pacific. We recommend that the revised DFMP discuss, in detail, management goals and areas for both the Hawaiian Islands NWR and the NWHI Reserve.

VOLUME 2: DRAFT EIS FOR Draft Plan

Pg. 1, Executive Summary: The lead and cooperating agencies have not been identified in the DEIS. Because the proposed plan would have a major effect on how the Service manages nine of its NWRs in the tropical Pacific, the Service has requested to be cooperating agency in the

development of this DEIS. Therefore, we recommend that the Service be a cooperating agency for all subsequent phases of the DEIS.

Pg. 1, Executive Summary: The DEIS is deficient by not considering additional alternatives, including the alternative recommended by the Draft Plan Team and the alternative of cooperative management with the lead Federal agencies in the NWHI and the PRIAs. The No Action Alternative is inadequately described, and it should include a prediction of what will happen in the affected coral reef area without a Draft Plan. Another variation of this alternative is that coral reef fisheries would be managed by the lead management agencies using authorities other than the Draft Plan. We do not support the preferred alternative in its current form, and we recommend that NMFS work together with the Service to develop alternatives that would satisfy our goals for the conservation of coral reef resources in the Pacific.

Pg. 3, Summary of Impacts of the Alternatives and Options: Environmental Impacts Section - By focusing on "immediate" impacts, the DEIS violates NEPA by not considering the short-term and long-term (cumulative) effects of each feasible alternative. There are numerous considerations in the proposed action that may lead to adverse impacts that have not been addressed in the DEIS. Also, the DEIS compromises the Service's responsibilities in managing NWRs for the protection and conservation of coral reefs in the Pacific and may result in significant adverse impacts to these resources. For example, the proposed action may authorize commercial fishing within NWRs, that are currently closed to fishing and may result in the depletion of refuge resources and may adversely effect federally listed species. We are concerned that the DEIS does not assess a worst case scenario for potential unrestricted and unpermitted harvest of coral reef resources beyond 50 fathoms, especially areas that are part of our NWRs in the Pacific. We recommend that you clearly discuss these concerns in the revised DEIS.

We are concerned that the proposed permitting system does not discuss coverage for most of the commercial fishing activities that may occur under the proposed actions. We are also concerned that the DEIS does not clearly detail the insurance requirement for removing grounded and wrecked fishing vessels from reefs. Lacking clearly stated commitment to remove federally permitted vessels that have grounded upon federally protected coral reefs may result in confusion and negative impacts to coral-reef resources. We believe the gear restrictions are inadequate to prevent damage to coral reef habitat. We are concerned that the DEIS does not require anchoring restrictions (except for one small area off Guam). We are also concerned that the vessel monitoring systems (VMS) to help managers enforce fishery and NWR regulations and to keep track of fishing vessel locations is not required throughout the proposed action area. We believe that reporting requirements are also deficient and that independent verification of the information is not proposed as mitigation. We are also concerned that the DEIS does not discuss mitigation relative to the proposed actions that may result in potential adverse impacts to coral-reef resources. Therefore, we recommend that the revised DEIS discuss each of these concerns in detail. We strongly recommend that you coordinate your revised response to each of these points with the Service.

Pg. 4, Summary of Impacts of the Alternatives and Options: Social and Economic Impacts Section - The DEIS does not discuss the details of the proposed action in terms of the number and size of boats, the number of full time and part time fishers, where they fish, and what they fish for, and how these will change with and without the proposed action. Also, the DEIS does not clarify the extent that coral reef fisheries would be supported by the Council budget. We recommend that the revised DEIS discuss these details.

We believe that the revised DEIS should provide a more comprehensive economic analysis of the lobster fishery in the NWHI. We believe the revised DEIS should analyze the economic consequences of keeping this fishery closed versus a resumption of the fishery. We recommend that the revised DEIS include discussion of the option of voluntary buyouts for the lobster and bottom fish fisheries and that this should be considered as another alternative.

Paragraphs 4 to 6 - The DEIS does not clearly state what the bottomfish fishery adverse impacts may be for the various proposed alternatives, and more precise information for the fishery is needed (e.g., more precise information on targeted depth ranges). It is our understanding that the fishery generally targets fish from 50 fathoms to 150 fathoms, although sometimes taking fish as shallow as 30 fathoms or as deep as 200 fathoms. We recommend that the revised DEIS discuss the depth range and other characteristics of the bottomfish fishery to help decision makers understand the consequences of the various alternatives.

Pg. 5, Summary of Impacts of the Alternatives and Options: Social and Economic Impacts Section, Bullets in Paragraph 1 - The DEIS presents an unbalanced assessment of impacts of closing some or all of the fishing grounds in the NWHI. We recommend that the revised DEIS discuss the positive impacts of closure including : 1) fewer ship groundings and associated injury to corals and damage to reefs, 2) more lives saved given the dangerous and hazardous environments where the fishers now operate, and 3) less impacts to fish stocks.

Pg. 6, Permits and Reporting: Paragraph 2 to 3 - The DEIS states that special or general permits would only be required for coral reef fishing in the few low-use MPAs. Also, only general permits would be needed for taxa already being harvested. The implication is that all commercial fishing beyond 50 fathoms would not be subject to any permitting requirements. We recommend that the revised DEIS discuss activities relative to the proposed action that may occur beyond the 50 fathom contour, especially those areas within NWRs.

Pg 7, Executive Summary Tables (alternatives): Table - This table is very confusing and it is not clear which measures apply to which alternatives. We highly recommend that in the revised DEIS a number be assigned to each alternative corresponding to the enumeration elsewhere. Also, we recommend that the revised DEIS clarify the statement "describe areas which will total 100% of the region's EEZ coral reefs" (quoted in the third box from the top on the left) as this statement is unclear.

Pg. 8, Allowable Gear Types: Table - The DEIS falls short of clearly describing the allowable and prohibited gear types, which may result in hampering adequate enforcement of the proposed

measures. We recommend that the revised DEIS provide clearer descriptions of proposed measures, and exclude "surround, barrier nets, purse seine, and other long nets" from the list of authorized gear types. These types of nets are indiscriminate in capturing and killing non-targeted species, as well as trapping turtles, sea birds, and perhaps marine mammals.

Pg. 9. Purpose and Need For Action: In general, the DEIS does not address the need for cooperation with other agencies, such as the Service, who are responsible for the management of fish and wildlife resources in areas identified in the proposed action. Most of these reefs are in remote locations where assessment, monitoring, surveillance, enforcement, restoration, and other management actions are logistically difficult and expensive to accomplish. There is a strong need to cooperate and pool resources with your agency, the Service, local governments, and research institutions, and reach agreement on a common regime and the specific roles that each of the team members will be responsible for. We recommend that the revised DEIS discuss this important issue.

Pg. 10, Paragraph 3: This paragraph discusses habitat impacts from certain gear types. We also recommend that the revised DEIS include a discussion on the restrictions to use these gear types as part of the proposed action. We recommend that the description of fishing gear impacts in the Purpose and Need section of the revised DEIS should form the basis for presenting options for corrective actions and potential mitigation.

Pg.11, Paragraph 1: The tenets of an ecosystem-based fishery management plan are not discussed. Such a discussion should differentiate the proposed plan from other FMPs, which are based upon the harvest of individual species. We strongly recommend that the revised DEIS discuss the adequacy of the Magnuson-Stevens Fishery Conservation Management Act to provide your agency with the ability to plan for fisheries management on an ecosystem basis.

Pg.13, 2.0 Description of the Alternatives, Paragraph 1: The DEIS does not discuss whether vessels permitted under other FMPs are required to carry wreck or vessel removal insurance. We recommend that the revised DEIS provide this information. Also, we recommend Jarvis Island and Rose Atoll be added to the list of PRIAs in this section of the revised DEIS.

Pg. 14, Coral Reef Ecosystem Special Permit (CRE Special permit or special permit): Item 7- The DEIS states that "with some exceptions" fishers would be exempt from the need for a special permit to fish in low-use MPAs. We recommend that the revised DEIS clearly discuss the circumstances under which fishers would be authorized to fish in low use MPAs, without a special use permit.

Pg. 15-17, Currently Harvested Coral Reef Taxa: Table - This list or variations thereof have been presented 4 times in the DEIS with supporting documents. We recommend that the revised DEIS present a thorough list once in a combined FMP/DEIS volume. Perhaps, it could be included again in the appendix. Otherwise, simply make reference to where the list can be found. The listing itself appears to serve as a catalogue of the resources that can be exploited, rather than protected on coral reefs. None of these resources are identified as potentially rare or

vulnerable species, as would be expected if the list were to serve the purpose of conservation. Therefore, we recommend that the revised DEIS indicate the status, as prescribed by the International Union for the Conservation of Nature (IUCN) or by Federal statutes, for each species in a separate column.

The last entry in the table, is for "All other coral reef ecosystem marine plants, invertebrates and fishes not listed under existing FMPs." Because many rare and vulnerable and protected species are included within this general category, we strongly recommend that it be removed from the table.

Pg. 18-19, Tabular Summary of Alternatives: Summary Table - The DEIS presents this summary at least 4 or 5 times in the three-volume FMP/DEIS, underscoring our concern that the document is unnecessarily long and complex, making it difficult for use by decision-makers. We recommend that unnecessary complexity and redundancy be replaced in the revised DEIS with discussion on more significant topics including other alternatives. For example, the revised DEIS should discuss: 1) the no-action alternative in terms of the future environment without the FMP, but including the NWRs and the new NWHI Coral Reef ecosystem Reserve, 2) the Draft Plan Team alternative, and 3) enhanced cooperation among the several existing management agencies (NOAA, FWS, State or territorial fishery management agency) to manage commercial and recreational fishing without a Draft Plan.

Pg. 39, Management Measure 2, Permits and Reporting Requirements: Paragraphs 1 & 2 - The DEIS overlooks details in the discussion of management measures. For example, we recommend the revised DEIS discuss the threshold criteria for elevating a proposed fishing permit from general to special; the differences in reporting requirements, conservation implications and gear restrictions; the reporting differences between fishers who need a permit and those who do not; and whether vessel hull removal insurance will be required for non-permitted fishers crossing the NWHI. We are concerned that non-permitted fishers may not report their catch, if they are not bound by a federally issued permit. We recommend that the revised DEIS discuss the proposed permit process to address this concern.

Pg 40, Management Measure 3, Allowable Gear Types and Methods: Paragraph 2 – The DEIS does not indicate whether there will be exemptions for the cultural use of natural poisons (*e.g.* awa or arrow-root poisons) to harvest coral reef resources. We recommend that this be addressed in the revised DEIS.

Pg 42, Discussion of Potential Framework Measures: Framework Action 1 – We recommend that the revised DEIS prohibit anchoring in any established MPA (including NWRs, NOAA Reserves and Sanctuaries, State and territorial MPAs) unless anchoring zones are explicitly delineated by the responsible management authorities and eligible for use by the fishers. Also, we recommend that the revised DEIS incorporate permit requirements that include using these anchoring zones.

Pg. 48, 2.8 Management Measures Considered But Not Analyzed Further: Paragraphs 1 & 2 - The DEIS states: ". . . quotas based on equilibrium yield models of particular resources would not necessarily prevent ecosystem over-fishing." This does not discuss the collapse and closure of the NWHI lobster fishery. We recommend that the revised DEIS discuss the failure and closure of the NWHI lobster fishery in this context and instead require "a rest period when fishing for particular species is temporarily suspended."

Pg. 50, 2.9 Discussion of the Preferred Alternative: Management Objectives 1-8 – We believe the plan fails to comply with these objectives. We recommend that future efforts to revise the DEIS include the Service as a cooperating agency under NEPA. The following is a summary of our concerns:

We believe the plan fails to comply with Objective No. 3 by not integrating its ". . . integrated resource data collection and permitting systems, research and monitoring program. . . "with those of the Service.

We believe the plan also fails to meet Objective 4 because ". . . establishing new and improving existing marine protected areas. . . " was not pursued. Instead new MPAs were developed without a clear understanding of the selection criteria. We are very concerned that establishing low-use MPAs would compromise and conflict with existing NWR MPAs and the NWHI Reserve MPAs.

We believe that Objective 6, "To collaborate with other agencies and organizations concerned with the conservation of coral reefs in order to share in decision-making and to obtain and share data and resources..." was not met. We believe the FMP does not recognize recommendations provided by the Draft Plan team, including the Service, in favor of the Council's own research agenda and fails to identify the Service and others as a cooperating agencies.

We believe Objective 7, "To encourage and promote improved surveillance and enforcement of the plan.", was not met. Instead a conflicting set of MPA and fishing regimes is proposed with no relationship to established NWR and NWHI Reserve regimes. Cooperative enforcement or surveillance is never mentioned anywhere in this document.

Pg 51, Marine Protected Areas: Paragraph 6 – The DEIS indicates that the NWHI lobster fishery is a "carefully controlled" fishery. We recommend that the revised DEIS clarify that this lobster fishery is now closed indefinitely, due to a Federal court action and establishment of the new NWHI Reserve.

Pg. 55, Precious Corals Management Unit Species List: Table - The DEIS does not discuss the Precious Coral Fishery and its compatibility with conservation measures established in the NWHI Reserve. We recommend that the revised DEIS provide this discussion and clearly indicate that the two precious coral beds, located in the northwestern Hawaiian islands, and previously considered for exploitation are now protected by the Reserve and are off limits to

harvest.

Pg. 55, Low Use Marine Protected Areas: Paragraph 3 - The DEIS indicates that commercial fishing may be authorized within the boundaries of NWRs and the NWHI Reserve. Implementation of the proposed provisions would violate established management regimes of the Hawaiian Islands, Johnston Atoll, and Midway Atoll NWRs. We are unequivocally opposed to the authorization of such fishing, particularly in the absence of dialogue or coordination of this proposal with the Service. We recommend that the proposal to authorize commercial fishing within the NWR and NWHI Reserve boundaries be removed from the revised DEIS.

In addition, coral reef areas beyond the boundaries of no-take MPAs and low-use MPAs would be open to commercial fishing without any permit requirements. Depending on the unstated offshore limits of the proposed Draft Plan, commercial fishing within nine NWRs would be authorized by the FMP. We believe that the geographic extent of this conflict is significant. We recommend that the revised DEIS remove any and all proposed actions that authorize commercial fishing to occur within the following NWRs: Midway Atoll, Hawaiian Islands, Johnston Atoll, Jarvis Island, Palmyra Atoll, Kingman Reef, Howland Island, Baker Island, and Rose Atoll.

Pg. 74, Pacific Remote Island Areas: Paragraph 4 - We recommend that the revised DEIS indicate that jurisdiction over Kingman Reef was transferred to the Department in January 2001, and that the atoll is now a designated NWR under the administration of the Service.

Pg. 75, Pacific Remote Island Areas: Paragraph 3 - We recommend that the revised DEIS indicate that Johnston Atoll was initially established as a Federal bird reserve in 1926 by the Department, long before military presence at the atoll. Later the Service was directed to manage Johnston Atoll as a NWR.

Pg 77-84, Summary of Fisheries Annual Ex-Vessel Value: Tables - The DEIS presents these tables, without change, for the third time. This repetition is an unnecessary lengthening of the document by 16 pages. We recommend that these tables be presented once and then incorporated by reference elsewhere.

Pg. 93, Remote US Pacific Islands: Paragraph 3 - The DEIS does not recognize the collaborative spirit and cooperation that exists between NMFS and the U.S. Fish and Wildlife Service for undertaking the first comprehensive studies of Howland, Baker, Jarvis, Palmyra, and Kingman, initiated in 2000 and continued in 2001. These investigations include tow-board surveys, oceanography, corals, invertebrates, marine algae reef fish assessments, and contaminant surveys. Permanent coral reef transects for long term monitoring have also been established and are being expanded (see Brainard et al, in press). Additionally in 2000, permanent monitoring transects were established at 1) Midway by the Service, 2) at Pearl and Hermes by DLNR and the Service, in response to a federally licensed fishing vessel running aground on the reef, and 3) by the Service at Johnston Atoll during the installation of mooring buoys for recreational boats. Also in

2000, the Service established permanent coral reef monitoring transects and removed over 100 tons of metallic debris from an earlier grounding of a Taiwanese longliner. We recommend that the revised DEIS include this information.

Pg. 94, Remote US Pacific Islands: Paragraph 2 - The DEIS states that ". . . collection of selective organisms and shells is permitted in restricted areas by recreational divers.", at Johnston Atoll. This statement is not correct, nor is it consistent with Service policy for managing Johnston Atoll NWR. We recommend that this statement be removed from the revised DEIS.

Pg. 97, 3.4.2 Northwestern Hawaiian Islands Lobster Fishery: This section - We recommend that the revised DEIS discuss the recent events surrounding the Federal court case and ultimate closure of the NWHI fishery due to overfishing and possible negative impacts on the endangered Hawaiian Monk Seal. We believe this is important information that should be included in the revised DEIS to facilitate a comprehensive understanding of the proposed actions.

Pg.105, Human Disturbance: Paragraph 3 - The DEIS includes a quote by Lavigne (1999:260). We recommend that the revised DEIS include a statement immediately after the Lavigne quote:

> *Midway Atoll is host to a wide variety of seabirds, migratory shorebirds, reef fish, corals, non-coral invertebrates and algae. It also is a very important home for the federally listed endangered Hawaiian monk seal, the threatened green sea turtle, the endangered short-tailed albatross, and on occasion, the endangered hawksbill sea turtle, and the endangered leatherback sea turtle. Federal recovery plans have been developed for the Hawaiian monk seal and the sea turtles. Because of the especially low numbers of Hawaiian monk seals, we believe that this species can no longer persist in the wild without humans playing a positive and active role in their recovery. The Service provides valuable support to the NMFS at Midway Atoll NWR to conduct research and management to recover this species throughout the northwest Hawaiian Islands. To simply vacate Midway Atoll NWR, would be tantamount to "throwing in the towel" on the recovery of this species, as well as populations of other species that find refuge there.*

Pg. 114, US Fish and Wildlife Refuges and Units: This section - The DEIS attempts to identify authorities and programs of the Service in the region. We recommend that the revised DEIS include discussion of Department jurisdiction over Kingman Reef and Palmyra Atoll NWRs. We also recommend that the Service be a cooperating agency for all revisions of the DEIS (also see Enclosure 2, pg. 22 of this comment).

Paragraph 2 - We believe the selected reference to Moss (2000) on the application of *U.S. v. Midwest Oil* for establishing new refuges, as opined by the U.S. Department of Justice, is completely out of context and is not relevant to the discussion of this section. We recommend this selected footnote be omitted. In its place, as more apropos to this section, we recommend the addition of the Department of Justice's opinion that ". . . the NWRSAA requires that the FWS maintain sole and exclusive management authority over all national wildlife refuge areas." (Moss, 2000)

Pg.116, State of Hawaii: This section - We believe that this discussion does not accurately reflect the current cooperative relationship that exists between the State of Hawaii and the Service. We recommend that the views of the State of Hawaii and the Service be accurately articulated in the revised DEIS.

Pg.118, Direct Effects on Target Stocks: Paragraph 4 - The DEIS states that, "Coral reefs in remote areas of the EEZ are not in danger of being overfished by existing fisheries for current-harvested resources (Green 1997)." We disagree with this statement. Recent surveys at Howland, Baker, Palmyra, and Kingman Reef NWRs suggest recent episodes of shark fishing and the depletion of most large edible fish at Kingman. Overfishing is not evident elsewhere except that lobsters were rarely seen during recent expeditions, in the NWHI, except at Kure, where lobster fishing is not authorized by the current FMP. We recommend that the revised DEIS incorporate our concerns in a discussion about the potential depletion of coral reef resources at remote areas.

Pg.149, 5.5 Environmental Consequences for National Wildlife Refuge Wilderness Resources: Paragraph 2 - Proposed actions stated within the DEIS will encroach within existing NWR by allowing commercial fishing where such fishing is prohibited. We oppose the proposed actions that would authorize commercial fishing to occur within any of the NWRs without Service authorization. Therefore, we reiterate our desire for the Service to be a cooperating agency in the development of the DEIS so that the next revision is consistent with Service policy and management strategies.

Pg.188, Significant Cumulative Effects on National Wildlife Refuge Wilderness Resources: We recommend that the revised DEIS discuss the cumulative effects of the proposed action that would compromise the responsibility of the Service to manage NWRs.

VOLUME 3: ESSENTIAL FISH HABITAT FOR THE Draft Plan

Pg. 9 & 149-151, EFH & MUS for Napoleon Wrasse: The Napoleon Wrasse is one of several species that is now depleted throughout its range. We recommend that this species, and other species (e.g. Bumphead Parrotfish and certain species of sharks and rays) that are similarly depleted, be placed in a special protective category (vulnerable, depleted) and not be targeted for harvesting authorized by the Draft Plan.

Pg. 99, MUS for Jacks: All Jacks should not be included within the bottomfish FMP. We recommend that all shallow water Jacks be managed separately from bottomfish in another category for coastal reef fishes.

Pg.193, MUS for dogtooth tuna: The dogtooth tuna is not a true pelagic species and we recommend that it be managed under the Draft Plan, not the Pelagic FMP.

Pg. 261, The Management Unit Species (MUS): an ecosystem approach: Paragraph 2 - The

generalization about ". . . *Porites/Faviid* assemblages are characteristic of areas of periodic flooding. . . ." is not relevant to Hawaii where faviids are very rare or to the PRIAs where flooding is limited. The entire paragraph seems to apply to corals from a region outside the U.S. Western Pacific. We recommend that this section be rewritten.

Pg. 262, Habitat Areas of Particular Concern (HAPC): Paragraph 2: We concur that: "Reserves, national parks, wildlife refuges and other protected areas are existing operational areas of particular concern." Therefore, we recommend that the revised DEIS identify and discuss each Reserve, Park and Refuge and other protected areas in the HAPConcern section, as well as under section IV of the appendix (p. 445-451).

Pg. 335, MU for *Millepora* (Fire coral): Regarding distribution, Fire coral is not found in the Hawaiian islands although reported at nearby Johnston Atoll and the other reefs in the Western Pacific. We recommend that this correction be made.

Pg. 337, MU for Lace Corals: *Distichopora* and *Stylaster* (lace corals) are not reported from Hawaii, although they are present at nearby Johnston and the other reefs in the Western Pacific

Pg. 341, MU for Scleractinia (stony corals): Taxonomic issues - We recommend that the revised DEIS correct the citation for Palmyra to read: "Palmyra Atoll- Maragos (1979, 1988, in prep.)" Add a citation for: "Howland, Baker, Jarvis, and Kingman- Maragos (in prep.)". Correct another citation to read: "Midway Atoll, Northwest Hawaiian Islands- DeFelice, Coles, Muir, and Eldredge (1998); Maragos, Gulko, Van Ravenswaay, and Dunlap (in prep.)". Amend the citation: "Johnston Atoll- Maragos and Jokiel (1986); Jokiel and Tyler (1992); Maragos (in prep.)"

Pg. 341, Management Unit: Scleractinia (stony corals): Paragraph 4 - We recommend that the revised DEIS incorporate the following correction: " The genera *Porites, Pocillopora, Montipora,* and *Pavona* in that order dominate the reef scleractinians in Hawaii. Elsewhere in the region *Acropora,* faviids, and *Millepora* are dominant or very common along with the other genera mentioned above." Clarify the second to last sentence to read: "In Hawaii, the predominantly branching coral genus *Acropora* is rare and generally confined to several of the NW Hawaiian Islands. In the main Hawaiian islands, massive and finger coral forms of *Porites* dominate along with branching *Pocillopora,* and encrusting and massive *Montipora,* and to a lesser extent *Pavona,* are common and in some places locally abundant."

Pg. 357-377, Distribution of Scleractinia (hard coral) within the American Flag Pacific Islands (AFPI): Table - We recommend that this table needs to be updated to account for many new records for the listed areas of PA, and NWHI, plus initial lists for Howland, Baker, Jarvis, and Kingman Reef NWRs. Please note the misspelled *Montipora tubercubsa*, the records of which should be combined with those of *M. tuberculosa.*

We recommend adding to the NWHI the following 29 species: ***Psammocora nierstraszi, P. verrilli, Pocillopora sp., P. ligulata, P. molokensis, Acropora cerealis, A. cytherea, A. gemmifera, A. humilis, A. nasuta, A. valida, Montipora flabellata, M. incrassata(=M. studeri), M. tuberculosa, Leptoseris incrustans, L. scabra, P. maldivensis, P. varians, Balanophyllia hawaiiensis, Cycloseris tenuis, C. vaughani, F. granulosa, Porites compressa, P. duerdeni, P. evermanni, Sinularia abrupta, S. sp, Palythoa sp, and Zoanthus sp.***

We recommend deleting the following 3 species from the NWHI: *Pocillopora verrucosa, Montipora monasteriata, M. sp 1 (green spine), Cyphastrea chalcidicum.*

We recommend adding to the MHI the following 3 species: *Fungia granulosa, Palythoa sp.* and *Zoanthus sp.*

We recommend deleting the following 8 species from the MHI: *Acropora humilis, A. valida, M. verrucosa, M. monasteriata, M peltiformis, Porites lichen, P. murrayensis, C. chalcidicum.*

We recommend deleting the following species from the JA list: *Montipora hispida.*

We recommend adding the following species to both the PA and JA lists: *Palythoa* sp

Pg. 380, Comment: *Oulangia bradleyi*: We recommend that this statement be reworded as follows: "*Oulangia bradleyi* Verrill 1866 is a deep water ahermatypic coral species not found on shallow reefs."

Pg. 381, Table 9: Zooxanthellate Corals Likely to be Found in the American Flag Pacific Islands:
Table - "Acroporidae"- We recommend that the revised DEIS delete it as it is incomplete and subsumed by the next entry.

Table - "*Fungin*" to read "*Fungia*"

Table - "*Gajaxea*" to read "*Galaxea*"

Table - clarify that the corals listed were taken from Vaughani (1907) without any updating of the taxonomic nomenclature and systematics of these species.

Pg. 394, Table 11: ACTINIARIA FROM HAWAII: The list of Actiniaria and other soft corals on this list is probably incomplete. Entries are needed for the actiniarian *Heteractis malu* and the octocoral *Anthelia edmundsoni*, both of which have been reported from Hawaii.

NATIONAL WILDFIFE REFUGES OF THE PACIFIC SUMMARIES

This enclosure is a refuge-by-refuge summary of the eight national wildlife refuges that have marine boundaries in the Pacific. It reviews the authorities by which the refuges were established, and describes submerged lands and coral reef habitats within national wildlife refuges in the North, Central, and South Pacific Ocean:

(1) *Guam National Wildlife Refuge, Territory of Guam*

The U.S. Fish and Wildlife Service (Service) has fee title to the Ritidian Unit of the Guam National Wildlife Refuge, which includes approximately 371 acres of emergent lands, and 401.5 acres of submerged lands adjacent to Ritidian down to 100 foot bottom contour. These submerged lands were never transferred to the Territory of Guam pursuant to the Territorial Submerged Lands Act and were specifically withheld by the Federal government. The Service acquired the emergent lands from GSA in 1993 and submerged lands in 1996. These lands had been reported to GSA as excess lands by the U.S. Navy, and were transferred to Service pursuant to Public Law 8537, which allows for such no cost transfer of Federal properties that have value to migratory birds. At the Guam NWR as well as many other coastal refuges in the Pacific, managing an intact ecosystem for migratory birds means the protection of both land and ocean resources upon which these species depend. In addition to the protection of these ocean resources for wildlife, the Ritidian Unit of the Guam NWR also offers a recreational fishery within these waters, pursuant to 50 CFR§32.71. The amount of coral reef managed by the Service is approximately 401.5 acres.

(2) *Rose Atoll National Wildlife Refuge, American Samoa*

Rose Atoll NWR is similar to Guam NWR, in that the lands, and waters of Rose Atoll were specifically withheld from transfer to the Territory of American Samoa. Rose Atoll is the only national wildlife refuge that is truly located in the South Pacific. The Refuge was originally established by a cooperative agreement between the territorial government of American Samoa and the Service dated July 5, 1973. Announcement of the new Refuge was through a Public Notice in the *Federal Register* that was published on April 11, 1974. On February 1, 1975, President Gerald Ford, by Proclamation No. 4347, exempted Rose Atoll from a general conveyance of submerged lands around American Samoa to the American Samoan government. He stated the submerged lands out to 3 miles around Rose Atoll would be under the joint jurisdiction of the Department of Commerce and the Department of the Interior. Pursuant to this joint jurisdiction and in cooperation with the government of American Samoa, fishing is not permitted within the 3-nautical mile Refuge boundary. Rose Atoll NWR is surrounded by the 200-nautical mile U.S. Fishery Conservation Zone, within which fishery resources are managed and regulated by the National Marine Fisheries Service (NMFS) and the Western Pacific

Regional Fishery Management Council. The total amount of coral reef area within the boundary of Rose Atoll NWR is approximately 2,564 acres and the total amount of submerged lands within the refuge boundary is 39,236 acres; emergent land consists of only about 15 acres.

(3) *Howland Island, Baker Island, and Jarvis Island National Wildlife Refuges*

All three of these refuges are located in the Central Pacific Ocean, near the equator, and are unincorporated territories of the United States. Howland Island is located at 0° 48' North, 176° 38' West, and is 36 nautical miles north of Baker Island, 48 miles north of the equator, and 378 miles north of Canton Island in the Phoenix Islands.

Baker Island is located at 0° 13' North latitude and 176° 28' West longitude and sits just 13 miles north of the equator, approximately 1,600 nautical miles southwest of Honolulu and 1,000 miles west of Jarvis Island.

Jarvis Island is located at 0° 23' South latitude and 160° 01' West longitude, just 25 miles south of the equator and about 202 miles southwest of Kiritimati Island in the Republic of Kiribati. It is 1,300 miles south of Honolulu and is considered to be part of the Line Islands.

All three islands have been under the jurisdiction of the Department of the Interior since 1936. A public notice published in the *Federal Register* on August 2, 1974, transferred the administrative responsibility for the islands from the Office of Territorial Affairs to the Service to be managed as individual National Wildlife Refuges. These possessions do not fall within the jurisdiction of any state or other U.S. territory, and Refuge boundaries for all the islands extend 3 nautical miles out from land in all directions, which was the limit of the territorial seas at the time the refuges were established. Fishing is prohibited within Refuge boundaries, in addition to any type of unauthorized entry. Each island is surrounded by a 200-nautical mile U.S. Fishery Conservation Zone, within which fishery resources are managed and regulated by the Western Pacific Regional Fishery Management Council in coordination with the National Marine Fisheries Service.

Howland Island National Wildlife Refuge has a total of 32,529 acres within the Refuge boundary, which include 455 acres of emergent lands and 2,083 acres of coral reef. Baker Island National Wildlife Refuge contains 30,909 acres, including 405 acres of emergent lands and approximately 2,859 acres of coral reef. Jarvis Island National Wildlife Refuge includes 36,483 total acres with the island of 1,086 acres and about 1,823 acres of submerged coral reefs.

In 1995, a routine visit to Howland Island NWR by the Coast Guard revealed a commercial fishing vessel, the F/V Hornet III, fishing within the boundaries of Howland Island NWR. The parent company of the F/V Hornet III, the Hornet's Nest Corporation,

was issued a notice of violation pursuant to wildlife refuge laws found at 50 CFR §27.32 (a) and 16 USC 460 (k).

(4) *Johnston Atoll National Wildlife Refuge, Central Pacific Ocean*

Johnston Atoll National Wildlife Refuge is an unincorporated U.S. Territory located approximately 700 nautical miles southwest of Honolulu. Johnston Atoll was declared a "refuge and breeding ground for native birds" in Executive Order 4467, signed by President Calvin Coolidge in July 1926. Recognizing its strategic value, President Franklin Roosevelt signed Executive Order 6935 in 1934 assigning the Navy administrative jurisdiction over the atoll. Most importantly, the 1934 Executive Order noted that the Navy's jurisdiction was "subject, however, to the use of said islands . . . as a refuge and breeding ground for native birds . . ." as provided by the 1926 Executive Order. A third Executive Order designated naval defensive seas around Johnston Atoll and other Pacific atolls in 1941.

Today the Refuge boundary at Johnston Atoll NWR extends to the limits of the naval defensive seas, which are measured from monuments placed in the lagoon at Johnston Atoll to a boundary 3nm seaward. About half (59,102 acres) of the 118,656 acres of marine habitat at Johnston Atoll are coral reefs managed by the Service. A recreational fishing program is managed by the Service at Johnston Atoll NWR, pursuant to 50 CFR §32 71.

5. *Hawaiian Islands National Wildlife Refuge*

The Hawaiian Islands National Wildlife Refuge covers the Northwestern Hawaiian Islands, with the exception of Midway and Kure atolls, and is located between 23° N and 29° N latitude and between 161° W and 177° W longitude. It consists of a chain of islands, reefs, and atolls extending about 800 miles northwest of the main Hawaiian Islands, encompassing most of the Hawaiian archipelago. The Refuge includes eight main islands and atolls and their surrounding waters: Nihoa (23° 04'N, 166° 53'W) Necker, French Frigate Shoals, Gardner Pinnacles (25° 00'N, 168° 55'W), Maro Reef, Laysan, Lisianski, and Pearl and Hermes Reef (27° 50'W).

These tiny islets are all part of the State of Hawaii but are federally owned lands that are administered as a National Wildlife Refuge by the Service. The Refuge was established in 1909 through Executive Order 1019 by President Theodore Roosevelt to protect seabirds from slaughter for the millinery trade. While this early 20th Century Executive Order did not give exact Refuge boundaries, it is clear from the archival records that Teddy Roosevelt intended for marine areas to be protected and included in the bird sanctuary along with emergent lands. The Refuge management area now administered by the Service, includes the land area of the eight islands and atolls and reefs that extend seaward to 10 fathoms, except for Necker, where the management area extends to

20 fathoms. These islands and atoll have no permanent residents, although two of the eight areas have field camps staffed with government employees and researchers devoted to wildlife management and research. The Department of Commerce, National Marine Fisheries Service (NMFS) are frequent visitors to the refuge.

Fishing is prohibited within Refuge boundaries. The State of Hawaii Department of Land and Natural Resources, Division of Aquatic Resources, has proposed establishment of a Fishery Management Area within 3 nautical miles of land. Fisheries in Federal waters, from 3 to 200 nautical miles, are controlled by the NMFS and the Western Pacific Regional Fishery Management Council, and regulations are enforced by the U.S. Coast Guard and NMFS.

The Western Pacific Regional Fishery Management Council has established a Protected Species Zone to protect endangered Hawaiian monk seals that extends for 50 nautical miles around each Refuge island and includes a 100 nautical mile-wide corridor connecting the Refuge islands. Pelagic longline fishing is prohibited within this zone, but other fisheries are allowed.

Under the Endangered Species Act, NMFS established Hawaiian monk seal critical habitat around each of the eight Refuge islands. Critical habitat includes all waters, beaches, sand spits, and islets from the beach crest vegetation out to a depth of 20 fathoms. However, fishing boats targeting lobsters and bottomfish are currently fishing within the existing Refuge management area (the 10- or 20-fathom isobath). Marine mammals, including seals, dolphins, and whales are also protected under the Marine Mammal Protection Act.

The Service and the State of Hawaii are in general agreement that the nearshore marine environment of the Hawaiian Islands NWR needs to be managed in a sensitive manner, mindful that these areas are all within critical habitat zones for the endangered Hawaiian monk seal. In addition to being critical for Hawaiian monk seals, most of the green sea turtle nesting in the Hawaiian Islands (99 percent) occurs within the Hawaiian Islands NWR. The Service supports the State effort to establish a Fishery Management Area designation for the Northwestern Hawaiian Islands.

The Western Pacific Regional Fishery Management Council has not recognized any marine boundaries in the Hawaiian Islands NWR. As a result, in past years commercial fishing has occurred in nearshore waters within the Refuge. In order to clarify the boundary issues, the Service is currently engaged in a search of archival information surrounding the Roosevelt Executive Order of 1909.

A total of about 610,140 acres of coral reef are within the administrative management area of the Hawaiian Islands NWR, as described above, plus about 1,766 acres of emergent land.

6. *Midway Atoll National Wildlife Refuge*

Midway Atoll is an unincorporated U.S. territory located near the northwestern end of the Hawaiian archipelago. Midway is not now, nor has ever been a part of the State of Hawaii. Discovered in 1859, Midway was an important military outpost for most of the 20th century. In 1993, Midway Naval Air Facility became subject to a Base Realignment and Closure (BRAC) action. At the end of the BRAC process, the Service was chosen to have custody, accountability, jurisdiction, and control of Midway Atoll, including its inner lagoon out to the extent of the former naval defensive seas.

Midway Atoll was designated as a National Wildlife Refuge by President Clinton's Executive Order 13022, dated October 31, 1996. The marine boundaries of the refuge are clearly stated within this Executive Order. There is an active public use program occurring at Midway, and recreational fishing is allowed pursuant to 50 CFR §32.71.

The total number of acres of emergent lands at Midway are 1,549 acres, and submerged lands within the refuge boundary total 296,820 acres. Within the submerged lands total acreage, there are 55,081 acres of coral reef habitat.

7. *Kingman Reef National Wildlife Refuge*

On September 1, 2000, the Department of the Interior accepted restoration of its administrative jurisdiction over Kingman Reef from the Department of the Navy. A Secretarial Order dated 01/18/01 established Kingman Reef National Wildlife Refuge (Refuge) to be administered by the Director, U.S. Fish and Wildlife Service (Director). This action was taken to protect the natural character, including the fish, wildlife, plants, coral reef communities, and other resources of Kingman Reef and all reefs surrounding Kingman Reef.

The authority for this Order is derived from 1) 43 U.S.C. §1458; 2) the National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C.§§ 66dd; 3) Reorganization Plan No. 3 of 1950; 4) the Fish and Wildlife Act of 1956, 16 U.S.C. §742f; 5) Executive Order 13089 dated June 11, 1998; and 6) Presidential Proclamation 5928 of December 27, 1988, 54 Fed. Reg. 777.

The refuge consists of the emergent areas of Kingman Reef and also its surrounding submerged lands and waters out to the twelve (12) nautical mile Territorial Sea Boundary. The Director manages the Refuge under all applicable laws, policies and regulations that govern the National Wildlife Refuge System. Refuge management is undertaken consistent with the administrative control and jurisdiction exercised by the Secretary of the Navy pursuant to Executive Order 6935 of December 29, 1934, and Executive Orders 8682 and 8729 of February 14, 1941, and April 2, 1941, until and unless such administrative control and jurisdiction is extinguished.

8. *Palmyra Atoll National Wildlife Refuge*

Secretary's Order 3224, dated January 18, 2001, transferred administration of Palmyra Atoll (Palmyra) from the Office of Insular Affairs to the U.S. Fish and Wildlife Service and established Palmyra Atoll National Wildlife Refuge (Refuge). The Refuge was established to protect and preserve the natural character of fish, wildlife, plants, coral reef communities and other resources associated with the tidal lands, submerged lands, and waters of Palmyra.

The authority for this Order was derived from 1) Section 48 of the Hawaii Omnibus Act of July 12, 1960, 74 Stat. 411; 2) Executive Order 10967 of October 11, 1961; 3) 43 U.S.C. §1458; 4) Presidential Proclamation No. 5928 of December 27, 1988, 54 Fed Reg. 777; 5) the National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. §§668dd; 6) Reorganization Plan No.3 of 1950; 7) the Fish and Wildlife Act of 1956, 16 U.S.C. §742f; and 8) Executive Order 13089 of June 11, 1998.

Palmyra Atoll National Wildlife Refuge was established on the tidal lands and submerged lands and waters within the lagoon and out to the twelve (12) nautical mile Territorial Sea Boundary surrounding Palmyra. Emergent lands at Palmyra Atoll are currently owned by The Nature Conservancy.

DETAILS FROM IDENTIFIED SECTIONS OF THE MAIN LETTER

Enclosure 3-1: The F/V Paradise Queen No. 2 ran aground on the coral reefs at Kure Atoll, State of Hawaii (October 1998), and the F/V Swordman 1 ran aground on the coral reefs at Pearl and Hermes Atoll, Hawaiian Islands NWR (May 2000). The F/V Swordman 1 was removed from the reef and scuttled in deep water before the vessel deteriorated, resulting in only minor physical impacts to the reef and moderate risks of exposure of petroleum products to wildlife. The removal of this wreck was expedited because of the immediate risk it posed to endangered Hawaiian monk seals observed swimming in the vicinity of the wreck, migratory seabirds, and coral reef resources that occur within the refuge. The cost to the Federal government in terms of financial resources to remove and scuttle the wreck was an expenditure of $1,688,591 (U.S. Coast Guard - Marine Safety Office - Honolulu, Hawaii).

The F/V Paradise Queen No. 2 broke apart on the reef margin at Kure Atoll (a designated State of Hawaii Wildlife Sanctuary), risking exposure of released petroleum products and fishing gear to monk seals, sea turtles, migratory seabirds, and marine organisms. Substantial physical damage to the reefs resulted from the initial impact, as well as from subsequent vessel movement on the exposed windward side of the atoll. Today, the wreck is scattered on the reef, and the continued risks to coral reefs in the immediate vicinity are not well understood. However, it has been documented that elevated iron in the water column resulting from the decay of a vessel's hull (e.g. F/V Jin Shiang Fa grounding at Rose Atoll NWR) contributes to an artificial increase in the development of blue-green algal mats. Large concentrations of blue-green algae are capable of degrading corals and disrupting the entire benthic community equilibrium within the affected area.

Enclosure 3-2: Petroleum products were released into the marine environment as a result of the fishing vessel grounding at Kure Atoll (1998) and Pearl and Hermes Atoll (2000). In both groundings, seabirds were exposed to petroleum products. We believe that the likelihood of oil spills occurring in the NWHI may grow due to increased vessel traffic associated with the proposed actions. We believe that future oil spills may negatively affect short-tailed albatross pioneers that may attempt to colonize the islets within Midway Atoll NWR or the Hawaiian Islands NWR.

Enclosure 3-3: The short-tailed albatross that occur at Midway Atoll NWR and the Hawaiian Islands NWR may be adversely effected by oil spill (e.g. petroleum products may be released into the marine environment as a result of vessel groundings on coral reefs and may negatively affect short-tailed albatross).

Green sea turtles are known to nest at the Hawaiian Islands NWR, Palmyra Atoll NWR, Kingman Reef NWR, and Rose Atoll NWR and haulout or nest at Baker Island NWR and Howland Island NWR and occur in the shallow waters at Johnston Atoll NWR or Wake Atoll. Hawksbill sea turtles are known to occur in the nearshore marine environment of the Hawaiian Islands NWR, Johnston Atoll NWR, and Palmyra Atoll NWR. These species may be adversely

effected by the proposed actions that may result in the introduction of oil spills, unauthorized harvest by humans, or fishing/collection nets. We believe that the introduction of marine alien species to the marine environment at these locations could displace food items important to sustain the local populations of green sea turtles. Oil spills may occur, due to the potential increase in vessel traffic and may negatively impact the sea turtles that occur in nearshore waters or haulout to rest or nest on land at these remote locations. Furthermore, oil spill response, cleanup and sea turtle rescue operations would be significantly complicated due to the great distances oil spill responders would need to travel in a timely manner to rescue and rehabilitate the sea turtles. We are also concerned that increased human presence at these locations may result in the unauthorized harvest of green and hawksbill sea turtles. Sea turtle carapaces are prized as potential products for the handicraft trade. Sea turtle meat is consumed for subsistence purposes by Pacific islanders and may be sold to Asian markets and restaurants. Finally, we are concerned that the use of fishing/collection nets may negatively affect sea turtles. We believe that harvestors may loose their fishing/collection nets, which in turn, may accidentally entangle green sea turtles. We believe that local populations of sea turtles may be adversely affected, thus, reducing the rate at which the species recovers.

Five federally listed endangered plants occur within the Hawaiian Islands NWR and these include *M. pennatiformis* ssp. *bryanii* (Laysan Island), *P. remota*, S. verticillata, *A. brownii* (Nihoa Island), and *S. tomentosa* (Nihoa Island and Necker Island). We are concerned that these plants may be adversely effected by the proposed actions as a result of the introduction of alien species at these locations. Introduced rats may consume these plants or their seeds and negatively effect the recovery of these species. Introduced alien insects may displace native insects that serve as pollinators, thus negatively affecting the recovery of the species. We are also concerned that alien plants may be introduced to these locations that may outcompete and displace the endangered plants from their natural niches.

Received at Public Hearing

Comments on Coral Reef Ecosystem FMP and DEIS:

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Specific Comments:

1. Selection of MPA's: "Consideration of proximity to important monk seal colonies"! 0-50f no take MPA at FFS, Laysan, north Midway and 0-10 at all other NWHI.

This proposed designation does NOT, in fact, take "important monk seal colonies" into account. Rather, the rationale here is that both FFS and Laysan have historically been poor lobster fishing areas, seldom fished for that reason, so they can be offered up as no-take MPA's to "protect" monk seals. But, why not similarly protect the coral reef resources at the other major monk seal breeding islands? All major colonies of monk seals are below peak historical levels, some are slowly recovering and some are not. Allowing fishing to continue in areas where monk seals are known to feed and fishing for the same prey resource these endangered seals need is NOT managing the ecosystem in a "precautionary" manner, as is claimed in the DEIS. The entire 0-50f area around the NWHI's should be no-take MPA's for all fisheries until research on the targeted resource can demonstrate that the prey needs of endangered and other protected species in the NWHI can be fully met while also supporting a commercial fishery. The DEIS suggests this as a precondition for "new" fisheries proposed for the area, but essentially grandfathers in existing fisheries for which these data are not known.

2. The restriction on anchoring at Guam's southern banks by vessels >50ft to protect the reef is a good idea.

But why is this limited to large vessels and why only at this one location? This is a measure to protect a small local fishery for local fishers....vessels coming any distance are likely to be larger than 50ft. Can't many small anchors be as damaging to the reef, or perhaps more so, than a few large anchors. The "no anchoring" restriction ~~must~~ to all vessels apply to all no-take MPA, regardless of vessel size, because anchoring in these areas will often result in damage or "takes" in the no-take MPAs. If, in fact, a goal of this FMP is "controlled utilization of these vital resources in an ecologically sensitive manner", then anchoring should be prohibited in all MPAs.

2

3. Traps are allowed under the preferred alternative "with conditions".

Do these conditions cover trap lines? How will trap lines (e.g. between lobster traps) be managed so these lines do not entangle and break coral on retrieval. This is a very destructive fishing method in coral reef habitat, it destroys the reef and essential fish habitat, use of these trap lines is clearly NOT "utilization of ....resources in an ecologically sensitive manner".

4. Insurance for all vessels to cover cost of removal and pollution liability.

Minimum insurance needs for vessels of various sizes must be stated in the FMP, this determination cannot be left to the vessel owner or insurance carrier. Vessel groundings at remote locations can result in much higher costs of removal than can be easily extrapolated from a vessel grounding at more easily accessible locations. The lobster vessel that ran onto the reef at Kure a few years ago is still there; all gear was not removed from it before it broke up and fuel leaked before it could be removed -- and to my understanding, insurance coverage of $500,000 was spent in the futile effort to remove the wreckage and gear. Insurance coverage amounts must be calculated from realistic cost estimates to conduct these recoveries in remote locations and these amounts must be a minimum and mandated in the FMP.

General Comment:

The FMP generally admits to "a poor understanding of the basics, much less the intricacies, of coral reef ecosystems." Depletion of the NWHI lobster resource, and specifically the near-commercial extinction of the spiny lobster under Wes. Pac. Fishery Management Council control, clearly demonstrates the need to know a lot more than we do now about how these ecosystems function BEFORE we continue to exploit them. This FMP implies it is a "precautionary" approach to managing these coral reef ecosystems, however the preferred management alternative selected demonstrates rather clearly that the exploitation of the recent past will continue in spite of no or only poor knowledge of the reef resources, little information on the interactions among species, and unknown harvest quotas that are truly sustainable.

January 24, 2001

Western Pacific Regional Fishery Management Council
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Honolulu, Hawaii 96813

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WESPAC

Dear Ms. Simonds:

After attending the Kona Meeting last evening regarding the DEIS and FMP for coral reef ecosystems of the Western Pacific Region, I would like to add my comments as follows:

The Northwest Hawaiian Islands are our last opportunity to save an ecosystem that needs strict and enforceable restrictions. I would like to see that whole area from north of Kauai to Kure atoll protected from any fishing and coral harvesting (except for scientific research and native subsistence). Allowing, of course, the continued tag and release program off Midway. In that way, it would be enforceable. With too many options, it becomes unenforceable. In other words, "Keep It Simple, Silly"!

The way it is worded in the Environmental Impact Statement, there are too many loopholes to make it easily enforceable, therefore worthless. Make the entire Northwest Hawaiian Islands a "No Take" zone, at any depth, surrounding the islands by at least 200 miles. Then ENFORCE those rules explicitly. That would be a whole lot easier than as suggested in the rules you have placed before the public.

The fishermen complain that this would remove their livelihood. Strange, but when the whalers were banned from taking whales, there were no reports of starvation by whaling families... they simply found something else to do.

Thank you for this opportunity to express my feelings.

Aloha,

Dick Dresie

Dick Dresie
75-5822 Neke Place
Kailua-Kona, Hawaii 96740
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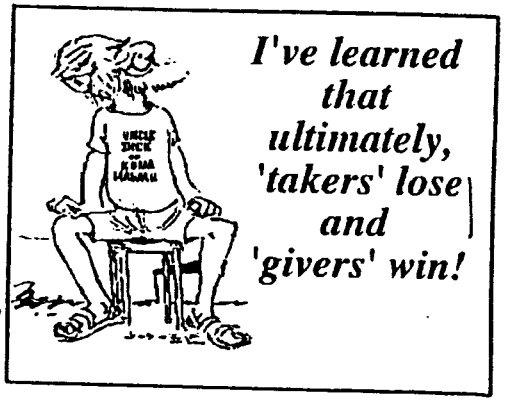
E-Mail: dickdresie@kona.net

cc: Susan B. Fruchter, NEPA Coordinator, Dept. of Com



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National Aeronautics and
Space Administration
Headquarters
Washington, DC 20546-0001

Reply to Attn of

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'01 FEB 13 A9:09
WESPAC

FEB 9 2001

JE

Kitty Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Ms. Simonds:

Thank you for the opportunity to review and comment on the Draft Fishery Management Plan and Draft Environmental Impact Statement for Coral Reef Ecosystems of the Western Pacific Region. NASA's comment is that the Draft Fishery Management Plan will provide useful baseline information for considering the potential impacts of proposed NASA actions on the fishery and coral reef ecosystems. We look forward to working with you in this endeavor.

Please feel free to contact Dr. Ann M. Hooker at (202) 358-0007 (NEPA), or Ms. Odean Serrano (Biodiversity and GIS) at (202) 358-1308 if you have any questions.

Sincerely,

Olga Dominguez
Director

cc:
Susan B. Fruchter
NEPA Coordinator
OPSP, Room 5805
US Department of Commerce
Washington, DC 20230

United States Department of the Interior

NATIONAL PARK SERVICE
National Park of American Samoa
Pago Pago, American Samoa 96799

IN REPLY REFER TO:

February 12, 2001

TO: Kitty Simonds, Executive Director
Western Pacific Fishery Management Council
1164 Bishop Street, Suite 1400, Honolulu, HI 96814

CC: Susan Fruchter, NEPA Coordinator
OPSP, Room 5805
Dept. Commerce, Washington, DC 20230

From: Peter Craig, PhD, Ecologist
National Park of American Samoa
Pago Pago, American Samoa 96799

Re: Comments on Draft Fishery Management Plan for Coral Reef Ecosystems and EIS

I would like to make three comments about Rose Atoll in American Samoa, but the second comment applies to the other proposed Marine Protected Areas (MPAs) as well:

1. Trojan horse conservation proposed for Rose Atoll. While the Council presents its preferred alternative for management as being "substantial additional protection to coral reef resources" by establishing, among other things, a no-take MPA around Rose Atoll to the 50 fm depth, the draft FMP fails to mention that this action will reduce by over 90% the size of the existing no-take area already in place there (Rose Atoll National Wildlife Refuge). This calculation is based on the size of the refuge (158 km², USFWS) and the estimated portion of coral reef habitat from 0-50 fm (7 km², Hunter 1999). It would be an unfortunate step backwards if Council dismantled the existing protected area at Rose Atoll, which is the only no-take MPA in the territory.

While it can be argued that there are no coral reefs in deeper portions of the existing refuge at Rose Atoll, that area is needed as a no-take buffer zone for enforcement purposes, as discussed below.

2. Proposed MPA boundaries facilitate poaching. Rose Atoll and most other islands listed in the draft FMP slope steeply, so the 10 fm and 50 fm depths occur relatively close to shore. To illustrate, the maps in the draft FMP (pages 146-157) show that the shortest distance from the shoreline to the 50 fm contour line is only about 500 meters for many of these islands. The 10 fm line would occur even closer to the shoreline. This will make enforcement difficult, because it means that a vessel can legally fish only 500 m away from the shoreline in some areas and/or scuba divers from that boat could easily swim a short distance shoreward into the no-take area to collect aquarium fish. Given this situation, standard enforcement tools such as overflights or vessel locator systems would be useful only in the most blatant infractions.

It is clear, then, that a buffer zone is needed to separate the 0-50 fm coral reef zone from the fishing grounds around all FMP islands. This buffer zone should also be a no-take area and not be euphemistically labeled "low use" because that simply opens the door for the enforcement problems mentioned above. I request that the Council revisit this boundary issue and establish common-sense boundaries that are enforceable and truly protect the coral reef ecosystems. A no-take buffer zone at least 1 mile wide (located seaward of the 50 fm line) would greatly improve the protection of the coral reef ecosystem from poaching, while limiting the area closed to fishing. Barring that, I would have to strongly recommend Alternative 4, because it would provide a larger no-take area (0-100 fm) that would better protect coral reef ecosystems and reduce the vulnerability of these ecosystems to poaching.

For Rose Atoll specifically, no pressing reason has been presented to justify dismantling the existing 3-mile boundary of the refuge. To the contrary, because enforcement and surveillance at Rose are so infrequent and costly, it remains likely that the only way poachers will be caught there is when overflights spot their presence in a zone that is unambiguously within the 3-mile limit. In contrast, the Council's preferred alternative would allow fishing as close as approximately 500 m around the whole atoll*, which is wholly inadequate to protect the important coral reef ecosystem there.

3. Proposed boundaries may impact Threatened species. Sea turtle populations in American Samoa are not doing well. The recent NMFS/USFWS Recovery Plan (1998) for them states that "outside of Hawaii, the green turtle populations have seriously declined and should probably be classified as Endangered". Rose Atoll is probably the last remaining place in American Samoa where a small but significant number of green turtles nest (Tuato'o et al. 1993). These turtles remain around Rose Atoll for weeks or months between bouts of egg laying before they migrate away to feeding grounds in Fiji (Balazs, unpublished). Council's proposed reduction of the no-take area around Rose Atoll Refuge by 90% would increase the potential for adverse interactions between fishing activities and this threatened species.

*The map of Rose Atoll in the draft FMP is a somewhat misleading because it shows only the two small islands there but neglects to show the rest of the atoll even though the whole atoll is exposed at low tide. By sketching in the missing parts, it becomes apparent that fishing vessels could fish as close as about 500 m around the whole atoll under the preferred alternative.

Ms. Kitty M. Simonds, Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

February 16, 2001

RECEIVED

'01 FEB 20 A10:41

WESPAC

Dear Ms. Simonds:

RE: The DEIS/FMP for the Western Pacific Region Coral Reef Ecosystems.

Thank you for the opportunity to review and comment on your office's three-volume draft DEIS/FMP for the Western Pacific Region Coral Reef Ecosystems. I urge you to implement Alternative Number 4, Maximum Additional Protection to Coral Reef Resources, at this time for the following reasons.

* There are numerous statements in all three draft volumes that accurate, reliable, scientific-quality data are not available for assessment of the coral reef fishery resources and their supporting ecosystems. It is vital to the long-term health and sustainability of any fishery resource to have accurate, hard data about the standing crop of the resource before allowing exploitation to proceed. None of the Federal or State fisheries agencies can provide accurate and reliable field data on the standing crops per area of each of the targeted species that currently have fishery management plans and/or permit requirements. Since the maximum sustainable yield (MSY) per area of a targeted species depends on an accurate assessment of that species' standing crop, the MSY values being used to determine the allowable annual fish harvest per species in permit-controlled areas are based on hope and a prayer.

* The draft FMP indicates that management decisions about maximum sustainable yields of coral reef fishery resources will depend on the current protocol of fishermen catch reporting. However, no details are provided on how the National Marine Fisheries Service [or any other permitting authority] verifies the information obtained on these reports as to accuracy and reliability. Without an independent means of verification for the information provided by fishermen, the numbers caught and areas fished are anecdotal and cannot be classified as valid scientific data. A different approach is needed for managing agencies to obtain accurate and reliable marine resource information on which to base management decisions.

* The economic analysis components of the draft FMP/EIS focus on the immediate or short-term benefits. There is mention of potential long-term benefits that cannot be assessed, so these are not given any value. Premature resource exploitation will benefit a few fishermen now, at the expense of future generations. There would not be so much pressure to immediately exploit the fishery resources in these remote areas if fishermen had not reduced the standing crops of marine resources in more accessible areas to very low levels. These remaining unexploited habitats should be left alone until we have accurate and verifiable assessments of the available marine resources. A better use of these unexploited marine stocks would be to provide a source of marine life to replenish depleted areas in more accessible fishing locations near human habitats, and to provide genetic re-invigoration for aquaculture species.

Once again, I urge you to implement Alternative #4 --Maximum Additional Protection to Coral Reef Resources--at this time. Thank you for your consideration of these comments.

Sincerely yours,

Laurel Kasaoka

Laurel Kasaoka
1658 Liholiho Street, #603, Honolulu, HI 96822-2971

LIVING OCEANS
National Audubon Society

Eric Gilman, Pacific Representative
Living Oceans Program
National Audubon Society
2718 Napuaa Place
Honolulu, HI 96822 USA

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21 February 2001

Kitty Simonds, Executive Director
Western Pacific Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96814

Dear Ms. Simonds:

The National Audubon Society's Living Oceans Program offers the following comments on the Draft Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region (Draft FMP) and Draft Environmental Impact Statement (DEIS). Overall, we strongly support the idea of moving from a management focus on single fish stocks to an ecosystem-based approach and believe that, given existing constraints, the draft plan takes significant steps in this direction. We especially support the proposed employment of marine zoning, including no-take and low-use zones. However, we believe that the plan falls short of employing an integrated and ecosystem-based management approach, that the plan reduces conservation efforts and precautionary management by challenging the boundaries and management authority of Hawaiian and Pacific Islands National Wildlife Refuges, and that the plan conflicts with measures of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve.

1. Management Tools: The Draft FMP and DEIS propose to use marine zoning and establish no-take and low-use zones in the Northwestern Hawaiian Islands (NWHI). These are internationally supported management tools with proven effectiveness at being capable of achieving conservation and sustainable use of coastal and marine resources. It demonstrates a precautionary and proactive approach, and as such, we fully support the proposed employment of these tools. We further support the permitting system proposed in the preferred alternative in the DEIS and Draft FMP, as this system would provide only limited opportunities to fish for poorly understood fish and to fish in proposed low-use areas using individually-reviewed special permits, while allowing general permits for better understood stocks that can sustain fishing pressure. Regarding the protocol to issue scientific permits, we recommend that scientific research only be permitted to occur in no-take and low-use areas if the applicant demonstrates that it is not practicable to conduct the proposed research outside of these areas, the research will not result in significant adverse environmental impacts individually or from cumulative impacts, and the research promises to support the conservation and sustainable management of coral reefs. We support the proposed prohibition of cruise ships and uninsured fishing vessels from operating in protected areas.

2. Conflicts with Existing Refuges and NWHI Reserve: (Section 9.2 Draft FMP, and Sections 3.6, 4.0, and 5.0 DEIS). The Draft FMP and DEIS are inconsistent with the measures established by Executive Orders 13178 and 13196, which establish the NWHI Coral Reef Ecosystem Reserve, and the Draft FMP and DEIS neglect to provide a justification for this inconsistency. The Reserve Preservation Areas and conservation measures established by these Executive Orders are more protective and precautionary than the "Marine Protected Areas" and management measures proposed in the Draft FMP and DEIS. We believe that the Draft FMP and DEIS must be revised to be consistent with these Executive Orders.

The Draft FMP and DEIS also assert marine boundaries of the Hawaiian and Pacific Islands National Wildlife Refuges that are different than those asserted to exist by the U.S. Fish and Wildlife Service. Also, the U.S. Fish and Wildlife Service asserts authority to manage all activities within refuge boundaries, including commercial and recreational fishery activities, while the Draft FMP and DEIS assert

that the Fishery Council has authority over fishery resources within these refuges. I refer you to the background paper, *Existing Marine Resources Management Framework and Recent Initiatives to Change the Governance of Marine Resources of the Northwestern Hawaiian Islands*, provided to your office in August 2000, for an overview of these unresolved jurisdictional disputes. To enable effective ecosystem-based management, the refuges need to be able to regulate all activities that could potentially adversely affect protected resources, as explained in detail in comment 3 below. Therefore, we recommend that the Draft FMP and DEIS be revised to accept the seaward boundaries, as asserted by the U.S. Fish and Wildlife Service, of all National Wildlife Refuge units in the Hawaiian Islands and U.S. Pacific Remote Island Areas, including the recently established refuges at Kingman Reef and Palmyra Atoll where the U.S. Fish and Wildlife Service prohibits commercial fishing within 12 nautical miles of emergent land, and acknowledge that the Refuges have the authority to manage all activities within these refuge boundaries, including fishery activities. Section 4.0 of the DEIS does not identify the inconsistency with the NWHI Coral Reef Ecosystem Reserve and jurisdictional dispute over refuge boundaries and management authority as significant issues. These are very significant and controversial issues and should be addressed in the DEIS and Draft FMP.

3. Integrated Ecosystem Management:

(a) Integrated Ecosystem Management Defined: An integrated management approach is appropriate for the NWHI. An integrated management approach manages all interrelated elements (natural resources, environmental processes, human activities, socioeconomic factors, and political factors) that affect a region or specific natural resource of a region under a single unifying approach to maintain ecosystem processes in a least disturbed state and sustain the provision of valued services and products indefinitely. Integrated management is implemented through the collaboration of all management authorities and stakeholders to achieve sustainable use and ecological integrity. Integrated management can be described as including three elements, an ecological element and two social elements. (1) The ecological element calls for the protection of biodiversity, functional processes, and ecological integrity, where the functioning of a particular region is influenced heavily by surrounding systems. (2) The first social element calls for the sustainable use of natural resources to allow future generations of people to derive valued services from the environment. This element acknowledges the importance of human needs and the reality that the capacity of the world to meet these needs in perpetuity has limits based on the functional performance of ecosystems. (3) The second social element calls for the collaboration and support of all management authorities and interest groups to adopt restrictions on uses of natural resources and on development to protect the region's natural resources. Integrated management acknowledges that humans are the cause of the most adverse impacts to ecosystem functioning and sustainability, and that humans are an integral ecosystem component that must be directly involved to achieve sustainable management goals. To encapsulate, an underlying principle of integrated management is that ecosystem functioning, anthropogenic forces, and the sustainability of human societies are interconnected and should be holistically managed through a collaborative approach.

(b) Why the Draft Coral Reef FMP is not an Integrated Ecosystem Approach: The Draft Coral Reef FMP and DEIS do not comprehensively address all activities that could impact the NWHI coral reef ecosystem, and do not cover all habitats that comprise the NWHI ecosystem. The executive summary of the Draft FMP refers to the plan as a, "fishery ecosystem plan," and I offer that this description is accurate, that the plan only addresses fishery activities, and as such, is short of a true ecosystem-based management approach. Regional Fishery Management Councils, which lack the authority to regulate fisheries not covered under a Council FMP and to regulate nonfishing activities, do not have the authority to implement an integrated, holistic management approach.

(c) What a true Integrated Ecosystem-Based Approach Entails for the NWHI: To effectively implement an integrated management approach, the NWHI protected area needs to include and coordinate management of both terrestrial and marine ecosystems, as marine, coastal, and terrestrial functional processes are interconnected and need to be comprehensively managed as a single system in a coordinated manner. For instance, the estimated fourteen million seabirds of 19 species nesting in the NWHI are primarily pelagic feeders that obtain fish and squid associated with schools of large predatory fish such as tuna and billfish. These seabirds are most successful at feeding their young when they can find schools of predatory fish within close range of their breeding colonies, and recently fledged birds rely on abundant and local sources of food. At least six of the 19 seabird species breeding in the NWHI

(brown noddies, black noddies, white terns, blue-gray noddies, gray-backed terns, and brown boobies) have significant proportions (33% - 56%) of their diet identified as originating from the coral reef ecosystem or are considered primarily inshore foragers. Also, for instance, green sea turtles require undisturbed beaches for nesting and coastal areas to graze on algae. And, for instance, beach habitat, lagoons, coral reefs, and pelagic waters as deep as 500 meters are used by the Hawaiian monk seal. Also, degradation of coral reef structure can cause reduced protection of upland areas from natural coastal hazards (storms and wave energy), and unwise land uses can cause erosion and smothering of coral reefs.

Because no single U.S. agency has unified authority over an entire ecosystem, and there is no current basis for multi-agency partnerships to allow for a unified and integrated management approach of the NWHI, we suggest that significant legislative changes need to be made to the governance framework of the NWHI before true integrated and ecosystem-based management can exist. A management body with representation of all government agencies with jurisdiction over the NWHI and all non-governmental stakeholders needs to be established and empowered in order to enable true integrated ecosystem-based management.

4. State versus Federal Jurisdictional Disputes: (Sections 9.2 and 9.3, Draft FMP, and section 3.6, DEIS). The Draft FMP and DEIS do not adequately address jurisdictional disputes regarding the management of the NWHI and its natural resources. In addition to the jurisdictional dispute over refuge boundaries described earlier, there is also a longstanding dispute between the State of Hawaii and the federal government that should be addressed in these draft documents. I again refer you to the background paper, *Existing Marine Resources Management Framework and Recent Initiatives to Change the Governance of Marine Resources of the Northwestern Hawaiian Islands*, provided to your office in August 2000, for an overview of these unresolved jurisdictional disputes. An integrated ecosystem approach requires unified collaboration of all management bodies. The need to resolve these disputes to the satisfaction of all parties is one additional justification for the formation of a new authority that can take a unified and holistic management approach.

Thank you for the opportunity to comment on the Draft FMP and DEIS. Changing from the current management framework, which includes a fisheries management system based largely on population analyses of single fish stocks, three refuges with predominantly single purpose missions and single agency managers, and artificial jurisdictional boundaries that are not based on ecological parameters, to a more holistic, integrated ecosystem approach based on tenets regarding species interactions within an ecosystem is difficult. Such a change in governance will challenge many entrenched interests and will require wholesale change in the U.S. governance framework. The Western Pacific Fishery Management Council is to be commended for taking steps to move towards an improved management structure to achieve long-term conservation goals and sustainable use.

Sincerely,

Eric Gilman

C: Susan B. Fruchter, NEPA Coordinator

TERRITORY OF AMERICAN SAMOA
OFFICE OF THE GOVERNOR
PAGO PAGO, AMERICAN SAMOA 96799

TAUESE P. F. SUNIA
Governor

TOGIOLA T. A. TULAFONO
Lieutenant Governor

1900 c 2000

Serial No. 0289

February 22, 2001

Via Facsimile: (808) 522-8226

Kitty M. Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, Hawaii 96813

Re: Coral Reef Ecosystem Fisheries Plan

Dear Ms. Simonds:

I would like to take the opportunity to comment on the recent draft of the Council's Coral Reef Ecosystem Fisheries Plan. In this current draft, the Council is proposing to create a marine protected area out to 50 fathoms around Rose Atoll. I am adamantly opposed to this designation.

As you know, I have been personally very interested and active in the U.S. Coral Reef Task Force and in matters pertaining to the Coral Reef Initiative. My administration has endorsed President Clinton's recommendation to set aside 20% of our Territorial waters as no—take marine protected areas. Currently, we are well below this target number, and the Rose Atoll Wildlife Refuge, which extends 3 miles out from the atoll, makes a significant contribution to our total protected area. The Council designation, then, would countervene our policy by subtracting more than 90% of the seas currently protected under the agreement with the U.S. Fish and Wildlife Service and the government of American Samoa. It would also make it difficult to enforce the no-take areas, as the 50 fathom depth can be quite close to the atoll itself. The full area of the refuge is needed for enforcement purposes to protect the coral reefs at the atoll.

More significantly, Rose Atoll and its surrounding three miles are *Territorial* lands and seas. As such, the Council has no jurisdiction in these waters. I respectfully submit that the Council's attempt to designate Rose as a marine protected area makes no sense, legally or environmentally, given its current status.

Executive Office Building-Third Floor • P. O. Box 485 • Pago Pago, American Samoa 96799
Telephone: (684) 633 4116 • Facsimile: (684) 633 2269

I will be attending the U.S. Coral Reef Task Force meeting next week and will look forward to discussing this issue in person with you.

Sincerely,

TAUESE P.F. SUNIA
Governor

Cc: Ufagafa Ray Tulafono, Director DMWR
Lelei Peau, Deputy Director DOC

The Nature Conservancy

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International Headquarters
Arlington, Virginia
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February 23, 2001

Kitty M. Simonds, Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813
fax: (808) 522-8226

We appreciate your invitation to comment on the Draft Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region (DFMP) and accompanying Draft Environmental Impact Statement (DEIS). Our comments here will be primarily limited to the possible effects of the proposed measures on the resources, activities, and values at and around Palmyra, in which, as you know, The Nature Conservancy has an especially strong interest since it purchased the atoll in November 2000.

The mission of the Conservancy is to preserve biodiversity, and Palmyra was acquired to preserve and manage the valuable biodiversity associated with the atoll and related ecosystems. Although the Conservancy does not own the marine territory surrounding the atoll, we are very interested in contributing to the extent possible, to the conservation of resources in the ecosystems surrounding and linked to the atoll itself. This includes the coral reef, deep benthic, and pelagic ecosystems. To that end, we support the recent establishment of the national wildlife refuge at Palmyra and are currently working on various management issues with the U.S. Fish & Wildlife Service. Having reviewed your DFMP, it also appears that the goal of placing Palmyra in conservation status, particularly its 16,000 acres of coral reefs, is consistent with the recommendations of the DFMP.

The Nature Conservancy is very aware of the connectivity of the myriad of Palmyra's marine and terrestrial habitats, although of course much remains to be learned about the types and degrees of connections. We recognize, for example, that the fate of sea turtle populations that range across the entire Pacific is in part dependent on how successfully we care for nesting beaches on Palmyra. Likewise, our successful management of seabird nesting habitat on Palmyra cannot alone ensure the maintenance of the populations that nest there. Their survival is also dependent on the productivity of the oceans in which they feed and sources of mortality that are beyond our immediate control (both of which are affected by fishing activity far from the shores of Palmyra). We also appreciate the challenges of cross-agency coordination and user group involvement that

will be required for a truly ecosystem-based system of management. If the Conservancy can serve any useful role in furthering those efforts, please do not hesitate to request our assistance.

Our vision for the long-term management of Palmyra and related marine ecosystems is one in which relevant federal and Hawaii State agencies, academic and research institutions, the Conservancy, and other non-governmental organizations work closely with the fishing community of Hawaii and other stakeholders to achieve a variety of conservation, fishery, scientific, educational, and other objectives. We believe that foremost among those objectives should be the maintenance of biodiversity and the sustained productivity of all resources.

Our immediate concern is that the measures proposed in the DFMP would prohibit the development of a low-impact catch-and-release shallow-water recreational fishery at Palmyra. As you know, we are planning to allow and operate certain ecotourism activities at Palmyra, including blue-water gamefishing, fly-fishing for bonefish, and casting for other reef-associated species. All these activities would be conducted on a catch-and-release basis. The objective of our ecotourism program is to provide recreational and educational opportunities that are compatible with our conservation goals while generating revenue that can be invested in the conservation program for Palmyra.

We do not believe that the absolute no-take measure proposed for Palmyra is the best alternative, even when judged in terms of conservation alone. Implementation of this measure would preclude our ability to explore and consider the full range of options available at Palmyra—just when we are beginning to do the research and conduct the monitoring needed to make good management decisions.

We urge the Council to reconsider the proposed no-take measure for Palmyra, and specifically, to consider adjusting the Palmyra designation to a "low-use" area in which the option to develop a strictly controlled and well-monitored catch-and-release recreational fishery would be preserved.

Provided below are more detailed comments on why we believe the recreational fishery we envision for Palmyra would generate substantial recreational and conservation benefits with minimal adverse impacts on coral reef resources.

Rationale for the no-take measure at Palmyra:

As discussed further below, we are not convinced that the prohibition of low-level non-consumptive catch-and-release recreational fishing in water shallower than 50 fathoms at Palmyra is necessary or appropriate for the conservation and management of the region's coral reef fisheries.[1] Given that one of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act) is to promote recreational fishing, and catch-and-release fishing in particular,[2] the DFMP and DEIS should pay special attention to the adverse impacts of

[1] The Magnuson-Stevens Fishery Conservation and Management Act requires that the DFMP contain measures that are both "necessary and appropriate for the conservation and management of the fishery" (M-S Act § 303, 16 USC 1853).
[2] M-S Act § 2, 16 USC 1801.

prohibiting recreational catch-and-release fishing at Palmyra and to justify the prohibition in light of that mandate.

The impacts of catch-and-release recreational fishing:

We recognize that any human activity has the potential to adversely affect natural resources and that even catch-and-release fishing can result in the mortality of target and other species. However, we believe that incidental mortalities and other effects can be maintained at such low levels in the strictly controlled fishery that we envision for Palmyra that the environmental impacts would be minimal.

Impacts on habitat: As acknowledged in the DFMP, fishing by rod-and-reel has negligible impact on habitat.

Bycatch: Fly-fishing on reef flats for bonefish is highly selective. Other species occasionally captured while fly-fishing can be released alive and healthy in virtually all cases. Spin-casting on the reef targets a variety of piscivorous species, including carangids, lutjanids, lethrinids, serranids, and sphyraenids. Most are desirable target species. All species caught can be released alive and healthy in virtually all cases.

Impacts on target populations: Given the limited number of visitors to Palmyra, the limited number of anglers allowed on the reef at any given time (8 rods), and the generally moderate catch rate of reef fish species targeted with fly rods, the total catch of reef species will be moderate. All fish caught in the lagoon and on the reef are required to be released alive (bonefish—the primary target species—have very little appeal as food, anyway). The only study we are aware of that assessed the survival rate of caught-and-released bonefish (*Albula vulpes* in South Florida) found that 96 percent of bonefish released after capture by rod-and-reel survived.[3]. As far as we know, no such survival studies have been done for *Caranx ignobilis* or other target reef species, and we acknowledge that the post-release survival of these species is less certain. Another possible impact on reef species—especially large individuals—occurs when a fish is lost due to the line breaking, resulting in the fish having the hook in its mouth. The use of barbless hooks will improve the fish's ability to throw the hook, and the use of non-stainless and non-aluminum hooks will favor rapid decomposition of the hook. A final impact is that individual fish will occasionally be lost to sharks while being fought, but again, the number is likely to be small.

We would be glad to continue to work with the Council and other partners to obtain and analyze the best scientific information on the effects of catch-and-release fishing on coral reef-associated fish species and to formulate any needed fishing restrictions accordingly. We are also committed to conducting a long-term monitoring program that would evaluate the effects of fishing on target species and other resources, and to support a management system that can quickly respond to new information as it becomes available.

[3] (Crabtree et al., 1998) Because the bonefish in the study were held in tanks and repeatedly caught—some of them as many as 13 times over the course of the study—the authors concluded that bonefish caught in the wild would have an even greater survival rate.

The benefits of catch-and-release recreational fishing:

Recreational fishing can provide substantial benefits, and given its relatively minor adverse impacts (especially if catch-and-release), the net benefits can be very high compared to alternative uses, including the no-use option. First, there is the surplus that accrues to individual anglers,[4] as well as to potential anglers that value the opportunity of being able to fish at Palmyra. A charter fishery, as we are proposing to develop at Palmyra, can generate additional benefits in the form of producer surplus. This surplus would accrue to both the business side of the operation—in this case, to the concessionaire and its employees—and the non-profit side of the operation—in this case, to the Conservancy.

Given the mission of the Conservancy and its conservation objectives at Palmyra, this surplus would be transferred back as an input into the management of Palmyra—it would be used to support all our conservation objectives at Palmyra, including the conservation of coral reef ecosystem resources. Without the revenues from the charter fishery, the Conservancy would have fewer resources to invest in the conservation of Palmyra as a whole.

Because the majority of ecotourism revenues are expected to come from fishing, it is unlikely that any other ecotourism activities at Palmyra would be viable without the fishery. The facilities and logistical requirements for the fishery would also indirectly support educational and scientific activities. Without the fishery, there would be very limited, if any, opportunities for public access to Palmyra.

Finally, the presence of recreational fishermen around Palmyra can serve as a deterrent and policing device for illegal fishing—both domestic and foreign. The DEIS, for example, finds that "long-range surveillance and enforcement capabilities are inadequate to police remote coral reef areas" (e.g., in the context of live reef fish trade) (vII:10). A recreational fishing presence at Palmyra could provide effective enforcement at no cost, potentially saving the public some of the estimated "$100,000 per air patrol and $25,000 per surface patrol" (vII:169). The DEIS acknowledges that large no-take zones in the NWHI could "preclude opportunities for fishermen to report illegal foreign and domestic fishing activity" (vII:170). It does not, however, recognize the same adverse impact in the case of Palmyra.

Assessing the impacts of the proposed no-take measure at Palmyra:

To help provide a better baseline against which to assess the impacts of the proposed measure at Palmyra, below is a brief description of the existing and planned fisheries at Palmyra.

The existing recreational fishery: Upon securing a purchase agreement for Palmyra Atoll in January 2000, the Conservancy rehabilitated the airstrip and established a tent camp on Cooper Island. Since then, the Conservancy has hosted a total of about 80 visitors during the course of nine trips made by air. The visitors engaged in a variety of ecotourism activities, including scuba diving, snorkeling, kayaking, photography, and fishing. Most of the visitors (70-80%) did some fishing, particularly flyfishing on shallow flats for bonefish, spin-casting on the reef for a variety

[4] The RIR, for example, cited a study that estimated this surplus to average $95 per angler-trip in the main Hawaiian Islands, and used a range of $25 to $100 per angler-trip in its analysis (vI:RIR/IRFA:26-27).

of piscivorous species, and trolling offshore for pelagic species. We have been operating one 22-foot blue-water fishing vessel and four 14-foot shallow-draft fishing boats for inshore fishing. All fish captured on the reef and within the lagoon were released alive, with the exception of a few fish lost to sharks while fighting and a few fish injured during capture. Fish caught offshore were released alive with the exception of one or two fish per boat-trip that were kept for on-island consumption. Only *ahi*, *ono*, and *mahi-mahi* were retained.

The planned recreational fishery: The recreational activities at Palmyra during the last year have been conducted in part to test the potential of ecotourism at Palmyra. Based on those experiences, as well as experiences elsewhere, we are now working on a detailed plan for ecotourism activities at Palmyra. The primary fishing attractions would be fly-fishing for bonefish on shallow sand flats, spin-casting on the reef, and trolling offshore. Controls on fishing would include:

- catch-and-release only (except a small offshore trip limit for *ahi*, *ono*, and *mahi-mahi* for on-island consumption)
- a limit of eight rods in four boats fishing inshore at any given time
- only method allowed on lagoon sand flats is fly-fishing (for bonefish)
- barbless hooks only
- no fishing in extremely sensitive areas (e.g., as needed for nesting seabirds)

Scope of impact analysis: The only fisheries issues that were determined after the screening process to be "potentially significant" and consequently analyzed in the DEIS were the "sustained participation by fishing communities" and "fairness and equity to fishermen" (vII:127). Given the extent and strictness of the proposed measures, another clearly important issue is the preclusion of the development of new fisheries. We recognize that an attempt was made to assess the "environmental consequences for bioprospecting and other new fisheries" (vII:163) and we acknowledge that forecasting fisheries development is very difficult. But in the case of Palmyra, the Council had knowledge of the existing fishery and of the Conservancy's plans to further develop the fishery. Yet the DEIS includes very little analysis of the obvious adverse direct and indirect impacts to the existing fishery, to the future development of the fishery, and to existing and future non-fishery uses and values at Palmyra.[5]

Recognition of recreational interest: We would like to emphasize to the Council that there is now a substantial recreational interest in the fishery at Palmyra.[6] This interest is held by a fishing community that includes people living in Hawaii, other US states, and abroad. It includes people that would take advantage of the opportunity to fish recreationally at Palmyra as well as those that would benefit from the knowledge that such an opportunity exists—whether they take advantage of it or not.

Conclusions:

[5] The impacts to recreational fishing at Palmyra clearly fall in the category of "adverse environmental effects which cannot be avoided should the proposal be implemented" and should be identified as such in the DEIS (40 CFR 1502.16).

[6] The DFMP's description of the fishery is required to include "any recreational interest in the fishery" (M-S Act 303, 16 USC 1853).

The Conservancy urges the Council to assess more fully the likely impacts of the proposed no-take measure at Palmyra and to consider more fully the alternative of designating Palmyra's coral reefs as a low-use area in which catch-and-release recreational fishing would be allowed. Among the factors the Council should take into consideration are the following:

- that there is an important recreational fishery interest at Palmyra that would be adversely impacted by the proposed measure;
- that catch-and-release inshore fishing at Palmyra would generate substantial recreational benefits;
- that such a fishery would provide financial support for the conservation of all Palmyra's natural resources;
- that such a fishery would enhance the viability of other ecotourism activities at Palmyra, as well as educational and scientific activities, thereby facilitating public access;
- that such a fishery, particularly when strictly controlled as we propose, is likely to result in minimal adverse environmental impacts; and
- that we believe such a fishery would be consistent with:
  - the objectives of the DFMP,
  - the principals of precautionary and ecosystem-based management, and
  - the purposes and policies of the M-S Act, including its national standards for fishery conservation and management

Sincerely,

Chuck Cook

Chuck Cook
Director, Palmyra Project
The Nature Conservancy

cc: Susan B. Fruchter, NEPA Coordinator
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23 February 2001

Kitty Simonds, Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813
FAX: (808) 522-8226

RE: December 2000 Draft Coral Reef Ecosystem Fishery Management Plan

Dear Ms. Simonds:

The Center for Marine Conservation (CMC) submits the following comments on the Draft Coral Reef Ecosystem Fishery Management Plan (CRE-FMP) on behalf of more than 100,000 members nationwide. We thank you for the opportunity to provide comments, and would welcome the opportunity to discuss any of these issues with you further.

Overall, CMC strongly supports the preferred alternative identified in the most recent version of the CRE-FMP. We do have a couple of major concerns, though. We hope to work with you to address these changes through minor revisions of the draft plan. Below, you will find our comments regarding: MSY, OY, and overfishing; marine protected areas; permitting; allowable gear; adaptive management; and jurisdiction.

MSY, OY, AND OVERFISHING

As the Council knows, the Magnuson-Stevens Fishery Conservation and Management Act (the Magnuson-Stevens Act), as most recently amended in 1996, requires all fishery management plans to be consistent with ten National Standards, including "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry" (16 U.S.C. Sect. 1851 (a)(1). This requirement has two key components: preventing overfishing and achieving optimum yield.

Overfishing is defined as "a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis" (16 U.S.C. Sect. 1802 (29)). Overfished / overfishing refer to a catch rate (i.e., overfishing) and an abundance level (i.e., overfished), as shown in the requirement that "If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish" (16 U.S.C. Sect. 1854 (e)(2)).

Optimum yield is defined as "the amount of fish which (A) will produce the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities,

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and taking into account the protection of marine ecosystems; (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and (C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery" (16 U.S.C. Sect. 1802 (28)).

These legal requirements establish three key reference points that should also serve as management triggers. First, the FMP is required to determine an optimum yield (OY), which would generally be stated in terms of the amount of a stock that can be removed during a fishing season. This yield cannot exceed the maximum sustainable yield (MSY), and may be set below MSY for relevant economic, social, or ecological factors. Economic and social factors that might lead to reducing OY below MSY include: maximizing economic efficiency of the fishery; providing opportunities for a range of fishing sectors which may differ in their efficiency; providing stable income and avoiding overcapacity problems; and providing for enhanced non-consumptive use of the resource. Ecological factors that might lead to reducing OY below MSY include: protecting the known ecosystem function played by a particular stock; protecting against inadvertent management mistakes, particularly when information is lacking; and maintaining the resilience of the ecosystem to oceanographic shifts. Due to the economic, social, and ecological nature of most coral reef fisheries, all of these factors are relevant to the CRE-FMP. ***CMC recommends that the Council set a default OY at three-quarters of MSY for well-studied fish stocks, with the potential to reduce OY based on the particular economic, social, and environmental considerations affecting any particular stock.***

The second reference point required by the Magnuson-Stevens Act is an abundance level that would trigger an overfished designation and a rebuilding plan. In the Act, this reference point is identified as the abundance associated with maximum sustainable yield (B_{MSY}) of the fishery. The requirements to prevent overfishing require that management measures achieve the optimum yield (OY) on a continuing basis, and as we highlighted above, OY must not exceed MSY. If catch levels are kept at or below MSY, the abundance of a stock will remain at or above B_{MSY}. The law also makes a direct link between MSY and overfished in the definition of overfishing and in the requirement to rebuild overfished populations back to MSY-levels. ***CMC advises the Council that the Magnuson-Act requires the overfished threshold to be set at MSY levels, although CMC would prefer to see a robust control rule as a means to avoid overfishing.***

The third reference point required by the Magnuson-Stevens Act is a fishing rate that would jeopardize the capacity of the fishery to achieve MSY on a continuing basis. As with the overfished threshold, this reference point is directly tied with MSY. However, this reference point is less clear because fishing rate could refer to the amount of fish caught per unit time (i.e., 1,000 lbs. per year) or could refer to the fishing mortality rate, F_{MSY}—the fraction of a population removed per unit time (i.e., 5% of the standing biomass per year). MSY itself refers to an amount of fish caught per year, but fishery scientists often focus on calculating a fishing mortality rate associated with MSY. If a policy allowed the full MSY to be taken every year, a real-world fishery would almost certainly crash when environmental fluctuations or bad calculations drove it below the MSY level. If instead a policy allowed the fishing mortality rate associated with MSY to be used each year, there would be some years with extremely high catch quotas. Though these high quotas are desirable for some economic reasons, they carry a major disadvantage, particularly for emerging fisheries like those envisioned in the CRE-FMP—they

allow capacity to build up too high. During the early years of the fishery, when abundance is near the unfished levels, quotas will be roughly twice as high as when the fishery has stabilized at MSY levels, assuming the target is to fish the population to roughly half of its unfished abundance. As a result, the industry that develops a reliance on a stock early on will be squeezed to using half the amount of product by the time the system approaches equilibrium. ***For this reason, CMC recommends that the Council define overfishing as any fishing rate (i.e., amount per year) that is greater than MSY or any fishing mortality rate that is greater than the fishing mortality rate (i.e., percent per year).*** Defining overfishing as occurring based on both fishing rates and fishing mortality rates will help to protect both the resource and the fishing industry in the future.

Our recommendations for reference points are superior to those listed in the current draft because they pay closer heed to legal requirements and because they reduce the chances that fishing will lead to ecological or economic disasters. Below, we provide a graphical representation of how the reference points and control rules should be modified from the current draft (see pg. 127).

Regarding the control rule, the Council proposes one with some merits. Utilizing a maximum fishing mortality rate (MFMT) lower than or equal to F_{MSY} level is a good start, as is the scaling back of fishing mortality rates when stocks drop below an MSY abundance level. However, the proposed control rule does not go far enough to insure productive stocks and account for ecosystem considerations. ***We propose the following changes:***

1) ***Cap MFMT at MSY for stocks that are above B_{MSY}, and set it equal to F_{MSY} for stocks below B_{MSY}. If a direct estimate of F_{MSY} is unavailable, E_{MSY} may be used as a proxy, but additional precaution must be built into management somewhere to account for this uncertainty.*** The effort cap is akin to a fishing mortality rate cap, and thus could encourage overcapacity early on in the fishery.

2) ***Set F_{OY} equal to 75% of MSY for stocks that are above B_{OY}, to 75% of $[(B - \alpha B_{OY}) / (B_{OY} - \alpha B_{OY})]$ MSY for stocks below B_{OY} but above αB_{OY}, and to 0 for stocks below αB_{OY}. In these equations, B is the current abundance level and α is the fraction of B_{OY} at which fishing ends. Values of α should range from close to 1 when there is high uncertainty to a minimum of 0.2 when uncertainty is relatively low, but should generally tend towards 0.5 or higher.*** This control rule addresses all Magnuson-Stevens Act requirements and provides a promising future for fish stocks and the fisheries and ecosystems they sustain. Reductions in the fishing rate should come when a stock drops below target levels, not afterwards as proposed in the current draft. It will be almost impossible to maintain stocks at target levels otherwise. Moreover, the reductions need to be decisive in order to avoid inadvertent overfishing due to uncertainties about stock dynamics and about environmental changes. By making the reductions more decisive, as we've proposed here, the Council can dramatically enhance the chances that stocks will remain at productive levels.

3) ***Set B_{MSY} based on biology of the stock when possible. When B_{MSY} is unknown, a proxy equal to 50% of unfished biomass should be used.***

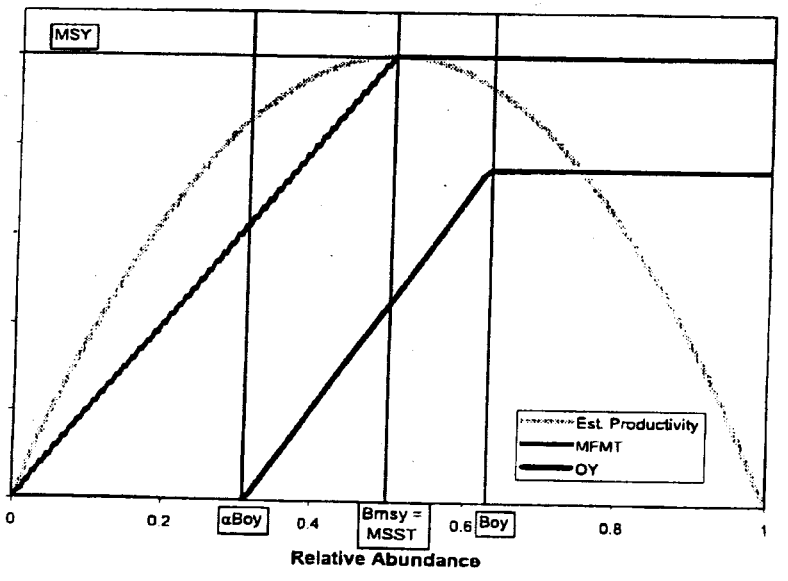
4) ***Set B_{OY} equal to 1.25 B_{MSY} when a direct estimate is available, or higher if we must rely on CPUE or if the stock is known to play an especially important ecosystem role.*** If we assume a Schaeffer recruitment curve, it can be shown that the fishery is expected to stabilize at an abundance $B_{OY} = (2 - f) B_{MSY}$, where f is defined as $F_{OY} = f$ MSY. In this case with $f = 0.75$, B_{OY} would equal 1.25 B_{MSY}. Using 1.3 $CPUE_{MSY}$ provides a small amount of additional buffer necessary because CPUE can often lead to inadvertent overestimates of abundance, but would not be adequate for a stock that provides habitat or food for major parts of the coral reef ecosystem.

5) ***Set MSST equal to B_{MSY}, as required under the Magnuson-Stevens Act.***

6) ***No flag is necessary. The flag identified in the draft serves no purpose because it does not trigger any management action. It should be removed.***

Together, these changes would produce a management framework that looked like the following:

CMC Recommendation



MARINE PROTECTED AREAS / JURISDICTION

Because the CRE-FMP takes an ecosystem approach, it is critical that the Council identifies and recognizes existing marine protected areas under different legal jurisdictions. Generally, the Council has done a good job of doing so in the draft plan. , In addition, the draft CRE-FMP helped to advance much of the no-take area identified by Executive Order 13178 on the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Language such as that found on pages 149-150 of the Environmental Impact Statement (EIS) is beneficial and appropriately points out that the draft plan has considered impacts on existing National Wildlife Refuges (NWR). ***CMC also supports the Councils efforts to prohibit cruise ships and uninsured fishing vessels from operating within MPAs of the region.***

However, the draft plan has language elsewhere (pgs. 263-265 of the draft plan) challenging NWR authority and proposing management measures for waters within the boundaries of the refuge system, particularly at Midway Atoll NWR. The National Wildlife Refuge System Administration Act (16 U.S.C.§668dd et seq, as amended) assigns exclusive jurisdiction and authority over activities in the refuges to the U.S. Fish and Wildlife Service,[1] including fishing regulations.[2] While an ecosystem approach requires that the CRE-FMP recognize marine protected areas and other closed areas under different legal jurisdictions, we urge the Council to eliminate any ambiguity as to the Council's jurisdiction to reflect the Council's recognition of U.S.F.W.S. exclusive jurisdiction in these areas (including at the newly created Kingman Reef and Palmyra Atoll NWRs). ***CMC recommends that the Council remove the language challenging that authority.***

This document also fails to acknowledge the Reserve Preservation Areas established pursuant to Executive Orders 13178 and 13196, under the authority of the National Marine Sanctuaries Amendments Act of 2000 (S. 1482). Although EO 13178 is mentioned in the draft plan, many of the Reserve Preservation Areas these Executive Orders created are not mentioned. ***CMC believes the Council must revise the draft plan to address these areas. CMC recommends that the Council add all Reserve Preservation Areas to the draft plan. For those not currently listed, CMC recommends the revisions affirm the prohibitions and exceptions as specified in the Executive Orders.***

PERMITTING

The permitting system identified as the preferred alternative in the draft plan has a great deal of merit. This system would provide for only limited fishing opportunities on poorly-studies fish using individually reviewed permits, while providing more ample opportunities through general permits for better-studies stocks on which a fishery is appropriate. Moreover, the special permitting process would be required for any CRE-FMP resource species fished inside of all marine protected areas, specifically the coral reef ecosystem waters around Johnston Atoll, Wake Island, and any area lacking additional protection in the Northwestern Hawaiian Islands. ***CMC strongly supports this system.***

[1] See Moss, Randolph. "Administration of Coral Reef Resources in the Northwestern Hawaiian Islands." U.S. Department of Justice, letter to John Leshy, James Dorskind, and Dinah Bear, dated September 15, 2000, at 22-23.
[2] Existing fishing regulations for the Refuge system can be found at 50 CFR §32.4 et seq.

One area needs clarification, though. According to the draft plan, research may be permitted within any area, including those that are otherwise no-take (pg. 160). CMC recognizes the need to do some research, including some that might have to take place inside no-take areas. However, it is inadvisable to identify this exemption without clear criteria for what constitutes scientific research and how a permit application would be evaluated. ***CMC recommends that scientific research should be limited in the context of this exemption to scientific studies carried out with the express purpose of improving the coral reef ecosystems and the status of species dependent on them. Permits should be granted only if every effort has been made to minimize the impacts of the research. Permits should only be allowed to perform extractive research in no-take areas if there are no non-extractive alternatives and only if the research products are vital to future management of coral reefs in the U.S. Western Pacific.***

ALLOWABLE GEAR

Overall, the list of allowable gear in the draft plan is exemplary. The list includes only gears that can be used in a manner so as to minimize bycatch and habitat impacts and requires tending of gear that could otherwise be problematic. ***Overall, CMC supports the list of allowable gear, with two exceptions:***

- ***CMC supports a prohibition on the use of a spear with SCUBA at all times in the Pacific Remote Island Areas and the Northwestern Hawaiian Islands.*** The current draft only bans this practice at night, a difficult provision to enforce and one which provides no protection during the day.

- CMC has concerns about the generality of the consideration given to gear not listed in this plan. This provides a potential loophole, and so **CMC supports limiting allowable gear to those types listed in the draft plan. However, if the Council feels it is beneficial to provide opportunity to use unlisted gear, CMC recommends that the draft plan should specify criteria for its use. Specifically, unlisted gear should not be permitted unless it provides nearly no opportunity for bycatch or habitat impacts, while maintaining an appropriate fishing capacity based on ecological and social considerations.**

ADAPTIVE MANAGEMENT

CMC also generally supports the framework provisions of the plan, which will allow the Council and the National Marine Fisheries Service to use adaptive management techniques. CMC supports several of these provisions and hopes to work with the Council and NMFS to implement relevant regulations. However, CMC also has concern about two framework provisions.

CMC recommends that vessel monitoring systems have the potential to be enacted even if the cost of such a system is not fully subsidized with federal funding. CMC believes that under certain circumstances it may be appropriate to ask fishing vessel owners to contribute to the cost, and also believes we should keep the option open that other private or non-federal government funding might be made available for such a program.

CMC further recommends that criteria be established for moving management unit species from the potentially-harvested to the currently-harvested list. While such a move is quite appropriate, it should only happen if four conditions are met: there exists a reliable estimate of the unfished abundance of the species or stock or can otherwise choose a safe abundance target for management; there exists a regular and frequent monitoring to count the abundance of the species or stock; there exists an estimate or reliable proxy for the maximum sustainable yield of the species or stock; and there is good information on the likely ecosystem function of the species or stock, and knowledge that this function can be reduced without causing adverse ecosystem impacts.

Thank you for this opportunity to comment on the draft Coral Reef Ecosystem Fishery Management Plan. CMC applauds your strong efforts at putting together a precautionary and ecosystem-based management plan, and hopes to work with you to correct the problems we have identified above. Do not hesitate to contact Josh Sladek Nowlis at (415) 391-6204 if you have any questions or wish to discuss any of these matters further.

Sincerely,

Joshua Sladek Nowlis
Senior Scientist, Fish and Ecosystems

cc: Susan B. Fruchter, NEPA Coordinator, OPSP, Room 5805, U.S. Department of Commerce, Washington, DC 20230.

ORGANIZATION OF PEOPLE FOR INDIGENOUS RIGHTS
c/o Suite 103, 588 W. Marine Dr.
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Facsimile Transmittal Sheet

Date: 2/23/01

To: WPRFMC (808) 522-8226

From: OPIR % (671) 472-3029

Subject: Comments on Coral FMP

REMARKS: _____

Number of Pages, including this sheet: 4

Please contact _____ at _____

If pages are not received.

ORGANIZATION OF PEOPLE FOR INDIGENOUS RIGHTS
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February 23, 2001

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

Dear Sir:

I attended the public hearing held on Guam on January 16, 2001 at the Guam Fishermen's Cooperative. I received a copy of the Executive Summary for the Coral Reef Ecosystems Fishery Management Plan handout on which I will base my comments on.

I do not question the need for some action to be taken to protect corals. However, there are natural factors affecting corals that no amount of regulations will remedy. Global warming with concomitant sea level rise, El Nño and La Niña events, typhoons, hurricanes and other weather phenomena are examples of acts of god that can affect corals that are beyond human intervention.

Activities on land can and do adversely impact corals. Runoff from natural or manmade erosion of land contributes significantly to coral die off or stress thereby impacting the species composition and productivity of the reef. It is these activities that must be controlled or mitigated to minimize the adverse effects to the reef. Yes, certain activities by ocean users do negatively affect corals on the reef, but the major impact is by pollution and acts of god.

My oral testimony at the Pelagics FMP hearing was to raise the issue of jurisdiction by the federal government over Guam. I mentioned that the Guam Legislature, in 1981 or 1982, enacted a law extending Guam's boundary to the limits of the EEZ. I also stated that, in 1997, the Guam Legislature enacted a law claiming jurisdiction over all living and non-living resources within Guam's EEZ. And, I said that the United Nations Convention on the Law of the Sea (UNCLOS) went into effect on November 4, 1994 and is now accepted international law. Lastly, I told Pelagics FMP hearing officer that my comments on the Jurisdiction Issue on the Pelagics DEIS are the same as that for the Draft FMP for the Coral Reef Ecosystem.

I now offer additional comments through this written testimony. I will limit my further comments to the Jurisdiction Issue, non-consultation with indigenous people or group and conduct of the public hearing.

The OPIR, founded in 1981, is one of the oldest indigenous rights organizations on Guam. Since 1982, the OPIR has been pursuing at the United Nations the right of the Chamorros to self-determination. The right of the Chamorros to self-determination stems from the fact that Guam was placed by the United States on the United Nations List of Non-Self Governing (NSG List) Territories in 1946. The U. S., by placing Guam on the NSG List, obligated itself to grant the right of self-determination to the indigenous people of Guam – the Chamorros. Also, by placing Guam on the NSG List, the U. S. agreed that it would be known as the "administering Power" of Guam. Another obligation incurred by the U. S., under the U. N. Charter, is the assurance that it gave to the world to assist the indigenous people of Guam, the Chamorros, to develop socially and economically in their quest toward self-determination. This is a treaty obligation of the U. S. and the Constitution of the U. S. recognizes treaty obligations as the "supreme law of the land." In other words, by placing Guam on the NSG List, the administering Power assumes the role of a trustee to the Chamorros until it, U. S., has discharged its obligations to the U. N. by granting the Chamorros their basic human rights to determine their own political status (emphasis added). Therefore, as a trustee, the U. S. cannot express any proprietary interest over the people and resources of Guam.

The people of Guam, the Chamorros, through their elected representatives have reaffirmed their sovereignty over the Exclusive Economic Zone around Guam by the passage of two (2) laws extending Guam's boundary to the limits of the EEZ and asserting jurisdiction of all living and non-living resources. These Guam laws were passed in 1981 (Public Law No. 15-114) and 1995 (Public Law No. 23-17) and codified at 1 GCA §402.

On July 29,1994, Guam's administering Power, the U. S., signed the UNCLOS. The UNCLOS became accepted international law in November 1994. Annex I, Resolution III, 1(a) of the Final Act of the UNCLOS states that, "In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, provisions concerning rights and interests under this Convention shall be implemented for the benefit of the people of the territory with a view to promoting their well-being and development." (Note: The people of Guam are the Chamorros; all others are either settlers or immigrants.)

The indigenous Chamorros are well organized. As I stated above, the OPIR is the oldest of the active organizations. The Nasion Chamoru (Chamoru Nation) is the largest group among the organizations. Fuetsan Famalaoan represents the Chamorro women. The Ritidian Property Owners, Harmon Cliffline Property Owners, Urunao Property Owners and Familian Felisa represent Chamorros whose properties had been taken by the federal government. These different organizations above have formed an "umbrella"

organization called the "Colonized Chamorro Coalition" (CCC), to coordinate actions and activities and to synergistically act in the best interest of the group. The CCC also serves as a "clearing house" for incoming and outgoing information regarding all things affecting Chamorros.

In the case of the Draft CRE FMP, none of the organizations above was aware of any consultation or correspondence on its impact to the Chamorros (discussed by the CCC on 1/18/01). The application of federal laws and regulations without first consulting the Chamorros is un-democratic and a blatant abuse of authority. It was something that frequently happened in the past that should not have been accepted then and certainly not now! If the non-consultation was based on ignorance on the existence of Chamorro organizations then I hope that this testimony will have served a useful purpose.

The conduct of the meeting should be changed so that there is dialogue between your representatives and the attendees. If you had consulted those that would be affected by the federal action during the FMP formulation process then perhaps attendees would not need to ask questions at public hearings.

I am reiterating my request (made at the public hearing) for a hard copy of the FEIS. I can be contacted by telephone during regular workdays at (671 472-3031/3032).

Pas yan Salut,

RUPERT J. LUJAN
Acting Chairman, OPIR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

Cross Media Division (CMD-2)
Federal Activities Office - 75 Hawthorne St., San Francisco, CA 94105

FACSIMILE
TRANSMITTAL

TO: Kitty Simmonds

Organization: Westerna Pacific Fisheries Management Council

Subject: DEIS/FMP for Coral Reef Ecosystems in the Western Pacific Region

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Date Sent: February 26, 2001

Number of pages including cover sheet:

Comments:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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San Francisco, CA 94105

February 26, 2001

Kitty Simonds
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Ms. Simonds:

The Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS) for the project entitled **Fishery Management Plan for the Coral Reef Ecosystem of the Western Pacific Region**. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

The National Marine Fisheries Service (NMFS) and the Western Pacific Regional Fishery Management Council (Council) propose to develop and implement a fishery management plan (FMP) for the Coral Reef Ecosystem (CRE) of the Western Pacific Region, and amend the FMPs for several related fisheries to maintain consistency among the plans. The goal of the CRE - FMP is to take a proactive, precautionary approach to protecting CRE fisheries. The DEIS evaluated four alternatives, including no action, limiting access to the fishery, restricting gear types, and monitoring and permitting. The preferred alternative (#3) includes use of several no-take (where fishing and resource extraction is prohibited) Marine Protected Areas (MPAs), designation of some low-use (limited fishing and resource extraction is permitted) MPAs, a list of allowable gear types, use of permits and monitoring to control impacts to the fishery, prohibition on the collection of live stony coral or rock for commercial purposes, and development of a process for adaptive managment based on future conditions.

EPA supports the ecosystem level approach taken by NMFS and the Council in addressing potential problems due to interactions of humans and coral reefs. The proposed FMP takes a proactive, but balanced approach to protecting coral reef ecosystems in the Western Pacific. The managment plan proposes significant measures to address potential problems, but is flexible to account for changing conditions in the future. EPA also commends NMFS and the Council for integrating this FMP effort with ongoing updates to existing, related FMPs in the Western Pacific Region.

Based on our review of the document, we found that the DEIS sufficiently addresses the environmental impacts of the proposed action. EPA has rated this document **LO, *Lack of***

Objections. (Please see the attached *Rating Factors* for a description of our rating system). EPA encourages NMFS and the Council to continue to integrate this planning activity with other FMP updates, and fully address the potential economic and social impacts from fishery displacement, particularly for native Pacific Islanders.

We appreciate the opportunity to review this DEIS. When the Final EIS is completed, please send two copies to me at the address above (Mail Code: CMD-2). If you have any questions or comments, please feel free to contact me or Shanna Draheim, the primary staff person working on this project. Shanna can be reached at (415) 744-1574 or draheim.shanna@epa.gov.

Sincerely,

Lisa B. Hanf, Manager
Federal Activities Office

Enclosure: Summary of EPA Rating Definitions
Filename: coral reef ecosystem DEIS.wpd
MI#: 003285

cc: Susan B. Fruchter, Department of Commerce, NOAA
Dr. Charles Karnella, NMPS, Pacific Islands Area Office
USFWS, Sacramento

February 25, 2001

To: Ms. Rose Kitty Simonds, Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813
Fax to: (808) 522-8226 Page 1 of 1

From: Mr. Isaac D. Harp, KAHEA Consultant, Citizen At Large Member - NWHI CRE Reserve
PMB 791, 843 Wainee Street, F-5
Lahaina, HI 96761
Faxed from: (808) 661-5473

Re: DRAFT FISHERY MANAGEMENT PLAN FOR CORAL REEF ECOSYSTEMS OF THE WESTERN PACIFIC REGION (INCLUDING REGULATIONS) AND REGULATORY IMPACT REVIEW/INITIAL REGULATORY FLEXIBILITY ANALYSIS

Aloha Ms. Simonds/Kitty:

Having reviewed the extensive, and no doubt expensive three-volume FMP, DEIS I am dismayed at the Council's misuse of the term "ecosystem." It appears that the Council has little knowledge of what an ecosystem is, let alone an understanding of how to prepare a fishery management plan from an ecosystem perspective. There appears to be little science in the preparation of this Draft. Normally I would spend the time to provide detailed information to each concern I have, but in this case, I feel that this would simply be a waste of my time and the time of the reviewer.

I will make a few simple statements. First, this collection of words is not an ecosystem fishery management plan, simply because several species of marine-life have been excluded from consideration. Secondly, it appears that the Council's FMP, DEIS does not recognize or acknowledge the newly established Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Third, it appears that the Council fails to recognize that the State of Hawaii, Department of Land and Natural Resources has developed their own Fishery Management Area plan for State waters, which the Council previously managed, significantly reducing the Council's area of responsibility in the Northwestern Hawaiian Islands.

Considering the fact that the Council has a single small bottom-fish fishery remaining in the area, and that the Northwestern Hawaiian Islands Reserve Council is a few months away from establishing a management plan for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, it's unnecessary and a waste of federal funds for your office to continue with the process of reviewing comments to your FMP, DEIS and the preparation of a final FMP.

Thank you for this opportunity to comment.

Sincerely, Isaac D. Harp

Cc: Susan B. Fletcher, NEPA Coordinator

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PACIFIC OCEAN PRODUCERS

965 B NORTH NIMITZ HWY.
HONOLULU, HAWAII 96817
808-537-2905 PH. 808-536-3225 FAX

FAX

To: BOB	**From:** SEAN MARTIN
Fax:	**Pages:** 3 including cover
Phone:	**Date:** February 26, 2001

Please see attached.

February 26, 2001

To Whom It May Concern:

As a permit holder for lobsters in the Northwestern Hawaiian Islands (NWHI), I **support** **the Coral Reef Ecosystem Management Plan** developed by the Western Pacific Fishery Management Council (WESPAC). The NWHI are a valuable asset to the people of the United States and the WESPAC has proven to be an excellent steward to this unique region. By all accounts, the NWHI **continue to be described as beautiful and pristine** after **25 years of conservative and sustainable** fishery management by the WESPAC.

Under careful and conservative management, commercial fishing and ecological goals can be achieved. The Coral Reef Ecosystem Plan will achieve a balance that will sustain this unique and pristine environment for generations to come.

The executive order issued by President Clinton **in his quest for a legacy doe NOT serve the interests** of the American people.

Allow the WESPAC to continue the science based management approach that has proven successful for over 25 years.

Sincerely,

Sean Martin

February 26, 2001

Gentlemen,

I am writing **in support** of the Western Pacific Fisheries Management Council's (WESPAC) **Coral Reef Ecosystem Plan** and ***NOT in support of*** *President Clinton's illegal annexation of the NWHI.*

I am a Hawaii resident born in Hawaii of Hawaiian ancestry. I have extensive first-hand knowledge of the Northwestern Hawaiian Islands **(NWHI)** through years of fishing in the area. I currently hold a NWHI lobster permit and a 750 thousand vessel that have been rendered worthless by President Clinton.

As the President's traveling road show wound its way through Hawaii, a great irony emerged. All involved marveled at the "Pristine" beauty of the area they sought to protect. For 25 years, the WESPAC has managed fisheries of the NWHI in a responsible and sustainable way. **The Coral Reef Ecosystem Plan continues this excellence.**

Aloha,

Jim Cook

FAX 26 February, 2001 8:00 AM HST

To: Ms. Kitty M. Simons

Fax #: (808) 522-8226

From: Conrad Erkelens
Natural and Cultural Resources Manager

Pages Sent: 5

Phone # (808) 471-5455

SUBJECT: Comments on Draft Fishery Management Plan for Coral Reef Ecosystems

Attached comments provided by Commander in Chief, U.S. Pacific Fleet that were also sent via mail on Friday, 23 February 2001.

DEPARTMENT OF THE NAVY
COMMANDER IN CHIEF
UNITED STATES PACIFIC FLEET
250 MAKALAPA DRIVE
PEARL HARBOR, HAWAII 96860-3131

IN REPLY REFER TO:
5090
Ser N46541/0 309
23 FEB 01

Ms. Kitty M. Simons
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street
Suite 1400
Honolulu, HI 96813

Dear Ms. Simons:

I am responding on behalf of the Commander in Chief, U.S. Pacific Fleet to the request for comments on the Draft Fishery Management Plan for Coral Reef Ecosystems. The enclosure provides comments in this regard. My point of contact is Mr. Conrad Erkelens, who may be reached at (808) 471-5455.

Sincerely,

A. E. RONDEAU
Rear Admiral, U.S. Navy
Deputy Chief of Staff for
Shore Installation Management

Copy to:
CINCPAC (J44)
COMNAVREG HAWAII (N45)
COMNAVMAR GUAM (N45)
PACNAVFACENGCOM (Code 23)

Enclosure:
1. Comments on Draft Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Volumes I, II, and III, dated December 2000

COMMENTS ON DRAFT FISHERY MANAGEMENT PLAN FOR CORAL REEF ECOSYSTEMS OF THE WESTERN PACIFIC VOLUMES I, II AND III DATED DECEMBER 2000

Note: the following comments/corrections are generally applicable to all three volumes.

1) The Magnuson-Stevens Fishery Conservation and Management Act is referred to using four different names and abbreviations. The act should be referred to consistently throughout all three volumes.

2) There are numerous references to reefs which "...have been degraded as a result of past and on-going military use." (Vol. I page 7, etc.) This is a misleading statement. Nearly all of the significant adverse impacts occurred prior to, during or shortly after WWII. Since the 1970's most of the military's actions in the project area have had beneficial impacts, by reducing or eliminating commercial development and commercial fishing. The "de facto" marine protected status that many areas have had as a result of military restrictions are the very reason many of these sites now support the best remaining fish and coral resources left within the project area. This fact should be clearly made in the Fishery Management Plan (FMP).

   At Farallon De Medinilla (FDM), the Navy has conducted annual surveys of the nearshore marine resources to quantitatively determine the degree of impact military exercises since 1997. The U.S. National Marine Fisheries Service, the U.S. Fish and Wildlife Service (USFWS) and the Commonwealth of the Northern Marianas, Department of Lands and Natural Resource participated in the surveys and contributed reports for the annual assessments. These surveys have consistently shown that the military training at FDM since 1997 has had minimal impact on marine communities, endangered and protected species, and fishery resources. It was noted that endangered and protected species were more prevalent in the 1999 and 2000 surveys compared to 1997. Such a comparison suggests that the ongoing training activities have not resulted in the progressive elimination of endangered and protected species from the area. A paucity of several commercially desirable reef fish suggests that fishing pressure is being exerted on the nearshore resources surrounding FDM.

3) Johnston Atoll is not under jurisdiction of the Navy. It is controlled by, and under the jurisdiction of, the Air Force.

4) Kingman Reef is not under jurisdiction of the Navy. USFWS accepted custody and accountability for Kingman Reef on August 25, 2000. The pending revision of the Executive Order at Office of Management and Budget is currently in progress.

ENCLOSURES (1)

5) Title to Kaula Island (Rock) is in the United States of America and the jurisdiction, control, accountability and custody of Kaula Island are with the Department of the Navy.

6) The FMP designates "No anchoring zones" off Guam and suggests that additional "No anchoring zones" may be established. It is not clear whether this restriction is applicable to fishing vessels over 50 feet in length, or all vessels over 50 feet in length. This should be clarified.

7) Although the Western Pacific Regional Fishery Management Council (WPRFMC) does not have authority over cruise ships, the threats from cruise ship anchors is acknowledged. WPRFMC could make recommendations on measures to ensure that cruise ships are not allowed to anchor in sensitive/vulnerable areas.

8) Red mangroves are not native to Hawaii, but have become well established at many locations within the Main Hawaiian Islands (MHI). The FMP appears to designate mangrove areas within the MHI as Essential Fish Habitat (EFH). If red mangrove areas in the MHI qualify as EFH, they should also qualify as Habitat Area of Particular Concern (HAPC), based upon the criteria presented. This issue should be clarified.

9) The entire bank around Kaula Island is designated as HAPC on page 193 in Vol. I and at several other locations in the three documents. However, on page 196 in Vol. I the HAPC designation appears to be restricted to the Five-Fathom Pinnacle portion of the Kaula bank. This should be clarified.

10) Reference to Kaula Rock should be deleted from page 184 in Vol. II paragraph 5. The island and the waters surrounding it are off limits to the public due to hazards from unexploded ordnance and the islands continued use as a firing range. Commander, Navy Region Hawaii, controls access to the island. The FMP should not attempt to promote access to this area. The presence of exceptional marine resources around Kaula Island is an example of how restricted access, due to military activities, can be very beneficial to marine resources.

11) The FMP designates Saipan Lagoon and Apra Harbor as HAPCs. Clarification is needed to show the boundaries of the HAPC designation. For example, is Inner Apra Harbor included?

12) The statement "Benthic productivity should be determined..." from page 203 Vol. I paragraph 7 should be deleted. Conducting a careful marine ecological assessment prior to the installation of a pier or dock is standard procedure. However, determining benthic productivity is unnecessary and unwarranted in most cases. This should not be included as a standard requirement.

13) The comments about FDM on page 217 Vol. I paragraph 3 are inconsistent with the entire concept of designating MPAs. The military's activities at FDM have made it a

"de facto MPA", which has been shown to support substantial fishery resources. Why should fishermen be given access to an area that has been serving as a replenishment zone for years, and then create new restricted MPAs in adjacent areas? The concept of MPAs is an excellent one. However, the "de facto military MPAs" should be retained.

14) Delete the last sentence ("Clearly some....reef area.") on page 217 Vol. I paragraph 3. It is misleading and inappropriate.

15) The ban on spear fishing with SCUBA or hookah at night should be expanded to a total prohibition against spear fishing with SCUBA or hookah.

16) As future framework provisions are developed to address management of non-fishing related activity impacts, ensure that the Department of Defense is included in all interagency coordination.

February 26, 2001

To: Ms. Kitty Simonds, WPFMC

Re: Coral Reef Ecosystem FMP

Dear Kitty,

I am writing to express my support for the Council's Coral Reef Ecosystem FMP's preferred alternative 3.

The plan affords strong protection to vulnerable areas via a rigorous permit system. The plan also implements no-fishing zones around sensitive Monk Seal habitat.

The preferred alternative allows for continuing sustainable participation in the existing fisheries and demands consultation between the Coral Reef, Bottomfish and Crustacean plan teams to monitor these activities closely.

Timm Timoney

Timm Timoney
#1509
575 Cooke St. #A
Honolulu, HI 96813

February 26, 2001

Ms. Kitty Simonds, Executive Director
Western Pacific Regional Fisheries Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Ms. Simonds:

As a member of the Coral Reef Ecosystem Fishery Management Plan Team, I would like to submit the following comments regarding the Draft Environmental Impact Statement (DEIS) submitted by the Western Pacific Regional Fisheries Management Council (WPRFMC) in support of its Coral Reef Ecosystem Fisheries Management Plan (CREFMP). I would like to thank the WPRFMC for the opportunity to provide comments on the DEIS and I look forward to your response to my concerns.

Overall, the Plan Team and its members support the WPRFMC in its attempt to establish a true ecosystem-level of management for coral reef resources in federal waters. Many of us do have some concerns specifically related to the WPRFMC's preferred alternative as stated in the DEIS and I have detailed my specific concerns below. In addition, I have also attached a comparison chart for the WPRFMC's preferred alternative and the new NWHI Coral Reef Ecosystem Reserve as outlined in the final Executive Order issued by President Clinton.

Coral reefs represent the most complex community of species on earth; the very tight inter-dependency of the organisms found on coral reefs results in extremely low net productivity. This low net productivity results in the balance of the reef ecosystem being more susceptible to the impacts of any harvest relative to that seen with single-species FMPs (such as Crustaceans or Bottomfish). As Hawaiian coral reefs may represent an extreme in relation to the above statement (given their isolation and northerly location), I would strongly encourage the WPRFMC to modify its management measures to NOT EXCLUDE existing FMPs (such as Crustaceans or Bottomfish) from coverage where they co-occur on federal coral reefs in the NWHI in order to truly achieve the ecosystem-level of management that the Council is striving for.

MANAGEMENT UNIT SPECIES (MUS)/TAXA

The CREFMP includes "virtually all biota in the coral reef ecosystem" except that it **exempts species covered under existing FMPs** (i.e. crustaceans, most apex predators, certain marine ornamental fish). As such, extremely large trophic gaps exist in the plan suggesting that it would not manage coral reefs at an ecosystem level. The WPRFMC's view that any problems caused by excluding such a large number of important coral reef species from coverage under this plan could be overcome by later discussions between different Plan Teams does not adequately deal with this issue. If this plan is to be based

on ecosystem-level of management it cannot exclude entire coral reef species assemblages from coverage under its management measures at its inception. Given the concerns that already exist over coral reef ecosystem-level impacts by existing fisheries that operate near coral reefs, it's difficult to comprehend how excluding such species from coverage under such a plan will result in effective management of the ecosystem as a whole. No rationalization is provided in the DEIS for how excluding such a wide range of coral reef species (All groupers and anthias species, most jack species, most snapper species, all lobster species, and certain shark species) from MUS under this plan will achieve the ecosystem-level of management stated as a primary goal.

The definitions for maximum sustainable yield (MSY) and optimum yield (OY) are based on parameters related to species' abundance and the replacement rate within a population independent of ecosystem relationships; yet ecosystem-level impacts would occur at levels of take far below that where they would trigger species-level concerns of overfishing. The result is that catch rates that would indicate overfishing under the CREFMP would occur AFTER ecosystem-level impacts had already occurred, resulting in a failure of this plan to manage federal coral reef resources at the ecosystem-level. One way of achieving this might be to set MSY and OY based upon not only species-level impacts, but also on impacts on trophic guilds one level above and below that of the species proposed for fishing. Such an action would deal directly with observations that on coral reefs most species are strongly tied ecologically to complex reef trophic webs.

MANAGEMENT MEASURE: MARINE PROTECTED AREAS (MPAS)

Of primary concern is that the DEIS provides no site-specific justification for the selection of the three "no-take" areas. Significant concerns exist over the selection of Midway (versus Kure Atoll or Pearl & Hermes Atoll, both of which represent more pristine-like habitats with unique coral reef resources and assemblages as documented by the recent multi-agency NOWRAMP expedition to the NWHI) as no-take MPA. The WPRFMC's CRE Plan Team provided the Council with site-specific justification for the selection of the areas they felt (in their professional opinion) deserved no-take MPA status; the lack of inclusion of Kure and Pearl & Hermes[1] without corresponding justification for the inclusion of Midway is suggestive that the selection was NOT based on ecological sensitivity, biodiversity, pristineness, uniqueness or other factors usually used as a basis for designating a "no-take" coral reef MPA.

The recent International Coral Reef Symposium in Bali (October 2000) and the American Association for the Advancement of Science (AAAS) Meeting in San Francisco (February, 2001) both acknowledged the strong need to preserve marine biodiversity and protect important habitat necessary for marine ecosystem function. At both meetings, large numbers of world-renowned scientists reaffirmed that fully-protected reserves (No-Take MPAs) are the most valuable way to achieve this goal. It is therefore perplexing as to why the Council disregarded the advice of the CRE Plan Team (which represents the greatest assemblage of coral reef management and coral reef ecosystem scientists directly available to the WPRFMC), and choose instead to designate a portion of Midway as No- Take MPA. Given the strong reasons presented for such areas as Kure Atoll and Pearl & Hermes Atoll to be totally protected, and the lack of any ecosystem-based justification for Midway, it appears that such designation may have

[1] Coincidentally, both were the sites of recent groundings by WPRFMC-permitted fishing vessels; perhaps supporting the need for such protection.

more to do with inter-agency squabbling over turf control than it does with any serious concern over establishment of well thought-out No-Take MPAs to protect fragile NWHI ecosystems.

The designation of all Federal EEZ waters in the NWHI (other than French Frigate Shoals, Laysan, and Midway) shallower than 10 fathoms (~ 60') to be No-Take MPA is enigmatic for this FMP as the majority of living coral resources in federal waters is thought to occur deeper than 10 fathoms (~ 60'). As such, it's difficult to comprehend how such designation will protect fragile coral reef ecosystems in the NWHI as the DEIS claims, if the majority of habitat to be protected occurs in depths outside of the designated no-take MPA. The best available data suggests that these depths should be deeper and related to the depth profiles of living coral reefs in the areas to be covered (25 fathoms or deeper).

The preferred alternative states that the NWHI no-take MPAs would also apply to existing FMPs; though the stipulation that permits for research can be given for use in the "no-take" MPAs may raise concerns regarding fishing activities occurring under the label of research. A related question is whether the "experimental fishing" recently proposed by the Council for the NWHI Lobster Fishery, whereby fishers would get to keep and sell their catch, would fall under the definition of allowable "research" take in a "no-take" MPA? Suggest that any research conducted within no-take MPAs should be directly related to the management of the no-take MPA itself as a way of avoiding the problem listed above; this could easily be accomplished by modifying the document to state that "All extractive activities would be prohibited in no-take MPAs, except for small harvests related to research directly supporting management of the MPA".

According to the DEIS, the entire NWHI outside of FFS, Laysan and a portion of Midway would be limited-take MPA requiring a Special Permit for any fishing. Such action appears to take an ecosystem-approach towards fisheries impacts and should be encouraged. One problem that exists with the current language in the DEIS is that the preferred alternative **exempts all existing FMPs** from coverage under this provision[2]. Once again, the primary human impact concerns in the NWHI (outside of marine debris) are the impacts of existing fisheries; exempting such fisheries from the permitting provisions of the CREFMP results in a major loophole towards managing the NWHI coral reefs in federal waters at an ecosystem-level. As stated earlier, these NWHI resources represent the vast majority of all federal coral reef habitat; as such, the exemption of existing FMPs from regulation under this plan remains a major obstacle.

In order that decision-making regarding this DEIS is based upon the best available science related to coral reefs, I would strongly encourage the WPRFMC to incorporate the results of the recent multi-agency NOWRAMP expeditions into this document and adjust the management measures to reflect the updated knowledge base regarding the ecological state of coral reef resources in the NWHI. Such results should play a critical role in the designation of any no-take MPAs in the NWHI.

The majority of the Plan Team wholeheartedly supports the Council's efforts to minimize impacts on coral reefs by requiring a provision for vessels to have insurance to

[2] Which covers many food fishes and habitat-forming species (such as black coral which can co-occur within stony coral reef habitat).

cover the cost of vessel removal, pollution liability and habitat mitigation[3] in the event of a grounding. Given that the three most recent groundings of WPRFMC-permitted vessels all occurred within State waters and severely damaged State of Hawai'i coral reef habitat, I would encourage the WPRFMC to insert appropriate language making it clear that such insurance covers impacts within both federal and State waters.

The DEIS in a number of sections fails to appropriately recognize existing MPAs within the NWHI (USFWS National Wildlife Refuge and the new NWHI Coral Reef Ecosystem Reserve). It appears that the document needs to be extensively modified to reflect not only the presence of these existing MPAs, but also the management responsibilities of the agencies that manage them.

MANAGEMENT MEASURE : CORAL REEF ECOSYSTEM FISHERY PERMITS

The major concerns regarding permitting relate to the statement that established **FMP fisheries are exempted.** This does not deal with the concerns raised by the Plan Team, the State, NMFS or USFWS in regards to existing impacts on NWHI coral reefs and certainly does not allow for management at the ecosystem level that this plan purports to accomplish. Currently none of the existing FMPs take into account ecosystem impacts in the issuance of their fishery permits; by excluding these fisheries from consideration of ecosystem impact (by not requiring a CRE FMP Permit) the WPRFMC has created a large loophole for existing coral reef impacts to continue. The view that such concerns can be dealt with later through consultations is problematic given that existing FMP impacts on federal coral reef ecosystems have been repetitively ignored in earlier versions of this document, suggesting that if such impacts are not dealt with through a defined management measure within the CRE FMP, they are unlikely to be dealt with through post-adaptation consultations.

While commercial collection of coral/live rock in Federal EEZ would be prohibited under the preferred alternative, collection would be allowed for research, incidental take under other FMPs[4], and commercial propagation[5]. As stated earlier, concerns exist over the definition of the term "research", and its possible use for commercial purposes (including bioprospecting). **Additionally, the Council added a provision for take of coral for traditional/ceremonial purposes by indigenous peoples,** this may be problematic since it could encourage such take within State waters in the NWHI which would be against Hawai'i State law. The DEIS does not define what an allowable "small" amount of coral/live rock is in regards to allowed take. An additional concern relates to unique endemic coral species that occur in the NWHI being allowed under such take provisions.

[3] Note that the description in the DEIS of insurance coverage on P. 3 differs from the description on P. 144 which has dropped the requirement for habitat mitigative action. The DEIS needs to be corrected to properly reflect the appropriateness of habitat mitigation as one of the actions covered under the insurance requirement.

[4] The existing NWHI Lobster Fishery is known to bring up a wide variety of coral that becomes entangled in its traps. This is a major concern that has been identified by the Plan Team but is ignored in the DEIS; the view that such issues can all be handled "later" through negotiations between Plan Teams is problematic and not indicative of a desire to manage resources at an ecosystem-level.

[5] This last point raises concerns as commercial propagation of coral often involves asexual fragmentation (breaking off of pieces to grow-out and sell – this is not truly self-sustainable aquaculture as it often involves going out and re-collecting more coral to "grow-out") which depending upon how it is accomplished can cause massive stress to colonies, introduce competition and disease, and decrease available ecological habitat for the wide range of species found living on and within the coral reef.

Concerns exist regarding the "Grounds for Denial of General Permit" section: The only stated reasons for denial of a general permit are: less than eighteen years of age, not a U. S. citizen, has a criminal record, has not completed an application form. While such provisions may be appropriate in determining whether someone can vote in a general election, they appear to be woefully inadequate for determining the appropriateness of a fishing activity or potential impact on coral reef ecosystems. The listed provisions provide no basis for determining impact of a proposed activity on the coral reef ecosystem prior to its initiation and are not adequate for properly managing resource use.

Given that Special Permits are required within areas thought to be ecologically sensistive (especially the NWHI and the PRIAs), concerns exist regarding the "Grounds for Denial of Special Permit" section: None of the grounds listed deal specifically with ecosystem-level impacts. This is also problematic given that this is supposed to be an "ecosystem" plan. Under the proposed system, it is conceivable that the impacts on a single species would not be significant, but the ecosystem effects would; for example taking out the dominant male cleaner wrasses from a harem resulting in increased parasitism in reef fish, or the removal of all large parrotfish allowing algal overgrowth of corals.

MANAGEMENT MEASURE: GEAR & METHODOLOGY PROVISIONS

The DEIS states that only "selective" and "non-destructive" gear would be allowed, but **by exempting existing FMPs (which include a wide variety of traps and allowable nets), this provision is NOT dealing with the known existing gear impacts to the coral reef ecosystem in the NWHI.** It's difficult to understand how large numbers of lobster traps which are released from the surface and drop down hard onto the reef environment are "non-destructive". Also given that NMFS observer data shows that more than one hundred and ninety seven (197) bycatch species have occurred in recovered lobster traps in the NWHI fishery, it's extremely difficult to suggest that this is a "selective" method of fishing[6].

FRAMEWORK ACTIONS

Mooring and Anchoring: The Council would ban anchoring in no-take MPAs, **except where the WPRFMC allows** – This provision appears to be inserting a loophole that makes for a regulation on paper only. The Council's preferred alternative calls for the installation of mooring buoys and prohibiting of anchoring where mooring buoys occur; such a situation (without a complete ban on anchoring elsewhere in the NWHI) will concentrate ships in sensitive areas (where presumably the only buoys would be located, as anchoring would be allowed everywhere else). Additional questions relate to who would be responsible for placement and maintenance of mooring buoys.

Vessel Monitoring Systems (VMS): The WPRFMC's Preferred Alternative has moved the CRE Plan Team's requirement for vessels under WPRFMC permit in the

[6] Additionally, this data suggests very strongly that traps are being laid in coral reef areas where one would find such a wide variety of species (as opposed to on sandy areas as Council staff and some fishers claim); if true, this would argue strongly for direct destruction of benthic habitat (coral colonies, etc.). Secondly, removal of such a large range of species as bycatch, even at small levels, would have amplified effects in a coral reef ecosystem.

NWHI to carry an active Vessel Monitoring System (VMS) from being a Management Measure to the Framework Process. Current FMPs do not all require VMS usage in the NWHI and the data is not available to the State (even when these vessels are operating in NWHI State waters outside the jurisdiction of the WPRFMC). Contrasting this, the system proposed by the CRE Plan Team (and modeled after an existing system in place for all large vessels operating throughout the entire Great Barrier Reef) would be monitored round-the-clock by computer[7] and notification automatically sent to appropriate State and Federal agencies when a vessel enters a buffer zone, an off-limits MPA or State waters in the NWHI. Such a system would act as an early warning for both ship's captains and the State of approach and (if unheeded) entry into protected/State waters. VMS can accurately track vessel movements and provide certain information about prohibited fishing activities. The automatic notification provision is important as currently such information is NOT provided to the State of Hawai'i resource trustees, even by those WPRFMC vessels currently using VMS in the NWHI. Such an automated system, had it been in place, would have prevented both the Kure and Pearl & Hermes vessel groundings. Given the highly isolated nature of the NWHI, its expansiveness and the lack of monitoring or enforcement patrols, such a system may be one of the only mechanisms available for protection of natural resources in the NWHI from damage or unauthorized take. I would strongly encourage the WPRFMC to modify the DEIS to include a management measure requiring VMS (with automatic notification to appropriate resource trustees) for all fishing vessels operating in the NWHI.

ADDITIONAL POINTS RELATED SPECIFICALLY TO THE DEIS

While there are published figures for maximum reef growth and productivity occurring at depths of 5 – 15 m for calm waters, embayments and lagoons; such a number (as listed in the DEIS) is inaccurate and misleading for the vast majority of reefs under consideration for this plan as they represent federal waters offshore of oceanic island habitats under strong wave pressure. The result is that the majority of the reef growth (and productivity) occurs far deeper than 15 m for most of the areas under consideration for the CRE FMP. The DEIS should properly reflect this as it directly relates to such issues as depth contours for MPA designation and other management measures. Data from the recent multi-agency NOWRAMP expeditions support the above statements.

The arguments raised in the DEIS that many indigenous peoples are dependant on coral reef resources is true only to the extent that such resources occur in close proximity to islands where these people live; yet over 90% of the coral reef area covered by this plan occurs in remote locations where indigenous use is not an issue. That is not to say that such concerns are not appropriate to be raised in the DEIS along with concerns regarding adjacent fishing communities, and shore-based impacts on federal coral reef ecosystems. But with recognition that the vast majority of the coral reef area covered under the proposed CRE FMP lies in the NWHI where such issues are not really an issue; perhaps the Council should take the time to investigate the appropriateness of creating two separate CRE FMPs: one to deal with federal waters adjacent to inhabited islands in the U. S. Pacific, and a different CRE FMP to deal with the NWHI and the PRIAs. Such an approach would allow for better management of areas that require different approaches towards coral reef management. Such an approach would also allow for better involvement of local management agencies to focus on issues directly

[7] The current VMS system for longlining boats is not automated nor continuously monitored, hence the recent grounding incidents.

related to federal waters adjacent to their jurisdictions. Finally, such an approach would have the side benefit of elevating various island government's concerns within an FMP framework where they are not overwhelmed by the majority of the area (and focus of the FMP) being in the NWHI.

The designation of Habitat Areas of Particular Concern (HAPC) as it relates to Hawai'i needs to be modified as follows:

NWHI: All hard substrate down to a minimum of 25 fm[8], including all lagoonal habitats. As stated earlier, 10 fm is far too shallow for most coral reef habitat on exposed areas of the NWHI.

MHI (In General): ALL Offshore Islets (they're all sea bird refuges). Should also include waters adjacent to National Parks.

Kaua'i: Kaliu Point and Mana Reef.

Moloka'i: South and West Shore Reefs and Embayments.

Hawai'i: Kealakekua Bay is an MLCD. Need to include all Kona Coast FRAs.

The DEIS is misleading in a number of its statements and should be revised accordingly in terms of accuracy. For example the following statement occurs on page 25 (DEIS): "Approximately 80% of the coral reef area that would be managed under the CRE FMP (is) in the NWHI." On the next page is a chart which represents coral reef area; adding up the total coral reef area in federal waters of the NWHI and comparing it with the total for federal waters in the U. S. Pacific, one comes up with a figure of 87% for the NWHI coral reef area that would be managed under the CRE FMP. On the very next page (27, DEIS) is the statement: "By far the largest coral reef area in the EEZ is located in Hawaii (10,004 km^2), of which 90% is in the NWHI (9,124 km^2)." In the space of three adjacent pages, three completely different figures are given for the representative area of coral reef coverage; such inaccuracies question the validity of other information provided in this large DEIS. As such, I respectively suggest that the Council spend an appropriate amount of time reviewing this document for accuracy and consistency and then re-submitting the DEIS for public review.

Given the dramatic changes that have recently occurred in terms of the NWHI federal coral reef areas now under the new NWHI Coral Reef Ecosystem Reserve (NWHICRER), and given the statement (p. 139) that the "CRE FMP attempts to simplify regulations between areas by working to achieve consistent regulations across the various management regimes", there is recognition that the DEIS will need to be re-done to reflect the existing regulations of the NWHICRER. Specifically, the question is how the DEIS will be brought into compliance with the management measures outlined in the Presidential Executive Order for the NWHICRER.

While significant progress has been made on this plan, **the majority of the Council's preferred measures still exempt all other species-level FMPs** from regulation under this ecosystem-level FMP. That view, if maintained by the Council, will continue to be a barrier to the CREFMP functioning as a fisheries management plan of coral reef resources at an ecosystem level. Perhaps of greater importance, such exclusion serves as a barrier to meeting the Council's "Need for Action' (p. 15,DEIS) which states that the CRE FMP is needed:

[8] This should be set to 100 fm in order to be in compliance with the new NWHI Coral Reef Ecosystem Reserve.

-"To anticipate and avoid potential damage to essential and non-renewable coral reef habitat." **Such habitat is currently being impacted in the NWHI by existing WPRMC fisheries which are exempt from most provisions of this plan.**

-"To address the secondary effects of all reef-related fisheries on non-target coral reef resources, thereby encouraging ecosystem-scale management." **This cannot occur if the existing fisheries are exempt from regulation under this plan, and therefore such secondary effects cannot be managed.**

This takes on even stronger repercussions with the realization that the NWHI coral reef **ecosystems are often continuous from State waters into those under WPRFMC control.** The ability to effectively and sustainably manage all[9] coral reef resources in the NWHI may be negatively impacted by the Council's preferred CREFMP as it currently exists and therefore I encourage the Council to strongly consider the recommendations I've listed above in order to help mitigate this concern.

Once again thank you for the opportunity to provide comments on the DEIS. If you have any questions, or I can be of any further assistance, please contact me at 587-0318.

Sincerely,

Dave Gulko, CRE FMP Plan Team Member

Cc: NMFS, Regional Administrator SW Region
NMFS OPR
NMFS Honolulu Office
USFWS Honolulu Office
DLNR Chairperson's Office

[9] Both State and Federal.

Comparison Between Major Provisions of the WPRFMC's Coral Reef Ecosystem FMP (Preferrred Alternative) and the New NWHI Coral Reef Reserve Established by Presidential Executive Order 13178

Prepared by Dave Gulko
WPRFMC Coral Reef Ecosystem Fishery Management Plan Team Member

Management Concerns	WPRFMC Preferred Alternative	NWHI Coral Reef Reserve/EO
Stated Principle Purpose of Each Plan	"To foster sustainable use of multi-species resources in an ecologically and culturally sensitive manner, through the use of the precautionary approach and ecosystem-based resource mgmt."	"To ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species of the NWHI."
Advisory Council Make-up In Terms of User Group Representation (Note: both councils have commercial and recreational fisher representatives)	There are no native Hawaiian group NGO, environmental NGO, non-federal marine scientists, tourism industry representatives, or marine educators in voting positions on the Western Pacific Regional Fisheries Mgmt Council.	There are three native Hawaiian group NGO, three environmental NGO, three non-federal marine scientists, one tourism industry representative, and one marine educator in voting positions on the NWHI Reserve Council.
Advisory Council Make-up In Terms of Management Agency Representation Note: NWHI Reserve Council provides for WPRFMC participation on its council, WPRFMC does not currently provide for NWHI Reserve participation on its council.	State of HI Dept. Land & Nat'l Resources (Voting) Nat'l Marine Fisheries Service (Voting) US Fish & Wildlife Service (Non-voting) US Coast Guard (Non-voting) US Dept. of State (Non-voting)	State of HI Dept. Land & Nat'l Resources (Voting) Marine Mammal Commission (Non-voting) Nat'l Marine Fisheries Service (Non-voting) Nat'l Marine Sanct. Prog. (Non-voting) US Coast Guard (Non-voting) US Dept. of State (Non-voting) US Dept. of Defense (Non-voting) US Fish & Wildlife Service (Non-voting) WPRFMC (Non-voting)
Advisory Council Make-up In Terms of Outside (HI) Agency Representation with Voting Power on NWHI Issues	Three from American Samoa (Voting) Two from Guam (Voting) Two from CNMI (Voting) Note: At least 7/13 voting members are from areas outside Hawai'i.	None. Note: All 15 voting members are from Hawai'i.
Limited-use MPA Coverage Under Each Plan (i.e Area of Coverage of Each Plan)	50 fm isobath extending out past 3 nm from the centers of each prominent NWHI atoll, island or shoal.	50 nm out from centers of each prominent NWHI atoll, island or shoal; excludes first 3 nm of State waters around emerged islets and islands.

Management Concerns	WPRFMC Preferred Alternative	NWHI Coral Reef Reserve/EO
General Proposed No-Take MPA Depth Profiles	10 fm (60') for most areas.	100 fm (600') for most areas; though exempts grandfathered bottomfishers and certain trawling from 25 – 100 fm in most areas.
No-Take MPA Sites (Limits of No-Take MPA by Depth) Note: Coral reefs on the outsides of each of the atolls, islands and shoals are thought to have most of their living coral abundance below 10 fm (60') due to wave exposure. GBF = Grandfathered Bottomfishers	Kure (10 fm = 60') Midway (50 fm = 300') – North half only Pearl & Hermes (10 fm = 60') Lisianski (10 fm = 60') Laysan (50 fm = 300') Maro (10 fm = 60') Gardner Pinnacles (10 fm = 60') French Frigate Shoals (50 fm = 300') Necker (10 fm = 60') Nihoa (10 fm = 60')	Kure (100 fm = 600') Midway – not covered Pearl & Hermes (100 fm = 600') Lisianski (100 fm = 600', 25 fm = 150' for GBF) Laysan (100 fm = 600', 50 fm = 300' for GBF) Maro (100 fm = 600', 25 fm = 150' for GBF) Gardner Pin. (100 fm = 600', 25 fm =150' for GBF) French Frigate Shoals (100 fm = 600') Necker (100 fm = 600', 25 fm = 150' for GBF) Nihoa (100 fm = 600', 25 fm = 150' for GBF)
Coral Reef Species Covered Under Each Plan	Includes all coral reef species EXCEPT those covered under other WPRFMC plans regardless of their role in the coral reef ecosystem. Species currently exempted from protection under this plan include: Jacks, Groupers, Snappers, Certain Sharks, and Lobsters.	Includes all species; unclear which species of bottomfish or recreational fish may be exempted (presume it's only those species for which catch records exist for the last five years).
Lobster Fishery	Exempts existing lobster fishery from all rules except No-Take MPAs.	Closed within the Reserve based on 0 level of fishing in 2000.
Bottomfish Fishery	Exempts existing bottomfish fishery from all rules except No-Take MPAs.	Must follow all rules and regulations. Fishery limited to those permit holders which have fished in the NWHI during the last 5 years, cap is average of last 5 year's take.
Precious Coral Fishery	Exempts existing precious coral fishery from all rules except No-Take MPAs.	Closed within the Reserve based on 0 level of fishing in 2000.
Gear Restrictions	Prohibits habitat-destructive and non-selective gear use BUT EXEMPTS EXISTING Lobster, Bottomfish and Precious Coral Fisheries that may use such gear. Allows use of fish traps, surround nets and seine nets.	Severely limits any new gear types for grandfathered bottomfishers and recreational fishery. Allows limited gear types for research, management and native Hawaiian gathering uses. All other gear use prohibited.

Management Concerns	WPRFMC Preferred Alternative	NWHI Coral Reef Reserve/EO
Bioprospecting	Allows for harvesting of corals and rare reef species in the NWHI through use of permit.	As currently stated, bioprospecting is not an allowed activity within the Reserve.
Marine Ornamental Collection	Allows for expanding the marine ornamental industry to the NWHI through use of permit.	As currently stated, marine ornamental collection is not an allowed activity within the Reserve.
Vessel Monitoring System (VMS) Requirements	Currently only applies to Longline fishery, all others exempt. Existing VMS system is non-automated and restricted in terms of its use for enforcement, early warning and management.	Calls for use of VMS for all vessels entering or transiting the Reserve if warranted.
Recreational Fishing	Prohibits SCUBA spearfishing at night. Requires permit for recreational fishing at Midway. Limits gear use.	All currently existing levels of recreational fishing effort are capped at 2000 levels outside of No-Take MPAs. Limits gear use.
Native Hawaiian Uses	Allows new fisheries and fishing by indigenous people under special permit. Allows harvest of live rock and coral under permit (even though the products would be brought back into State waters and may be in conflict with existing State law).	Native Hawaiian non-commercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas.
Bycatch	Provides no protection for bycatch caused by existing lobster, bottomfish, precious coral or recreational fisheries. Note: Over 190 bycatch species have occurred in recovered traps in the NWHI lobster fishery.	Eliminates bycatch except that occurring by grandfathered bottomfishers and recreational fishing. Provides for oversight and modification to reduce bycatch.
Habitat Damage	Provides no protection for habitat damage caused by existing lobster, bottomfish, precious coral or recreational fisheries.	Eliminates habitat destruction except that occurring by grandfathered bottomfishers and recreational fishing. Provides for oversight and modification to reduce habitat damage.
Discharge of Materials	No authority to regulate.	Regulates discharge of materials into Reserve waters.
Non-Fishing Activities	No authority to regulate.	Regulated much like a National Marine Sanctuary where activities are assessed for their impact on the Reserve.

Environmental Defense

To:	Western Pacific Fisheries Management Council	**From:**	Stephanie Fried, Rod Fujita
Fax:		**Pages:**	14 + cover
Phone:		**Date:**	February 26, 2001
Re:	CREFMP	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

Aloha,

Enclosed please find our comments on the Draft CREFMP.

COMMENTS OF ENVIRONMENTAL DEFENSE

CONCERNING

THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR CORAL REEF ECOSYSTEMS OF THE WESTERN PACIFIC REGION

February 26, 2001

Contacts:

Rod Fujita, Ph.D – Marine Ecologist
Environmental Defense – Western Regional Office

Stephanie Fried, Ph.D – Sociologist
Environmental Defense – Hawaii Project Office

Environmental Defense is a leading environmental organization combining science, law, and economics to achieve lasting solutions to environmental problems, with over 300,000 members. **Environmental Defense opposes implementation of the Coral Reef Ecosystem Fishery Management Plan (CREFMP) for the following reasons:**

EIGHTY-FIVE PERCENT OF CREFMP MANAGEMENT AREA IS IN THE NORTHWESTERN HAWAIIAN ISLANDS, YET THE NWHI EXECUTIVE ORDERS ARE IGNORED, AND WOULD BE WEAKENED BY THE PROPOSED CREFMP

For close to one year, there has been a broad-based public process to develop Executive Orders 13196 and 13178 (EO) pertaining to the management of the coral reefs in the Northwestern Hawaiian Islands (NWHI). The Western Pacific Regional Fisheries Management Council (Wespac) has been deeply involved in this process. There were ten hearings throughout the state of Hawai'i during this period and over 9,000 people submitted written comments to the Secretary of Commerce. According the Draft CREFMP, close to 85% of the reefs under the jurisdiction of this CREFMP (and 90% of the reefs in Hawai'i) are located in the NWHI (Vol. I, p.26). Nonetheless, the CREFMP makes little reference to the regulations contained in the Executive Order, which are now law. It is as if the Executive Orders do not exist and have no effect on coral reef management in the NWHI.

The CREFMP not only ignores many provisions of the NWHI Executive Order, but replaces some of the protective measures of the EO with less protective measures. It ignores the authority of the NWHI Coral Reef Ecosystem Council. The EOs, which are now law, require the NWHI management entity to have as its primary goal ensuring "the long term conservation and protection of the coral reef ecosystem and related marine resources and species of the NWHI in their natural character." This is stronger and of a different orientation than the CREFMP's goal to "foster sustainable use of multi-species resources."

The EOs limit catches to recent, existing levels of take and effort. The EOs allow existing bottomfishers to continue fishing throughout the NWHI for their economic lifetimes,

through a series of non-transferable permits reflecting the five-year catch history of the fishers. The EOs allow for designation of a coherent network of marine protected areas based on the best available science, whereas the MPAs proposed in the CREFMP appear to be sited primarily to minimize short-term economic impacts. For example, according to Wespac spokesmen, the CREFMP preference for a no-take MPA at Midway Island instead of at fragile Kure Atoll reflects primarily the fact that commercial fishing interests wished to retain their access to Kure and did not see much economic benefit from fishing at Midway. The recent six week long scientific expedition to the NWHI in 2000 found massive coral colonies at Kure —some 30 feet tall – which may be over one thousand years old. The decision to designate a no-take MPA at Midway but not at Kure does not reflect the latest scientific findings.

Under the EOs, as a result of lack of effort and catch in the NWHI lobster and precious corals fisheries during the last year, those fisheries are now permanently closed. The CREFMP, however, appears to assume that those fisheries are still open and lists lobster traps as an allowable gear type for the NWHI.

The EOs provide for management oversight by a carefully balanced Reserve Council more fully representative of the broad range of interests in coral reef protection than is Wespac. The NWHI Reserve Council includes scientists, Kanaka Maoli (indigenous Hawaiian) cultural practitioners, recreational and commercial fishers, ocean tourism operators, and environmentalists as direct members of the Council, not as members of relatively powerless advisory bodies to the Council. Unlike Wespac, the Reserve Council is subject to stringent conflict of interest regulations. NWHI Council members may be removed for conviction of a felony offense, violations of National Marine Sanctuaries Act, Marine Mammal Protection Act, the Migratory Bird Treaty Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other environmental laws under NOAA's jurisdiction. Unlike Wespac, NWHI Council members who have a financial, personal, or business interest in any matter before the Council or a subcommittee must identify such interest prior to discussion and voting on such matter. In addition, no NWHI Council member may cast a vote on any matter that would provide a direct financial benefit to that member or otherwise give the appearance of conflict of interest under Federal law. The regulations governing the NWHI Council are designed to avoid the conflict of interest problems that have plagued Wespac's operations for years.

Instead of requesting its scientists and consultants to ensure that the CREFMP was consistent with the aims, goals, and regulations of the NWHI EOs, Wespac has invested time and taxpayers' funds in attempts to block or weaken the EOs and in producing misleading documents and "fact sheets" on the NWHI EOs. For example, the February 13, 2001 documents titled "Economic Losses to Bottomfish Fishery as a Result of Executive Order 13196" versions I and II (enclosed) claim -- falsely – that the EOs close Nihoa, Necker, Gardner Pinnacles, Maro Reef, and Lisianski to bottomfishing. According to Wespac "bottomfish gear is lowered at depths ranging form 50 – 150 fathoms."[1] The islands and reefs listed above are open under the EOs to bottomfishing by permit holders at depths from 25 fathoms and deeper, i.e. for the range of the bottomfish fishery. The CREFMP proposes no take zones for the above sites in waters shallower than 10 fathoms. Actually

[1] Wespac, "Summary of the NWHI Bottomfish Fishery," 11/27/00

most of these areas are already closed from 0 to between 10 and 20 fathoms under the Hawaiian Islands National Wildlife Refuge. Wespac claims that the Executive Orders close Laysan Island to bottomfishing. The EOs actually close Laysan to bottomfishing in waters shallower than 50 fathoms, which is what Wespac also proposes in the CREFMP. In its assessment of the "economic impacts" of the EOs on the bottomfish fishery, Wespac does not note its own plans for no take MPAs in the same region. By exaggerating the area closed – i.e. declaring 5 areas left open by the EOs as closed to fishing – by neglecting to mention its own plans for closures in parts of those areas, and existing 10 and 20 fathom closures under the Hawaiian Islands National Wildlife Refuge, and by attributing the loss of the entire bottomfish catch to areas closed from 0 – 25 fathoms, Wespac has wasted taxpayers' funds on a bizarre and unscientific assessment of NWHI resources.

For example, in its "Economic Losses" document, Wespac concludes that the entire take of Necker bottomfish, representing 67% ($157,837) of the Mau Zone fishery, is lost as a result of the E.O. However, this is based on the false assumption that the EOs "close" Necker Island to bottomfishing. The US Fish and Wildlife has historically closed Necker from 0 to 20 fathoms; the EO specifies that Necker is open to bottomfishing from depths of 25 fathoms and deeper; and the CREFMP would close it from 10 fm. It is interesting to note that a November, 2000 Wespac document states that the "economic performance of Mau zone vessels has been generally poor during the 1990s. Analyses... suggest that vessels were, on average, experiencing annual net losses of $7,827 per vessel prior to limited access" and that Wespac's limited access program still resulted in "negative net benefits" to bottomfishers. Their break-even analysis suggested that "the average vessel would have to fish 107 days per year or approximately three times the current average" to break even. "At this level of effort, the fishery could only support three or four vessels."[2]

To make matters worse, in Version I of "Economic Losses to the Bottomfishery as a Result of the Executive Order" presented at Wespac's February, 2001 meeting, Wespac appears to have overestimated the economic losses resulting as a result of NWHI closed areas mandated in the EO. For example, the claim is made that

Gardner Pinnacles are "closed" to bottomfishers; that they represent 8.6% of the total bottomfish revenue, with a value of $67,577;

Maro Reef is "closed" to bottomfishers; represents 5.9% of total NWHI bottomfish revenue, valued at $41,366;

Brooks Bank is closed to bottomfishers; represents 5.9% of total NWHI bottomfish revenue, valued at $64,458;

Lisianski is "closed" to bottomfishers; represents 10.2% of total bottomfish revenue lost, valued at $73,119;

The total loss to the Ho`omalu Zone bottomfish fishery is estimated at 56.7% of the total fishery or $419,708.

[2] Wespac, "Draft Measure to Establish Eligibility Criteria for New Entry into the NWHI Mau Zone Limited Access System." 11/17/00 pages 12, 13

The numbers don't add up. When Environmental Defense pointed out the significant flaws in Wespac's analysis, Wespac hurriedly issued a "revised" table of "economic losses." Despite our input and provision of information concerning the open status of the regions claimed "closed" by Wespac, none of the designations of "closed" areas were changed at all in the Wespac calculations, yet every single dollar amount of landings at each of the regions throughout the NWHI Ho`omalu Zone was altered, some amounts were increased, others decreased. No information was provided on the derivation of these numbers. Wespac stuck to its initial conclusion that 56.7% of the Ho`omalu Zone bottomfish fishery's economic value was "lost" as a result of the EO, but this amount was now increased to $463,341.

It is interesting to note that a November, 2000 Wespac document states that negative impacts on the regional economy of the permanent closure of the NWHI bottomfish fishery "would be minimal, as the contribution of the NWHI bottomfish fishery to overall economic activity in Hawai`i is small."[3]

WESPAC TRACK RECORD IN THE NWHI

Wespac has a clear track record in coral reef ecosystem management in the NWHI, one that should preclude it from taking a leadership role in NWHI ecosystem governance. The NWHI lobster fishery – now excluded from the CREFMP and apparently allowed to continue under Wespac's Crustaceans FMP -- is a case in point. In 1983, after identifying the MSY for NWHI spiny lobster at 300,000 lobster per year:[4][5]

Wespac allowed 5 times (500%) of the MSY to be harvested in: 1985,1989
Wespac allowed 4 times (400%) of the MSY to be harvested in: 1986,1990
Wespac allowed 3 times (300%) of the MSY to be harvested in: 1984
Wespac allowed double & almost triple of the MSY to be harvested in: 1987 and 1992
Wespac allowed 117% of MSY to be harvested in 1991

Between 1983 and 1992 there was only 1 year (1983) where the MSY or less was harvested from the NWHI. In 1993, the fishery crashed and was closed down. Wespac now claims that a "climate-induced reduction in overall ocean productivity" led to the crash. Wespac re-opened it in 1994 and the harvests never recovered. In 1996, Wespac changed its regulations to allow the take of females with eggs and undersized juveniles. It should be noted that lobsters may take seven years to reach sexual maturity. In 1983, fishermen could trap over 3 lobsters per trap; by 1999, they had to set 3 traps to catch one lobster.

In addition, in the back pages of Volume I of the CREFMP (Vol. I, page 324) it is noted that observers found that "pieces of live coral and entire coral heads are caught in some lobster traps and groundline and landed on board the lobster vessel. One observer noted that 'small broken pieces of coral were frequently (as many as one piece per five traps) ? wedged in the

[3] Wespac, "Preliminary Draft EIS, Bottomfish and Seamount Groundfish Fishery in the Western Pacific Region," November 2, 2000, page 2-22
[4] NMFS, "The Present Status of the Spiny Lobster Fishery in Hawaiian Waters," 1981.
[5] NMFS, chart page 3, Table 2, "NWHI lobster fishing effort (trap-hauls) and catch & catch rates by species, 1983-1998."

holes of the traps. Numerous softball-sized and a few basketball sized whole coral heads came up stuck to the mainline."

Dr. James Maragos, one of the world's leading authorities on Pacific Island coral reefs led the October, 2000 interagency scientific expedition to the NWHI. According to Dr. Maragos, "The lobster fishery has not been managed properly and is depleted in the Northwestern Hawaiian Islands. ... The fishery is closed for a good reason: there are no lobsters out there. In our observations during our September-October, 2000 cruise, we found very few lobsters in our surveys of over 170 sites. ... It's clear that management was deficient. This was a virgin fishery in 1980 and has since been fished down to the point where it is now depleted."

SPECIFIC COMMENTS ON THE CREFMP

- The CREFMP exempts species covered by existing FMPs including crustaceans, bottomfish, and precious corals. Given the fact that species in these groups fulfill many different ecological functions, their exclusion from the CREFMP does not make sense. As such, the CREFMP cannot be considered an ecosystem plan. Relegation of their management to separate FMPs simply continues conventional single-species management.

- The practical result of the exemption of several commercially valuable species from the CREFMP is that the proposed MPAs would constitute the sole ecosystem protection mechanism in the CREFMP. If multiple benefits of the MPAs are to be realized, the total size of the MPA network should be considerably larger as a percentage of management area than the 14% proposed in the CREFMP, especially if fishery enhancement and insurance benefits are expected. For example, the science advisory panel to the Channel Islands marine reserves working group recommended that 30%-50% of all major habitat types around the islands be protected within no-take marine reserves in order to realize biodiversity, ecosystem health, and fishery management benefits.

- Council-authorized vessels have run aground in the NWHI two times in the last two years, yet there specific actions are not taken in the CREFMP to prevent more groundings. Actions could include requirement of automatic 24 hour/7day VMS systems which report to several agencies and to the ship's captain when approaching an MPA, reef, bank, or atoll; the loss of permit privileges as result of careless vessel operation.

- The CREFMP proposes that vessels carry insurance for vessel removal, pollution liability and possibly mitigation in the event of grounding "depending on the category of vessel, type of permit, and fishing area." The requirement for vessel insurance is not clear, straight-forward, or applied across the board. It also does not guarantee sufficient finance for mitigation. With loopholes such as these, this measure is likely to prove ineffective.

- The CREFMP claims that it would establish no-take MPAs in federal waters (seaward of 3 nautical miles from islands and atolls), extending for the most part to 10 fathoms. In three cases – one of the Midway Island, located outside the NWHI Reserve – the MPAs are extended to 50 fathoms. The Council appears to ignore not only the EO MPAs but also U.S. Fish and Wildlife's claim that the Hawaiian Islands National Wildlife Refuge areas – 10 fathoms around most of the NWHI, 20 fathoms at Necker, are already closed. The CREFMP's proposed closure to 10 fathoms at Necker appears to be an attempt to weaken both the existing Refuge and the NWHI Coral Reef Ecosystem Reserve established by the EOs.

- The CREFMP does not include measures to control or even measure total fishing mortality. MSY critical points and a harvest policy are described, to meet the requirements of the Magnuson Stevens Act, but do not appear to be implemented in the CREFMP.

- The CREFMP includes pursenets and lobster traps (despite the fact that the EO closes the lobster fishery) in its list of allowable "selective" gears. NMFS found 197 species of bycatch associated with lobster traps in the NWHI. Under the CREFMP allowable gear types, bycatch and discard mortality is inevitable, and much will probably go unreported. The CREFMP prohibits the use of SCUBA and spearguns at night – often used to target large predator species -- but allows this practice during the day. This situation can lead to overfishing of less productive species, some of which may not be assessed or even studied in any way. Incentives for bycatch reduction could include deduction of bycatch mortality from allowable catch; however, this is unworkable under the CREFMP because no catch limits are established.

- Wespac's own Coral Reef Ecosystem Plan Team – consisting of top coral reef scientists – called for specific protection – i.e. prohibitions on take – for napoleon wrasse, giant clam, and bumphead parrotfish. The CREFMP does not take action on these suggestions and allows, instead, Wespac to decide on the issuance of permits for take throughout the CREFMP region.

- The CREFMP does not include any measures to control fishing capacity, which has proven to be the bane of many fisheries. It relies solely on gear and use restrictions and permits. Increased numbers of vessels or individuals using the allowable gear types could increase fishing pressure and fishing mortality.

- The CREFMP fails to adequately cap the number of vessels or individuals fishing under special permits for unassessed species. A truly precautionary policy would strictly limit the number of such vessels or individuals to the minimum number required to collect data essential for stock assessment. This is especially important in coral reefs, due to the high vulnerability of many coral reef species to overexploitation as a result of life history, behavioral, and aggregation characteristics. Under the CREFMP preferred alternative, for example, Wespac allows itself to issue permits for "experimental fishing" in no-take MPAs. This could be abused to allow "experimental take" of lobster in fragile and closed areas, despite the closure of the lobster fishery under the EO.

- The CREFMP gives a high level of discretion to WESPAC with regard to the issuance of special use permits, creating a high potential for abuse (e.g., issuance of too many permits, issuance of permits for fishing that may damage habitat or result in excessive fishing mortality or bycatch, etc.).

- The CREFMP would lump many species into broad categories (Currently Harvested Coral Reef Species, Potentially Harvested Coral Reef Species). Lumping species in this way can mask overfishing, lead to unintentional overfishing through undocumented bycatch/discard mortality, and result in ecosystem overfishing (alteration of trophic structure or other ecosystem structural or functional attributes).

- The CREFMP does not require VMS at the outset, but rather would add a VMS requirement contingent on full federal funding and further WESPAC action. Automatic 24 hour/7 day VMS should be required equipment on any vessel fishing within the management area, because VMS appears to be the most effective way to enforce the boundaries of MPAs, the most important ecosystem management tool proposed either in the CREFMP or in the NWHI EOs. VMS should be utilized to alert State and Federal agencies and the ship's captain when a vessel enters a buffer zone surrounding an MPA or State waters. Furthermore, VMS should not be contingent on full federal subsidy. At least part of the costs of VMS may be borne by fishermen, in return for the privilege of using the public trust for private gain. It is interesting to note that the Coral Reef Ecosystem Plan Team recommended that vessels in the NWHI carry active VMS. In the CREFMP, VMS has been downgraded from a primary Management Measure to the later, slower framework process. In addition, current FMPs apparently do not all require VMS use in the NWHI. Council VMS data is apparently not available to the State of Hawai'i, even for vessels in NWHI State waters. Clearly, there is a need for automatic VMS which sends signals to several parties, including the State of Hawai'i and the captain of the vessel.

- The CREFMP (p. 259) states that allowable catch in the NWHI cannot be divided into individual levels, pursuant to the national moratorium on Individual Transferable Quotas. However, other Councils routinely divide allowable catches into trip limits for individual vessels, leaving some percentage (usually about 25%) of the allowable catch unallocated ("overhead") to prevent the trip limits from being designated as ITQs.

SPECIFIC COMMENTS ON THE REGULATORY FLEXIBILITY ANALYSIS

- The estimated existence and non-market net present values for healthy coral reefs in the proposed management area ($5-19 billion) appear to greatly exceed anticipated net present values of fish catches ($0-175 million).

- The existence value is defined in terms of fishing opportunity only. Ecosystem services provided by coral reefs can be extremely valuable (estimated net present value of $7.47 per square meter in 1999 dollars). In addition, members of environmental groups and other citizens place a high value on pristine areas (according to recent surveys), even if they cannot visit them.

SPECIFIC COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

- Given how little is known about the vulnerability of many coral reef species to overexploitation and about the impacts of fishing on coral reef structure and function, the primary management principle should be conservation of biodiversity and ecosystem integrity, with allowance of uses compatible with that overarching goal. In contrast, the overarching goal of the CREFMP seems to be sustainable use, accomplished primarily through the protection of the status quo with the exception of new MPAs. Many of the new MPAs proposed in the CREFMP are simply overlays of existing HINW Refuge boundaries and unfortunately may not protect many of the most sensitive and ecological important habitats within the management area. The CREFMP MPAs are, for the most part, inconsistent with the protected area boundaries delineated by the EOs.

- The DEIS focuses exclusively on negative economic impacts of conservation and management measures, and neglects the positive impacts of such measures, such as long-term economic sustainability, insurance against management failures or errors, scientific research, fishery enhancement by no-take MPAs, tourism potential, existence value (defined broadly), etc.

Enclosures:

"Comparison between major provisions of the CREFMP and the NWHI Coral Reef Reserve Established by Presidential Executive Order"

"Economic Losses to Bottomfish fishery as a Result of Executive Order 13196", versions I and II

Comparison Between Major Provisions of the WPRFMC's Coral Reef Ecosystem FMP (Preferrred Alternative) and the New NWHI Coral Reef Reserve Established by Presidential Executive Order 13178

Prepared by Dave Gulko

Management Concerns	WPRFMC Preferred Alternative	NWHI Coral Reef Reserve/EO
Stated Principle Purpose of Each Plan	"To foster sustainable use of multi-species resources in an ecologically and culturally sensitive manner, through the use of the precautionary approach and ecosystem-based resource mgmt."	"To ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species of the NWHI."
Advisory Council Make-up In Terms of User Group Representation (Note: both councils have commercial and recreational fisher representatives)	There are no native Hawaiian group NGO, environmental NGO, non-federal marine scientists, tourism industry representatives, or marine educators in voting positions on the Western Pacific Regional Fisheries Mgmt Council.	There are three native Hawaiian group NGO, three environmental NGO, three non-federal marine scientists, one tourism industry representative, and one marine educator in voting positions on the NWHI Reserve Council.
Advisory Council Make-up In Terms of Management Agency Representation Note: NWHI Reserve Council provides for WPRFMC participation on its council, WPRFMC does not currently provide for NWHI Reserve participation on its council.	State of HI Dept. Land & Nat'l Resources (Voting) Nat'l Marine Fisheries Service (Voting) US Fish & Wildlife Service (Non-voting) US Coast Guard (Non-voting) US Dept. of State (Non-voting)	State of HI Dept. Land & Nat'l Resources (Voting) Marine Mammal Commission (Non-voting) Nat'l Marine Fisheries Service (Non-voting) Nat'l Marine Sanct. Prog. (Non-voting) US Coast Guard (Non-voting) US Dept. of State (Non-voting) US Dept. of Defense (Non-voting) US Fish & Wildlife Service (Non-voting) WPRFMC (Non-voting)
Advisory Council Make-up In Terms of Outside (HI) Agency Representation with Voting Power on NWHI Issues	Three from American Samoa (Voting) Two from Guam (Voting) Two from CNMI (Voting) Note: At least 7/13 voting members are from areas outside Hawai'i.	None. Note: All 15 voting members are from Hawai'i.
Limited-use MPA Coverage Under Each Plan (i.e Area of Coverage of Each Plan)	50 fm isobath extending out past 3 nm from the centers of each prominent NWHI atoll, island or shoal.	50 nm out from centers of each prominent NWHI atoll, island or shoal; excludes first 3 nm of State waters around emerged islets and islands.

Management Concerns	WPRFMC Preferred Alternative	NWHI Coral Reef Reserve/EO
General Proposed No-Take MPA Depth Profiles	10 fm (60') for most areas.	100 fm (600') for most areas; though exempts grandfathered bottomfishers and certain trawling from 25 – 100 fm in most areas.
No-Take MPA Sites (Limits of No-Take MPA by Depth) Note: Coral reefs on the outsides of each of the atolls, islands and shoals are thought to have most of their living coral abundance below 10 fm (60') due to wave exposure. GBF = Grandfathered Bottomfishers	Kure (10 fm = 60') Midway (50 fm = 300') – North half only Pearl & Hermes (10 fm = 60') Lisianski (10 fm = 60') Laysan (50 fm = 300') Maro (10 fm = 60') Gardner Pinnacles (10 fm = 60') French Frigate Shoals (50 fm = 300') Necker (10 fm = 60') Nihoa (10 fm = 60')	Kure (100 fm = 600') Midway – not covered Pearl & Hermes (100 fm = 600') Lisianski (100 fm = 600', 25 fm = 150' for GBF) Laysan (100 fm = 600', 50 fm = 300' for GBF) Maro (100 fm = 600', 25 fm = 150' for GBF) Gardner Pin. (100 fm = 600', 25 fm =150' for GBF) French Frigate Shoals (100 fm = 600') Necker (100 fm = 600', 25 fm = 150' for GBF) Nihoa (100 fm = 600', 25 fm = 150' for GBF)
Coral Reef Species Covered Under Each Plan	Includes all coral reef species EXCEPT those covered under other WPRFMC plans regardless of their role in the coral reef ecosystem. Species currently exempted from protection under this plan include: Jacks, Groupers, Snappers, Certain Sharks, and Lobsters.	Includes all species; unclear which species of bottomfish or recreational fish may be exempted (presume it's only those species for which catch records exist for the last five years).
Lobster Fishery	Exempts existing lobster fishery from all rules except No-Take MPAs.	Closed within the Reserve based on 0 level of fishing in 2000.
Bottomfish Fishery	Exempts existing bottomfish fishery from all rules except No-Take MPAs.	Must follow all rules and regulations. Fisbery limited to those permit holders which have fished in the NWHI during the last 5 years, cap is average of last 5 year's take.
Precious Coral Fishery	Exempts existing precious coral fishery from all rules except No-Take MPAs.	Closed within the Reserve based on 0 level of fishing in 2000.
Gear Restrictions	Prohibits habitat-destructive and non-selective gear use BUT EXEMPTS EXISTING Lobster, Bottomfish and Precious Coral Fisheries that may use such gear. Allows use of fish traps, surround nets and seine nets.	Severely limits any new gear types for grandfathered bottomfishers and recreational fishery. Allows limited gear types for research, management and native Hawaiian gathering uses. All other gear use prohibited.

Management Concerns	WPRFMC Preferred Alternative	NWHI Coral Reef Reserve/EO
Bioprospecting	Allows for harvesting of corals and rare reef species in the NWHI through use of permit.	As currently stated, bioprospecting is not an allowed activity within the Reserve.
Marine Ornamental Collection	Allows for expanding the marine ornamental industry to the NWHI through use of permit.	As currently stated, marine ornamental collection is not an allowed activity within the Reserve.
Vessel Monitoring System (VMS) Requirements	Currently only applies to Longline fishery, all others exempt. Existing VMS system is non-automated and restricted in terms of its use for enforcement, early warning and management.	Calls for use of VMS for all vessels entering or transiting the Reserve if warranted.
Recreational Fishing	Prohibits SCUBA spearfishing at night. Requires permit for recreational fishing at Midway. Limits gear use.	All currently existing levels of recreational fishing effort are capped at 2000 levels outside of No-Take MPAs. Limits gear use.
Native Hawaiian Uses	Allows new fisheries and fishing by indigenous people under special permit. Allows harvest of live rock and coral under permit (even though the products would be brought back into State waters and may be in conflict with existing State law).	Native Hawaiian non-commercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas.
Bycatch	Provides no protection for bycatch caused by existing lobster, bottomfish, precious coral or recreational fisheries. Note: Over 190 bycatch species have occurred in recovered traps in the NWHI lobster fishery.	Eliminates bycatch except that occurring by grandfathered bottomfishers and recreational fishing. Provides for oversight and modification to reduce bycatch.
Habitat Damage	Provides no protection for habitat damage caused by existing lobster, bottomfish, precious coral or recreational fisheries.	Eliminates habitat destruction except that occurring by grandfathered bottomfishers and recreational fishing. Provides for oversight and modification to reduce habitat damage.
Discharge of Materials	No authority to regulate.	Regulates discharge of materials into Reserve waters
Non-Fishing Activities	No authority to regulate.	Regulated much like a National Marine Sanctuary where activities are assessed for their impact on the Reserve.

Economic Losses to Bottomfish fishery as a Result of Executive Order 13196

REV

February 13, 2001

(Source NMFS NWHI Bottomfish Data 1997-1999)

Zone	Bank	Fishing Status [1]	% of total bottomfish revenue lost	Value ($) of landings sold [2]
Ho'omalu	66 fathom bank	Closed	0.8	$ 5,889.09
Ho'omalu	French Frigate Shoals	Closed	6.5	$ 49,453.75
Ho'omalu	Brooks bank	Closed	5.9	$ 64,458.60
Ho'omalu	St. Rogatien	Open	0	0
Ho'omalu	Gardner Pinnacles	Closed	8.6	$ 67,577.48
Ho'omalu	Raita bank	Open	0	0
Ho'omalu	Maro Reef	Closed	5.9	$ 41,366.53
Ho'omalu	Laysan Island	Closed	2.3	$ 24,347.32
Ho'omalu	N.Hampton	Closed	0	0
Ho'omalu	Pioneer bank	Open	0	0
Ho'omalu	Lisianski	Closed	10.2	$73,119.06
Ho'omalu	Pearl & Hermes	Closed	3.2	$ 20,115.32
Ho'omalu	Salmon bank	Open	0	0
Ho'omalu	Ladd	Open	0	0
Ho'omalu	Nero	Open	0	0
Ho'omalu	Kure	Closed	13.3	$73,381.32
	HO'OMALU TOTAL		**56.7 %**	**$419,708.47**
Mau	Nihoa Island	Open	0	0
Mau	Twin banks	Open	0	0
Mau	Necker Island	Closed	67.09	$ 157,837.99
	MAU TOTAL		**67.09 %**	**$ 157,837.99**

Converting depth based area closures to "straight line boundaries" as required by EO 13196 will close 10 of the 16 bottomfishing banks in the Ho'omalu Zone and one bank in the Mau Zone. To date, there is no indication on how these lines will be drawn. For this reason, the table represents a "worst case" scenario. Impacts presently include a 56.7% reduction of landings for the Ho'omalu Zone and a 67.09% reduction in the Mau Zone.

[2] The NWHI bottomfish fishery ex-vessel value is about $1.1 million per year. Ho'omalu Zone average value is $ 817K per year and Mau Zone is $ 291K per year.

Economic Losses to Bottomfish fishery as a Result of Executive Order 13196

12.B.(6

REV II

February 13, 2001

(Source NMFS NWHI Bottomfish Data 1997-1999)

Zone	Bank	Fishing Status [1]	% of total bottomfish revenue lost	Value ($) of landings sold [2]
Ho'omalu	66 fathom bank	Closed	0.8	$ 6,536.00
Ho'omalu	French Frigate Shoals	Closed	6.5	$ 53,105.00
Ho'omalu	Brooks bank	Closed	5.9	$ 48,505.00
Ho'omalu	St. Rogatien	Open	0	0
Ho'omalu	Gardner Pinnacles	Closed	8.6	$ 70,262.00
Ho'omalu	Raita bank	Open	0	0
Ho'omalu	Maro Reef	Closed	5.9	$ 48,203.00
Ho'omalu	Laysan Island	Closed	2.3	$ 18,791.00
Ho'omalu	N.Hampton	Closed	0	0
Ho'omalu	Pioneer bank	Open	0	0
Ho'omalu	Lisianski	Closed	10.2	$83,334.00
Ho'omalu	Pearl & Hermes	Closed	3.2	$ 26,144.00
Ho'omalu	Salmon bank	Open	0	0
Ho'omalu	Ladd	Open	0	0
Ho'omalu	Nero	Open	0	0
Ho'omalu	Kure	Closed	13.3	$108,666.000
	HO'OMALU TOTAL		**56.7 %**	**$463,341.00**
Mau	Nihoa Island	Open	0	0
Mau	Twin banks	Open	0	0
Mau	Necker Island	Closed	67.09	$ 157,837.99
	MAU TOTAL		**67.09 %**	**$ 157,837.99**

Converting depth based area closures to "straight line boundaries" as required by EO 13196 will close 10 of the 16 bottomfishing banks in the Ho'omalu Zone and one bank in the Mau Zone. To date, there is no indication on how these lines will be drawn. For this reason, the table represents a "worst case" scenario. Impacts presently include a 56.7% reduction of landings for the Ho'omalu Zone and a 67.09% reduction in the Mau Zone.

[2] The NWHI bottomfish fishery ex-vessel value is about $1.1 million per year. Ho'omalu Zone average value is $ 817K per year and Mau Zone is $ 291K per year.

26 February 2001

Western Pacific Regional Fisheries Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

I have reviewed the Draft Coral Reef Ecosystem Fishery Management Plan (FMP) of the Western Pacific Region volumes I and II. Although the documents contain numerous inconsistencies and unsupported assertions that should be rectified, I have restricted my comments to the larger issues.

Failure to follow the required NEPA process for public involvement:

The Western Pacific Regional Fisheries Management Council has not followed the required process for public review of these documents under the National Environmental Policy Act (NEPA) with respect to public hearings held in the Commonwealth of the Northern Mariana Islands (CNMI). First, the Council failed to follow the requirements of 40 CFR 1506.6(c)(2) state that "(i)f a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public *at least* 15 days in advance." The notice of availability for the EIS and the schedule for the public hearings was published in the Federal Register on January 5th. The public hearing in the CNMI was held on January 17th. Thus, there were only twelve days between the notice of availability and the public hearing, making it impossible for the Council to have provided the documents for review 15 days prior to the public hearing.

Secondly, the Council did not meet its requirements for making the documents available to the public. At the time the public hearing was held, there were *no* copies of the EIS and accompanying documents available for review anywhere in the CNMI. Copies of the CRE documents had not been provided to the appropriate local agencies authorized to develop and enforce environmental standards, as required under 40 CFR 1502.19(a), and therefore were not available for review by the public at these local agencies. Copies of the CRE documents were made available in only two ways: by mail if requested, and via download off the Council's website. As already pointed out, the short timeframe between the announcement of document availability and the hearing itself made it impossible to obtain a copy of the documents by mail 15 days prior to the public hearing. Given the necessary mail delivery times, it is also very likely that mailed documents would have failed to arrive *any* time before the hearing. Attempts to download the documents from the Council's website were unsuccessful. After three hours of downloading only one-third of the document had been received. Requiring the public to spend upwards of 10 hours downloading a document via modem hardly constitutes a reasonable attempt to provide documents for public review under the spirit and intent of NEPA.

The manner in which public comments were solicited for the CRE FMP is in marked contrast to the manner in which the Council and the National Marine Fisheries Service (NMFS) solicited comments under the pelagics EIS. The public hearing for the pelagics EIS was held on the same day and prior to the hearing for the CRE EIS. Prior to the pelagics public hearing, the Council mailed copies of the pelagics EIS, which was similar in size to the CRE documents, to Council contacts in the CNMI. This allowed people attending the public hearing to have a passing familiarity with the EIS prior to the hearing. To conduct the pelagics public hearing, the Council and the NMFS sent three staff members to present the pelagics preferred alternative, answer questions with respect to the pelagics EIS, and take public comments. In contrast, there were no Council or NMFS staff members sent to conduct the public hearing on the CRE FMP. The CRE FMP public hearing was conducted by local agency staff who, as discussed above, had not received copies of the documents prior to the meeting and therefore were largely unfamiliar with the EIS and FMP. As a result, there was no one at the CRE public hearing knowledgeable enough to answer questions about the CRE documents.

Given the above information, it is reasonable to question whether the Council and the NMFS seriously intended to solicit public comments on the CRE documents, as required by NEPA. Every attempt was made to prevent the public in the CNMI from having sufficient time prior to the public hearing to review the CRE documents. The Council purposely chose not to provide copies of the CRE documents to Council contacts in the CNMI as it had done with the pelagics EIS. Even members of the CRE FMP plan team in the CNMI, who were ostensibly involved in the development of the plan, did not received copies of the revised draft plan. The last draft of the plan provided for plan team review was the December 1999 version. It is therefore unreasonable to expect that the public hearing in the CNMI could have resulted in any meaningful public input on the draft plan and, therefore, the requirements of NEPA have not been met. The Council and NMFS should suspend plans to proceed with the finalization of these documents until the NEPA process is adequately and faithfully carried out.

Ecosystem nature of the CRE FMP

In the Executive Summary, the Council states that the CRE FMP was developed based on the ecosystem based approach. The plan's management unit species include a large number of coral reef taxa in two lists: currently harvested coral reef taxa, and potentially harvested coral reef taxa. Unfortunately, simply listing a large number of species and managing them independently does not constitute ecosystem management under any accepted scientific definition of the term. As defined in the EPAP report, for example:

"a comprehensive ecosystem-based fisheries management approach would require managers to consider all interactions that a target fish stock has with predators, competitors and prey species; the effects of weather and climate on fisheries biology and ecology; the complex interactions between fishes and their habitat; and the effects of fishing on fish stocks and their habitat."

The CRE FMP lacks a management structure that would allow the gathering of data sufficient even to assess minimal impacts of fishing on ecosystem functions. The Council proposes to rely on existing local data collection systems for the collection of data required to make management decisions under the FMP. These existing local systems cannot begin to provide information to assess the interactions between target fish stocks and predators, competitors and prey species, much less any of the other ecosystem level impacts that the EPAP recommends including in management decisions. In many cases, the existing local systems can do little more than evaluate total catch over time in comparison with effort. The Council recognizes this in Section 4.0 Data Richness when it states that local data collection "is generally restricted to commercial landing of a handful of species."

The Council's decision to not require additional permitting or reporting requirements for harvesting of coral reef resources is questionable if the intention is truly to manage at an ecosystem level. Management of fisheries resources at an ecosystem level requires more, not less, data than would be collected under the traditional single species or species complex based FMP. Yet, the data reporting requirements in this alleged ecosystem plan are much lower than the requirements in many of these more traditional plans. To avoid the criticism that the Council is hiding behind the requirement to use only best *available* data as an excuse for not collecting better data, the Council's preferred alternative, and the approach taken in the FMP, should be reevaluated and revised to an approach more in keeping with accepted scientific definitions of, and requirements for, ecosystem management.

Ecosystem Principals Advisory Panel Report to Congress Recommendations:

Section 1.5 Management Approach indicates that the CRE-FMP has attempted to incorporate the recommendations of the Ecosystem Principles Advisory Panel. However, the Council's implementation of these measures is incomplete at best. The proposed plan does a poor job of incorporating the management policies developed by the EPAP into the management structure of the plan, completely ignoring several of the recommended policies that are included in the bulleted list on page 23 of the CRE plan.

For example, the EPAP recommends changing the burden of proof from a requirement to prove that unacceptable impacts have occurred before restrictions in fishing activities are implemented to an

approach that only allows fishing that can be reasonably expected to operate without unacceptable impacts. The report states that in practice this will mean that:

"when the effects of fishing on either the target fish population, associated species, or the ecosystem are poorly known (relative to the severity of the potential outcome), fisheries managers should not expand existing fisheries by increasing allowable catch levels or permitting the introduction of new effort *and should not promote or develop new fisheries for so-called "underutilized species"*" (emphasis added).

In the draft CRE FMP, Section 4.0, Data Richness, it states that "available biological and fishery data are poor for all species" and goes on to say that "(t)here is scant information on life histories, ecosystem dynamics, fishery impact, community structure changes, yield potential, and management reference points for many of the coral reef ecosystem resources despite the fact that a large potential exists for exploitation of coral reef ecosystem resources and fisheries in the near future." Previous versions of the draft CRE FMP recognized that despite the high gross productivity of coral reefs, these ecosystems have low net productivity, making them vulnerable to overfishing.

Yet the current draft CRE FMP proposes to allow fishing for potentially harvested coral reef taxa under a special permit system. The FMP also proposes to allow for increased fishing for currently harvested coral reef taxa without any permit or reporting requirements. Furthermore, the implementation of a permit requirement for currently harvested taxa would be based on analysis of data indicating that the existing "regional permitting" system is inadequate to address the needs of the FMP. This would appear to be a business as usual approach of requiring the showing of adverse impacts prior to making changes in the fishery - not the change in the burden of proof that the EPAP recommends. By both expanding existing fisheries and allowing the opening of new fisheries in the face of extremely limited data on the target species and their ecosystems, the current plan is proceeding completely counter to the recommendations of the EPAP.

The EPAP also recommends implementing a precautionary approach to management that encourages risk adverse decisions in the face of uncertainty. The draft CRE FMP purports to do this under a framework process. However, as discussed above, the plan's proposal to allow unregulated increases in fishing for currently harvested coral reef taxa, and allow the creation of fisheries for coral reef taxa that are not currently harvested in the face of severely limited management data does not meet the definition of the precautionary approach.

Management Unit Taxa and "Adequate" Information

1.6.2 Management Unit Taxa "The coral reef management unit species are divided into two groups of species or taxa: 1) "Currently harvested Coral Reef Taxa (CHRT)", i.e. coral reef organisms that are currently harvested (e.g. from catch report records in federal waters) but not covered by existing FMPs, *for which adequate information is available to begin management....*" (emphasis added). This statement is in direct contradiction to the statement made in Section 4.0, Data Richness which asserts that "available biological and fishery data are poor for all species" and goes on to say that "(t)here is scant information on life histories, ecosystem dynamics, fishery impact, community structure changes, *yield potential, and management reference points* for many of the coral reef ecosystem resources despite the fact that a large potential exists for exploitation of coral reef ecosystem resources and fisheries in the near future" (emphasis added).

The Council has used the argument that there is "adequate" information on the CHRT taxa to support the preferred alternative of not requiring any permit for fishing of these resources at the present time, and implementation of only a general permit if required at a later date. This is in contrast to the recommendations of the CRE plan team to implement a special permit for harvest of all coral reef resources. The CRE plan team recommendation is support by the statement in Section 4.0, Data Richness of the draft plan that data is poor for all species, and that data required for ecosystem level management of these species is virtually non-existent. The Council's statement that "adequate" information is available for these taxa appears to be completely unsupported. Thus, it would appear that the Council's and NMFS' basis for selecting the preferred alternative and the permitting options are also unsupported. Justification for Council's and NMFS' conclusions are required.

MSY, OSY and Overfishing

The first paragraph in the section titled "Data Richness" states that data on coral reef resources, even those currently being harvested, is consistently poor, with only a few species being represented with any data at all. The first sentence of the following paragraph then states "(w)ith this level of data we will establish limits and reference points based on the multispecies coral reef ecosystem as a whole." With the data that contains scant information on "....yield potential and management reference points"? How is the Council proposing to accomplish this? In the absence of data you will nonetheless find something to analyze?

In fact, the entire chapter 4 contains very little information on how, exactly, the Council proposes to calculate MSY, OY and Overfishing limits for, not only individual coral reef taxa, but the coral reef ecosystem as a whole. There is a nice standard discussion of how these limits *can be* developed - if there are sufficient data. There is even a discussion of how ECOSIM *could be* used, if the data were available to support it. However, this is no description of how the Council proposed to calculate these limits in the face of limited or absent data. I believe that this section is actually supposed to describe the manner in which MSY, OY and overfishing criteria *will be* developed - not how they might be developed if things were different. The Council should give some attention to revising this section based on reality and not on some desired altered state.

Conclusions

The marine protected area measures in the current draft of the CRE FMP is improved somewhat over previous versions. However, the document in general fails to meet the recommendations established by the EPAP for ecosystem management of fisheries resources, and also fails to develop adequate mechanisms for managing coral reef resources in a sustainable manner. There are significant gaps in the document, most notably a realistic presentation on the methods for establishing MSY, OY and overfishing criteria using the available data. In addition, the document recognizes that the data necessary to adequately manage coral reef fisheries is not available, and is not likely to be collected under current data collection systems. Yet, the preferred alternative appears to have been developed with complete disregard for this information. In fact, it is not at all clear how the Council arrived at the preferred alternative which bears no resemblance to any recommendation made by the plan team, of which I was a member, or the advisory panel.

Sincerely,

Katharine B. Miller

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII

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CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS

February 26, 2001

Ms. Kitty Simonds, Executive Director
Western Pacific Regional Fisheries Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Ms. Simonds:

The State of Hawai'i Department of Land and Natural Resources would like to submit the following comments regarding the Draft Environmental Impact Statement (DEIS) submitted by the Western Pacific Regional Fisheries Management Council (WPRFMC) in support of its Coral Reef Ecosystem Fisheries Management Plan (CREFMP). The Department would like to thank the WPRFMC for the opportunity to provide comments on the DEIS and we look forward to your response to our concerns.

Overall, the Department supports the WPRFMC in its attempt to establish a true ecosystem-level of management for coral reef resources in federal waters. We do have some concerns specifically related to the WPRFMC's preferred alternative as stated in the DEIS and have detailed those concerns below.

MANAGEMENT UNIT SPECIES (MUS)/TAXA

The CREFMP includes "virtually all biota in the coral reef ecosystem" except that it exempts species covered under existing FMPs (i.e. crustaceans, many apex predators, certain marine ornamental fish). As such, large trophic gaps would exist in the plan suggesting that it would not manage coral reefs at an ecosystem level. The WPRFMC's view that any problems caused by excluding numbers of important coral reef species from coverage under this plan could be overcome by later discussions between different Plan Teams does not adequately deal with this issue. If this plan is to be based on an ecosystem-level of management, it cannot exclude entire coral reef species assemblages from coverage under its management measures at its inception. No rationalization is provided in the DEIS for how excluding such a wide range of coral reef species (All groupers and anthias species, most jack species, most snapper species, all lobster species, and certain shark species) from MUS under this plan will achieve the ecosystem-level of management stated as a primary goal.

The definitions for maximum sustainable yield (MSY) and optimum yield (OY) are based on parameters related to species' abundance and the replacement rate within a population independent of ecosystem relationships; yet ecosystem-level impacts would

occur at levels of take far below that where they would trigger species-level concerns of overfishing. The result is that catch rates that would indicate overfishing under the CREFMP would occur after ecosystem-level impacts had already occurred, resulting in a failure of this plan to manage federal coral reef resources at the ecosystem-level. One way of achieving this might be to set MSY and OY based upon not only species-level impacts, but also on impacts on trophic guilds one level above and below that of the species proposed for fishing. As part of such a strategy, efforts should be made to develop more complete trophic models for ecosystems where coral reef resources are to be fished. Such actions would deal directly with observations that on coral reefs most species are strongly tied ecologically to complex reef trophic webs.

MANAGEMENT MEASURE: MARINE PROTECTED AREAS (MPAS)

Of primary concern is that the DEIS provides no site-specific justification for the selection of the three "no-take" areas. Significant concerns exist over the selection of Midway (versus Kure Atoll or Pearl & Hermes Atoll, both of which represent more pristine-like habitats with unique coral reef resources and assemblages as observed during the recent multi-agency NOWRAMP expedition to the NWHI) as no-take MPA. It is our understanding that the WPRFMC's CRE Plan Team provided the Council with site-specific justification for the selection of the areas they felt deserved no-take MPA status.

The designation of all Federal EEZ waters in the NWHI (other than French Frigate Shoals, Laysan, and Midway) shallower than 10 fathoms (-.60') to be No-Take MPA is enigmatic for this FMP as the majority of living coral resources in federal waters is deeper than 10 fathoms (- 60'). The best available data suggests that these depths should be deeper and related to the depth profiles of living coral reefs in the areas to be covered (25 fathoms or deeper).

The preferred alternative states that the NWHI no-take MPAs would also apply to existing FMPs; though the stipulation that permits for research can be given for use in the "no-take" MPAs may raise concerns regarding fishing activities occurring under the label of research. A related question is whether the "experimental fishing" being recently proposed by the Council for the NWHI Lobster Fishery, whereby fishers would get to keep and sell their catch, would fall under the definition of allowable "research" take in a "no-take" MPA? We suggest that any research conducted within no-take MPAs should be directly related to the management of the no-take MPA itself as a way of avoiding the problem listed above; this could easily be accomplished by modifying the document to state that "All extractive activities would be prohibited in no-take MPAs, except for small harvests related to research directly supporting management of the MPA".

According to the DEIS, the entire NWHI outside of FFS, Laysan and a portion of Midway would be limited-take MPA requiring a Special Permit for any fishing. Such action appears to take an ecosystem-approach towards fisheries impacts and should be encouraged. One problem with the current language in the DEIS is that the preferred alternative exempts all existing FMPs from coverage under this provision[1]. Once again, the primary human impact concerns in the NWHI (outside of marine debris) are the impacts of existing fisheries. Exempting such fisheries from the permitting provisions of

[1] Which covers many food fishes and habitat-forming species (such as black coral which can co-occur within stony coral reef habitat).

the CREFMP results in a major loophole towards managing the NWHI coral reefs in federal waters at an ecosystem-level. Therefore, the document should reflect recognition that impacts from these existing fisheries may be occurring and require that such potential impacts be studied for adverse effects on the coral reef ecosystem.

DLNR wholeheartedly supports the Council's efforts to minimize impacts on coral reefs by requiring a provision for vessels to have insurance to cover the cost of vessel removal, pollution liability and habitat mitigation[2] in the event of a grounding. Given that the three most recent groundings of WPRFMC-permitted vessels all occurred within State waters and severely damaged State of Hawai'i coral reef habitat, we would encourage the WPRFMC to insert appropriate language making it clear that such insurance covers impacts.

There are inconsistencies between the NWHI MPAs proposed in the DEIS and the NWHI MPAs designated by Presidential Executive Order for the new NWHI Coral Reef Ecosystem Reserve. From DLNR's perspective, we are in the process of creating a Fisheries Management Area (FMA) to cover State waters throughout the NWHI and would like to encourage the Council to work with us to further minimize impacts from activities occurring in federal waters from affecting our State natural resources.

MANAGEMENT MEASURE : CORAL REEF ECOSYSTEM FISHERY PERMITS

The major concerns regarding permitting relate to the statement that established FMP fisheries are exempted. This does not deal with the concerns raised by the Plan Team, the State, NMFS or USFWS in regards to existing impacts on NWHI coral reefs and does not allow for management at the ecosystem level. The view that such concerns can be dealt with later through consultations is problematic. If such impacts are not dealt with through a defined management measure within the CRE FMP, they are unlikely to be dealt with through post-adaptation consultations.

While commercial collection of coral/live rock in Federal EEZ would be prohibited under the preferred alternative, collection would be allowed for research, incidental take under other FMPs[3], and commercial propagation[4]. The DEIS does not define what an allowable "small" amount of coral/live rock is in regards to allowed take. An additional concern relates to unique endemic coral species that occur in the NWHI being allowed under such take provisions.

Concerns exist regarding the "Grounds for Denial of General Permit" section. The listed provisions provide no basis for determining impact of a proposed activity on the

[2] Note that the description of insurance coverage on P. 3 differs from the description on P. 144 which has dropped the requirement for habitat mitigative action. DLNR strongly believes that the DEIS needs to be corrected to properly reflect the appropriateness of habitat mitigation as one of the actions covered under the insurance requirement.

[3] The existing NWHI Lobster Fishery is known to bring up a wide variety of coral that becomes entangled in its traps. This is a major concern that has been identified by the Plan Team but is ignored in the DEIS; the view that such issues can all be handled "later" through negotiations between Plan Teams is problematic and not indicative of a desire to manage resources at an ecosystem-level.

[4] This last point raises concerns as commercial propagation of coral often involves asexual fragmentation (breaking off of pieces to grow-out and sell – this is not truly self-sustainable aquaculture as it often involves going out and re-collecting more coral to "grow-out") which depending upon how it is accomplished can cause massive stress to colonies, introduce competition and disease, and decrease available ecological habitat for the wide range of species found living on and within the coral reef.

coral reef ecosystem prior to its initiation and are not adequate for properly managing resource use.

Given that Special Permits are required within areas thought to be ecologically sensitive (especially the NWHI and the PRIAs), concerns exist regarding the "Grounds for Denial of Special Permit" section: None of the grounds listed deal specifically with ecosystem-level impacts. This is also problematic given that this is supposed to be an "ecosystem" plan. Under the proposed system, it is conceivable that the impacts on a single species would not be significant, but the ecosystem effects would.

MANAGEMENT MEASURE: GEAR & METHODOLOGY PROVISIONS

The DEIS states that only "selective" and "non-destructive" gear would be allowed, but by exempting existing FMPs (which include a wide variety of traps and allowable nets), this provision is not dealing with the known existing gear impacts to the coral reef ecosystem in the NWHI. It's difficult to understand how large numbers of lobster traps which are released from the surface and drop down hard onto the reef environment are "non-destructive". Also given that NMFS observer data shows that more than one hundred and ninety seven (197) bycatch species have occurred in recovered lobster traps in the NWHI fishery, it's difficult to suggest that this is a "selective" method of fishing[5].

FRAMEWORK ACTIONS

Vessel Monitoring Systems (VMS): The WPRFMC's Preferred Alternative has moved the CRE Plan Team's requirement for vessels under WPRFMC permit in the NWHI to carry an active Vessel Monitoring System (VMS) from being a Management Measure to the Framework Process. Current FMPs do not all require VMS usage in the NWHI and the data is not available to the State (even when these vessels are operating in NWHI State waters outside the jurisdiction of the WPRFMC). Contrasting this, the system proposed by the CRE Plan Team (and modeled after an existing system in place for all large vessels operating throughout the entire Great Barrier Reef) would be monitored round-the-clock by computer[6] and notification automatically sent to appropriate State and Federal agencies when a vessel enters a buffer zone, an off-limits MPA or State waters in the NWHI. Such a system would act as an early warning for both ship's captains and the State of approach and (if unheeded) entry into protected/State waters. VMS can accurately track vessel movements and provide certain information about prohibited fishing activities. The automatic notification provision is important as currently such information is not provided to the State, even by those WPRFMC vessels currently using VMS in the NWHI. Such an automated system, had it been in place, would have prevented both the Kure and Pearl & Hermes vessel groundings. Given the highly isolated nature of the NWHI, its expansiveness and the lack of monitoring or enforcement patrols, such a system may be one of the only mechanisms for protection of resources in the NWHI from damage or unauthorized

[5] Additionally, this data suggests very strongly that traps are being laid in coral reef areas where one would find such a wide variety of species (as opposed to on sandy areas as Council staff and some fishers claim); if true, this would argue strongly for direct destruction of benthic habitat (coral colonies, etc.). Secondly, removal of such a large range of species as bycatch, even at small levels, would have amplified effects in a coral reef ecosystem.

[6] The current VMS system for longlining boats is not automated nor continuously monitored, hence the recent grounding incidents.

take. We encourage the WPRFMC to modify the DEIS to include a management measure requiring VMS (with automatic notification to appropriate resource trustees) for all fishing vessels operating in the NWHI.

ADDITIONAL POINTS RELATED SPECIFICALLY TO THE DEIS

While published figures for maximum reef growth and productivity may suggest 5 - 15 m for calm waters, embayments and lagoons; such a number (as listed in the DEIS) is inaccurate and misleading for the vast majority of reefs under consideration for this plan as they represent federal waters offshore of oceanic island habitats under strong wave pressure. The result is that the majority of the reef growth (and productivity) occurs far deeper than 15 m for most of the areas under consideration for the CRE FMP. The DEIS should properly reflect this as it directly relates to such issues as depth contours for MPA designation and other management measures. Observations from the recent multi-agency NOWRAMP expeditions support the above statements.

The arguments raised in the DEIS that many indigenous peoples are dependant on coral reef resources is true only to the extent that such resources occur in close proximity to islands where these people live; yet over 90% of the coral reef area covered by this plan occurs in remote locations where indigenous use is not an issue. That is not to say that such concerns are not appropriate to be raised in the DEIS along with concerns regarding adjacent fishing communities, and shore-based impacts on federal coral reef ecosystems. But with recognition that the vast majority of the coral reef area covered under the proposed CRE FMP lies in the NWHI where such issues are not really a concern; perhaps the Council should take the time to investigate the appropriateness of creating two separate CRE FMPs: one to deal with federal waters adjacent to inhabited islands in the U. S. Pacific, and a different CRE FMP to deal with the NWHI and the PRIAs. Such an approach would allow for better management of areas that require different approaches towards coral reef management. Such an approach would also allow for better involvement of local management agencies to focus on issues directly related to federal waters adjacent to their jurisdictions. Finally, such an approach would have the side benefit of elevating various island government's concerns within an FMP framework where they are not overwhelmed by the majority of the area (and focus of the FMP) being in the NWHI.

The designation of Habitat Areas of Particular Concern (HAPC) as it relates to Hawai'i needs to be modified as follows:

NWHI: All hard substrate down to a minimum of 25 fm, including all lagoonal habitats. As stated earlier, 10 fm is far too shallow for most coral reef habitat on exposed areas of the NWHI.

The DEIS is misleading in a number of its statements and should be revised accordingly in terms of accuracy. One example follows: On page 25 occurs the following statement: "Approximately 80% of the coral reef area that would be managed under the CRE FMP (is) in the NWHI." On the next page is a chart which represents coral reef area; adding up the total coral reef area in federal waters of the NWHI and comparing it with the total, one comes up with a figure of 87% for the coral reef area that would be managed under the CRE FMP as being in the NWHI. On the very next page (27) is the statement: "By far the largest coral reef area in the EEZ is located in Hawaii (10,004 km^2), of which 90% is in the NWHI (9,124 km^2)." In the space of three adjacent pages, three completely different figures are given for the representative area of coral reef coverage;

such inaccuracies raise into question the validity of other information provided in this large DEIS. As such, DLNR respectively suggests that the Council spend an appropriate amount of time reviewing this document for accuracy and consistency and then re-submitting the DEIS for public review.

Given the dramatic changes that have recently occurred in terms of management of the NWHI federal coral reef areas now under the new NWHI Coral Reef Ecosystem Reserve (NWHICRER), and given the statement (p. 139, DEIS) that the "CRE FMP attempts to simplify regulations between areas by working to achieve consistent regulations across the various management regimes", there is recognition that the DEIS should be re-done to reflect the existing regulations of the NWHICRER. Specifically, the question is how the DEIS will be brought into compliance with the management measures outlined in the Presidential Executive Order for the NWHICRER.

While significant progress has been made on this plan, the majority of the Council's preferred measures still exempt all other species-level FMPs from consideration under this ecosystem-level FMP. That view, if maintained by the Council, will continue to be a barrier to the CREFMP functioning as a fisheries management plan of coral reef resources at an ecosystem level. Perhaps of greater importance, such exclusion serves as a barrier to meeting the Council's "Need for Action' (p. 15 DEIS) which states that the CRE FMP is needed:

- "To anticipate and avoid potential damage to essential and non-renewable coral reef habitat." Such habitat is currently being impacted in the NWHI by existing WPRMC fisheries which are exempt from most provisions of this plan.
- "To address the secondary effects of all reef-related fisheries on non-target coral reef resources, thereby encouraging ecosystem-scale management." This cannot occur if the existing fisheries are exempt from consideration under this plan, and therefore such secondary effects cannot be managed.

For the State of Hawai'i and DLNR this takes on even stronger repercussions with the realization that the NWHI coral reef ecosystems are often continuous from State waters into those under WPRFMC control. Coral reef resources in State waters in the NWHI may be negatively impacted by the Council's preferred CREFMP as it currently exists and we encourage the Council to strongly consider the recommendations we've listed above in order to help mitigate this concern.

Once again thank you for the opportunity for our Department to provide comments on the DEIS. If you have any questions, or we can be of any further assistance, please contact Dave Gulko at the Division of Aquatic Resources, 587-0318.

Sincerely,

Ed Coloma-Agaran, Chairperson
Board of Land and Natural Resources

Ms. Kitty Simonds, Executive Director
Western Pacific Regional Fisheries Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

February 26, 2001

Comments on the Draft Environmental Impact Statement
FISHERY MANAGEMENT PLAN FOR CORAL REEF ECOSYSTEMS OF THE WESTERN PACIFIC REGION, December, 2000

These comments are submitted on behalf of the Sierra Club by Dave Raney, a volunteer member of the Sierra Club's National Marine Wildlife and Habitat Committee. Mr. Raney, a resident of Hawaii, heads the Club's Coral Reef Working Group. He also serves as the Pacific Non-Government Organization Representative to the United States Coral Reef Task Force:

1 GENERAL COMMENTS

We commend the Council for recognizing over five years ago the need to protect the coral reef ecosystems of the U.S. Western Pacific EEZ from emerging technologies and market forces that put them at risk. We acknowledge the considerable time, effort, and money that has gone into the preparation of the DEIS and the Coral Reef Ecosystem FMP (CRE FMP), and we appreciate the Council making the review documents available in CD-ROM format.

We must conclude, however, that the three documents, totaling over one thousand pages, bear mute witness to the difficulty in achieving ecosystem-based resources management under the constraints of the single-species orientation of the Magnuson-Stevens Act. While the Council claims this to be the first ecosystem-based FMP in the United States, we think it more accurate to describe it as the first attempt at an ecosystem-based FMP.

No-take Marine Protected Areas of sufficient size may indeed provide true ecosystem-based management. This concept flowed from the U.S. Coral Reef Task Force and its "National Action Plan to Conserve Coral Reefs," not from the Magnuson-Stevens Act. The boundaries of the no-take MPAs in much of the Northwestern Hawaiian Islands were established by Presidential Executive Orders 13178 and 13196, which established the Coral Reef Ecosystem Reserve. The Council's CRE FMP proposes smaller no-take MPAs in the Northwestern Hawaiian Islands and does not comply with the Executive Orders.

Outside of no-take Marine Protected Areas, the Council attempts ecosystem-based resource management by proposing "ecosystem" adjustments to the species-based Magnuson-Stevens parameters of Optimal Yield and Overfishing. The Council also proposes that the Coral Reef Coral Reef Ecosystem FMP Plan Team "coordinate" with the existing FMP Plan Teams to "recommend methods for minimizing identified impacts to the coral reef ecosystem" from other FMPs, which are exempt from the CRE FMP regulations outside of no-take MPA areas. Yet, we have witnessed numerous occasions where the Council ignored or weakened the recommendations of the CRE FMP Plan Team. At the most recent meeting of the Council, a member of the CRE FMP Plan Team noted that the Plan Team had not met for a long time. Council staff replied that the Plan Team meetings were expensive and the CRE FMP Plan Team would not meet again until the Council budget allowed for such a meeting. This hardly inspires confidence in the use of the CRE FMP Plan Team for timely, precautionary, actions.

We support Objective 6 of the Management Plan, "***To collaborate with other agencies and organizations concerned with the conservation of coral reefs, in order to share in decision-making and to obtain and share data and resources needed to effectively monitor these vast and complex ecosystems.***" We note, however, the Council has been very aggressive in attempting to assert sole authority over the management of marine resources in the EEZ, including assertion of fishing rights within the boundaries of national parks and national wildlife refuges under the jurisdiction of the Department of the Interior.

The coral reef ecosystems of the U.S. Western Pacific EEZ are a public trust to be administered for the benefit of current and future generations of all the citizens of this country. They should not be viewed as resources available only to a select few economic enterprises based on extraction of those resources under the exploitative mandate of the Magnuson-Stevens Act. This is especially true for the Northwestern Hawaiian Islands, where the protection of threatened and endangered wildlife species, and the unique coral reef ecosystems found there, are high national priorities. It is also true for the remote Pacific islands and atolls designated as national parks and national wildlife refuges, where fishing should be allowed only as deemed by the U.S. Fish and Wildlife Service to be of such a scale and location so as to be compatible with the broader purposes of the parks and refuges.

2 SPECIFIC COMMENTS

2.1 **The Preferred Alternative, and the DEIS based upon it, are inconsistent with Executive Orders 13158 and 13196, which established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, and designated permanent Reserve Preservation Areas (no-take Marine Protected Areas). The Preferred**

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Alternative, including the no-take MPA boundaries, must be revised to be consistent with these Executive Orders, and the Final EIS must reflect the required changes. WE CANNOT SUPPORT THIS CRE FMP UNLESS, AND UNTIL, IT IS REVISED TO CONFORM WITH THE PROVISIONS OF EXECUTIVE ORDERS 13158 AND 13196.

According to the remarks in paragraph 4, Page 1 of Volume I, the Preferred Alternative is based on the FMP "tentatively" adopted by June, 2000 by the Western Pacific Regional Fishery Management Council (The Council). The DEIS does mention Executive Order 13178 on Page 258, so the authors were aware of the Order. On Page 259 of Volume I, the Draft recognizes that the Executive Order creates Reserve Preservation Areas wherein fishing is prohibited, with certain exceptions allowed for bottomfishing. Oddly, however, the DEIS ignores the fact that the Executive Order renders most of the Council's Preferred Alternative obsolete.

2.2 **The Council, and NMFS, appear to be determined to contest the authority of the Department of the Interior to manage marine resources within national wildlife refuges and national parks.**

The Preferred Alternative would allow commercial fishing within the boundaries of the recently designated Kingman Reef National Wildlife Refuge and the Palmyra National Wildlife Refuge. The marine boundaries of both of these refuges extend to twelve nautical miles, within which commercial fishing would be banned under the provisions of the National Wildlife Refuge Act. The Preferred Alternative would allow commercial fishing in waters seaward of 50 fathoms, significantly encroaching on the marine waters of these refuges. This reduces the buffer areas necessary to protect the birds, turtles, monk seals, and other wildlife species to be protected by the refuges, and would allow fishing in areas where fishing is banned by the U.S. Fish and Wildlife Service.

We assert that the Council must revise its Preferred Alternative and DEIS for Kingman Reef and Palmyra Atoll to be compatible with the marine boundaries and regulations of the national wildlife refuges established there.

2.3 **The CRE FMP exempts the fishery management plans (FMPs) for crustaceans, bottomfish, precious corals, and pelagic fisheries from its regulations, other than those related to no-take Marine Protected Areas. This exemption could allow continuation of fishing practices, such as lobster trap drops, that could damage coral reef habitat.**

See Volume I, Page 140, wherein it is stated "***While the four existing FMPs implemented by the WPRFMC (bottomfish and seamount groundfish, crustaceans, pelagics and precious corals) are exempt from the regulations outlined in the CRE FMP and will observe the management regime of their respective FMPs, the no-take marine protected areas will be in effect for all Council-managed fisheries.***" As noted in our general comments, the Council appears to rely heavily on the CRE FMP Plan Team to address coral reef ecosystem impacts from other FMPs. For this

to be viable, the CRE FMP Plan Team must be adequately funded to allow them to meet as required, and should have more than simply the power to "recommend" changes in other FMPs. There should also be a formal process for reviewing each FMP for its impacts on coral reef habitat and amending each FMP as necessary.

2.4 **Outside of the no-take MPAs, the CRE FMP proposes to manage CRE species by General or Special permits based on the status of species as Currently Harvested Coral Reef Taxa or Potentially Harvested Coral Reef Taxa, for which overfishing limits and reference points will be established based on the coral reef ecosystem as a whole.. We note that this management measure is very primitive at this stage, with little of the required information in place to implement it.**

It is assumed that because species appear on current catch reports that they are "relatively well understood," and only an easily attained General Permit would be required. We do not believe that the ecosystem impacts of removal of many of the Currently Harvested Coral Reef Taxa are well enough understood to justify this approach. For example, gray reef sharks and several species of herbivores are Currently Harvested Coral Reef taxa whose removal could have significant ecosystem impacts. The same is true for removal of jacks, which are managed under the Bottomfish FMP and thereby exempted from the CRE FMP permit requirements.

On Page 129, Volume I, the CRE FMP recognizes that ecosystem overfishing occurs when fishing pressure causes changes to the species composition in a multispecies setting, often resulting in changes in ecosystem function. On Page 131, of the same volume, the CRE FMP proposes that prevention of Ecosystem Overfishing be achieved by monitoring changes in species abundance/composition using "the best available data." This approach would not be sufficiently precautionary, since it would wait until after a change in composition had occurred before taking any action.

2.5 **The criteria for denying a General Permit do not appear to include any considerations related to potential overfishing or damage to coral reef habitat. There should be provision for denying a General Permit on such grounds.**

2.6 **The CRE FMP states that overfishing limits would be set for Currently Harvested Coral Reef Taxa, yet we note the Council rejected the suggested prohibition on the commercial take of Napolean wrasse and Humphead parrotfish, two species which the CRE FMP Plan Team recommended as "protected" species because they are being currently overfished throughout their range. Who sets the overfishing limits, and how?**

2.7 **The CRE FMP proposes that Vessel Monitoring Systems be deferred for action through the Framework Process. We urge that mandatory, 24-hour a day, automated VMS be required for boats transiting the Northwestern Hawaiian**

Islands as part of the initial CRE FMP.

3 CONCLUSION

Thank you for the opportunity to submit our comments on this important document. We repeat that we cannot support the CRE FMP until it is amended to comply fully with the provisions of Executive Orders 13178 and 13196, which established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. **In no way do we consider this CRE FMP to be a substitute for the boundaries, policies, and management measures established in the NWHI by Executive Orders.**

Sincerely,

Dave Raney
Sierra Club National Marine Wildlife and Habitat Committee
Coral Reef Working Group

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Honolulu, HI 96816

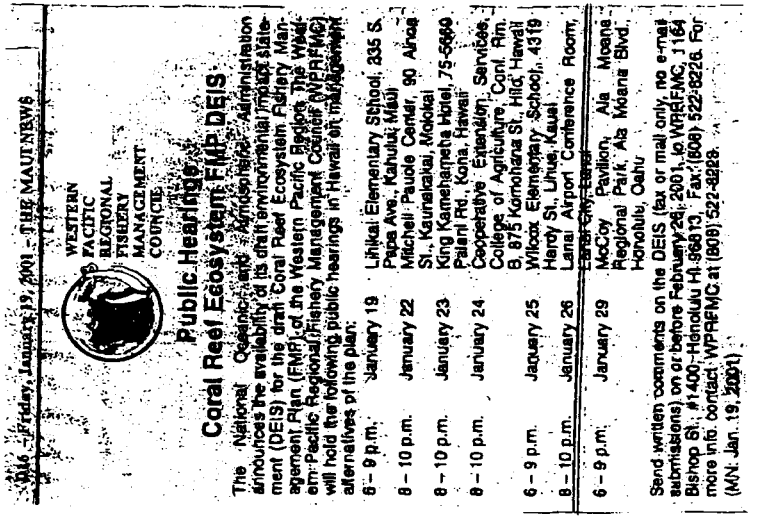
Phone: 808-734-4986
e-mail: d_raney@aloha.net

MEMORANDUM dated 5 January 2001 from Ms Kitty Simonds attached to 3 volumes of the CRE DRAFT FMP/DEIS.

2nd page (backside) notice of Dates, Times, and Locations for Public Hearings on the Coral Reef Ecosystem FMP DEIS.

#3. Kahului, Maui, HI: January 19, 2001, 6 to 9 p.m. Lehi Kai Elementary School, 335 S. Papa Ave., Kahului, HI 96732

**not enough time was given in notifying the public here on Maui of the Public Hearings for the Coral Reef Ecosystem FMP DEIS. I , along with my husband, Isaac, didn't know that a hearing was already scheduled, we learned about it through our daily island newspaper, THE MAUI NEWS, the very same day. It was impossible for us to get there, because we had another obligation scheduled. I have photocopied the actual hearing notice on this page.*



Page - Friday, January 19, 2001 - THE MAUI NEWS

WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL

Public Hearings on Coral Reef Ecosystem FMP DEIS

The National Oceanic and Atmospheric Administration announces the availability of its draft environmental impact statement (DEIS) for the draft Coral Reef Ecosystem Fishery Management Plan (FMP) of the Western Pacific Region. The Western Pacific Regional Fishery Management Council (WPRFMC) will hold the following public hearings in Hawaii on management alternatives of the plan:

6 – 9 p.m.	January 19	Lihkai Elementary School, 335 S. Papa Ave., Kahului, Maui
8 – 10 p.m.	January 22	Mitchell Pauole Center, 90 Ainoa St., Kaunakakai, Molokai
8 – 10 p.m.	January 23	King Kamehameha Hotel, 75-5660 Palani Rd., Kona, Hawaii
8 – 10 p.m.	January 24	Cooperative Extension Services, College of Agriculture, Conf. Rm. B, 875 Komohana St., Hilo, Hawaii
6 – 9 p.m.	January 25	Wilcox Elementary School, 4319 Hardy St., Lihue, Kauai
8 – 10 p.m.	January 26	Lanai Airport Conference Room, Lanai City, Lanai
6 – 9 p.m.	January 29	McCoy Pavilion, Ala Moana Regional Park, Ala Moana Blvd., Honolulu, Oahu

Send written comments on the DEIS (fax or mail only, no e-mail submissions) on or before February 26, 2001, to WPRFMC, 1164 Bishop St., #1400, Honolulu HI 96813, Fax: (808) 522-8226. For more info. contact WPRFMC at (808) 522-8220.
(MN: Jan. 19, 2001)

vol 2 p213 RESPONSE TO PUBLIC COMMENTS

-the Public Scoping Hearing - Honolulu (Plan Team and EHAP Meeting) 17 September 1999.

-the CRE Plan Team (PT) were not in the Council's conference room at the time the Hearing took place. The CRE PT was in another section of the Council's Office and later it was questioned by the EHAP members amongst themselves, why the PT wasn't present for the Hearing.

-the CRE PT is the science body for the coral reef ecosystems and the term best scientific data available became useless the moment this public scoping hearing took place without the PT in the same room.

vol 2 p185 line 9 should have read: The Kingdom of Hawaii ended with the invasion and overthrow of Kalakaua's sister, Queen Lili'uokalani, on January, 1893.

vol 1 p175 Process to Facilitate Interagency Coordination to Assess....

#5 and #9 are of a concern to me in/around the NWHI:

-scientific projects: a proposal to have a North Pacific Acoustical Laboratory project (NPAL) also known as Acoustic Thermometry Oceanic Climate project (ATOC) at Midway is totally ridiculous as well as pure ignorance of the growing population of monk seals at Midway.

-the Hawaiian monk seals are recolonizing Midway after many years of absence when Midway was bustling with military presence.

-ocean co2 sequestration projects should not be allowed at all in/around the NWHI.

-military activities: the NPAL/ATOC project is a joint venture with Naval Research.

-one military activity that should be allowed in the NWHI is the cleaning up and removing of contaminants that was left after the military left those islands/atolls.

vol 2 p107 continued under Reduced Prey Availability 2nd paragraph

-two leading hypotheses to explain the lack of prey at French Frigate Shoals are....

-since the above is a hypotheses, I'll share my assumptions.

-the local population did not reach its carrying capacity during the mid-1980's and they did not deplete their own food supply. Humans did it for them. through the large-scale harvesting quantity of lobster, octopus and various reef fish, that were brought up in the commercial lobster traps, which many were kept as incidentals.

-natural prey on prey process: the bait is in the trap, the lobster goes in for the bait, the octopus goes in for the lobster, the eels goes in for the octopus, the reef fish and crabs enter the trap as the clean-up crew who scavenge for scraps. This is a natural prey on prey process.

-the numbers do not lie. The lobster fishery was allowed to be harvested at a gung-ho rate in the 80's.

-octopus retained as incidental catch were in the thousands of pounds range per vessel per trip in the 80's.

-the replenishment rate could not catch up with the commercial take of both lobsters and the incidental take of octopus.

-in the 90's the lobster levels were in trouble;

-in the 90's the incidental take of octopus had been drastically reduced to about one hundred octopus (not pounds) were taken for the whole fleet.

vol 1 p324 Lobster Trap

-there is no mesh size listed; only dimensions of the trap.

vol 1 p308 "Moi moi" net

-should be spelled "moe moe" instead which means to lay in wait; ambush.

vol p298 definitions of gear

-Gillnet: moe moe net is not listed and under the above description it does not list the various other names for the same gear. Pai pai is listed but not moe moe.

-gillnets are not a selective type of gear; it catches everything and anything with or without close monitoring. True passive destructive gear.

vol p298
-the Pacific Islanders throw/cast net was rectangular.
-cast net and throw net is the same thing.

vol 1 p165 Fishing Gear and Methods

-ban SCUBA with spear at all times.

vol 1 p125 last paragraph

-I am very surprised that the Council would without hesitation give the Hawaiian people 20% of the commercial value of the resource, etc.

-the Native Panel could not even get the 20% of the Pelagics permits and the 20% quota from the Crustacean fisheries.

-the bottomfish fishery has a "use it or lose it" clause. The Pelagics have 20 or so permits sitting in possession with no vessel.

As for a term used that the indigenous people were using inefficient gear which afforded them long term sustainability is an insult. The indigenous people of the Hawaii and perhaps other Pacific Islanders made use of materials that were available to them and took only what was needed. True sustainability was for nourishment for generations to come and not to maintain a sizeable bank account to be in jeopardy when fisheries are in trouble.

Commercial fishing is like any other business. It has its RISKS. As the saying goes, a boat is like a hole in the water.

VMS should be mandated whether through funding or thrbugh the owner.

The US Coast Guard Enforcement Division is severely under funded. They have the largest piece of the Pacific Ocean to malama (take care) and inadequate funding are preventing them to do their work to the best of their ability and capability.

Mahalo, Tammy A. Harp

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I will not believe that the lobster/crustacean component in the monk seal diet is so small of a percentage.