



January 28, 2014

John D. Rockefeller IV
United States Committee on Commerce
Science and Transportation
SD-512 Dirksen Senate Office Bldg
Washington, DC 20510-6125

Dear Chairman Rockefeller:

Thank you for the invitation to testify on the Magnuson-Stevens Act (MSA) reauthorization before the Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard.

Please find attached my testimony which speaks to the progress made and ongoing challenges in maintaining and managing sustainable fisheries in the Western Pacific Region. I have also provided written testimony in addition to my oral testimony. This provides greater detail on the topics included in my oral testimony and other issues facing the Western Pacific Fishery Management Council in its ecosystem approach to fishery management.

Thank you again for this opportunity to testify before the Subcommittee

Sincerely



Arnold I. Palacios
Council Chair



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

**Statement of Arnold Palacios, Chair,
Western Pacific Regional Fishery Management Council, before the
Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard
January 30, 2014**

Chair and Members of the Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard, on behalf of the Western Pacific Regional Fishery Management Council (Council), thank you for the opportunity to provide this written testimony of the Council's perspectives of the reauthorization of the Magnuson-Stevens Act (MSA).

The MSA is a comprehensive statute that ensures marine resource conservation and strives to promote the Nation's fisheries. In past reauthorizations, and no doubt during this process, Congress will hear that there are "magical" solutions to make fisheries sustainable. However, the Councils have heard it all before in different guises, marine protected areas (MPAs), catch limits, catch shares, etc.; the next "panacea" will be no different than the ones that went before; they may work for some but not for others. Further, our record on fishery conservation, management and sustainability speaks for itself (see Attachments 1 and 2).

The core themed message the Council would like to convey through this testimony is one of loss:

- Loss of fisheries;
- Loss of fishing grounds;
- Loss of culture;
- Loss of perspective; and
- Loss of opportunity.

The Council believes that the solutions to these issues are as follows:

- Restoration of the primacy of the MSA for managing marine fisheries resources: any measures under other statutes that may restrict fishing (Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), National Marine Sanctuaries Act (NMSA), Migratory Bird Treaty Act (MBTA), Antiquities Act, Executive Orders, etc., should be implemented under the authority of the MSA and in accordance with processes and time schedules required under the MSA.
- Improved funding for the Councils and better allocation prioritization of resources by the National Marine Fisheries Service (NMFS) and the US Fish and Wildlife Service (USFWS) to obtain data on MSA regulated fisheries and on protected species and habitats associated with these fisheries.
- Support for US fisheries in international fishery conventions and the recognition that any restrictive measures to be implemented for US fisheries, such as catch or fishing effort limits, must not disadvantage US fisheries to the benefit of less regulated foreign fisheries.

- Recognition that some fishery resources are grossly underutilized and not contributing to optimum yield (OY) as specified in the MSA, and that any management measures implemented through the MSA or other statutes should not preclude the utilization of these resources at a future date.
- Congressional directive to NMFS to make 60 percent of the entire Saltonstall-Kennedy Act funds available to the Councils and fishing industries to be employed for fishery research and development.

A. Loss of Fisheries

Fishing is primarily seen as a business, whether commercial for income or pursued for pleasure. It is a major employer and generator of revenue. However, our nation has become so obsessed with overfishing and endangered species conservation that we are sleepwalking while US fisheries are lost, one by one. When the MSA was last reauthorized the United States imported 80 percent of its seafood; now we import 94 percent. This has serious implications for the nation's food security and national security as we become increasingly reliant on imported seafood.

Fisheries play an important role in the food supply and provide a source of protein for millions of people worldwide. A loss of fisheries is a loss of this protein and has to be balanced by production from other sources, particularly land-based proteins. The eminent fishery biologist Professor Ray Hilborn has noted that, if lost fish production is compensated by cutting the rainforest to grow crops or cattle, the total biodiversity consequences will be surely negative.

Nevertheless, the United States continues to bury domestic fisheries under piles of regulations stemming not from not only the MSA, but also the ESA, MMPA, NEPA, NMSA, Antiquities Act, MBTA, Executive Orders, and international tuna convention conservation and management measures (CMMs). The list goes on and on. Further, the Department of Defense has a significant presence in the Western Pacific, with a further major military build-up expected for the Mariana Islands. Activities by the military are already constraining fisheries with further proposed closures of waters used for fishing and navigation.

The bureaucratic burden can be measured by the NEPA documentation for our Pelagic Fisheries Ecosystem Plan (FEP). Where a few pages of commonsense text sufficed in the 1990s, we now draft hefty tomes to accompany even the smallest fishery management measure. Of course it is important to document what we are doing and why, but review and approval of plans and amendments are now unnecessarily tedious, taking two to three years to be approved, so management measures may be obsolete by the time they are implemented.

The 2006 reauthorization required NMFS, in consultation with the fishery management councils, to develop within 12 months of enactment new environmental review procedures. The new procedure would have to integrate MSA and NEPA in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public. In 2013, NMFS issued a policy directive indicating that the processes outlined therein meet the MSA requirement to improve the current process. The Council, however, does not agree that the process envisioned in the directive meets the intent of Congress in the 2006 reauthorization, nor will it reduce paperwork and provide for timely,

concise analysis. What the directive does do, however, is put the burden on the councils to prepare NEPA documents prior to taking final action.

As the public participation process and level of environmental review are largely duplicative between the MSA and NEPA, the Council would be in support of MSA reauthorization language that clearly states that fishery management plans and amendments prepared in accordance with MSA shall be considered in compliance with NEPA.

The Western Pacific is a paradox: the largest of the eight fishery management council areas, encompassing 1.5 million square nautical miles with the total land area of 3,398 square nautical miles (equivalent to about the size Rhode Island) comprising only about 0.2% of the ocean area and containing less than two million people, over half of them living on the island of Oahu (see Attachment 3).

Despite our size we punch above our weight. The Hawaii longline fishery ranks the port of Honolulu consistently within the top 10 fishing ports and often within the top five. It supplies half of the nation's swordfish and 80 percent of the bigeye tuna landed in the United States. Hawaii also consistently ranks within the top 10 states with respect to marine recreational fishery landings and is number one in recreational per-capita landings.

The late Senator Inouye used to emphasize that the islands and islanders are different from the rest of the U.S. His main point was "we don't want more than anyone else we just want different!" Our economies are simple: tourism, military, agriculture and fish. This is why there is specific language in the MSA which states that "*Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth*" (MSA Section 2: 104-297).

We've lost not only a pioneering longline fishery in the Marianas Islands but also the Northwestern Hawaiian Islands lobster fishery and the Northwestern Hawaiian Islands bottomfish fishery. The American Samoa longline fishery, the second largest fishery under Council jurisdiction is on the brink of collapse, due to competition from subsidized foreign fisheries such as China catching the same fish and driving down prices while operational costs for the domestic fleet continue to increase. We are also deeply concerned about the Hawaii longline fishery as its bigeye tuna catch has been reduced by a third due to quota management by an international tuna convention.

The Hawaii longline fishery, along with the American Samoa fishery, is an internationally recognized, iconic fishery for environmentally responsible pelagic longline fishing. Both fisheries have scored greater than 90 percent when evaluated against the United Nations Code of Conduct for Responsible Fisheries, and the American Samoa longline fishery is an important component of the Territory's small and fragile economy.

Many of the measures adopted for these longline fisheries—such as mandatory logbooks, observers, vessel monitoring systems, and measures to reduce seabird, turtles and marine mammal interactions—were landmark measures adopted by the United States in the Pacific and have since been adopted by other fisheries and by the Pacific tuna regional fishery management organizations (RFMOs) (see Attachment 2). However, effective and prudent management

sometimes counts for very little within the highly competitive and politicized international fishery management arena. The American Samoa longline fishery and those of neighboring Pacific Island countries have been driven into bankruptcy by heavily subsidized foreign longline fleets, particularly those from China.

The MSA contains measures that aim to level the playing field for US vessels forced to minimize fish and protected species bycatch. But there is nothing to address the undercutting of US fishing vessels by extensive subsidies to foreign fishing fleets for fishery development, fuel, access fees, low-interest loans, tax breaks and reduced import tariffs.

The MSA must address this if the Nation wants to continue eating fish caught by US vessels in accordance with the MSA and its 10 National Standards. To further expand on this point two examples are presented below that highlight the need to support domestic fisheries and the marginalization of MSA through competing protected species statutes.

1. International Tuna Management: Level the Playing Field and Support Domestic Fisheries on International Level

In the Western Pacific Region, tuna is the largest and most valuable fishery resource. Tuna is considered a highly migratory species (HMS) and is managed internationally within the Pacific by two RFMOs: the Western Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC). The United States is a contracting party to both RFMOs. Tuna and other HMS were brought under MSA management in the early 1990s. Since that time the Council has been managing Western Pacific Region tuna fisheries under its Pelagics Fisheries Management Plan (FMP). This was later converted into a FEP, along with the other Council FMPs. As a result of the Pelagics FEP management regime, the Hawaii and American Samoa longline fisheries are among the best managed and most comprehensively monitored longline fisheries in the world.

With HMS stocks, however, sound domestic management does not always lead to success. For example, the American Samoa longline fishery, which lands albacore tuna for processing at local canneries, has largely collapsed due to low catch rates, high operating costs and low ex-vessel prices. The fishery targets South Pacific albacore, which ranges from Australia in the West to Chile in the East. In recent years, Chinese vessels have been catching South Pacific albacore at record levels. These vessels have been operating in the high seas and the exclusive economic zones (EEZs) of South Pacific countries.

If there was a level playing field between these vessels and US vessels operating out of American Samoa, then the fishery would likely not have collapsed—unfortunately there is no parity. Chinese vessels are receiving substantial subsidies for fuel, labor and other expenses, allowing them to operate at much lower costs. When albacore prices drop due to global market forces, US vessels cannot compete with subsidized foreign fleets. This is contributing to the loss of US fisheries. The reauthorized MSA needs to provide the Secretary of Commerce with the ability to level the playing field, either through equivalent subsidies to US fleets, the prevention of foreign subsidies through market access restrictions and/or trade sanctions.

Another critical issue with respect to the lack of parity between US fisheries and foreign fisheries are the stark differences in the level of monitoring, domestic implementation of RFMO measures and enforcement. This is critically important because the US is a good citizen; it diligently monitors its vessels both within the EEZ and high seas, undertakes a public rulemaking process to implement conservation and management measures in regulations and then enforces the regulations and prosecutes violations.

The same cannot be said for most other members of the tuna RFMOs. What is particularly alarming is that the United States agrees on RFMO conservation and management measures that will have substantial economic impacts when applied to US fisheries, while recognizing that other RFMO member fisheries will not be affected due to a lack of compliance monitoring and enforcement.

For example additional cuts for the Hawaii longline fishery were accepted by the United States in December 2013 at the 10th Regular Session of the WCPFC. Due to an already reduced quota for bigeye tuna, the Hawaii longline fishery faces closure every calendar year, and in past years (2009 and 2010) was closed from catching bigeye tuna in the Western and Central Pacific Ocean (WCPO). No other longline fleet in the Commission was subject to a similar closure.

The United States strictly enforced measures to the detriment of its fleet (amounting to tens of millions of dollars of lost revenue) while other countries are not subject to similar obligations with respect to the same targeted HMS stocks and flood US markets with unrestricted catch.

The MSA should contain language that would prevent further reduction of US fisheries catch and effort limits if other countries cannot demonstrate compliance with existing international conservation and management measures.

At around 1.5 million square miles, the Western Pacific Region represents the largest portion of the US EEZ. The US Coast Guard District 14 is responsible for conducting fisheries enforcement monitoring in this vast zone; however, available assets are only stationed in Hawaii and Guam. American Samoa, which is centrally located within South Pacific tuna fishing grounds and the only US Territory in the Southern Hemisphere (the US EEZ waters around Baker and Jarvis Islands are also in the Southern Hemisphere), does not have a US Coast Guard Station with deployable patrol assets. American Samoa's post-harvest facilities include the largest US tuna cannery on US soil, and as such is a major fishery hub in the Western and Central Pacific.

As combating illegal, unreported and unregulated (IUU) fishing is a major issue within international fisheries management, the US Coast Guard should homeport patrol vessels or aircraft that could help monitor the US EEZ in the region. The last successfully USCG detected and prosecuted foreign fishing vessel incursion was in 2009. Patrol assets based in American Samoa would also serve an important search and rescue mission, whereas under current conditions, New Zealand assumes first responder responsibilities. American Samoa is home port to about 20 US longline vessels, a dozen US purse seiners and numerous other foreign fishing vessels. On average approximately 700 foreign fishing vessels make port calls in Pago Pago in any given year.

For the past several years, the US Coast Guard has conducted a foreign EEZ shiprider program, where US Coast Guard assets are deployed in foreign EEZs with foreign shipriders to conduct fisheries enforcement of national laws of the host shiprider. While this program likely supports a broader international mission within the region, time spent in the EEZ of other countries takes away from patrols that could be done in the US EEZ including American Samoa and the Pacific Remote Island Areas of Jarvis, Howland and Baker Islands, and Palmyra. The Council urges Congress to direct the USCG to prioritize monitoring of the US EEZ over that of foreign EEZs.

2. Protected Species Authorities: Endangered Species Act and Marine Mammal Protection Act Driving MSA Management

Federal fishery regulations for marine mammal conservation and management may be promulgated under MMPA authority independent of the fishery management council process. Circumvention of the Council process results in inconsistencies and conflicts with FMPs and the MSA National Standards, as well as a loss in public input and transparency.

For example, the recently implemented MMPA False Killer Whale Take Reduction Plan resulted in duplication of protected species workshop requirements in both MMPA and MSA regulations; the existing longline exclusion zone created under the MSA was modified for consistency with the new MMPA regulation without concurrence from the Council. Public input and the transparency of the process were also denied when the Council process was bypassed.

Regulation of federal fisheries outside of the MSA, such as through MMPA, ESA and MBTA, continue to threaten the livelihood of US fishermen and place domestic fisheries at a further disadvantage on the international playing field.

Congress should consider requiring that all fisheries-related marine mammal and other protected species conservation and management measures be promulgated through the MSA process, to ensure such measures are consistent with FMPs and the National Standards.

Limited scientific information on species protected under the ESA and MMPA lead to further unnecessary restrictions on US fisheries. Assessment of fishery impacts on ESA-listed sea turtle populations are dependent on nesting beach trends due to the lack of abundance estimates for the entire population, creating a situation similar to assessing human health conditions by conducting a survey at a maternity ward. New species listings under the ESA have been proposed despite limited data about population trends or vulnerability to threats, as is the case with the proposal to list 82 species of corals. Infrequent stock assessment surveys for marine mammals are producing overly conservative population estimates, leading to an extremely low threshold of allowable take for US fisheries under the MMPA.

In the entire Western Pacific only two MMPA dedicated marine mammal surveys have been conducted around the Main Hawaiian Islands since 2002. The consequence of these data limitations are precautionary approaches to protecting species under the ESA and MMPA while having little true conservation benefits to the species. For example, under MMPA promulgated regulations, two observed interactions with false killer whales within the Hawaii longline fishery in any given year results in the closure of the entire southern portion of the US EEZ around the

Main Hawaiian Islands (110,000 square nautical miles, or 42% of the US EEZ around the MHI). This is indicative of the draconian regulations in the absence of adequate data.

These data limitations for protected species result from questionable allocation of funding resources by NMFS and the USFWS to fulfill data needs to properly manage species under the ESA and MMPA. Yet, the resulting burden of potentially unnecessary regulations or closures is shouldered by US fishermen.

The MSA should direct NMFS and the USFWS to better prioritize allocation of resources to obtain data on protected species and habitats associated with MSA regulated fisheries.

B. Loss of Fishing Grounds

About 90 percent of the MPA areas that have been established in the USA are found in the Western Pacific (see Attachment 4), an unfair skew by any definition. This is also probably the reason that since 2009, NOAA inventories MPAs by numbers per State/Territory rather than spatial extent of MPAs per State/Territory.

Our nation seems to care more about turning Pacific Island coral reefs into giant aquaria, finding spurious reasons to enclose more of our islands in 50-mile zones that ban most fishing activity while trumpeting these places as conservation icons. The banning of fishing in the Northwestern Hawaiian Islands has not made fish more abundant in the Main Hawaiian Islands as promised by the proponents of MPAs.

In the same vein, the closure of fishing in the Northwestern Hawaiian Islands was also supposed to protect monk seals. Ironically, they are crashing to extinction in the Northwestern Hawaiian Islands, where there is no fishing, but thriving in the Main Hawaiian Islands, where fishing abounds. In short, three quarters of the State of Hawaii has been closed to fishing for little to no net gain to the residents of the State. At the same time visitors are not lining up in droves to visit the Northwestern Hawaiian Islands Marine National Monument (MNM), the Marianas Trench MNM in Guam and Commonwealth of the Northern Mariana Islands (CNMI), the Rose Atoll MNM in American Samoa or the Pacific Remote Island Area MNM. Nevertheless, they were sold to the State of Hawaii and US Territories by the Federal government as money-making initiatives that would bring in millions of dollars.

Further, closing fishing grounds means fishermen are subject to greater expense and may have to take greater risks to go fishing. The National Institute for Occupational Safety and Health documented a correlation between increases in fishermen drowning in Guam with the increasing coastal fishery closures (<http://www.wpcouncil.org/wp-content/uploads/2013/02/Guam-MPA-drowning.pdf>). Do fishermen have to accept a greater risk of going bankrupt or dying to pursue their livelihoods?

Ironically, most of the areas that are now Marine National Monuments were already "protected" because of their remoteness as well as through previous existing conservation designations. Now the fishing opportunities they offered are gone, replaced with an army of bureaucrats managing an archipelago of paper parks, where fishers are locked out potentially forever!

The MSA needs to be strengthened such that its authority to manage fishery resources, including the access and rights to operate in EEZ waters by commercial and non-commercial fishing vessels, cannot be superseded by other Federal statutes, such as ESA or MMPA. The following section will provide greater detail on this problem and its effect on OY.

1. Ecosystem-Based Fishery Management and Optimum Yield Hampered by Fishery Closures

MSA Section 406 enhances fishery conservation and management by incorporating ecosystem considerations when managing fisheries. The NMFS Ecosystem Principles Panel in 1999 recommended the development of FEPs. The Council was the first to implement this type of plan in 2004 with its Coral Reef Ecosystem FMP and again in 2009 when it converted its FMPs to archipelagic-based FEPs.

These archipelagic-based comprehensive plans include provisions to consider ecosystem function, integrity, ecological linkages and effects of environmental forcing on managed marine resources. MPAs, MNMs, sanctuaries and "zones where fishing is not permitted" (an MSA term) are just one ecosystem-based management tool. No-fishing zones already exist as a provision in MSA Section 303(b)(2)(A), and fishery closures from other statutes like the Antiquities Act, NMSA and Presidential Executive Orders are in conflict with MSA provisions.

These conflicts stem from closures typically not being time bound and not evaluated or assessed for performance of the closure. MSA provides for a stricter evaluation of the performance of a closure and should be the primary statute that establishes fisheries closed areas regardless of biological, stock-related or diversity conservation purposes.

Monuments and protected areas are also hampering the achievement of OY (MSA Section 301(a)(1)). One of the largest MPAs in the world (Papahānaumokuākea MNM in the Northwestern Hawaiian Islands) shuts itself from commercial bottomfish fishing even though it was deemed sustainable. The loss of these bottomfish fishing grounds does not allow the United States to maximize the economic value of fisheries in the region, thus it will never be able to reach its OY.

This results in a significant economic loss for both the bottomfish industry and the entire State of Hawaii, plus increased imports and a higher seafood trade deficit. Planned closures under the Council process ensure that the economic impacts of these closures are evaluated as dictated by MSA Section 303(b)(2)(C).

Provisions should be added to the MSA to ensure that any marine areas in the United States that are closed to fishing are developed under the MSA.

C. Loss of Culture

The Western Pacific Region is home to many native island people who have fishing as part of their cultural and traditional heritage. These cultures and traditions date back more than 3,000 years, and, as with traditional non-instrumental Pacific Ocean navigation, what is preserved and practiced today is but a fraction of the huge knowledge base amassed from direct experience and empirical observation.

Through its experience of trying to rescue this traditional knowledge, the Council has found that many of the practitioners in Hawaii, American Samoa, Guam and the CNMI are elders who live on the margins of society, functioning without computers, email or even bank accounts. What happens when native cultures disintegrate is well understood. The shelves of college libraries are groaning with the studies of people in the United States who have lost their culture and the social problems this brings in the creation of welfare dependency, spousal/child abuse, alcoholism and substance abuse.

When these cultures are lost, their knowledge of the fisheries is also lost and it's very difficult and sometimes impossible to bring them back. The loss of culture causes a break in the chain of skills and information that passed between generations, resulting in traditions that are gone forever or that must be revived using historical narratives, illustrations and guesswork.

The MSA needs to be strengthened to address the loss of traditional fishing and fisheries in the United States so that the knowledge and practices of indigenous cultures are not lost or destined for museums. Further, Congress should direct NOAA to provide funding to support existing MSA authorities, such as the Community Development Program and the Community Demonstration Project Program, and to recognize and add additional definitions such as customary exchange and subsistence fishing to the MSA.

1. The Need for Culturally Appropriate Definitions

In some parts of the United States, fish is culture. In the Pacific Islands, modernization and rigid Western forms of fisheries management have eroded cultural connections held fast by fishing; connections that revolve around providing food to family, bringing communities together and passing on traditional practices to future generations.

An important aspect of fishing in the US Pacific Islands is the concept of *generalized reciprocity*. Fish are provided to others with no expectation of immediate specific or equivalent return, but rather with an understanding that at some point in the future the needs of the fisherman will be considered by the receiver and/or community in general.

To this end, the Council has recently worked to incorporate this concept and its related issues into its management practices by the defining and implementing of "customary exchange" provisions. In partnership with fishermen and within its advisory body and committee process, the Council has provided the following definition for customary exchange:

"The non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons, and which may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, food, or fuel, that may be necessary to participate in fisheries in the western Pacific."

Congress should amend MSA section 3 to support the implementation of this nationally important concept, describe customary exchange, and provide for its regional adoption based on local needs and practices.

Along those same lines, Pacific Islanders also engage in subsistence fishing, where fishing is conducted to provide food for the family and community. This is an important part of the culture, social cohesiveness and food supply for the people. The Council has already proposed the following definition for subsistence fishing:

"Fishing undertaken by members of a fishing community in waters customarily fished by that community in which fish harvested are used for the purposes of direct consumption or distribution in the community through sharing in ways that contribute to food security and cultural sustainability of the fishing community."

The MSA should accommodate regional practices and norms for regional fishery sectors.

2. Provide for Cultural Conservation through the Western Pacific Sustainable Fisheries Fund

Section 204(e)(7) of the MSA establishes the Western Pacific Sustainable Fisheries Fund (SFF), which since 2010 has received funds from illegal foreign fishing fines and penalties to support projects in the Western Pacific Region. Further, the SFF may also receive funds from private donors such as philanthropic institutions. These funds have been used by the Council to provide for the development of fisheries and the preservation of cultural fishing traditions.

NMFS has determined that the current language of Section 204(e)(7) does not allow earmarking of donations to particular projects. The lack of earmarks may inhibit funding donations from philanthropic institutions unsure how their funds would be used and thus impede the Council's ability to stop the loss of culture and the loss of fishing in the region.

Congress should amend Section 204(4)(7) to clearly allow donors to earmark funding for a particular Marine Conservation Plan project when contributions are provided to the SFF.

3. Make Minor Changes to the Marine Conservation Plans

Section 204(e) lists several conservation and management objectives to be included in authorized Marine Conservation Plans. Included in the list in paragraph (iv) are grants to the University of Hawaii's Pacific Island Network. The Pacific Islands Network has ceased to function, so it no longer needs to be included in this section.

Minor changes to the MSA Section 204(e) should be made to remove reference to this Network.

D. Loss of Perspective

All too often in the evolution of MSA, the focus apparently has been on how to further restrict fishing. An obsession with overfishing has led ingenious avenues of litigation over federally managed fisheries. This forces Councils to manage all stocks at limits well below the

maximum sustainable yield (MSY). New complex rules have been designed about peer review, fishery rebuilding plans, essential fish habitat, habitats of particular concern and ecosystem component species; all of which hinder the ability of the Councils to maximize the fisheries and their resources for the betterment of the Nation.

In the Western Pacific, politicians and non-governmental organizations are striving to declare a shark sanctuary in Micronesia, regardless of whether such an initiative is rationale or has popular support or not. However, the entire US EEZ in the Western Pacific is a giant shark sanctuary. There are no dedicated shark fisheries that land sharks on an industrial scale anywhere in the region. The fishery that catches the largest volume of sharks, the Hawaii longline fishery, lets most of them go, and they are released alive.

Nevertheless, this shark sanctuary initiative has led to state and territorial laws banning the possession of shark fins, in direct conflict with the MSA, which contains provisions to safeguard sharks by requiring landings with fins attached. Another fishery opportunity is thus lost for our region. This loss is further compounded as our fisheries have often been the leader in developing fishery mitigation techniques, and a fishery may be able to provide the solution for sustainable shark fisheries. This solution would almost certainly be adopted by, or exported to, other nations, as happened with our approaches to bycatch minimization. Moreover, in the Mariana Archipelago, fishermen have been complaining for decades about fishery losses due to shark depredation.

As noted above, the MSA needs to be strengthened such that its authority to manage marine resources cannot be superseded by any other state or territorial statute that is in conflict with the MSA. A primary objective of the MSA is to achieve OY, with all other objectives subsidiary to this goal. The MSA was structured to provide for regional flexibility, which has been largely lost in its implementation. Three examples of loss of flexibility within the MSA are explained below.

1. Annual Catch Limits Flexibility with Respect to Data Poor Stocks

a. Data-Poor Fisheries

The Western Pacific Region has more than 1,000 insular management unit species. The fisheries that harvest these species are small-scale with multiple gears and multiple landing sites. Scarce biological and demographic information limit conducting stock assessments to determine the status of the species. Without stock assessments for majority of these species, overfishing limits cannot be determined and thus annual catch limits (ACLs) are based on catch-only methods, which are also data poor. Because of the strict mandate for ACLs in the MSA, the Council is forced to comply and develop ACLs that may not meet the intent of the MSA.

ACLs in the Western Pacific region are based on the 75th percentile of catch time series. Exceeding an ACL in any given year, therefore, is unrelated to stock status and does not mean that a stock is being overexploited. ACLs should not be established under such circumstances unless compelling meta-data indicates stock depletion (e.g., traditional and local ecological knowledge, information on changes to habitat, etc.). Alternative methods that do not require reference points should be explored and allowed to be used. The complexity of the small-scale

insular fisheries does not conform to the reference-point based status determination currently being enforced.

More flexibility should be given in the situation where data-poor stocks exist. National Standard 1 is too stringent given the data-limited nature of the Western Pacific fisheries. The Council concurs with the December 18, 2013, draft House Bill regarding defining "data poor stocks" and application to ACLs.

The MSA should distinguish between fisheries that are depleted from as a result of fishing and those that are depleted as a result of factors other than fishing.

The MSA should have exemptions from the ACL requirement for data poor stocks and add provisions for a time frame for which reliable fishery information needs to be obtained in order to remove the stock from a data-poor situation.

b. Fishery Data Collection Improvements

The Territory Science Initiative, introduced by Congresswoman Madeleine Bordallo in 2013, is a good first step towards initiating the data improvement process. The intent of this initiative is to support data collection projects and efforts in Guam, American Samoa, the CNMI, the US Virgin Islands and Puerto Rico to increase locally based science, build scientific and monitoring capabilities and enhance fisheries science capacity. In order to continue to address the issues for data-poor stocks, these types of initiatives need to continue on a regular basis. The Saltonstall-Kennedy (SK) Grant Program also provides support to data collection, which is allocation via competitive basis on a national level. The Western Pacific is regionally unique in terms of data needs and requirements. Regionalizing the SK allocation and establishing a competitive process within each region would address the region-specific needs.

The Council concurs with the December 18, 2013, draft House Bill regarding the use of asset forfeiture funds to support improvements in fishery independent data collection.

The MSA should include a territorial data collection program with dedicated funding provided to the Territories to improve the amount and quality of fishery data being used for management.

c. Incentive for Coordinated State-Federal Annual Catch Limits

The biomass of the majority of Western Pacific reef and near-shore fish stocks is within State/Territorial waters. Thus, effective ACLs are contingent upon the State and Territorial governments to collaborate with the Council to establish complementary catch limits across the range of the stock.

An ideal management scenario is exemplified by the Main Hawaiian Islands Deep 7 bottomfish fishery where coordinated management is conducted by the Council, NMFS and the State of Hawaii. Federal and state waters open and close concurrently if/when limits are reached through each agency's rulemaking process. Funding/staff incentives are needed for the State/Territories to develop complementary catch limits within the State/Territorial waters and to

improve monitoring systems and data for more effective implementation of ACLs and better conservation of fish stocks.

MSA amendments to the ACL mandate should consider providing incentives for States and Territories to develop complementary regulations, including educational initiatives and improved fishery management capacity at the local level.

2. Recreational/Non-commercial Fishing

The way the MSA is currently written and implemented constrains the regional flexibility *that was at the heart* of the 1976 Fishery Conservation and Management Act.

For example, under Section 3(37), recreational fishing is defined as “fishing for sport or pleasure.” This narrow definition in practice is applied to almost all fishing that is not considered to be profit-driven. However, in the Pacific Islands, Alaska, and elsewhere, motivations for fishing can differ and overlap across fisheries. Commercial fishing is driven primarily by profit. Most other fishing is underpinned by a diverse spectrum of social and cultural forces.

It is imperative that the MSA explicitly recognize these motivations. The Council has adopted the term “non-commercial” fishing to capture fishing driven by factors other than the profit motive and refers to recreational fishing as *“fishing undertaken for sport and pleasure, in which the fish harvested, in whole or in part, do not enter commerce or enter commerce through sale or barter or trade.”*

This definition, along with the definitions for subsistence fishing and customary exchange, provides the basis for non-commercial fishing in the Western Pacific Region. These definitions are regionally sensitive and allow for the recognition of the various fishing motivations to be addressed appropriately in management decision-making. However, the Council continues to be constrained by the current inflexible definitions in the MSA.

The MSA should be amended to include regionally appropriate definitions for recreational, subsistence and other non-commercial fishing.

3. Mandate that the Cooperative Research Program Funds Regional Council Research Priorities

The Council and its Scientific and Statistical Committee annually review the performance of its fisheries managed through the FEPs. As part of this annual review, research needs are identified and prioritized for transmittal to NMFS as required by Congress.

Given this effort to coordinate research in the region, Congress should consider requiring the NMFS Cooperative Research Program (CRP) to fund and support projects that are identified by the regional Councils. In addition, the CRP should implement regional solicitations for projects and distribution of grant funds to improve equity in the distribution of funds among the regions and better meet regional research needs and priorities.

E. Loss of Opportunity

The great campaigner for civil rights and social justice Malcolm X said, *"The future belongs to those who prepare for it today."*

One of the fundamental reasons Congress drafted the MSA has been lost, namely to encourage fishery development, reduce fishery imports and be a more self-reliant nation. Indeed, one of the main goals of the MSA is "to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that OY determinations promote such development in a non-wasteful manner."

Today, how many of us in the United States have even considered that our fishery resources are under-utilized? Yet our nation continues to import fish from fisheries where it has little to no influence. This Viking-style approach to commerce that conducts careful conservation at home and pillage abroad is unacceptable. We should not be exporting problems offshore to countries that may not have the capacity to effectively manage their share of the global fishery resource.

The United States has agreed to additional US longline bigeye catch limits and limited US purse-seine fishing on the high seas, while other much larger fishing nations with far greater impacts to bigeye tuna remain exempt from these international CMMs. This Council can tell you that fisheries in the US Pacific Islands are free falling, not because of poor management, but because of overly complex management priorities coupled with a lack of mechanisms to maintain participation in an incredibly tough and difficult industry.

F. Conclusion

The United States has some fundamental questions to ask itself: Do we want a US fishing industry? Do we want fish on our dinner tables from American fisheries caught by American fishermen? Or are we about to see more and more fishing vessels up for sale, as our American Samoa longliners are today?

It's time to take a long hard look at the MSA and the burden that it and other statutes impose on our fisheries. Otherwise, the next time hearings are held for MSA re-authorization, the testimonies may well be eulogies on the death of US fisheries.

Attachment 1. In order to meet its mission, the Council relies not only upon the 10 MSA National Standards, but also upon the following seven Guiding Principles:

1. Support quality research and obtain the most complete scientific information available to assess and manage fisheries;
2. Promote an ecosystem approach in fisheries management, including reducing waste in fisheries and minimizing impacts on marine habitat and impacts on protected species;
3. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision making process;
4. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources and foster opportunities for participation;
5. Promote environmentally responsible fishing and the utilization of sustainable fisheries that provide long term economic growth and stability;
6. Promote regional cooperation to manage domestic and international fisheries; and
7. Encourage development of technologies and methods to achieve the most effective level of monitoring control and surveillance and to ensure safety at sea

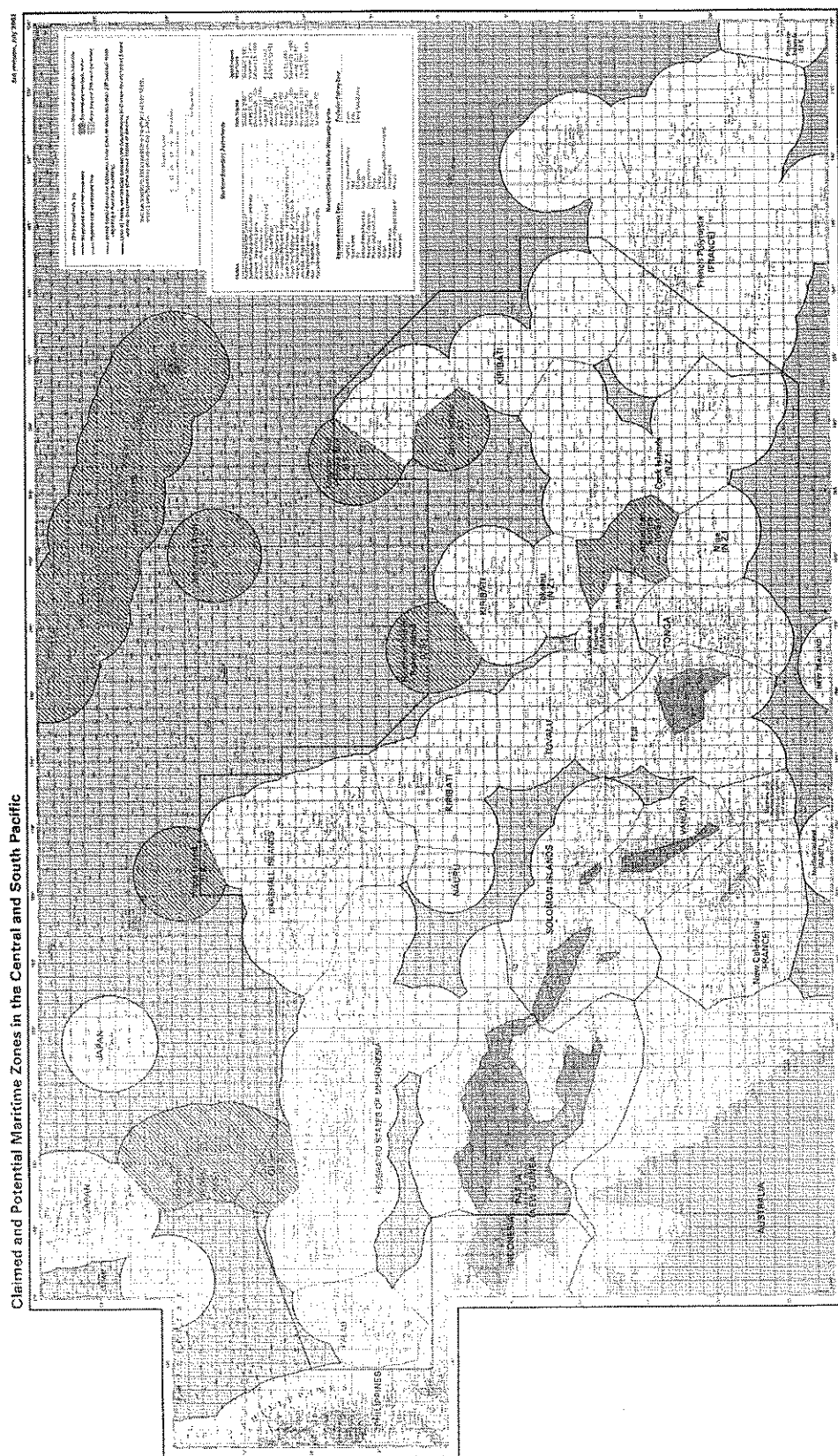
Attachment 2: Chronology of Council Achievements

The Western Pacific Regional Fishery Management Council has led the nation in many areas of fishery management. Here are highlights of some of these “firsts.”

Year Initiated	Measure
Species Interaction Management	
1987	Establish the 50 nm protected species zone in the NWHI to prevent longline fishery and monk seal interactions.
2002	Introduced gear technology to minimize sea bird interactions with pelagic longlines.
2002	Hosted a series of International Fishers Forums to provide longline and other pelagic fishermen an opportunity to learn, exchange ideas, and develop solutions about sea turtle, seabird, marine mammal and shark bycatch.
2004	Required the use of gear technology to minimize sea turtle interactions with pelagic longlines.
2005	Established a Marine Mammal Advisory Committee in advance of the False Killer Whale Take Reduction effort.
Pioneer Fisheries Management Approaches	
1980	Implemented a fishery management plan for deep-water precious corals utilizing harvest quotas a series of area closures for spatial management.
1983	Banned bottom trawling and other potentially destructive and non-selective gear.
1987	Banned drift gillnetting throughout the Region.
1989	Established the Nation’s first vessel-based limited entry program, for the Northwest Hawaiian Islands bottomfish fishery.
1990	Given management responsibility for tuna species.
1991	Introduced fully automated satellite-based vessel monitoring (VMS) in the pelagic longline fishery to support spatial management.
1996	Implemented a risk-based annual harvest limit management regime in the NWHI which limited harvest to only 13% of the exploitable population and 10 percent risk of overfishing.
2001	Implemented the first Ecosystem-based Fishery Management Plan – the Coral Reef Ecosystem Fisheries Management Plan.
2005	Developed a series of ecosystem workshops to integrate the biophysical, social, and policy attributes of fisheries management.
2010	First Council to transition all species-based Fishery Management Plans to place-based archipelagic Fishery Ecosystem Plans.
International Fisheries Management	
1997	Negotiated and implemented, with partners, a new international tuna fishery management organization in the Western and Central Pacific Ocean.
Protected Species Management	
2004	Developed, implemented, and have maintained a comprehensive sea turtle population recovery program.
2004	Convened a series of international conservation workshops for Pacific sea turtles.

	Education, Outreach, Communication
2003	Showcased renowned chefs known for locally-caught regional seafood cuisine.
2006	Developed annual high school summer course on marine science and fisheries management.
2007	Host annual teacher workshops on sustainable fisheries and student symposia on coral reefs and other topical issues in Hawaii and the US Pacific Island territories.
2007	Held an international marine education conference that led to the establishment of an ongoing international marine educators network.
2011	Initiated community workshops and Fishers Forums on coastal and marine spatial planning.
	Fisheries Data
1991	Introduced comprehensive longline fishery logbooks and reporting requirements for pelagic longline vessels.
1991	Deployed full-time observers on pelagic longline vessels.
1998	Hosted the first symposium on Pacific game-fish tournaments.
1998	Used the satellite-based vessel monitoring (VMS) in the NWHI lobster fishery to report daily catches to monitor the annual harvest limit.
2007	Conducted and published a comprehensive study of shark depredation of pelagic longline catches.
	Spatial Management
1980	Implemented a fishery management plan for deep-water precious corals utilizing harvest quotas a series of area closures for spatial management.
	Traditional and Indigenous Consideration in Fisheries Management
2005-ongoing	First Council to use lunar calendars as a means to document traditional and marine resource use in Hawaii and other Pacific Islands
2006	Convened a series of traditional fishery management and marine resource use workshops (Puvalu series).
2007	Fomented a Traditional Knowledge Committee in the National Marine Educators Association.
2012	Coordinated and organized U.S. Pacific Island indigenous communities to be represented at the First Stewards bi-annual climate change symposiums in Washington, DC, which brings together American Indians, Alaskan Natives, and the Hawaiians, American Samoans, Chamorro and Refaluwasch of the US Pacific Islands.
2013	Promoted socio-cultural aspects of non-commercial fishing, such as subsistence fishing and cultural exchange, and implemented them in regulation.

Attachment 3. Claimed and potential maritime zones (EEZs) of Western and Central Pacific Ocean



Attachment 4. Percent of US MPAs by Region. Note this figure was created prior to the creation of the Marianas Trench, Pacific Remote Island Area and Rose Atoll Marine National Monumentss, which increased the Pacific Islands MPA percentage from 78% to 90% of the national total.

