



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

**MINUTES OF THE
189th MEETING OF THE
WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL**

**December 7-9, 2021 Council Plenary
By Web Conference and Host Sites:**

Tedi of Samoa Building Suite 208B, Fagatogo Village, American Samoa

Cliff Pointe, 304 W. O'Brien Drive, Hagatña, Guam

BRI Building Suite 205, Kopa Di Oru St. Garapan, Saipan,
Commonwealth of the Northern Mariana Islands

Approved by Council:

A handwritten signature in blue ink, appearing to read 'Archie Soliai', is written over a horizontal line.

Archie Soliai, Chair

Western Pacific Regional Fishery Management Council

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I. Welcome and Introductions

The following members of the Western Pacific Regional Fishery Management Council were in attendance:

- Taotasi Archie Soliai, chair (American Samoa) and American Samoa Department of Marine and Wildlife Resources (DMWR)
- John Gourley, vice chair (Commonwealth of the Northern Mariana Islands [CNMI])
- Manny Dueñas, vice chair (Guam)
- Will Sword, vice chair (American Samoa)
- Roger Dang, vice chair (Hawai‘i)
- Matthew Ramsey (Hawai‘i)
- Monique Amani (Guam)
- McGrew Rice (CNMI)
- Howard Dunham (American Samoa)
- David Sakoda, Hawai‘i Department of Land and Natural Resources (Hawai‘i DLNR) (designee for Suzanne Case)
- Michael Tenorio, CNMI Department of Lands and Natural Resources (CNMI DLNR) (designee for Anthony Benavente)
- Chelsa Muña-Brecht, Guam Department of Agriculture (DOAG)
- Michael Tosatto, National Marine Fisheries Service (NMFS) Pacific Islands Regional Office (PIRO)
- Brian Peck, U.S. Fish and Wildlife Service (USFWS)
- LCDR Jason Holstead, U.S. Coast Guard (USCG) (designee for Rear Adm. Matthew Sibley, commander for USCG District 14)
- Colin Brinkman, U.S. State Department

Also in attendance were Council Executive Director Kitty M. Simonds; Fred Tucher, Elena Onaga, Kristen Placek and Sarah Sheffield from NOAA General Counsel Pacific Islands (GCPI); Lt. George Nakoa (USCG); and James Lynch of the Scientific and Statistical Committee (SSC).

Soliai opened the 189th council meeting with a prayer.

II. Approval of the 189th Agenda

The 189th meeting agenda was approved by general consent.

III. Approval of the 187th and 188th Meeting Minutes

The 187th and 188th meeting minutes were approved by general consent.

IV. Executive Director's Report

Simonds presented the executive director's report. Simonds reported the Council would consider an in-person meeting in March 2022 unless otherwise indicated. She highlighted several items that the Council will discuss throughout the meeting. The Council's big action is the seabird mitigation item. They look forward to working with NMFS PIRO and the longline industry to implement tori lines in place of blue-dyed bait.

Dave Hogan from the U.S. State Department will speak to the Council regarding cultural take for the honu. Hogan serves as the U.S. negotiator at the Inter-American Tropical Tuna Commission (IATTC) meetings. He is also familiar with the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC).

The staff has been working with NMFS Headquarters and the other councils to develop an environmental justice (EJ) workshop in Hawai'i in February. The Council will hear a follow-up on this at the March meeting.

Simonds reported Council staff is working through the sanctuary designation process for the Papahānaumokuākea Marine National Monument (PMNM). Staff has worked with other agency staff to get questions answered on the parameters of what the Council can and cannot do on their fishing regulations. Council staff understands it must draft the fishing regulations from 50 to 200 miles in the PMNM. Currently, recreational and subsistence fishing is allowed in the monument, but the regulations are complex. The Council and Office of National Marine Sanctuaries (ONMS) staffs will present on this under the Hawai'i section.

The Western and Central Pacific Fisheries Commission (WCPFC) meeting outcomes were a disappointment. The United States did not get an increase in its tuna quota. This has been an ongoing effort for six years. Simonds said that the United States was not able to negotiate this with the other parties of the WCPFC. She said that Council Chair Soliai may also have something to report about that later regarding American Samoa's disappointment.

Simonds said Council staff will report on what happened at the House Hearing on the Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Office of the Inspector General audit during the administration section. *Civil Beat* Honolulu has released a series of articles on the Council. The staff has prepared points for the Council members for later discussion. It disappointed her that *Civil Beat* did not mention the Council's conservation work beginning in the '70s, '80s and '90s. She suggested *Civil Beat* should consider conveying the conservation activities of the Council and fishing industry to the public.

Dueñas said that the word civil means "to get along." He said that he has served on the Council several times and the Advisory Panel (AP) for many years, and he is concerned that the publication is stepping on the boundaries of discrimination. He believes that the Council has

always been at the forefront of conservation. It has taken action on items that would benefit the local community, which is much more than any organization. The Chamorro culture recognizes women as always being correct and in charge, especially ones of age, to be most respected. He questioned why the federal government continuously creates laws to protect the elderly, but people like *Civil Beat* trashes them.

Dueñas said that it disturbed him how *Civil Beat* wrote differently about white and brown people. He said the publication is constantly hammering the Hawaiian people as if it were a repeat of the overthrow of the Queen of Hawai‘i, where the propaganda went to America and said they should take over Hawai‘i. The same thing is happening in *Civil Beat* and it should change its name to something else, since it is not being civil. He recognized that President Bill Clinton apologized to the Native Hawaiians, and even that did nothing to them because they are still the same. Sword said he agrees with Dueñas’s statement on recent *Civil Beat* articles, saying it should reconsider its content since the staff do not live in the islands and do not understand their lifestyle.

Dueñas said that the ban on bottom trawling in the Pacific came not from environmental nongovernmental organizations, but instead from the citizens of these island states who still do not have voting right as citizens.

V. Agency Reports

A. National Marine Fisheries Service

1. Pacific Islands Regional Office

Tosatto presented the PIRO report, focusing on international activities and protected species activities. The final Recovery Plan for the Insular Main Hawaiian Islands (MHI) False Killer Whale (FKW) Distinct Population Segment (DPS) was published using a new framework, with the updated Status Review, Recovery Plan and Recovery Implementation Strategy published at the same time. The USFWS uses this framework and PIRO liked it and used it for this species.

PIRO was scheduled to hold public hearings later in the week on the proposed rule to establish time-area closures at five sites in the State of Hawai‘i for the protection of Hawaiian spinner dolphins. PIRO had previously published a final rule that prohibits swimming with, and approaching Hawaiian spinner dolphins within 50 yards.

PIRO published amendment 9 to the Council’s Pacific Pelagic Fishery Ecosystem Plan (FEP), which modified the requirements and permits for the American Samoa longline limited-entry program. The major change is that the program was modified from a four-tier to a two-tier eligibility requirement system.

The public comment period closed for the Marianas Trench Marine National Monument (MTMNM) Draft Management Plan and PIRO is working to address the public comments in its finalization of the plan. The Marianas Trench Monument Advisory Council (MTMAC) has not been re-established. The membership nominations are under consideration at the level of the Department of the Interior and Commerce with an unclear timeline. Tosatto said it would not be

fruitful to move toward finalizing the management plan until after the MTMAC is reconstituted and begins to meet to consider the public comments received on the draft plan. PIRO will work with the MTMAC to finalize the management plan.

Gourley shared his appreciation with not finalizing the management plan until the MTMAC is reconstituted. He asked for the coral critical habitat designation statutory deadline and a status update.

Tosatto said that the Endangered Species Act (ESA) requires NMFS to designate critical habitat, if determinable, at the time the species is listed under the act. When that does not happen, NMFS proceeds to designate critical habitat on a timely basis. While there is no statutory deadline truly in effect, in this case, NMFS agreed to a schedule with a potential litigant. PIRO is proceeding in a timely way to consider the comments received during the public comment period and working toward finalizing the critical habitat designation. No decision date is certain.

Gourley said the coral critical habitat group was working with the territorial governors on the Coastal Zone Management Act (CZMA) consistency determination. PIRO submitted a negative determination that was rejected by both Guam and the CNMI. NMFS and the territories discussed the federal consistency determination July 28, 2021, during a call of the All Islands Committee (AIC) for the Coral Reef Task Force. At the meeting it was said that NMFS GCPI would send a follow up letter with additional justification maintaining the negative determination. The governors of Guam, American Samoa and the CNMI submitted a Freedom of Information Act (FOIA) request Oct. 4, 2021, asking for NMFS coral critical habitat designation policy guidance. The FOIA request was fulfilled Oct. 19, 2021, with five documents—three from the public website, and two others, a guidance document and a memo. Gourley shared the guidance document and memo via the webinar screen, both of which were heavily redacted. The memo was between Rod Viera, deputy section chief for Protected Resources and Habitat, and Jenny Douglas and Ruth Ann Lowry, NOAA attorney advisors, some of which he understood could be appropriate for redaction as attorney/client privilege. Gourley asked for more federal transparency on the guidance for critical habitat designation and, in general, for regulatory schemes so there could be public accountability. Gourley noted concern for the upcoming critical habitat designation for the green sea turtle.

Onaga said FOIA documents are released unless there are exemptions that apply. The exemption denoted as (b)(5) is the attorney/client privilege exemption under FOIA. She said the requested guidance documents were provided. The documents lay out the coral critical habitat process and the procedures from her understanding as having reviewed the released documents. The redacted documents were specific communications and requests from the client asking GCPI a particular legal question, which is what was exempted.

Gourley said his issue was with the guidance document, not the attorney/client privilege memo document. He thought federal guidance should be publically available. The reason for the FOIA was the lack of discussion given the territories' rejection of NOAA's CZMA determination and GCPI's desire to provide a follow up CZMA determination letter with the same determination as the original. There was the impression that NMFS did not have to follow CZMA.

Tosatto said NMFS is following FOIA and CZMA to the letter of the law. Under CZMA, the agency makes a determination, seeks concurrence in the relevant state and territories, and then with the feedback follows the law. He questioned the theatrics and the focus on only the redacted documents for those presented on screen. He was not in attendance at the AIC meeting but had met with everyone, including the governor of Guam, sharing assurances of NOAA's legal compliance. He considered the relevancy of this Council discussion, but then said NMFS would have to consult when considering fishery management actions in areas that could apply coral critical habitat, so it is relevant. He stated ongoing discussions on available science, the presence or absence of species and how the CZMA process works.

Gourley said that he did not present the other three documents since they are publically available via the NOAA website. He said the NMFS attitude in the AIC meeting triggered the FOIA request.

Tosatto said that, per CZMA, when a State or Territory does not concur, the agency then has a decision to make. The agency is working through that process with the input that it received from the Territories and will follow the CZMA with its response.

Onaga said GCPI provides guidance, and legal recommendations and advice, and does not make determinations on policy or other things. GCPI guidance does not have to be followed by its client. Unless it is providing assistance to the U.S. Department of Justice with litigation, GCPI does not dictate a necessary outcome.

Rice asked where NOAA posted the public notice for the proposed rule to establish time-area closures for the protection of Hawaiian spinner dolphins, noting that he only learned about it in an email from Ramsey that day.

Tosatto said the public notice was provided on all the usual listservs, to previous commenters and industry groups and the usual places. PIRO focused on those individuals it had been hearing from and working with, and relied a little bit on the coconut wireless, including those at the harbor.

Rice said he sent it out broadly to be sure people received it.

Muña-Brecht reiterated Gourley's points regarding the FOIA request. She recounted the AIC meeting and believed there was NMFS legal counsel present. Guam and CNMI's stated nonconcurrence with NMFS's negative determination and provided a letter that outlined the rationale for disagreement with NMFS's determination. She recounted that during the AIC meeting, NMFS said the negative determination was automatic based on guidance from legal counsel and perhaps congressional law, meaning Guam and CNMI concurrence was not needed. Guam and CNMI submitted a FOIA to understand how NMFS's position was supported, but they did not receive that information. The legible internal guidance received suggested that the negative determination is not automatic, different from the AIC conversation.

Tosatto said many federal actions are mandatory and there is a nature of that mandatory action that is automatic but there is also some discretion, and while NMFS must consider critical habitat, NMFS has discretion on how it applies. NMFS is considering the input from Guam and CNMI as it related to the CZMA consistency determination. As NMFS gets closer to decision-

making, it will provide a response to the territories explaining NMFS's status and how the agency is responding in light of the nonconcurrence from the territories.

Muña-Brecht asked what the NMFS discretion would allow for in this case.

Tosatto said that based on the analysis of the needs of the species, the criticality of the habitat, its essential features, what they are, how important they are and what areas of that species' range is critical to its survival, NMFS's discretion lies in making the ESA decision. He added that there is discretion in their determination of essential features and, thereafter, the location of critical habitat.

Dueñas asked how the proposed Hawaiian spinner dolphin time-area closure proposal would affect fishermen and tourists alike. He also asked if NMFS identified funding for a tourism facility that was promised at the time of MTMNM designation. Dueñas shared concern with any future critical habitat designation given military exemptions and a limited surrounding shallow water coralline habitat. He noted that the large monetary costs associated with CZMA and the Coral Reef Initiative have not resulted in protecting the environment. Dueñas described the realities of the military shooting range that affects sea turtle nesting habitat in comparison to more draconian fisheries regulations.

Soliai noted appreciation that NMFS published amendment 9 to the Pelagic FEP, affording more participation in this fishery. He echoed Muña-Brecht's comments on coral critical habitat and concern over the redactions. Soliai understood the attorney/client privilege reasoning and hoped that the discussion could continue productively offline.

2. Pacific Islands Fisheries Science Center

Michael Seki, Pacific Islands Fisheries Science Center (PIFSC) director, provided the PIFSC report and focused the presentation on items not included in his written report. The Inouye Regional Center moved to phase one COVID-19 protocols so most of the staff was still working remotely. Only mission critical in-person activities, such as some small boat surveys and protected species response activities, were occurring.

PIFSC completed shore-based activities such as Kahekili reef fish surveys in collaboration with the State of Hawai'i, spinner dolphin surveys, coral site selection, some instrumentation testing and Hawaiian monk seal islet activities.

The Fisheries Research and Monitoring Division (FRMD) continued efforts to improve the territorial bottomfish assessments with the goal to modernize and validate the process by which data are collected and used. It planned to coordinate with the Western Pacific Fisheries Information Network in the territories. Seki noted presentations later in the agenda from Felipe Carvalho on the American Samoa bottomfish stock assessment data report and workshops and the completed Center of Independent Experts (CIE) review of the shore-based and boat-based expansion methods used to expand creel and effort surveys. FRMD began the transition of the Catchit Logit app to PIFSC. Contracted developers are working with PIFSC staff to integrate commercial receipt data with the Sellit Logit app. PIFSC staff began a potential redesign of the creel survey methodology to ensure that sampling frames, sample sizes and species information will meet the needs of the stock assessment. The Western Pacific Fisheries Information Network

was awarded additional funding and continued the multi-year process of modernizing the creel and commercial landings data collection systems.

Regarding PIFSC Life History Program (LHP) pelagic research activities, Seki noted that basic processes such as growth and reproduction are difficult to estimate for highly migratory species due to regional study limitations. To remedy for striped marlin, blue marlin and swordfish, PIFSC developed and is leading the International Billfish Biological Sampling Program. The plan standardizes the sampling design, sample processing and estimation procedures with international collaborators to provide accurate growth and maturity estimates of billfish across the North Pacific. PIFSC received sampling design guidance from the LHP and Stock Assessment Program (SAP) collaborative research that entailed a simulation study looking at the biases associated with low sample size and nonrepresentative sampling. This methodology is currently in journal review and was adopted by collaborators in Japan and Taiwan, as well as members of the International Science Committee for Tuna and Tuna-Like Species in the North Pacific (ISC) Billfish Working Group. PIFSC staff also developed the cloud-based database to track and collect the specimens with international partners. Seki said that although sampling kits were distributed to observers in October 2021, collections were delayed from the Hawai'i longline fleet due to COVID-19. Project partners include PIRO's observer program, Lynker Technologies, United Fishing Agency and the Hawaii Longline Association (HLA).

In an effort to find northern feeding grounds of bigeye tuna, the LHP worked closely with PIRO's Observer Program who collected and sent 165 samples to collaborators at the Commonwealth Scientific and Industrial Research Organization. PIFSC funded the samples' DNA analysis and sequencing, which is complete. PIFSC awaits Commonwealth Scientific and Industrial Research Organization's publication.

Michael Kinney, PIFSC LHP, completed a study to provide information that the ISC Shark Working Group could use to appropriately define fleet structure with an assessment based on size and sexual composition of the catch. The study reexamined the North Pacific fleets used for previous blue shark assessments by investigating in greater detail the size and sex composition data from observer records and scientific samples.

The PIFSC LHP staff was also involved in a study that tested the underlying assumptions and robustness of estimating abundance using close-skin mark-recapture methods. This emerging methodology was recently applied to Atlantic bluefin tuna and to southern bluefin tuna. PIFSC staff also provided advice on pelagic species tag recapture and shark aging research with international researchers.

Seki provided an overview of the hierarchical cluster analyses used to support the development of territorial fishery management plans (FMPs) and the reevaluation of bottomfish management unit species (BMUS) complexes. Staff analyzed creel interviews for the boat-based operations in American Samoa and boat-based interviews in Guam. The cluster analysis delineated species that experienced similar fishing pressure which facilitates, alongside life history data, the determination of species complex for the FMPs. Seki provided the detailed example of the oblique-banded snapper in Guam, which showcased the additional information provided by this analysis.

PIFSC staff applied the Protected Species Ensemble Random Forest model to the U.S. purse seine fleet interactions with giant manta ray. Since 2020, the purse seine fleet has had 100% observer coverage. The observers provided the details on these interactions. The model performed well with predicting a positive occurrence with individuals recorded as *Mobula birostris*, a potentially problematic species identification due to similar physical appearances of these manta rays when encountered in the fishery. The model predicted higher probabilities of encounter with a set type, on unassociated set types, in the mid-year parameter, the sine of the Julian Day, in sets away from seamounts in areas of higher chlorophyll a concentrations and with shorter set times.

The Hawaiian monk seal 2021 field season ended. It represented the first season completed since the onset of COVID-19. PIFSC staff members completed 57 full monk seal surveys, documented 171 pups born in PMNM and tagged 130 of them. They also tagged 43 yearlings and tagged and retagged older seals encountered in the field that had lost or damaged tags.

The Marine Turtle Research Program staff observed more than 1,000 individual turtles on Tern Island, including 679 females. East Island is still recovering from the 2018 Hurricane Walaka. One loggerhead turtle was documented at French Frigate Shoals.

PIFSC Socioeconomics Program staff published several papers. Minling Pan published a paper in the *North American Journal of Fisheries Management* on the maximum economic yield and nonlinear catchability. Hinling Michelle Chan published on fishing trip cost modeling, which applied the estimated trip cost model to conduct an empirical analysis to evaluate the trip cost impacts of area closures due to reaching the annual bigeye tuna catch limits in the Hawai'i longline fleet. Chan identified five trip types among all Hawai'i deep set longline trips between 2005 and 2018, and estimated their average costs. Although only a small percentage of the trips (2.9%) were affected by the closures, the percent of affected vessels was high (73%). The study concluded that vessel trips taken by the affected vessels during the Western and Central Pacific Ocean (WCPO) closures experienced longer travel distances and fishing days than the vessel trips that fished exclusively in the WCPO, the area where vessels were most likely to fish without the WCPO closures. Vessels that were affected during the Eastern Pacific Ocean closures experienced the shortest travel distances and longest fishing days. The average cost for trips taken by the affected vessels during the WCPO closures was higher than the regular WCPO trips.

PIFSC completed the 2021 MHI bottomfish survey. Seki presented the raw numbers and thanked the partners, the Pacific Islands Fisheries Group (PIFG) and Lynker Technologies. He said it is one of the imminent surveys in the country where PIFSC incorporates advances in technology, the cameras, partnerships with commercial industry and fishers. It is independent of any of the NOAA vessels or scientists, which made it independent of COVID-19 restrictions.

Seki announced Jenny Suter as the new FRMD lead. Suter was previously a project manager with the Pacific States Marine Fisheries Commission (PSMFC) and a data manager for NMFS Southwest Fisheries Science Center. As the regional representative for Highly Migratory Species and Quality Management and Continuous Improvement Professional Specialty Groups, she was an invited external panelists for the Pacific Insular Fisheries Monitoring, Assessment and Planning Summit several years ago.

Rice, aware of DNA research near California, asked if PIFSC was researching the billfish migratory patterns as part of the size and maturity study.

Seki initially said that migratory pattern DNA analysis was not part of the billfish working group's core life history work, but later confirmed with staff that fin clippings were indeed being collected.

Dueñas asked Seki to reinstate the full biosampling program for Guam, instead of the current subset. He noted the oblique-banded snapper cluster analysis that Seki highlighted and said it extended to all the fish in his area. Dueñas mentioned that Jude Martinez, a biosampling technician who graduated with a master's degree, now works for the Navy Marine Section. Martinez discovered that Guam's scribble rabbitfish is capable of eating almost every type of algae. Dueñas is looking at a government program to establish the species in the wild to manage algae. Dueñas is concerned over the overfished and overfishing status and the qualitatively determined annual catch limits (ACLs). He said that the analysis may prove PIFSC right, but the fishing communities feels it is off. Dueñas extended the invite for scientists to discuss fisheries with the communities. He noted the availability of additional marlin tag data from the International Game Fish Association.

Seki said PIFSC wanted community members from Guam and the CNMI to participate in the stock assessment workshops as a way to move forward with the next assessments planned for 2024. He hoped that PIFSC staff could travel soon to listen and get the communities' direct input.

Amani echoed Dueñas's bottomfish comment. Her community has requested a deep-seven model for a while which would be better than the current 13-species model.

Soliai asked for a copy of the BMUS cluster analysis technical memorandum for review in advance of the upcoming workshops. He noted that the workshop held the previous month was good. Given shorter COVID-19 quarantine periods, Soliai shared the desire and value of holding future workshops in person.

Simonds shared that she was pleased with Suter's background and familiarity with Councils, states, data and reporting.

B. NOAA Office of General Counsel Pacific Islands Section

Onaga provided the GCPI report.

Regarding the litigation involving the Plaintiff Steven Hueter against NMFS and the Department of the Interior, the federal defendants have filed a motion to dismiss. The plaintiffs were seeking enforcement of violations of the ESA, National Marine Sanctuaries Act (NMSA) and the Ocean Dumping Act in a private marine area against the federal defendant. Plaintiffs responded Dec. 3, 2021, and the federal defendants response was due Dec. 10, 2021, relating to the motion to dismiss.

Regarding the two 60-day Notices of Intent to Sue, one from the Conservation Council of Hawai‘i and one from the HLA, NMFS continues to engage with periodic reports on the status of the various biological opinions, and the consultations are continuing.

Soliai asked if the Plaintiff Steven Hueter filed any response yet.

Onaga confirmed with Sheffield, GCPI lead on the case, that the plaintiff did file an opposition by the deadline. The defendant response was due Dec. 10, 2021.

C. Enforcement

1. U.S. Coast Guard

Holstead provided the USCG report highlights. The USCG operations for the prior three-month period supported regional stability and maritime security in the region. There were many international fisheries patrols that encountered activities, and they focused on serving as a presence on scene alongside the U.S. purse seine and longline fishing fleets.

Rice asked if the USCG was monitoring the Russian vessels outside the U.S. exclusive economic zone (EEZ) around Guam.

Holstead confirmed that the USCG maintains a good 24/7 maritime awareness.

Muña-Brecht said that the conservation officers within Guam’s law enforcement section have been in training with the USCG to patrol marine protected areas and enforce maritime regulations. There is an interest to formalize the relationship with the USCG into a memorandum of agreement for continued USCG support.

Holstead commended the forward-leaning stance between Guam’s officers and the USCG enforcement officers in Guam.

Dueñas thanked the USCG for providing the Guam Police Harbor Unit with a safety vessel, with perhaps a second one on the way. He said the Guam Fishermen’s Cooperative Association (GFCA) had been collecting used oil from the fishing community for 20 years but recently shut down this program after receiving a notice of violation. Dueñas explained the oil was instead coming from the marina wash down area and not from activities related to this used oil program. Dueñas shared concern with the fishing activities adjacent to the Pacific Remote Islands Marine National Monument. He said that the monuments were supposed to protect resources for U.S. interests, but U.S. vessels are in heavy competition with foreign vessels in that area. He requested increased monitoring including the use of satellite monitoring to capture vessels that may turn off their vessel monitoring systems (VMSs).

Holstead said he would follow up on the oil spill with USCG prevention staff. He also said that the USCG actively monitors the U.S. EEZ with the NOAA Office of Law Enforcement (OLE). Vessels are required under the WCPFC to have their VMS on within 100 miles of the U.S. EEZ, and if not, there is a potential violation for the flag state. Holstead reiterated that the USCG is sustaining high seas boarding and inspections efforts and will bring Dueñas’s point back to staff.

Sword said there were two patrol vessels, a buoy tender and a C130, stationed at American Samoa in the last two months. He asked for the patrol radius and if the USGC boarded any vessels or had anything noteworthy to share.

Holstead said American Samoa is an operating location where USCG can leverage the resources that American Samoa provides, specifically out in Oceania and in the Central Pacific. High seas boardings and activities are under the WCPFC as part of pending investigations cannot be commented on. The USCG is restricted on their ability to conduct face-to-face boardings and interactions, so much of the focus is monitoring using radio frequencies, going alongside, boarding them or boarding them basically with the radio and filling out reports, not necessarily physically being onboard. Their cutter radius is around 2,200 nautical miles and with the use of a C130, that surveillance radius expands. The USCG also has the benefit of VMS monitoring information from the WCPFC during their operations. In using American Samoa as a base, the USCG can cover a geographic range that includes Tahiti, Fiji and Tonga.

Dunham said he had previously been boarded by the USCG, which reported he had a broken radio and he had to get out his paperwork. He appreciated the USCG doing their job with the boat inspections in the area.

Soliai congratulated Guam for securing the additional assets, and reiterated the request from American Samoa made over the last several years to the USCG for donations that would help to patrol their local waters, the U.S. EEZ around American Samoa and any incursions. Soliai reported from a credible source in Manu'a that large vessels were sighted a couple months back close to the islands, and were sending small vessels ashore.

2. NOAA Office of Law Enforcement

Martina Sagapolu provided the NOAA OLE report covering the period from Sept. 1 to Nov. 30, 2021. There were a high number of protected species incidents recorded, 79 complaints relating to fisheries and no complaints relating to sanctuaries. OLE completed an investigation involving one of the domestic fleets of commercial fishing in a closed area around the MHI, in which the respondent was assessed a civil penalty of \$7,250. OLE continued investigations of tuna species coming in from neighboring islands via containers arriving in American Samoa.

The Seafood Inspection and Monitoring Program continued work with Joint Enforcement Partners (JEA) from DMWR. A second enforcement officer was stationed in American Samoa. This new officer is working with JEA partners on these inspections and boardings involving the domestic fleet.

Sagapolu highlighted one case relating to a person who had collected a dead Hawaiian spinner dolphin in the area, conducted a ceremony and buried it away from the original site. OLE worked jointly with the Hawai'i Division of Conservation and Resources Enforcement to collect the animal and send it for further analysis to the Marine Mammal Stranding Network. Sagapolu said OLE's partners had issued a State violation for this offense.

OLE continued to conduct joint patrols relating to spinner dolphins, and the agency issued 22 citations and summary settlements. OLE, with JEA partners and the USCG, will continue these operations on the islands of Hawai‘i and O‘ahu.

OLE conducted patrols and inspections involving foreign vessels that frequent American Samoa. OLE checked the vessels’ logs for compliance with regulations. Sagapolu said that there were only very minor infractions, and most of the foreign vessels were compliant. OLE noted infractions on the Port State Measures forms which were passed on to the representatives for corrective actions.

OLE conducted a joint operation with USCG when the the spinner dolphin regulations went into effect. Agents used assets from both agencies and covered both land and sea areas across the islands. OLE, working with Division of Conservation and Resources Enforcement officers from Moloka‘i and Maui, continued its presence and outreach on Moloka‘i to continue investigations of the 2020-2021 Hawaiian monk seal killings. OLE conducted protected species operations that would continue through March 2022, providing land and sea assets for protected species during the Hawaiian humpback whale season and continued efforts on Hawai‘i and Moloka‘i islands.

Rice asked for clarification on the new spinner dolphin approach rule in regard to kayaking violations.

Sagapolu said that kayaking violations depended on the officer’s observations. If the spinner dolphins approached the kayaker and the kayaker stops, then it probably is not a violation, but if the kayaker continued to pursue the dolphins, then it would be borderline harassment. She added that OLE added two positions, a special agent and a uniformed officer, on Hawai‘i Island. They will be looking for blatant violations, such as when individuals are educated prior to leaving the beach and they ignore this guidance by continuing to pursue a photograph opportunity or the adventure of pursuing protected wildlife. OLE also wants to have a presence on the neighbor islands, given the rise in tourists.

Dueñas asked if there was a new agent on Guam to replace a recent retiree.

Sagapolu said that the position was still in the review process and had not yet been filled. Enforcement Officer Johnny Evangelista remained assigned to Guam, and OLE hoped to get the positions filled as soon as possible.

Dueñas asked if OLE wanted to recruit at the local or national level.

Sagapolu said OLE is always looking to recruit locally and have reached out through JEA partners. There has been a lot of local interest as a couple of individuals inquired with OLE about the positions. Veteran’s preference provides a challenge in the hiring process.

Dueñas thanked Sagapolu for this information and cautioned the loose use of the term poaching. He noted that that poaching issues of green sea turtles have been featured in the Guam newspapers, but he rarely sees poaching happening and would like to know if there is any report of illegal activity.

3. NOAA Office of General Counsel Enforcement Section

Elizabeth O'Sullivan presented the NOAA Office of General Counsel Enforcement Section report. The Office had not yet evaluated seven cases from OLE that were pending charges. The Office issued Notice of Violations for two cases, one of which is the *F/V St. Peter*, the respondents of which are RS Fishery, and the captain. The violation was fishing in the MHI closed area, and the penalty assessed was \$7,250. The other case was the *F/V Lanikai* with Twin Nguyen Fishery. The captain was the respondent, with a violation of fishing in the MHI closed area. A penalty of \$5,750 was assessed.

D. U.S. State Department

Brinkman, foreign affairs officer of the Office of Marine Conservation, presented the U.S. State Department report. Brinkman referred to his written report for a general update and one-page summary on the South Pacific Regional Fisheries Management Organization (SPRFMO). He highlighted the plans for high seas boarding and inspection in the SPRFMO Convention Area. SPRFMO does not have the same detailed high seas boarding and inspection procedures that the WCPFC and North Pacific Fisheries Commission have, and while the SPRFMO Convention did call for such measures to be adopted within three years of the Convention going into force, the deadline passed. SPRFMO recognized that that deadline was not met and that the Convention had called for Articles 21 and 22 of the U.N. Fish Stocks Agreement to thereafter govern at-sea boarding and inspection in the Convention Area.

For several years, the United States introduced a proposal modeled primarily on the WCPFC measure in SPRFMO to address these issues. Brinkman said the U.N. Fish Stocks Agreement language lacks useful operational details and does not provide a clear framework for Taiwan to participate. This is important because Taiwan has a large fishing fleet and there is potential excitement on the high seas if Taiwan and China encounter each other without a clear framework in place. During the 2021 SPRFMO annual meeting, the U.S. delegation garnered support for its most recent proposal from all members except one. Given that the United States believes that SPRFMO needs enhanced enforcement and at-sea boarding, the United States has notified the Secretariat that it plans to operationalize the proposed measure. Brinkman said the USCG was in the middle of conducting a patrol in the Eastern Pacific that would include the SPRFMO Convention Area and hoped to conduct an at-sea SPRFMO boarding. The U.S. State Department plans to work toward a specific measure in the future and use all avenues available to ensure that SPRFMO continues to improve its conservation and management of the resources in the SPRFMO Convention Area.

Dueñas asked if the territories were included in the Convention Area and what species were covered under the SPRFMO.

Brinkman said SPRFMO covers pelagic species excluding tuna, salmon and certain classes of benthic sessile species. Unlike the WCPFC, the territories do not have independent representation.

Dueñas asked if the territories are consulted as part of the U.S. representation.

Tosatto said the SPRFMO Convention Area covers the high seas and does not cover the EEZ of the coastal states or the islands states in the South Pacific. The Council recommended that its chair serve as a commissioner. The U.S. is working through that process to bring both the Council representation and potentially American Samoa on to the delegation at the same time. Tuna species are not covered. Jack mackerel and squid off the South American coast were the principle drivers for the development of SPRFMO as well as the vulnerable marine ecosystems of the seamounts throughout the region, particularly in the Australian/New Zealand area. Tosatto said pursuing high seas boarding under the U.N. Fish Stocks Agreement was important given the current framework of SPRFMO and because the United States may not ever get a measure if the one member does not agree. The United States would like to prove that the current framework under the U.N. Fish Stocks Agreement can be operationalized on the water.

Dueñas asked if sardines are included in SPRFMO, noting that their size relative to the cans have been shrinking.

Tosatto said that the largest fishery by species in the world is anchoveta off the South American coast. It is a straddling stock across many of those countries' EEZs and not yet included in the SPRFMO.

E. U.S. Fish and Wildlife Service

Peck presented the USFWS report, and referred to Tosatto's presentation for the status update on the MTMNM. There is a community group helping to inform the Pacific Remote Island Marine National Monument management planning process. One of the individuals is Matthew Owens, sustainability director of TriMarine Management Company, and he is the commercial fishing representative of that community group.

Muña-Brecht asked for a status update on the letter that the Council sent requesting Guam's participation as part of the MTMAC.

Peck offered to follow up.

F. Public Comment

Kenton Geer, fisherman, commented on Hawaiian spinner dolphins. He wanted to provide on-the-ground information for what may be micromanagement that looks great on paper. He said that the spinner dolphin problem was now causing a FKW and pilot whale problem with the dive boats. He said the new rule is pushing dive boats, which are the biggest offenders, to harass another species, while at the same time it is punishing everybody. The public is supposed to leave FKWs and pilot whales alone, but now they are getting covered up in tourists. Geer asked the agencies to make laws that can enforce the implications of what happens next. He said the goal was to get rid of dolphin boats inshore, but the laws are pushing the boats offshore instead into an area beyond enforcement and creating a new set of problems.

G. Council Discussion and Action

Regarding the NMFS PIFSC agency report, the Council requested NMFS PIFSC provide the report on the cluster analysis to reassess the species comprising the BMUS complex in the territories prior to the workshops that will be conducted in 2022.

Moved by Sword; seconded by Dueñas.

Motion passed.

VI. Program Planning and Research

A. National Legislative Report

Gourley presented the National Legislative Report, focusing on H.R. 4690, Sustaining America's Fisheries for the Future Act of 2021, introduced by Rep. Jared Huffman of California and Rep. Ed Case of Hawai'i. The congressmen requested comments on the proposed legislation from all of the regional fishery management councils (RFMCs). The Council submitted 10 pages of comments on H.R. 4690, and the Honolulu *Civil Beat* recently published an article stating that the Council opposes everything offered by the legislation. Several of the RFMCs submitted more comments than the Western Pacific Council, and the comments are generally critical of how the proposed legislation will impact fishery management through the process of the RFMCs.

On Nov. 16, 2021, a legislative hearing occurred for H.R. 59, introduced by Rep. Don Young of Alaska for the reauthorization of the MSA, H.R. 5770, Forage Fish Conservation Act, introduced by Rep. Debbie Dingell of Michigan, and H.R. 4690, which is also a bill for MSA reauthorization. The hearing consisted of two panels, one with Janet Coit, acting NMFS assistant secretary of commerce for Oceans and Atmosphere and NOAA deputy administrator, and Marc Gorelnik, chair of the Council Coordination Committee (CCC) and Pacific Fishery Management Council. Gorelnik's comments on H.R. 4690 represent the comments of each of the RFMCs and generally state that the legislation could increase the workload of the councils in ways that they cannot support, increase the risk of litigation, reduce the role and flexibility of the councils and does not appear to authorize sufficient funding to meet the proposed requirements. Gorelnik suggested that the creation of deadlines that the RFMCs cannot meet undermines their authority, and the legislation should address time requirements for proposed activities based on an understanding of the councils' responsibilities and procedural requirements under the MSA. Gourley encouraged Western Pacific Council members to read Gorelnik's testimony. Of the six second legislative hearing panelists, only William Aila, Hawaiian Homes Commission chairman, had any experience in the Pacific Islands. During the panel, Aila complained about the Council, potentially misunderstanding the Council process.

Dueñas said the premise of the FMPs through the Council process is a collaboration between the fishing community and regional scientists. With a focus on the national setting, Dueñas said that H.R. 4690 will likely be a failure. The processes that H.R. 4690 proposes negate old processes such that the Council may not be able to fulfill its obligations and work with the fishing community. Discussion surrounding H.R. 4690 states that the legislation would support commercial fisheries, but the only substantial commercial fisheries in the region are in Hawai'i and are well-managed and well-regulated. Additionally, the marine conservation plan (MCP), which local governments and communities helped to develop to support capacity and confidence building, typically include participation from native communities. In the past, the

Council held forums to discuss management regimes. The Council is at the forefront of conservation measures and is willing to work with both the community and scientists.

Soliai asked if the Council received a response to the comment letter sent months ago.

Simonds said the Council received no response and does not believe that it will receive a response. There may be some changes in the next draft of the legislation, and Gorelnik may receive a response.

B. Report on the Territorial Creel Survey Expansion

Carvalho, Hongguag Ma and Toby Matthews, PIFSC, reported on the evaluation of the creel survey design and expansion algorithm in the territories (i.e., American Samoa, Guam and the CNMI). Carvalho introduced the effort to evaluate the creel survey design and expansion process, noting that PIFSC is working to strengthen the quality of information it uses in stock assessments for bottomfish in the territories in accordance with the MSA. In coordination with PIRO and the Council, PIFSC initiated a CIE review of the shore- and boat-based creel survey design and expansion algorithm in the territories. The CIE provides external, independent and expert reviews of NMFS's science that influences policy. Ma led a team to produce a report for the CIE review, which occurred from Aug. 23 to Sept. 22, 2021, by Jon Volstad and John Hoenig. The report has three objectives, which are to present the survey design and data expansion for creel surveys in the territories, describe survey data and detail its use to produce catch estimates and analyze the sensitivity of the expansion algorithm to two central assumptions using the Guam boat-based surveys as a case study.

Ma presented the report's findings on the design of the creel surveys and subsequent data expansion. Generally, local management agencies use access point surveys to estimate fishing effort and catch rate at major ports (e.g., Agaña Boat Basin, Agat Marina and Merizo Pier in Guam), roving surveys to collect data in regions other than the major ports and aerial surveys to estimate fishing activity outside of the areas that the roving surveys monitor. Ma also presented details of the catch expansion from creel survey data using the expansion algorithm, which PIFSC originally developed in Visual FoxPro, but recently transitioned to a MySQL database.

Matthews presented details of the creel survey data and expansion results using the Guam boat-based fishery as a case study. Since a greater number of interviews provides a better catch per unit effort (CPUE) estimate, the minimum number of interviews per expansion domain is generally three. Surveyors encountered the bottomfishing and trolling fishing methods most frequently, and the less common fishing methods often did not meet the minimum interview requirements. A greater amount of noncharter fishing activity occurred than charter fishing activity, as charter fishing activity has been declining since 1995. Agaña Boat Basin and Agat Marina had most of the fishing activity, while Merizo Pier and unsampled ports had much less activity. Trolling contributed approximately 77% of total catch, while bottomfishing contributed approximately 9% of total catch. The data allowed for catch to be partitioned in many ways, such as by species.

Matthews also presented the results of the CIE review, noting that PIFSC is still currently reviewing the CIE report. Volstad concluded that the surveys are generally well-designed, the estimators for catch rate, effort and catch are reasonable, the variance estimators do not fully account for multi-stage cluster sampling designs and the assumption of simple random sampling

seems reasonable, despite sampling likely involving some targeting to ensure coverage for rare gear types. Volstad recommended that managers modify the survey design to have survey shifts be nonoverlapping without gaps, conduct analyses that account for the stratified cluster sampling to see if variance estimators under the simple random sampling assumption are reasonable and use resampling simulations based on historical data to optimize allocation of sampling effort. Hoenig concluded that the overall survey design and implementation are reasonable, constraints on the randomization of sampling schedules induces uncertainty, the surveys resemble multi-stage cluster sampling and the deviation of the sampling designs likely causes variance to be underestimated. Hoenig recommended that managers should clearly describe randomization and data analysis procedures, evaluate the survey designs to see if they relate to a standard design, consider the mean of ratios estimate for catch rate calculation and perform additional sensitivity analyses to assess the impact of assumed constants.

Amani asked who is conducting the interviews in Guam, and whether creel surveys will continue or if managers are trying to move away from creel surveys and conduct different types of surveys.

Carvalho deferred to Guam Division of Aquatic and Wildlife Resources (DAWR) representatives for questions regarding survey implementation.

Muña-Brecht said creel surveys will continue, but the DAWR is working with PIFSC as part of the CIE review to determine if there are ways to improve the survey methodology or increase the survey frequency, or if there are other types of assessments that managers can conduct if creel surveys are discontinued.

Amani said that if the Council continues to support creel surveys, there needs to be new surveyors conducting surveys at different times because the current creel surveys seem to produce incorrect data. Amani said she is happy that managers are attempting to collect better information, but she asked how the Council plans to actualize these improvements.

Muña-Brecht said COVID-19 presented a challenge in that managers have not been able to meet to discuss the surveys in greater depth. Muña-Brecht asked if the CIE review only considered data through 2018.

Ma said the CIE review included data through 2019.

Muña-Brecht said she did not notice the inclusion of 2019 data.

Carvalho said the focus of the CIE review was on the survey methodology, the development of the expansion and how PIFSC generates catch and effort estimates in the territories using the expansion algorithm. The intention of the CIE review was not to check all available values from the past. PIFSC has also been conducting efforts to improve the data in the territories, and the intent is to continue improving the creel surveys since they provide the information that PIFSC uses for stock assessments. The creel survey review is an example of PIFSC's work to improve data collection to inform stock assessments, which the agency intends to work closely with management agencies in the territories to accomplish.

Dueñas said he worked with Dave Hamm and Mike Quach from PIFSC for the last 25 years on data collection. The GFCA is supportive of data collection and supported the

biosampling program, but Dueñas said he is disappointed that PIFSC gives an abundance of credence to the creel surveys. A four-day survey does not consider when no fishers are actively fishing. Many fishers return from fishing late at night, some fishers leave early in the morning and some fishers do not use boat trailers, which make the creel survey data incomplete. Dueñas said that surveyors have interviewed him only twice in the past 40 years, and he is currently collecting information from fishers to show how many times each has been interviewed by surveyors in their history. If the data collection is inadequate, then the resulting estimates will also be inadequate. Dueñas said he has 27 years of data from the GFCA as well as 10 years of biosampling and life history data that PIFSC does not use. Dueñas said that charter fishing catch rates decreased on Guam due to the reduction of Japanese tourism, which resulted in 80% of the charter boats leaving the industry. Dueñas encouraged PIFSC staff to reach out to him as opposed to presenting misinformation.

Ma said that in the expansion method for estimating the total number of trips, the survey days are randomly selected, regardless of whether the day is a good or bad fishing day.

Dueñas said that the National Weather Service issues an average of 10 small craft warnings each month for Guam, meaning that there are some months where fishers are unable to make a fishing trip. The randomness and expansion need to account for reality.

Sword said nobody seems to be conducting surveys in American Samoa regardless of how many times he goes on fishing trips. Sword does not know if the Catchit Logit electronic reporting app will work better, but he suggested installing cameras at the access points to identify returning fishers. The creel surveys have a wealth of good information from fishers. In the territories, everyone is aware of who the fishers are, so managers would easily be able to get in contact with them if the cameras record them returning from a fishing trip.

Carvalho said PIFSC is looking for the next step in data collection. One of the CIE reviewers mentioned that no survey is perfect. PIFSC understands that there is room for improvement of the creel surveys in the territories, and the CIE review produced 55 pages of conclusions and recommendation on how PIFSC can improve the creel surveys. The review represents the beginning of PIFSC efforts, as it also plans to reach out to the local management agencies and listen to residents of the territories to reevaluate the creel survey design and implementation. PIFSC will explore the use of cameras and other methodologies to deal with some of the issues in the creel surveys for long-term improvement. PIFSC plans to work in collaboration with the local management agencies and fishing communities on this improvement. The CIE review was the first step, and the next step involves listening to surveyed fishers and talking with surveyors and the local management agencies.

Muña-Brecht asked how PIFSC defines an unsampled port and if these ports are included in the surveys.

Matthews said PIFSC defines an unsampled port on Guam as any area that is not Agaña Boat Basin, Agat Marina or Merizo Pier. Surveyors collect data for unsampled pots during the shore-based creel survey roving surveys through trailer counts, which PIFSC uses to estimate the number of fishing trips.

Muña-Brecht asked if the surveys account for fishers who do not use boat trailers, such as spearfishers.

Matthews said that, if a boat is put into the water without a trailer or if the boat owner takes the trailer home after the boat is put into the water, then surveyors could potentially miss those trips for unsampled ports.

Muña-Brecht asked about the variability in onaga catch in 2017.

Matthews said the years of high variability tend to be the years with high catches. One could view variability as a proportion of the catch that tends to be more constant over the years. If a year has high catch, then the associated imprecision will be proportionally high. The estimates were probably not less precise in 2017, but likely had a larger actual catch.

Muña-Brecht asked the definition of simple random sampling.

Matthews said simple random sampling refers to assigning an equal selection probability to each member of a group.

Muña-Brecht asked if PIFSC would provide the presentation to the local management agencies.

Carvalho said PIFSC would be happy to schedule a meeting with any of the groups in a smaller setting to present the entire report, and said he would work with PIFSC leadership and Muña-Brecht to schedule a presentation soon.

Soliai said he is looking forward to the analysis of the American Samoa bottomfish fishery and the associated results given that there are so few boats fishing.

Gourley said the biosampling team had conversations about the challenges with the bottomfish fishery data and the use of that data in calculating CPUE. Gourley suggested that PIFSC further examine data collection at the ports, including whether the fishers encountered sharks and whether the wind is blowing from a different direction, as these factors dictate the number of hours that a fisher will go fishing. One of Gourley's employees started to record his shark encounters and the time required to move to a different fishing site, and has moved to different bottomfish fishing sites as many as four times in a single fishing trip. Gourley said the data are variable, and he cannot imagine using such data for CPUE calculations.

C. Report on the Center for Independent Experts Review of the Territorial Creel Survey Expansion

This agenda item was discussed under item 5.B.

D. Improving Collaboration Between Stakeholders: Territorial Bottomfish Stock Assessment in the Pacific Islands

Mia Iwane, PIFSC, presented the results of the cooperative research project to develop a stakeholder engagement strategy in support of the territory bottomfish stock assessment improvements, using Guam as a study site. The project emerged because PIFSC identified a number of challenges that stakeholders faced when engaging with one another, including geographical separation, specialized expertise and language, and engagement capacities of each stakeholder. The purpose of the project was to identify pathways toward improved

engagement practices with the hope that improved engagement will allow for collaborative improvements in the science. The three research questions were about engagement challenges, identification of helpful engagement processes and potential engagement benefits. Iwane collected data by attending Council-hosted meetings and conducting 42 semi-structured interviews with people experienced in or around Guam's bottomfish fisheries, research or management. The interviews emphasized the interconnected roles and processes between the fishing community, Council, territorial management agencies and NMFS stakeholders.

Stakeholder-specific challenges inhibit the delivery of roles in the interconnected system. Fishing stakeholders have some distrust of data collection agencies, which can inhibit data flow and face high engagement costs, and cultural norms may also impede engagement. Territorial management agencies face challenging field logistics, including the fact that data reporting is voluntary, while Council stakeholders often explore the intersection between management, engagement and science. NMFS stakeholders have work that is dictated by federal law, and there is a lack of institutional support for engagement. Engagement incentives include access to data, making a difference, money and avoiding negative outcomes. Challenges exist that can impede effective communication, including "talking past each other," which may be affected by barriers such as accessibility and varied interpretations of stakeholders. Iwane noted the importance of identifying achievable goals to improve data and science through inclusive discussions, utilizing facilitators and participants that bridge stakeholder gaps in language and experience and recognizing conflict. Benefits of engagement include sharing information between stakeholders to build shared understanding and improving fisheries science and management processes from that shared understanding. Engagement can lead to improved understanding that, overall, will help the delivery of services and information.

Amani said she looks forward to collaborating on research going forward. Guam has started to improve with respect to creel surveys with new DOAG leadership and more law enforcement. The surveys require additional coordination on the survey times, and fishers need to work with the scientists to get the data right. PIFSC could also consider Catchit Logit information alongside creel survey data such that the data streams validate one another. Amani hoped that all stakeholders can work together.

Muña-Brecht said that Guam has new law enforcement personnel and reservists.

Dueñas said he would like to see more of Iwane's work with the community and for her to be an interpreter for the PIFSC SAP. Dueñas asked if there are any updates regarding the issue of shark encounters in regional fisheries and if a tagging program may start in the Mariana Archipelago, noting that such programs need to begin and move forward. Dueñas asked Iwane to encourage the PIFSC scientists to speak to the community, given that the community is the group that PIFSC is impacting and trying to understand.

Soliai echoed the comments from Dueñas and asked if Iwane has any timelines for engaging other territories.

Iwane said PIFSC intended the effort to be a pilot project that can be replicated in the other territories. The bottomfish stock status for American Samoa is the most urgent, and she did not feel comfortable starting engagement work there since she had only recently met some of the

stakeholders in American Samoa. Iwane said she would like to replicate this work in American Samoa, especially with the support of DMWR.

Soliai offered his support and said to let him know how they can initiate the process.

Iwane said that, even though she was not doing research or interviews with people in American Samoa, she worked with the PIFSC SAP and FRMD to plan for engagement such as data workshops. Regarding Dueñas' comments on shark encounters, the topic may be discussed further at future Council meetings, but she did not have any updates on the progress of a tagging project.

E. Regional Communications and Outreach Report

Amy Vandehey, Council staff, presented an overview of the communication and outreach activities completed since the September 2021 Council meeting, which included the 2022 regional lunar calendars, the publication of the fall issue of *Pacific Islands Fisheries News*, the publication of articles in the October, November and December issues of *Hawaii Fishing News*, the production of a 30-minute film focusing on the history of open ocean fishing in the Mariana Archipelago, a press release on the 2020 Annual Stock Assessment and Fishery Evaluation Reports and associated Council staff interview segment on KITV4 and social media updates. Vandehey also highlighted regional initiatives, such as Guam's Earth Day held Nov. 13, 2021, that was postponed from April 2021, the Buds and Suds fishing tournament in American Samoa and interviews on the Go Fish! radio show with Mike Buck in Hawai'i.

Dueñas asked if the Council is making progress on the documentation of the video on honu issues in the Pacific Islands.

Vandehey said she did not have any updates.

Soliai said that the fishing tournament in American Samoa was not hosted by the National Marine Sanctuary of American Samoa, but rather South Pacific Distributors, Inc.

F. Advisory Group Report and Recommendations

1. Advisory Panel

There were no AP recommendations regarding program planning.

2. Fishing Industry Advisory Committee

There were no Fishing Industry Advisory Committee (FIAC) recommendations regarding program planning.

3. Non-Commercial Fishing Advisory Committee

Dean Sensui, Non-Commercial Fishing Advisory Committee (NCFAC) chair, presented the NCFAC report and recommendations.

Regarding fishery allocation, the NCFAC recommended the Council put together a working group made up of FIAC, NCFAC and others to discuss the issue of allocation and what it would look like, including the lack of enforcement.

Sensui added that, because there is a lack of user data in the noncommercial fishing sector, it would not be possible to ascertain an accurate allocation that would be fair to both the commercial and noncommercial fisheries. Establishing allocation also has a concerning reliance on historical catch data, and underserved communities that are unable to establish historical catch due to inequity would never get the opportunity to do so.

Regarding the national recreational fishing summit, the NCFAC recommended the Council request the summit steering committee include an update on fishermen requests from previous summits, including the progress that has been made, on the next summit agenda.

Sensui added that the NCFAC hoped that the upcoming summit would report on any progress made on the results of the previous summits, as well as the needs expressed by the fishers at those meetings.

4. Social Science Planning Committee

There were no Social Science Planning Committee (SSPC) recommendations regarding program planning.

5. Scientific and Statistical Committee

Lynch, SSC chair, presented the SSC recommendations.

Regarding the CIE review of the Territorial Creel Survey Expansion, the SSC recommended PIFSC implement the CIE recommendation on increasing the level of survey effort for bottomfishing to reduce variability by making it a priority for the territories.

Regarding the territorial bottomfish stock assessment in the Pacific Islands, the SSC supported the concept of constructive outreach and engagement by all groups involved in the management process. The SSC recommended that all management partners consider the implications of this work and to be reflexive and conscious of language in stakeholder engagement. This may become critically important in future data workshops with fishers where attention to culturally based protocols will be essential.

Lynch added that Iwane's presentation to the SSC emphasized the different language managers use in asking questions of fishers, and managers need to be careful in how they approach fisheries in order to obtain appropriate information.

G. Public Comment

There were no public comments.

H. Council Discussion and Action

Regarding program planning, the Council directed staff to develop a workshop with members from the FIAC, NCFAC and AP to discuss the issue of allocation.

The Council requested NMFS include an update on fishermen requests from previous recreational fishing summits, including the progress that has been made, on the next summit agenda.

Dueñas asked if the issue of allocation is open-ended, and if a timeline exists for progress made. Dueñas said that the Council discusses the same items every Council meeting to no end.

Marlowe Sabater, Council staff, said that the CCC developed a working paper in 2016 that resulted in a NMFS policy for reviewing the allocation for its fisheries, and the Council is due for a review of that allocation. Thus, Council staff asked the NCFAC, the FIAC and the AP to examine the issue of allocation and whether it is a useful tool for the Western Pacific Region. Previously, the Council deemed that allocation is not warranted for the bottomfish and longline fisheries, so the Council is revisiting the issue to see if there are any changes to the situation.

Dueñas asked if allocation would apply to all species of fish harvested.

Sabater said allocation would apply only for federal management unit species.

Dueñas said he knows that Hawai‘i has a recreational bag limit, but no commercial bag limit. Allocation may be an issue in the Mariana Archipelago, as there will likely be fishers that are concerned that other fishers are catching more than them. When the catch reaches the ACL, then the fishers that did not fish but want to fish will lose their opportunity.

Ramsey said he fully supports the recommendation, noting that he participated in two meetings of the planning committee for a recreational fishing summit where he shared a similar concern that previous achievements and requests need to be highlighted. Ramsey thanked the AP for bringing this issue to light. Ramsey said he believes someone is generating a list of past progress, but he also recognizes that it is important that fishermen’s requests are also being followed up on.

Moved by Sword; seconded by Dunham.
Motion passed.

Regarding the CIE review of the creel survey expansion, the Council requested PIFSC to implement the CIE recommendation on increasing the level of survey effort for bottomfishing to reduce variability in the catch estimates for all territories.

Moved by Sword; seconded by Dueñas.
Motion passed.

Regarding improving collaboration between stakeholders: territorial bottomfish stock assessment in the Pacific Islands, the Council recommended federal and territorial fishery agencies, the fishing community and other fishery stakeholders consider the implications of this engagement framework, and agencies be reflexive and conscious of language in the engagement effort. The Council also recommended that stakeholder engagement be, as much as possible, conducted in-person.

The Council requested the PIFSC Social, Economic, Ecosystem Synthesis Program, in collaboration with the Council’s Education and Outreach Program, develop a stakeholder engagement framework for American Samoa, CNMI and Hawai’i, given the differences in cultural and fishery situation.

Dueñas said he wants to ensure that the engagement is one-on-one, in-person and inclusive of all agencies that are a part of the discussion with the fishing community. Dueñas said he is glad that PIFSC emphasized engagement with this project because fishers need to better understand how managers make decisions, what the scientists need and how the fishers can help to provide these items without additional burden. The people working on the engagement project receive a salary, but fishers struggle to stay alive. Dueñas said he does not believe that the fishing community requires a more documented exercise, but he is glad that a possibility exists for better engagement.

*Moved by Dueñas; seconded by Sword.
Motion passed.*

VII. Public Comment on Non-Agenda Items

Manuel P. Dueñas II, president of the GFCA on Guam, provided public comment on integrating Catchit Logit app data into the creel survey. He said that fishermen should not hold the regulatory burden. If the management agencies incorporated Catchit Logit into the creel survey, then he feels that they would capture more information for the exercise at hand.

VIII. Mariana Archipelago

A. Guam

1. Department of Agriculture / Division of Wildlife and Aquatic Resources Report

Muña-Brecht presented the Guam DAWR report. The agency achieved 100% completion of their scheduled shore-based creel and participation surveys between July and September 2021, which showed i’e (juvenile jacks), ti’ao (juvenile goatfish), tagafi (red snapper), laiguan (mullet), two species of tarakitu (jacks) and sesyun (rabbitfish) as the top seven species caught. The surveys also showed catches in the preserves when special permits were issued to allow fishing. The primary method of fishing was hook and line and the primary gear used was cast net, followed by gillnet and snorkel spear. DAWR completed all boat-based surveys, including participation surveys, during the same period. Skipjack tuna and yellowfin tuna were the most caught species, and one Pacific blue marlin was caught during this quarter. Deepwater bottomfish catches increased, with onaga as the top species caught. Weather determined what species was caught, with trolling being the most used fishing method at more than 90% of all boat-based fishing.

The proposed Talofofu boat ramp is waiting for the Guam Economic Development Authority (GEDA) to finish the design build request for the proposal package. GEDA continues to dialogue with the mayors of the villages of Talofofu and Inarajan on the matter, and the lieutenant governor’s office is working to identify a funding source for the \$2 million to \$3 million cost of the design build. All documents for the Agat Marina Dock B replacement have

been signed and the work request is with the Port Authority of Guam, which allowed DAWR to solicit for a contractor. The requisition for the Harbor of Refuge is being routed for review to be followed by an Invitation for Bid, which will take place during the first quarter of fiscal year 2022. The Merizo Pier and Ramp projects are with the Department of Public Works for bidding, and DOAG will request additional funding to replace worn-out sections of the ramp. The pier repair work includes replacement of solar lights, two of which were stolen, and is expected to begin during fiscal year 2022. Using grant funded maintenance, DAWR staff has been water-blasting boat ramps at the Agaña Boat Basin, Agat Marina and at the Merizo facility to remove algae and improve traction for boat launching.

Discussion is ongoing on fishing licenses, and the AP requested more frequent updates at its last meeting. Fishing licenses were also discussed with the community subgroup meetings of the FMP.

Special permits were issued during the last quarter to allow for seasonal take in the marine preserves. Regarding enforcement, arrest data showed that of those arrested for poaching in the marine preserves, all were male and represented different ethnic backgrounds.

All \$988,000 of the Coronavirus Aid, Relief and Economic Security (CARES) Act I funding received was paid to fishers. Those with address or misspelling issues were returned to the PSMFC for reissuance after corrections were made. 446 fishers were under the subsistence category, 12 were commercial and seven were subsistence with sales. Fishers received varied amounts based on the documents they produced, including receipts and tax documents. For CARES Act II funding, checks were received at DAWR from PSMFC for fisher name confirmation to ensure those with issues during the first round are resolved before checks are mailed. There were fewer commercial fishers, but an increase in subsistence and subsistence with sales fishers. DAWR directly called all CARES Act I applicants, resulting in more fishers submitting forms for CARES Act II.

Regarding the FMP, the local NOAA coordinator offered to assist with some of the logistics such as document maintenance and record retention. A community subgroup meeting was held at the Santa Rita mayor's office where fishers shared some of their issues and concerns, such as fish aggregating device (FAD) deployment and the need for more boat ramps. Fishers expressed support for commercial licensing, but had concerns about enforcement and monitoring. They also expressed support for bag and size limits together with mandatory catch data reporting, and more informational and educational signs. Another community subgroup meeting for the fishing industry was held at DAWR and included stakeholders from commercial businesses, the Guam Visitors Bureau and tackle shops. Six to 10 fishers joined. Additional community subgroup meetings will be hosted in different sectors of the island and another go-around to the same areas where meetings were previously held to increase fisher participation. An FMP meeting with staff was held Nov. 10, 2021, who discussed the plan's vision, goals and objectives. The FMP language is being shared at the community meetings to see if fishers agree. The plan's vision states that an adaptive, responsive and consultative approach to fisheries management is desired as it ensures fishing is low risk to Guam's aquatic resources and used in a way that optimizes benefits to the community. The goal is to rebuild fish populations and improve ecosystem health to support long-term sustainable use of the resources and ensure the residents have access to the resources they need. Each subgroup will create objectives for themselves, with stakeholders, objectives, goals and milestones.

The contract to deploy three FAD systems has been awarded with two buoys, No. 3 and Old NOAA, deployed Nov. 24, 2021. The third FAD was not available for deployment. The grant award and contract to purchase additional FAD systems was extended to 180 days due to delays in shipping, but will be purchased during this fiscal year, along with additional deployment contracts. FAD No. 3 was coupled with a small echo sounder buoy that will transmit data with the buoy location and biomass beneath it. DAWR and The Nature Conservancy partnered to deploy a system that will allow fishers to access the real-time data transmitted, such as how much and which species of tuna are underneath the sounder. Some of the initial biomass data were shared with fishers on the first hour of the buoy deployment, which showed aggregating fish already underneath the FAD. Some fishers reported catches from the newly deployed FAD. Requisitions to deploy 15 shallow water mooring buoys are being resubmitted for fiscal year 2022 and are the same as those the agency tried to secure purchase orders for in fiscal year 2021. All the components are already on hand.

A new program project coordinator is being assigned to replace a biologist who was hired by the U.S. Navy. He will coordinate the fishing platforms maintenance and signage. Work to attach the Fishermen's Code of Conduct at the Paseo fishing platform is continuing, and the cost estimate for each of the platforms is roughly \$40,000.

Six turtles were reported stranded. One was sighted Sept. 1, 2021, in inner Apra Harbor but was not relocated for retrieval. The USCG reported a stranded turtle Sept. 2, 2021, floating near one of their vessels in Apra Harbor. The cause of death was a vessel strike. On Sept. 16, 2021, Naval Base Guam reported another dead turtle in the harbor that died due to vessel strike. Another stranded turtle with no obvious signs of injury was reported to conservation officers in Merizo who recovered it, and it is being held at the DAWR office. A necropsy will be performed soon. A dead sea turtle was reported at Pago Bay with the cause of death difficult to determine. On Nov. 4, 2021, a report of a large and struggling sea turtle estimated to be about 15 years old was received at the Agat Marina. It had fibropapillomatosis tumors and was euthanized and necropsied on the same day. The turtle had a substantial number of tumors on its body and in its throat, and was having breathing difficulties. This was the first time a turtle with tumors was seen outside of the Piti area. All of the tumors were sampled and sent to Honolulu for testing.

2. Isla Informe

Amani reported that former Council AP Chair Judith Guthertz was appointed to the Port Authority of Guam Board of Directors. Guthertz reached out to the Guam Council family to begin working together on priority projects that involve the port. Issues of interest include repairing corroded railing at the Agaña Marina, installing floating docks at the Agat Marina parallel to the road, determining if the concrete platform formerly used for derbies is repairable to allow future use and installing a boom and lighting. The list of issues also includes repairing parking lot flooding with an area to be designated parking near the launch ramp for vehicles with trailers only. Another priority is expanding and accessorizing the seaplane ramp in Apra Harbor to allow pleasure crafts to launch and recover, while increasing the use of the harbor for recreational use, especially when the waters outside the harbor are rough.

Most of Guam's charter businesses, including day tours such as dolphin watching, evening sunset cruises and fishing charters, adapted well to the loss of tourism due to COVID-

19. Locals and the military filled the gap with cruises and family charters on the weekends. Fishing charters are using social media to market to locals and the military. Tourism is mostly nonexistent. Korean visitors were allowed in, but this stopped when their COVID-19 infection increased.

Amani reported that there had not been any fishing tournaments since the September 2021 Council meeting, but the Culturally Livin Natives organization plans to host a spearfishing competition in July or August 2022. The Shut up & Fish Guam organization also plans to host a fishing tournament after December 2021, but no dates are set.

Dueñas reported that Guam's catch rates have been bad the last few years. Mahimahi and wahoo, Guam's traditional seasonal fish, are bad but last year there was a decent amount of catch closer to the island with reef fish.

GFCFA experienced a dramatic and impactful loss over the last two years and suffered tremendous financial shortfalls. As a nonprofit organization, GFCFA does not qualify for any pandemic assistance, including CARES Act, Small Business Administration loans or the GEDA Business Assistance. Dueñas said he hopes GFCFA survives 2021 and is looking at 2022 as being the death of a 44-year effort to keep fisheries alive in Guam. Gas price in the mainland is \$3.25 per gallon, whereas in Guam, it is hovering around \$4.80 per gallon and hit \$5.10 per gallon at one time. A bag of ice is up to \$2.50 each. Everything costs more. A good portion of fishermen are over 60 years old, with many in perpetual lockdown by their families. Guam had lost more than a dozen fishermen over recent years. A man recognized nationally as a corrections officer died from COVID-19, and he was an avid bottomfish fisher and was one of those who spoke of effort on onaga. From a business sense, this cannot be taken anymore. Everyone is looking for essential items like toilet paper, almost like typhoon preparedness, but are not looking for fish. Dueñas said he appreciates the Council's proactive approach to these matters.

Dueñas said that in the context of Essential Fish Habitat (EFH) and the military buildup, including all of the discussion about cumulative effects, Guam is a small island community of only 160,000 people, with less than 5% of the population that go fishing. The exaggerated impacts are concerning. It is about perpetuating a 4,000-year-old culture. Talks about rules and regulations is heard and people self-regulate. Guam has 10 small craft warnings monthly, and in some months no one can access the ocean due to bad weather. Guam's small 20-boat fleet could not have killed so many fish. He is proud for contributing to biosampling and wished the fishing community would get more support. Guam is going to lose 15 square miles of Ritidian to a military firing range and Dueñas questioned what the community will get out of the loss. He called to task Seki and the Council about sea turtle interaction, critical habitat and protecting corals. Referring to the boat ramp on the east side that Muña-Brecht mentioned, Dueñas said it should be federally funded because three firing ranges and five marine preserves are on the west side. He questioned where the fishermen are going to fish because they have been chased out by Navy gunboats. Instead, he recommended a look at FAD systems surrounding the no-fishing zones and to ask the Office of Economic Adjustment for half a million dollars a year to fund Guam's MCP. The Talofof Boat Ramp is too far south, and the biggest concern is the safety of fishers who will always try to access the ocean. Rescue boats travel eight hours through the pounding ocean because the east side cannot be accessed to prevent drowning or loss of life.

On EJ, Dueñas said all one sees during Council meetings are people who talk negatively. It is best to talk positively and move forward. He noted the Council's efforts and is glad he is back on as a Council member. But he is concerned everything being done by the Council to advance peoples to build capacity is thwarted by the efforts of every agency that has its hands in the cookie jar.

Regarding EFH and coral protection for sea turtle habitat mitigation, Dueñas said it is a way for the agencies to get \$2 million from the Department of Defense. He referenced a University of Guam (UOG) professor who was contracted for a coral reef project. There are many factors affecting the fishing community. With these exercises, every cumulative impact must be addressed on how it affects the communities. He questioned the longevity of fishers noted for their daily fishing for onaga and how long they will last. All the fishers he knew as highliners or professionals are gone. It is the island's heart and sensitivity. Dueñas hopes the federal agencies aid the communities and are not a burden. He noted what will remain of Guam's fishing community will be an exhibit in the Smithsonian the way things are going. There is no respect for cultural values. When he hears Gourley mention concerns about EFH, it is not just one concern, but one of many concerns. There must be an end to the mentality to provide for the colonialism of the Mariana Archipelago and American Samoa. Provide support for them and provide solutions to keep fisheries open instead, including solutions to keep the canneries open in American Samoa. Fishermen are not rich and famous. They drive rusty vehicles with trailers that barely function and their boats don't meet the full standard of a good boat. The territories do not have the advantages of Hawai'i or the mainland. They are disenfranchised and totally in need of help. They are willing to help themselves.

3. Pacific Community Regional Technical Meeting on Coastal Fisheries and Aquaculture

Muña-Brecht reported on the Pacific Community (SPC) Regional Technical Meeting on coastal fisheries and aquaculture, in which she and two DAWR staff members participated. A primary request at the meeting was support for technical workshops. The Micronesian Association for Sustainable Aquaculture, a group SPC helped create and facilitate meetings for, was also mentioned. Meetings were held for several years, including one on Guam, with plans to develop Micronesia to actively facilitate aquaculture issues, share training and technical assistance, provide brood stock and collectively purchase supplies as a region to reduce costs. However, the Micronesian Association for Sustainable Aquaculture fell apart. DAWR requested the group's history, including any documents of prior meetings, so it can work on reconstituting the organization. DAWR also requested information on strategies for how other islands deal with typhoons near open pens, life history data, coastal species and research on the culture of pelagic species such as mahimahi. DAWR asked how broodstock can be made available to the region, and about the possibility of cultivating aquaculture feed locally, within the region or between SPC member islands.

Dueñas said UOG has a robust aquaculture program raising shrimp and saltwater tilapia with feed coming from Taiwan. The program is slowly entering into Guam's economy, and there is an institution of aquaculture specialists available as a resource. A senator's family from Inarajan and Johnny Atulai have also been involved with the GFCA for 27 years and where there are aquaculture opportunities, the association seized them, no matter how good or bad the result was financially. GFCA also worked with the UOG 4-H Program on a scribbled rabbitfish study.

That is another possibility for successful restocking. Where there are periods of heavy algal blooms, rabbitfish are released into the blooms to feed. There are many possibilities if the United States gave the local government money to support the rabbitfish project. Dueñas hoped Guam can tap into the Sport Fish Restoration Fund or the Guam Visitors Bureau money to create or rebuild the project, as it is the most advantageous for protecting the environment.

Muña-Brecht said that biologist Martinez was hired by the U.S. Navy. Jason Biggs, the new DAWR deputy chief and Martinez's masters degree thesis chair, worked on the rabbitfish project with Martinez. Biologist Frank Roberto is working on a restocking project plan with the 4-H Program with a \$133,000 grant. The plan includes work with high school students to teach them how to run the project. Roberto was encouraged to submit a Saltonstall-Kennedy grant proposal for a mariculture system, which is habitat within the cage project for aquaculture. Muña-Brecht said the UOG hatchery is now privately managed. Hui Gong Jiang, a research scientist at the hatchery, also participates in aquaculture taskforce meetings and is cultivating pathogen-free shrimp at the hatchery. The shrimp is available to local consumers but they are working to make it a primary export product. Muña-Brecht is in discussions to find ways to expand some of the work being done. As a group, the taskforce submitted a funding proposal to GEDA for a regional aquaculture innovation project to build innovation centers locally and on some of the neighboring islands for a collaborative aquaculture export process.

B. Commonwealth of the Northern Mariana Islands

1. Arongol Falú

Gourley reported that the CNMI went eight months without a single community infection of COVID-19, but the situation became out of control after Halloween, with close to 1,000 community infections. Currently there are three COVID-19-related deaths, and the variant is spreading into Tinian. The COVID-19 problem has never been very serious within the islands in the past, so the current community spread is unsettling. Governor Ralph DLG. Torres has issued a directive to close nonessential government services down for the next two weeks, until Dec. 19, 2021. Businesses have not been affected too much, although there is a 50% reduction to seating capacity. Curfew between midnight and 4 a.m. has also been reimplemented for the islands. Despite the COVID-19 situation being unnerving, the islands are still at a community variability level green and the island vaccination rate is at approximately 89%.

There have been no changes to fishing activities. The reinstated curfew may affect the spearfishermen. The reoccurring problem, however, is the lack of tourists in the CNMI, and the overall demand for fresh fish is limited to island residents. The government has started the tourism bubble concept with South Korea to help boost the economy, which seems to be succeeding despite some criticisms. The federal disaster stimulus funds are still flowing into the CNMI and provides support for the government.

The Star Marianas Commuter Airline, the only air transportation services to Tinian and Rota, has cancelled all its flights until Jan. 1, 2022. The initial thought was that the cancellation was due to the COVID-19 outbreak, however, upon closer look, it was revealed that there are some disagreements with the Commonwealth Ports Authority regarding pricing and cost.

2. Department of Lands and Natural Resources / Division of Fish and Wildlife Report

Tenorio provided the CNMI DFW report, noting it was an initial report given the short period since the September 2021 Council meeting. The creel performance surveys are going well and shows that things are back to normal. However, due to the curfew, the surveys from midnight to 4 a.m. will be postponed. Between July to September, DFW conducted 68 boat-based creel interviews. Of those interviews, 35 were trolling, 28 were bottomfishing, four were spearfishing and one was hook and line. Under the shore-based creel program, DFW conducted 67 interviews between July and September, of which 10 were cast-net, 35 were hook-and-line fishing and two were spearfishing. Data for October were not fully entered into the system at the time the current report was prepared.

Regarding market performance, DFW collected receipts for the Commercial Purchase Data System from participating vendors, hotels and restaurants up to the month of September. The results show that there were an estimated 14,397 pounds of bottomfish, 16,250 pounds of reef fish (6,953 pounds of miscellaneous reef fish) and 69,483 pounds of pelagic fish that entered the market.

Regarding the mandatory catch recording and reporting system, the CNMI DFW director and PIFSC FRMD director held a meeting Nov. 1, 2021, to discuss the transition of the Electronic Data Reporting System to DFW. A draft data sharing memorandum of agreement is in development and is expected to be finalized and signed before December. DFW is also working to finalize the Mandatory Data Reporting and Implementation Plan.

The CNMI Office of Grants Management and State Clearing House announced that the CARES Act funds would be mailed to the fishermen and vendors Sept. 24, 2021. DFW, along with PSMFC and PIRO is working to revise the CNMI spend plan to be consistent with the Consolidated Appropriations Act, the CARES Act and NOAA's guidance. The DFW director is working directly with PSMFC to obtain the previous spend plan.

The Boating Access Program is conducting its regular marina and ramp maintenance operations on all of the CNMI boating access sites. LED light system upgrades have been made at the Smiling Cove Marina. This will improve night visibility and reduce utility costs. An extension request was submitted for the contract to repair the Rota West Harbor Marina dock system. Work is expected to begin on the Rota Marina in the following month. Three projects on the Rota Marina were completed in September 2021 to refurbish railing, install signage and repair walkways. The loading dock system and installation project for the Rota West Marina is pending.

Dueñas asked about the funding source for all the upgrades and repairs done to the different projects around the CNMI docks.

Tenorio said the funding for the installation and repair projects at Rota West Harbor Marina comes from the Sport Fish Restoration Funds. The Federal Emergency Management Agency is the funding source for projects on Tinian due to the damages incurred on the floating dock system during the typhoon.

Dueñas said it was commendable that the agency uses available funds like the Sport Fish Restoration Funds to help rebuild and fix the different dock sites.

C. Advisory Group Report and Recommendations

1. Advisory Panel

There were no AP recommendations regarding the Mariana Archipelago.

2. Fishing Industry Advisory Committee

There were no FIAC recommendations regarding the Mariana Archipelago.

3. Non-Commercial Fishing Advisory Committee

There were no Non-Commercial Fishing Advisory Committee recommendations regarding the Mariana Archipelago.

4. Scientific and Statistical Committee

There were no SSC recommendations regarding the Mariana Archipelago.

D. Public Comment

Clay Tam, AP chair, asked about the cost for deploying the FAD with the transponders that would allow fishermen to locate the device and view the associated biomass. He said the Hawai'i AP is interested in a similar smart FAD system. He also asked where the data would be stored and how they would be handled to look at fishing productivity. Tam said that such a system would be a good investment due to high fuel costs, and would increase productivity if fishermen can view what type of fish is under the buoy before leaving the harbor.

Muña-Brecht said she would gather the information and send it to Tam.

Rice asked to be included in the correspondence.

E. Council Discussion and Action

There were no recommendations.

Dueñas said the Guam AP is concerned that there is not enough follow up with the group's recommendations and that it wants assurances on some of the recommendations. He asked staff to follow up with the AP members after the holidays.

IX. American Samoa Archipelago

A. Motu Lipoti

Dunham provided updates on American Samoa fisheries. Only two Pago Pago-based alia vessels have been fishing commercially in the last quarter, and reported catches of yellowfin and

skipjack tuna, masimasi (mahimahi), wahoo and rainbow runners. Additionally, eight Manu‘a-based alia vessels fish for subsistence. Spearfishermen continue to sell approximately 500 pounds of fish weekly to vendors and roadside markets. Floating docks remain an issue for fishermen in Tutuila and Manu‘a. The Malaloa dock in Tutuila is damaged with rusted pilings, and the wharfs in Manu‘a have few or no floating docks, resulting in alia vessels being tied up side-by-side and making it difficult for fishermen to maneuver in and out of the wharfs.

The American Samoa Government (ASG) Procurement Office awarded a \$3 million contract to Armstrong Consolidated Inc. to build four super alias. The first turnkey vessel is expected to arrive in April 2022. Unlike the small alias, the super alias have the capacity to reach offshore banks which are not being fished commercially. This project is funded by the U.S. Department of Commerce Economic Development Administration.

Sword reported on the Suds and Buds Fishing Tournament sponsored by South Pacific Distributors, Inc. Despite the poor weather and rough sea conditions in November 2021 making it harder for the smaller boats to get to the outer banks, fishermen were able to catch a substantial amount of fish that was sold to local vendors and restaurants. Funds raised from the sale of fish were donated to Hope House, an assisted living care home.

Dunham reported on the light rising of palolo around Tutuila in October 2021, when hundreds of Tutuila residents were sighted along the coastlines to harvest palolo. Rough currents were observed around the island of Tutuila. Residents of Manu‘a reported more favorable weather and an average harvest. Palolo did not rise in November 2021.

Sword reported two fishermen fatalities since the September 2021 Council meeting. One suspected cause of death was a shark attack while spearfishing at night, and another fisherman was caught in the rough currents during the palolo harvest and drowned.

Dunham reported a rare sighting of orcas near the Manu‘a Islands. Manu‘a fishermen spotted the pod of orcas less than 100 m from Ofu and reported the sighting to DMWR.

Sword reported that only two FADs are currently deployed in American Samoa. FAD E near the village of Fagasa has been difficult to locate. DMWR staff is working on fabricating FAD C after FADs A and C were lost to vandalism. FAD D is still missing.

Dunham reported that PSMFC is processing the first round of CARES Act funds for American Samoa. Many of the local applicants did not satisfy requirements as provided for American Samoa in the Act. Those that did not qualify or meet the requirements for Round 1 may apply for Round 2. The application process for CARES Act Round 2 will be publicized once the distribution of the first checks has been completed.

Sword reported that StarKist Samoa resumed its second shift in late November 2021, after several months of labor shortage. ASG has approved the request from the cannery for continued guest worker recruitment from neighboring Samoa, but COVID-19 impacts to flights and transportation continue to hinder the recruitment process. The cannery is planning its annual 2-week maintenance shutdown at the end of the year.

Fewer purse seine vessels are calling into American Samoa due to FAD closures and better economic conditions elsewhere. With fewer purse seine vessels returning to the territory,

American Samoa canneries continue to rely on imported fish loins for 85% of their production. Outcomes of the recent WCPFC meeting did not improve the longevity of the purse seine vessels and the canneries.

Soliai said the price for tuna in Bangkok is higher than in Ecuador for the first time in more than a year, which may bring back purse seiners to the territory.

Sword said that the price difference in the past was approximately \$500 per ton higher in Ecuador, which made it profitable for purse seiners to take the time to transit to Ecuador to offload.

Rice asked if the \$3 million funding for the super alias was coming from the ASG and if the vessels were setup for longlining and bottomfishing.

Sword said that the project was funded by U.S. Department of Commerce Economic Development Administration. The vessels are multi-use alias for longlining and bottomfishing, similar to dories used in the 1960s but larger.

Soliai added that Armstrong Consolidated Inc. designed the vessels and is contracted to fabricate and deliver the vessels to the territory.

Sword commented that the super alias will arrive around the time that the bottomfish moratorium would go into effect.

Dueñas commended the ASG for supporting efforts to enhance fisheries. He said that the multi-purpose design of the super alias makes it possible for fishermen to do both trolling and bottomfishing, and recalled that an alia that was designed in Apia had deficiencies and kept sinking. The design by Armstrong Consolidates Inc. will be more robust. The high costs for the vessels are most likely due to shipping from the U.S. west coast. He said that an emphasis on “Buy American” should be pursued at the federal level to promote American Samoa fisheries.

Ramsey asked if the national shipping delays will delay the shipping of the super alias.

Sword said that the vessels should be completed in April 2022 and it may take a month to deliver the first vessel to the territory. Most shipping vessels that come from the U.S. west coast are empty so there should not be much delay.

B. Department of Marine and Wildlife Resources Report

Domingo Ochavillo reported on DMWR activities since the September 2021 Council meeting. The shore-based subsistence fishery landed approximately 11,600 pounds from July to September 2021. Top fishing methods or gears used were spearfishing, rod and reel, and throw net. Turban snails, groupers, octopus and fringelip mullet were the most caught species for subsistence. The boat-based fishery landed more than 8,000 pounds of fish during the same period, with top species caught being skipjack and albacore tunas. The spearfish fishery landed 1,425 pounds from July to September, with top species caught being redlip parrotfish and bluespine surgeonfish. No bottomfish activity or sales were recorded during this time.

DMWR is working with PIFSC to obtain life history information for several species in American Samoa. Data for *Naso unicornis* reveal that the species grows rapidly in length during its first five years. After the first five years, *N. unicornis* stops growing and spends more time spawning. Maximum age is 19 years, maximum size is approximately 49 cm and the size at reproductive maturity is 30 cm.

DMWR continues to work on the genetics of fish species in the Samoan Archipelago. With help from a molecular lab in Australia, DMWR used population markers called microsatellites to determine similarities between fish populations. Data shows that alogo and *Scarus oviceps* have a single genetic stock among Savai'i, Upolu and Tutuila. *S. oviceps* are highly targeted across the Samoan Archipelago.

OLE conducted 57 port checks, and sea and land patrols. Fifty-two fish bait containers of albacore were inspected. Staff has also assisted in the facilitation of three repatriation flights. Ochavillo also reported that the annual palolo spawning yielded very little harvest in Tutuila. There was a bigger spawning in Manu'a and Savai'i (Samoa).

Tenorio asked about the other fish species caught in the palolo net photograph shown in Ochavillo's presentation.

Sword said that goatfish and other species of fish are caught in the palolo nets, which have a fine mesh. He said that the catch in October and November were nonexistent and the handful in the net was probably the most anyone caught this year.

Dang asked if a handful of palolo is considered to be low catch, and what a typical catch looks like.

Sword said that on a good year, fishermen can catch around 140 quarts of palolo, which can be sold for approximately \$20,000.

Diana Kitiona, Council staff, said that the handful of palolo in the net shown in the photo was a combined catch of three people in one night.

Dueñas asked about the sex ratio of the fish in the life history study on *N. unicornis*.

Ochavillo said that he will have to check with PIFSC on that information.

Dueñas said that in Guam, the larger unicornfish are male and smaller ones are female. Due to their larger size, the males are harvested more than females. Dueñas asked what prevailing currents exist between Samoa and American Samoa, noting that in the Mariana Archipelago, the prevailing currents move from north to south and influence the movement of larvae and juvenile fish. He said that DNA research from these regions could provide insight to fish stocks found in the Samoan Archipelago.

Sword said that in Samoa, fishermen are catching Spanish mackerel that are never seen in American Samoa, which may imply that the currents are not moving from west to east. For bottomfish, Sword said that the current could be going either way, but mostly from east to west.

C. Report on the American Samoa Bottomfish Data Workshop with Department of Marine and Wildlife Resources

Marc Nadon and Erin Bohaboy, PIFSC, presented on the available data for the bottomfish stock assessment in American Samoa, as well as on the recent bottomfish data workshops. The new benchmark assessment for American Samoa BMUS is due in February 2023, and the first step of the new Stock Assessment Improvement Plan was to generate descriptive analysis of data available for stock assessments. The next step is to conduct workshops with local agencies, SSC members and local fishermen to promote data-driven decision making. The first data workshop was held Nov. 9, 2021, with PIFSC, DMWR and Council staffs, and the second workshop Nov. 18, 2021, included PIFSC, Council staff and key members from the SSC working group. The next workshop for fishermen is planned for January 2022. The purpose of the data workshops is to review the data report and data analyses by soliciting advice from key SSC members and DWMR staff who are knowledgeable about bottomfish fisheries datasets for American Samoa. No management actions were decided at the workshop.

The current modeling approach is a surplus production model that focuses on catch and CPUE data and is run as a species complex. PIFSC is looking to move to an age-structured model that would allow the use of length and life history data. These types of models can only be run at the species level because they rely on life history parameters that are species-specific. CPUE data comes from boat-based creel surveys and diver surveys. Size data comes from boat-based creel surveys, biosampling, diver surveys and commercial purchase. Life history parameters come from fish biology labs. The surplus production models rely entirely on CPUE data. Length-based models rely on size and life history models. Integrated models can take any type of data available and are typically used to run stock synthesis.

There are six datasets available for American Samoa. The NOAA diver surveys started in 2002 with improvements on the sampling design and accounting method implemented in 2008. The surveys occurred every two years, but switched to a three-year rotation in 2012. The 2021 survey was canceled due to COVID-19. The survey is limited to depths above 30 m, which means the divers encounter a fairly limited number of BMUS. For some BMUS, these data provide good fishery-independent size data and abundance index.

The second dataset is the Commercial Purchase Program that started in 1990. This program required local vendors to report their sales by recording fisher ID, species or species group, fishing method, area where the fish was caught, weight and price. CPUE data cannot be generated from this data due to the lack of effort data associated with vendor reports. Many vendor reports do not provide number of pieces sold. Another issue with this dataset is that most of the fish are not reported at species level, but as a species group. The program was set up to complement creel surveys, so it does not provide enough information to generate size.

The third dataset is from NOAA's biosampling program from 2010 to 2015 in American Samoa. The objectives were to collect specimens for life history studies and collect length data to support assessments. The data can be used to generate size information, but not CPUE as effort was not recorded and the time series is only for five years. All 11 BMUS were observed during the biosampling, however, one species (*Pristipomoides filamentosus*) did not have a good sample size (only 24 length measurements).

The fourth dataset was the shore-based creel survey which started in 1985. This survey recorded catch from shore-based methods such as thrownet, gillnet and spearfishing. This dataset recorded few BMUS since 2005. Between 1988 and 1995, there was a high number of *P. zonatus* caught in gillnets and thrownets. Due to the low number of observations in the recent years, this dataset would not be useful for stock assessments.

The fifth dataset is the boat-based creel survey that became standardized around 1986. Creel survey samplers at DMWR estimate boat-based fishing trips and conduct creel survey interviews with fishermen. The survey records fish species, number, weight and length. This dataset is one of the main sources used for past stock assessments. The number of interviews per year is between 50 and 120. From 1988 to 2008, half of the interviews were from Manu'a and the other half were from Tutuila. From 2008 to 2020, data were no longer collected from Manu'a. Based on the workshop with DMWR, personnel shifts may be a contributing factor to the missing Manu'a data in those later years. A significant portion of the catch were also reported to the group level from 1986 to 2015. Since 2016, fish in the creel survey are identified to the species level. Further discussion with DMWR is needed to understand what the species groups were used for and how to estimate which portion of these groups are actually one of the BMUS.

The final data set comes from historical catch information. American Samoa had fishery development programs dating back to the 1960s with periodic monitoring and catch estimation. Historical catch data provide an estimate of original catch sizes in the 1970s, when the bottomfish fishery developed in American Samoa. Data from pre-boat-based survey years showed that the bottomfish catch was up to 100,000 pounds a year. Data from 1986 and later showed far less catch (less than 50,000 pounds in most years).

With the six datasets available for American Samoa, 10 out of 11 BMUS have enough data for single-species, age-structured assessment models. *P. filamentous*, which is rarely observed in the datasets, will be used in a data-limited model. The report also noted that assessment for *Etelis carbunculus* is unlikely due to a recently described confounding species (*E. boweni*) that is in the data. *E. carbunculus* and *E. boweni* were recorded as the same species in the dataset.

Additional next steps include an assessment model structural discussion with key members of SSC in February 2022. The new benchmark BMUS assessment is due for review through the Western Pacific Stock Assessment Review process in early 2023. PIFSC will work with DMWR to discuss ways of inferring catch in the Manu'a Islands after 2009, create a timeline of staffing and protocol change for the boat-based and shore-based creel surveys and develop a timeline of regulations affecting bottomfishing.

Tenorio asked if PIFSC was able to find out how BMUS were recorded during shore-based creel surveys in American Samoa, noting that some of these species were not usually recorded in shore-based creel surveys in the CNMI.

Bohaboy said that shore-based creel surveys showed that *P. zonatus* were caught in gillnets and thrownets in both Tutuila and the Manu'a Islands in the early '90s. DMWR could look for someone who was a surveyor at the time to provide further insight about the catches

during that time. *P. zonatus* caught in the shore-based nets were recorded to be up to 14 cm. It is also possible that the fish caught were misidentified.

Nadon added that NOAA diver surveys never encountered *P. zonatus*, indicating that it is a deep species.

Dueñas asked about the average catch rate per vessel per trip.

Nadon said that the catch rate is dependent on the gear used and the species caught.

Bohaboy added that the average catch rates, or CPUE, is part of the modeling phase in the analysis. The models have not been fit yet to provide the average catch rates, but they hope to have that information available soon.

Dueñas said that the average catch rate is important when it comes to ACLs and how the catch would be divided amongst communities. He also said that species misidentification is common among fishermen, noting that there is species misrepresentation that can affect the data, considering that there are 250 species in the coral reef ecosystem and bottomfish fisheries.

Nadon said that starting in 2016, there was a standardized training for DMWR staff to identify fish to the species level. Any pattern, such as the appearing and disappearing of *E. bownei* in the *E. carbunculus* data, may be due to species misidentification and a concern for the stock assessment.

Sakoda asked if the size and life history data are being used for the 10 species that have enough data for single-species, age-structured assessment.

Nadon said that size data are what will be ultimately used for the assessment with some life history data. For life history, there are growth, maturity and longevity parameters for all 11 BMUS, but not specifically for American Samoa. For the model, life history parameters from Guam, the CNMI or Samoa would be used.

Soliai said that the workshops are an important step in the Stock Assessment Improvement Plan. DMWR staff was able to provide invaluable insight on the data collected over the years. He thanked PIFSC staff for facilitating the workshops.

Sword said that the 2009 tsunami was a factor in why there was less data after that time.

Peck asked how shark depredation is factored into CPUE and size since larger fish take longer to reel in and may be more prone to depredation.

Bohaboy said that discussion with fishermen in American Samoa can provide insight on shark depredation and if it should be something to consider in the stock assessment.

D. Scientific and Statistical Committee Report on the American Samoa Bottomfish Data Evaluation

Ochavillo provided a report on the outcomes of the SSC working group data workshop. PIFSC SAP collaborated with the SSC to review the datasets and analyses that will be used for

the new stock assessment in 2023. No management decisions were made. The SSC working group and PIFSC staff reviewed the six datasets. The NOAA diver survey has enough size data to generate short trend but only for a few BMUS. The Commercial Purchase Program will not be a major source of species-specific data as the program was not designed to do that. The biosampling data has enough information to generate size distribution for most species except for *P. filamentosus*. An SSC member mentioned that *P. filamentosus* is a rare species. *Lethrinus rubrioperculatus* does have significant data from biosampling, but it is not observed in the commercial data most likely due to what vendors chose to sell.

For the shore-based creel surveys, the SSC working group noted that there were more interviews between 1988 and 1996 than 2005 to present, which may be due to a shift in survey methodology. Due to low sample size, this data will not be used for CPUE and size information. The SSC noted a reduction of boat-based creel surveys completed in recent years. Also there is little information on bottomfish sold and unsold. Catch derived from creel surveys suggests that sales are much higher than assumed, but not supported by the Commercial Purchase Program invoices. Historic catch information have been difficult to obtain but could provide insight into full catch history for information on an unexploited stock and total removals.

The SSC working group discussed the use of rate-based input controls in the future instead of ACLs. Though the focus of the workshop was data, analyzing data and model structure are not mutually exclusive since the scientists need to understand how different frameworks respond to various inputs. It was noted that interviews from the outer banks were low and reporting from Manu'a since 2009 was low. SSC members had concerns about uncertainties in model output and assessment results. Members advocated for a multi-model interference. Bottomfish are still culturally significant, but it is unclear if the use of bottomfish for cultural events has changed throughout the years.

The SSC working group made the following recommendations during the workshop: 1) explore ways to determine if there is size selectivity by vendors in American Samoa, using anecdotal information if necessary; 2) DWMR should produce a timeline of changes in staff, data collection methodologies, fishery regulations and any other major events (e.g., natural disasters) that may have had an impact on fishery data; 3) assemble a group of creel survey data collectors that worked in previous decades to have a focused discussion on past methodologies; 4) generate an analysis of the estimated proportion of sold vs. unsold bottomfish from the creel survey data without filtering for length measurements; 5) determine the number of boats in Manu'a that were repaired by the Council's program to better estimate the number of active fishing vessels in recent years; and 6) PIFSC SAP should send DMWR a list of pertinent questions that can be asked during discussions between the agricultural departments of American Samoa and Samoa.

Dueñas said that he is disheartened that American Samoa bottomfish life history will be compared with Hawai'i, Guam and the Great Barrier Reef as life history for all fish differ from region to region. He shared that fish live in different depth zones and do not overlap much, and that target species and size might also be different between regions.

E. Pacific Community Regional Technical Meeting on Coastal Fisheries and Aquaculture

Ochavillo reported on the 4th SPC Regional Technical Meeting on Coastal Fisheries and Aquaculture that was held Oct. 12-15, 2021. DMWR staff participated in the meeting to discuss technical and scientific gaps, needs and challenges in the territory and opportunities in the region. SPC reported that its e-monitoring project develops electronic platforms for data reporting for various coastal fisheries in the South Pacific. During breakout groups, staff discussed the potential risk of aquaculture commodities and management strategy needed. SPC will provide support for DMWR to develop an American Samoa Aquaculture Plan. DMWR plans to submit a formal request to further this endeavor. Other projects included the developing of Coastal Fishery Report Cards for countries in the region and promotion of community-based fisheries dialogue. Additionally, the U.S. Agency for International Development announced \$15 million to fund the “Our Fish Our Future” project, and \$6 million for the “Pacific Coastal Fisheries Management and Compliance” project for all U.S. Agency for International Development-eligible countries.

F. Advisory Group Report and Recommendations

1. Advisory Panel

There were no AP recommendations regarding the American Samoa Archipelago.

2. Fishing Industry Advisory Committee

There were no FIAC recommendations regarding the American Samoa Archipelago.

3. Non-Commercial Fishing Advisory Committee

There were no NCFAC recommendations regarding the American Samoa Archipelago.

4. Scientific and Statistical Committee

Don Kobayashi, SSC member, presented the SSC recommendations.

Regarding the American Samoa Bottomfish Data Workshop, the SSC supported the PIFSC SAP in developing single-species, age-structured stock assessments for the American Samoa BMUS. If practicable, the SSC suggested simple single-species production models using Bayesian software tools developed at PIFSC also be examined in addition to the age-structured assessments.

The SSC recommended that the Council direct staff to work with NMFS to explore input control approaches to limit fishing mortality and contrast them with the current output control framework and use of ACLs.

Regarding the SSC Working Group Report on American Samoa Bottomfish Data Evaluation, the SSC recommended that the Council request PIFSC, in collaboration with the SSC working group, explore other historical datasets.

The SSC accepted the SSC working group recommendations. The SSC recommended that the Council and PIFSC address the recommendations in the working group report.

G. Public Comment

Tam, AP chair, commented on the American Samoa bottomfish data situation, noting that it is important to engage the community. Fishermen are very knowledgeable about fisheries as they are always out on the water. PIFG is about fishermen being part of the solution, not the problem. In Hawai‘i in the past, some of the best scientists did not go to school but acquired extensive knowledge about their fishery from observing, and each of the fishing communities had master fishermen (lawai‘a). Part of PIFG’s success with its bottomfish project is that everyone on the project is a fisherman, and they were trained on a scientific level to come to a mutual understanding with the scientists over the last 10 years on what the bottomfish fishery looked like. The key to success is for scientists to meet fishermen halfway because fishermen know what the fish are doing and when they are spawning. When all stakeholders come together to manage a resource, it will be better for all, now and in the future.

H. Council Discussion and Action

Regarding the American Samoa Bottomfish Data Workshops, the Council requested NMFS PIFSC continue the development of the single species age-structured assessment using the length information rather than the uncertain catch and effort data based on the evaluation of the available data for the American Samoa bottomfish fishery. Further, the Council recommends, if practicable, PIFSC examine a simple single-species production model using Bayesian software tools developed in-house in addition to the age-structured assessment.

The Council requested NMFS PIFSC, in collaboration with the SSC working group, explore other historical datasets. Further, the Council requests PIFSC and DMWR address the recommendations in the SSC working group report.

The Council directed staff to work with NMFS PIFSC FRMD and NMFS PIRO Sustainable Fisheries Division (SFD) explore input control approaches to limit fishing mortality and contrast them with the current output control framework and use of ACLs. Further, the Council directs staff to look into the consistency of the rate-based input control with the draft National Standard 1 Technical Guidance Memo for providing flexibility in the application of ACLs for data-limited stocks.

*Moved by Sword; seconded by Dueñas.
Motion passed.*

X. Protected Species

A. Hawai‘i Longline Fishery Seabird Mitigation Measures

1. Modification of Seabird Interaction Mitigation Measures in the Deep-Set Longline Fishery (Final Action)

Asuka Ishizaki, Council staff, presented the draft regulatory amendment to modify seabird interaction mitigation measures in the Hawai‘i deep-set longline fishery for Council’s

consideration for final action. Ishizaki provided a brief background on the action, which stems from increased black-footed albatross interactions observed since 2015 and addressing priorities for alternative mitigation measures identified through Council workshops. The Council at the December 2020 meeting directed staff to develop a regulatory amendment for considering the use of tori lines in lieu of blue-dyed bait and removing the strategic offal discard requirement, and the Council subsequently took initial action in September 2021. Ishizaki reviewed the purpose and need for the action, noting that the scope of the action does not include changes to the shallow-set longline fishery.

The draft regulatory amendment analyzed three alternatives: 1) no action, 2) replace blue-dyed, thawed bait and strategic offal discharge measures required for stern-setting vessels with a new tori line requirement, and implement nonregulatory offal management best practices training (preliminarily preferred alternative), and 3) replace blue-dyed, thawed bait with a new tori line requirement, and modify the strategic offal discharge requirement to an offal management requirement.

Ishizaki presented the draft tori line regulatory specifications applicable under alternatives 2 and 3, which were based largely on the short streamer tori line design tested in the deep-set longline fishery through the cooperative research project. While considerable literature research and expert input were incorporated into the design, only one design was tested during the field trials due to time and funding constraints, and the known efficacy of the tori lines in the deep-set fishery is based on that particular design. The draft specifications were updated from the preliminary draft presented to the Council at the June 2021 meeting, which had focused on the minimum standards comprised of aerial and drag section length, streamer design and attachment point height. Based on further discussions with PIRO SFD staff, enforcement representatives, GCPI, the PIR Observer Program and industry, a list of additional specifications were identified. These included specifications for aerial and drag section material, a requirement to carry two tori lines at the start of every trip and a requirement to include a breakaway point. Language to address the Council's recommendation from the September 2021 meeting for exemption language in the event of an attachment point structure failure was also incorporated into the revised draft.

Ishizaki also presented the analysis comparing the differences in the strategic offal discharge requirement under alternatives 2 and 3. Based on the available scientific evidence, operational characteristics of the fishery and foraging behavior of albatrosses, the best practices in the deep-set fishery are no offal discard during setting operations and discharging offal during hauling on the opposite side of the vessel when seabirds are actively pursuing baited hooks. Under alternative 2, the regulatory requirement for strategic offal discharge would be removed and replaced with best practices training, whereas under alternative 3, the regulations would be modified for consistency with the best practices. While alternative 3 may provide greater compliance with best practices, the extent to which improved compliance results in conservation benefit is unclear and may be marginal, due to inconclusive evidence on the benefits of the measure. Compliance and enforcement burden would be removed under alternative 2 and reduced under alternative 3.

Ishizaki provided a brief summary of the effects analysis, highlighting the cost differences between blue-dyed bait and tori lines. Once the Council takes final action, rulemaking process will occur and the regulatory change may be implemented in late summer

2022 at the earliest. Ishizaki noted that additional preparation for implementation will be needed, including refining draft guidance for fishery participants to build their own tori lines, coordinating tori line and pole distribution at no cost to fishery participants and considering a process for periodic review of tori line standards.

Dueñas asked if the range of the black-footed albatross has increased and whether the population is growing. He also asked if additional closures would be needed if interactions continue to increase, noting that the longline fishery's effort currently excludes the 200 miles around their nesting sites.

Ishizaki said that the black-footed albatross population is gradually increasing, but at a much slower rate than the increase in interactions observed since 2015. The fishery's effort distribution has gradually shifted to the northeast, while black-footed albatross range extends further south in some years due to oceanographic conditions, resulting in greater overlap in the ranges and increase in interactions. The interactions could also be tied to a combination of factors, including the ineffectiveness of the blue-dyed bait and captain turnover. The expansion of the PMNM happened in 2016, and interactions did not decline subsequent to the 200-mile closure, which was not surprising given that seabird interactions occurred both inside and outside of the EEZ.

Dueñas asked if there were major interactions in the 50- to 200-mile zone prior to the monument expansion, and if there was not, whether offal discharge was actually benefiting the birds by making food readily available for them.

Ishizaki said that the interactions between 50 to 200 miles were likely a smaller component of seabird interactions (compared to the high seas). Regarding offal benefiting birds, Ishizaki recalled a study from Japan that had suggested some association with seabird health and feeding around fishing vessels.

Sakoda asked if the color of streamer material matters and whether that needs to be included in regulations.

Ishizaki said that available literature suggested that streamer color or material is not as important as some of the other factors, and thus was not included in the draft regulatory specifications. In the trials, a heavy-duty, UV-coated plastic was used for the streamers based on availability of the material.

Ramsey asked if the additional material specifications for the tori lines are broad and common enough to account for any supply chain disruptions or material shortage coming into Hawai'i.

Ishizaki said that the inclusion of language that allows for other similar materials that have certain properties are intended to help with potential supply chain issues that may disrupt availability of Dyneema, noting that the material has not experienced any supply issues at this time. She noted that the advisory bodies considered that issue also.

2. Hawai'i Shallow-Set Longline Fishery Experimental Fishing Permit

Lynn Russel, PIRO SFD, presented on the Experimental Fishing Permit (EFP) application submitted by HLA to test tori lines in the Hawai‘i shallow-set longline fishery. The Council at the 185th meeting recommended additional research to develop appropriate seabird mitigation measures for the shallow-set fishery, with high priority placed on identifying combinations of mitigation measures that maintain the effectiveness of seabird deterrence during dusk compared to the existing night-setting suite of measures. This would provide greater operational flexibility, which may help optimize swordfish catch rates, promote more efficient fishing operations, maintain catch value and enhance crew safety while preventing seabird mitigations.

The proposed research would require an exemption for existing mitigation measures including thawed, blue-dyed bait, setting an hour after sunset and strategic offal discard during the set, thus an EFP is required for these exemptions. Russel provided an overview of the EFP process and requirements, noting that HLA has submitted a complete application and PIRO is consulting with the Council and the State of Hawai‘i at this meeting.

HLA is proposing to conduct trials from January through June when albatrosses are most active. The vessels would alternate sets with the control and treatment sets, with the treatment sets using double tori lines and untreated bait while starting the set up to two hours before the current night-setting requirement. No offal will be discarded during setting operations to reduce confounding factors, based on the prior experiment conducted for the Hawai‘i deep-set longline fishery. The study will target deployment of 40 to 80 sets under the EFP. Data on seabird attempts and contacts will be collected using electronic monitoring and human observers. Russel presented a summary of the anticipated effects of the EFP on target and nontarget catch, as well as seabirds and other protected species.

Dueñas asked if NMFS has an EFP application format in place to process it faster, recalling the case of a Hawaiian fisherman who had tried for years to get an EFP for longline fishing in the past.

Russel said that there is a format in place, and referenced regulations at 50 CFR 665.17 for details.

Rice asked what is needed from the Council to advance the application.

Tosatto said that he needs to consult with the Council as part of the EFP approval process, which is the reason for the briefing, and hoped the Council has sufficient information in front of them to support the application by the industry. He will also consult with the State of Hawai‘i because the project will take place around the state, and said that he will follow up with Sakoda, after which NMFS will make the decision of whether to approve the EFP.

B. False Killer Whale Issues

1. Report of the False Killer Whale Weak Hook Study

Diana Kramer, PIRO Protected Resources Division, presented an overview of a study comparing target and overall catch retention and value on 4.2 mm versus 4.5 mm hooks in the Hawai‘i deep-set longline fishery. PIRO received the final report the previous week, right after the SSC meeting. The fieldwork took place between March and July 2021 with four participating

vessels that completed 178 sets. The two hook types were deployed in alternating order within each set.

The length and weight of bigeye tuna were greater on the strong (4.5 mm) hooks compared to the weak (4.2 mm) hooks, although the difference in values were less than the 10% threshold set for the False Killer Whale Take Reduction Team (FKWTRT). The overall mean length difference was 0.4% greater on weak hooks and the mean weight difference was 5.4% greater on weak hooks. The price per pound and sales price for bigeye tuna were greater on the strong hooks compared to weak hooks. The total ex-vessel revenue for all species sold at the auction was \$604 greater on the strong hooks than the weak hooks.

FKWTRT met in October 2021 to review the draft report and provide suggestions for edits to the report, but did not discuss implications of the study. FKWTRT's comments on the draft report were presented to the report authors in preparation of the final report. FKWTRT and NMFS will review the final report and consider the results in the context of the take reduction measures in the coming months. Kramer encouraged Council members to review the final report and work with a FKWTRT representative about the implications of the study results in terms of any action either through the FKWTRT or separately, noting that the report contains a lot of information about the gear that may be valuable to the Council.

Dueñas said the study reminds him of past efforts to test the effect of different circle hook types on fish catch, and that a comparison analysis could be done on all of these mitigation measures.

Rice asked whether the analysis reported on how many of the weak hooks straightened out while pulling in the gear, noting his experience longlining for Bluefin in Louisiana where there were a lot of straightened out hooks.

Kramer said that the final report included a section about the straightened hooks.

2. Hawai'i Longline Acoustic Monitoring Study

Erin Oleson, PIFSC, presented on the FKW acoustic monitoring study in the Hawai'i deep-set longline fishery. The goal of the project is to understand how FKWs interact with the gear, how commonly they are near the gear and whether there may be any sounds produced by the gear or vessels that may be attracting them and increasing depredation and bycatch. The PIFSC Cetacean Research Program began deploying passive acoustic monitors on longline gear in 2012 in collaboration with the PIR Observer Program and individual fishers within the longline fleet. Observers deploy the acoustic recorder by attaching it in the middle of the basket, and the recorders turn on and off with a saltwater switch. Once the recorders are brought back to the lab, PIFSC staff work through the data to look for FKW and other odontocete sounds, as well as for sounds that may be produced by the vessel or the gear. In the current phase of the project, the observer also uses an in-air acoustic recorder to record sounds produced by the vessel near various pieces of fishing equipment to identify the source of sounds that may be attracting animals to the gear.

Results to date have shown that FKW clicks and whistles were heard most commonly around the gear during the haul, with clicks indicating foraging behavior. FKW sounds were detected more frequently than observer-reported depredation rates, which suggest that FKWs

may be around gear without taking any bait or catch, or that FKWs are depredating on bait. Additionally, FKW encounters were higher during hauling events when vessel-generated noises were detected, particularly with a sound that is commonly detected at the beginning of the haul for an hour or two. Observers are currently recording the sound of the hydraulic reel and a number of other reels or spools to identify the source, starting with a list of common gear that various captains suggested during the protected species workshop. PIFSC has funds to monitor up to 20 trips with in-air recorders and to work with individual captains to identify solutions to reduce or mitigate potential attractant sounds.

Dueñas asked if the project also includes FKW satellite tagging to track their movement to monitor their foraging range, noting that certain oceanographic features are used to identify areas with high presence of sea turtles. He also asked if the vessel or gear sounds may echo differently by vessel depending on the type of hull, such as mixed metal and fiberglass. Dueñas also wondered if there are additional monitoring with foreign vessels on the high seas, as the interactions may be occurring beyond the U.S. boats, while the mitigation measures are only practiced on U.S. boats.

Oleson said that the project does not include deployment of satellite tags, but PIFSC has supported satellite tag deployment for a number of years on both pelagic and insular FKWs through partnership with the Cascadia Research Collective, and also through PIFSC's own surveys. As part of the fiscal year 2021 federal appropriations for FKW fishery interactions, NMFS funded a dedicated survey effort intended to increase deployment on the pelagic population and better understand habitat associations as well as their range and interactions with fishing vessels. A couple of published studies have analyzed satellite tag data along with logbook data from the deep-set fishery, which showed responses of tagged whales to vessels. These relationships have been studied for the U.S. fleet, but PIFSC does not have access to data needed to look at animal movement in association with foreign fishing fleets.

Rice said that the vessel noise sounds like the puller with the line going through the water.

C. Endangered Species Act Consultations for the Hawai'i Deep-Set Longline Fishery, American Samoa Longline Fishery and Bottomfish Fisheries

Kramer provided a brief update on the ESA consultations, highlighting the anticipated completion dates for the biological opinions as follows: Hawai'i deep-set longline fishery, March 2022; American Samoa longline fishery, April 2022; and bottomfish fisheries, February 2022.

Soliai asked if anything has changed since the last Council meeting.

Kramer said that she would need to check back, but the dates for at least one of the consultations have been pushed back by a few months, although nothing major, and the new dates are within a month's time frame of what was presented at the September 2021 Council meeting.

Ishizaki said that the anticipated completion dates presented at the last Council meeting were October 2021 for the American Samoa longline fishery and January 2022 for the Hawai'i deep-set longline fishery. At the time, the Council had heard that a draft of the American Samoa biological opinion was in review.

D. Endangered Species Act and Marine Mammal Protection Act Updates

Kramer reported that NMFS published the final Recovery Plan and Recovery Implementation Strategy for the MHI FKW stock, which address threats including small population size, incidental take, inadequate regulatory mechanisms, competition with fisheries and effects from climate change. NMFS is also conducting a five-year status review for the insular FKW stock, which is anticipated to publish in early 2022.

For the coral recovery planning, NMFS is exploring an ecosystem recovery plan that addresses the climate threat and highlights the urgency and need for traditional and innovative solutions. Following the May 2021 workshop, NMFS has continued to solicit expert input through working groups and ad hoc consultations. NMFS will be reaching out to U.S. and international stakeholders to solicit input on recovery actions and activities.

In response to public comments on the proposed coral critical habitat, NMFS is working with experts from American Samoa, Guam, the CNMI and USFWS to ensure that it has the best available information on the distribution of ESA-listed corals within each affected area. NMFS is also developing new maps that will show precise locations of critical habitat, and conducting a new economic impact analysis based on the most recent Section 7 consultation data and other information received during the comment period.

On Sept. 28, 2021, NMFS published two rules on Hawaiian spinner dolphins: a final rule that prohibits swimming with, approaching or remaining within 50 yards of a spinner dolphin, which applies within two nautical miles from shore of the MHI in designated waters; and a proposed rule to establish five time-area closures in the MHI, which would apply from 6 a.m. to 3 p.m. The public comment period for the proposed rule is open through Dec. 27, 2021, and NMFS is scheduled to host a public forum on the proposed rule Dec. 9, 2021. Kramer showed the maps of the proposed closure areas, four of which are around Hawai'i Island and one near Maui.

Kramer reported on the FKW interactions in the Hawai'i longline fishery to date, highlighting the 13th interaction for 2021 that was confirmed since the September meeting. One additional interaction occurred Nov. 19, 2021, inside the EEZ, which may trigger the Southern Exclusion Zone closure depending on the outcomes of the expedited injury determination process. NMFS will update the FKWTRT and the fishery as appropriate once the injury determination is made. Kramer also provided an update on the FY2021 federal appropriations projects. For the telemetry deployment project, some tagging occurred in May and additional fieldwork occurred in November. For the hook corrosion and breaking strength study, a draft manuscript is in progress. For the camera system development project, some prototype cameras have been built and initial testing began in November. For the handling tools project, the University of Hawai'i Department of Engineering is developing options to test. A contract for the electronic monitoring of empty hooks project was awarded in September 2021 and work is projected to be completed in March 2022.

Rice said he only found out about the proposed time-area closures for spinner dolphins the day before, and he will not be able to attend the public forum but has been contacted by some fishermen. He said that the proposed closure areas for Honaunau and Ho'okena overlap with "ono lane" where fishermen troll through 50-60 fathoms of water to fish for ono, so there will be

a lot of skiffs coming through the area. The proposed closure for Ho‘okena also overlaps with the ko‘a that recreational and subsistence fishermen fish during the day. He said that the spinner dolphin areas should be brought inside of 40 fathoms.

Tosatto said he is not able to respond directly to Rice’s comments because NMFS is in a public comment period, but hoped public input continues and encouraged Rice and others to submit comments in writing before the deadline. He said that the proposed closure areas are not new, as the consideration for time-area closures was included at the time the approach rule was proposed. At the time, NMFS was not proposing the time-area closures, but received strong support for them, which is why NMFS is proceeding with a proposed rule at this time. He said it would be good to get the fishers in the communities to provide input, because the input from the communities so far has been in favor of the closures. The overall goal is to focus on the protections needed for spinner dolphins, but NMFS understands that a certain amount of community buy-in is needed for the closures to be successful. If the closures are implemented, NMFS envisions there would be some type of marking in the water to assist with enforcement, and if there is constant traffic through the area, that would be at the consequence of that individual.

Rice said if buoys are used for the markings, that would cause more traffic because the buoys would attract ‘opelu (mackerel scad).

Gourley said the updated database of the listed coral records shows one listed coral species, *Acropora globiceps*, in the CNMI, whereas NMFS had previously identified the presence of three listed coral species. If the updated database is correct, he asked if NMFS plans to revise the ESA listing.

Tosatto said the action that NMFS is currently considering is the designation of critical habitat, noting that if NMFS were to conduct a status review, that would be the time when it would consider changes to the listing.

Gourley asked for confirmation that NMFS is currently conducting a status review of the listed corals.

Tosatto said yes, and that he believed there is a status review in some phase of development at this point.

Gourley said that if the original listing was not accurate and if new data show only one species occurring in the CNMI, the ESA listing should be corrected. He asked if NMFS has a date when the final rule for the coral critical habitat is expected to publish.

Tosatto said no.

Dueñas said he is not against protecting corals of concern, but he is concerned when agencies with federal government funding have failed to protect those corals and another federal agency comes in and wants to take away resources from the community. He said that sedimentation continues to plague Guam despite the presence of a Coastal Zone Management Program and a Coral Reef Initiative Program for the last 20 years, but there appears to be no concern from NMFS when a bloom during a heavy downpour extends a mile beyond the reefs. The only people that NMFS will affect are the fishing community or marine users, as will be the

case for the spinner dolphin closures in Hawai‘i. He asked if the ono fishermen are impacting the dolphins, or if it is the tour companies who will continue to make money because they can move around.

Amani asked if the spinner dolphin area closure would affect all ocean users including swimmers and kayakers, or if it is just for vessels.

Kramer said that the proposed closures apply to all ocean activities, with some exceptions including transit to privately-owned shoreline and outrigger canoes for traditional subsistence fishing.

Rice said the biggest problem will be from the kayaks coming across Kealakekua Bay to the Captain Cook Monument as there are usually 40 kayaks that come across the bay every day.

Kramer said that the visitors route to the Captain Cook Monument is noted on the map, but said that NMFS welcomes public comment on that issue.

Sakoda requested that the Council chair and members wrap up the agenda on time the following day so that those interested in the spinner dolphin public forum can attend.

Ramsey said that he has also been contacted by fishermen and had some conversations about the time-area closures. One high level concern is that it is precedent-setting for closing off areas to fishing activity when impacts to dolphins are not from fishing activities. The proposal will also close off prime trolling areas, not only around the Big Island, but also around Maui, with many fishers either swimming out and spearfishing, or launching from La Perouse Bay using kayaks. Based on questions he received, Ramsey asked if the closures can wait until the newly implemented approach rules work, and why some proposed areas allow near-shore transit while others (such as in Makako Bay) are closed off in a way that access to near-shore mooring buoys would be lost. He said no comments he has heard have been bad, noting that quite a few comments from fishermen were in support of the proposed closure, and passed on compliments to NMFS for a proposal that supports the perpetuation of Native Hawaiian practices by allowing traditional fishing practices and fishing from canoes.

Rice agreed that the fishermen are not opposing the rule, but they oppose the lack of access.

Kramer thanked Council members for sharing their comments and encouraged that they be submitted as public comments so they are on record. She said that comments on specific areas, depths or coordinates would be helpful, and added that the public forum the following day will have an open period for questions and answers.

E. Advisory Group Report and Recommendations

1. Advisory Panel

Gil Kualii, Hawai‘i AP vice chair, presented the AP report and recommendations.

Regarding seabird mitigation measures in the Hawai‘i longline fishery, the Hawai‘i AP recommended the Council support alternative 2 and ensure that the regulations list the material description rather than brand names.

Kuali‘i added that the AP was concerned that regulations are difficult to modify or remove once implemented, and some prudence should be applied. The AP understands that this is a Council and fishery-led initiative, but it is important to maintain as much flexibility in the specifications as possible.

2. Fishing Industry Advisory Committee

Ishizaki presented the FIAC recommendations on behalf of Michael Goto, FIAC chair.

Regarding the modification of seabird interaction mitigation measures in the deep-set longline fishery, the FIAC recommended the Council adopt alternative 2, which would replace blue-dyed, thawed bait and strategic offal discharge measures required for stern-setting deep-set longline vessels with a new tori line requirement, and implement best practices training on offal management as part of the annual protected species workshop. The FIAC supported tori line regulatory specifications that identify appropriate aerial and drag section backbone material with the additional language of “other similar material” to account for unanticipated issues with procuring the specified material. FIAC recommended that the Council periodically review the minimum standards and consider refinements, if necessary.

Regarding FKWs, the FIAC recommended PIFSC and PIRO continue to work with HLA, FKWTRT and the Council to identify research priorities to address FKW interactions in the Hawai‘i longline fishery.

Ishizaki noted that there was a similar recommendation regarding FKW priorities from the FIAC at the June 2021 meeting.

3. Non-Commercial Fishing Advisory Committee

There were no NCFAC recommendations regarding protected species.

4. Scientific and Statistical Committee

Justin Hospital, SSC member, presented the SSC report and recommendations.

Regarding the modification of seabird interaction mitigation measures in the deep-set longline fishery, the SSC reiterated its previous recommendation supporting alternative 2 (replace blue-dyed, thawed fish bait with tori lines, remove the regulatory requirement for strategic offal discharge and provide best practice training for offal management at protected species workshops). The SSC noted that the preferred alternative mitigation measures and regulatory specifications are based on the best scientific information available (evidence-informed). The SSC supported the regulatory exemption for the tori line attachment point height.

Regarding the Hawai‘i shallow-set longline fishery EFP, the SSC supports the proposed study under the EFP.

Regarding the FKW weak hook study, the SSC tasks the FKW Working Group to work with staff as appropriate to develop the Council position on the implications of the study results in preparation for the in-person FKWTRT meeting in 2022.

Hospital noted that the SSC did not receive the weak hook study final report until the last day of the meeting, and did not receive the detailed presentation that the Council received. The SSC’s FKW Working Group members did assist staff with review of the draft report, and members reiterated concerns they had during the SSC meeting.

F. Public Comment

Eric Kingma, HLA, provided comments on the shallow-set longline EFP and the deep-set fishery seabird mitigation measure modifications. Regarding the EFP, HLA is looking at the issue in terms of both seabird conservation and improving operational efficiency in the shallow-set fishery. HLA looks to the Council’s favorable review on the EFP consideration, and appreciates Council staff’s assistance as well as review by PIRO SFD and consideration by the regional administrator. Regarding the seabird mitigation measure action in the deep-set fishery, HLA has been involved in the research and understands that eliminating blue-dyed bait and the offal discard requirement in lieu of tori lines will result in seabird conservation, and HLA wants to get ahead of the issue and reduce the interactions that have been increasing. HLA had a general membership meeting earlier in the day where the tori line specifications under consideration were presented, and HLA is in full support. HLA would appreciate potential flexibility in refining the specifications as the fishery encounters any implementation issues, but at the start, specifying a certain material type or similar material is the best way forward.

Ryan Steen, HLA and FKWTRT member, commented on the FKW weak hook study. The suggestion that the FKWTRT directed a 10% threshold is not correct, as there was never an agreement among the members as to what threshold of impact is acceptable for switching to weaker hooks. FKWTRT discussed the number of sets that would be performed under the study and the statistical power for detecting a certain change, and was told that it would only be possible to determine a statistically significant difference of 10% due to the number of sets that would be conducted. The fishery had hoped for a study that could detect a 5% difference. The industry believes that no economic impact is acceptable for switching to a weaker hook. Steen also said that while the final report does include a discussion on straightened hooks, the issue was that many of the hooks that were straightened were not collected in many of the sets. He noted there are no good data on straightened hooks, even though that was information the FKWTRT had requested and was told would be collected in the study. From the fishery’s perspective, a weaker hook is not the direction that FKWTRT should be heading, as weak hooks have not proven to be the fix and HLA will be advocating for the FKWTRT to take a different direction.

Kuali‘i provided comments on the spinner dolphin time-area closure proposed rule, noting that he agrees with comments made by Rice regarding the overlap between the proposed closure and fishing activities, and the effects on fishermen.

G. Council Discussion and Action

Regarding the modification of seabird interaction mitigation measures in the deep-set longline fishery, the Council recommended the following regulatory amendments to improve the overall operational practicality and mitigation efficacy of required measures for the Hawai'i deep-set longline fishery (alternative 2 in the draft regulatory amendment):

- a. **Replace blue-dyed, thawed bait and strategic offal discharge measures required for stern-setting deep-set longline vessels with a new tori line requirement; and**
- b. **In lieu of a regulatory requirement for a strategic offal discharge measure, implement best practices training on offal management as part of the annual protected species workshop, based on the best practices as presented, or any update thereof.**

The Council recommended the tori line regulatory specifications as follows:

- a. **Length specification of a minimum of 50 m for the aerial section and a minimum total length of 100 m.**
- b. **Specify material type, while maintaining some flexibility:**
 - i. **Aerial section: Ultra-high molecular weight polyethylene or other similar material that is light-weight, water-resistant, low stretch and floats in water.**
 - ii. **Drag section: 6 mm or larger braided material that is water-resistant and floats in water.**
 - iii. **Prohibited material for aerial or drag sections: Prohibit use of monofilament nylon in the aerial or drag sections of the tori line.**
- c. **Require two tori lines meeting specifications to be present on the vessel at the start of every trip.**
- d. **Aerial section must have streamers that are a minimum of 30 cm in length and spaced less than 1 m apart, except no streamers are required for the last 20 m of the aerial section.**
- e. **Tori line must be attached to the vessel or a fixed structure on the vessel made of rigid material at a minimum height of 5 m above the water if located within 2 m from vessel stern (or additional 0.5 m height for every 5 m distance from stern).**
- f. **Require a breakaway point to be included at the point of attachment.**
- g. **Attachment point height exemption that allows the operator to use an alternative attachment at the highest possible point on the vessel if the structure used to attach the tori line breaks during a trip (exemption only applies for that trip).**

Further, the Council deems that the regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the MSA. In doing so, the Council directs Council staff to work with NMFS to complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, the Council authorizes the executive director and the chair to review the draft regulations to verify that they are consistent with the Council action before submitting them, along with this determination, to the Secretary on behalf of the Council. The executive director and the chair are authorized to withhold submission of the Council action and/or proposed

regulations and take the action back to the Council if, in their determination, the proposed regulations are not consistent with the Council action.

Tosatto said that he will be abstaining because this is a final action that will come before him for decision-making.

Moved by Rice; seconded by Sword.

Motion passed with Tosatto abstaining.

Tosatto raised a point of order on the last action, noting that the discussion during the motion should be limited only to voting members, whereas Soliai asked for any comments from nonvoting members.

Simonds said that nonvoting members are allowed to comment but not allowed to vote.

Tosatto asked GCPI to consult Robert's Rules.

Onaga said that under Robert's Rules, when discussing motions during debate of the motion, any member can speak, so it would appear that any member must be germane to the motion, must address all remarks and the speaker must be courteous.

Tosatto withdrew his point of order.

*Regarding the modification of seabird interaction mitigation measures in the deep-set longline fishery, the Council **directed staff to convene a tori line implementation team comprising Council, NMFS PIRO, NMFS PIFSC, industry and other appropriate expertise to support the transition from blue-dyed bait to tori lines by developing additional design guidance for fishery participants to build their own lines that meet regulatory specification and coordinating distribution of tori lines and poles at no cost to fishery participants. Additionally, the implementation team should develop a process for periodically reviewing the minimum standards for tori line design or materials, and report back to the Council for its consideration at a future meeting, if appropriate.***

Moved by Dueñas; seconded by Sword.

Motion passed.

*Regarding the Hawai'i shallow-set longline fishery EFP, the Council **recommended issuance of the EFP to HLA.***

Sakoda asked if his "yes" vote on this motion would be considered the State of Hawai'i's official consultation response.

Tosatto said no, noting that he envisions one of his staff would have a follow-up call with Sakoda or the appropriate representative, and that a "yes" vote in this case would be in support of the Council's consultation.

Sakoda says that the State of Hawai'i does support the EFP application.

Tosatto said he will abstain mostly because it is reflective of a consultation regarding the EFP with NMFS.

Moved by Sword; seconded by Dunham.
Motion passed with Tosatto abstaining.

*Regarding the FKW weak hook study, the Council **directed staff to develop the Council position on the implications of the weak hook study with input from SSC working group in preparation for the in-person FKWTRT meeting in 2022.***

Rice said that from what he understands, a hook in a FKW is considered a serious injury, which does not make sense because a FKW that died of natural causes was found with six hooks in the stomach.

Dueñas asked that staff spell out acronyms in the motions for the benefit of the public.

Moved by Sword; seconded by Rice.
Motion passed.

*Regarding the spinner dolphin time-area closure proposed rule, the Council **directed staff to send a comment letter in response to the proposed rule highlighting fishery issues identified by Council members.***

Sakoda said that the State of Hawai‘i will also be submitting its own letter, but noted he has no problem supporting the motion.

Moved by Sword; seconded by Rice.
Motion passed.

*Regarding coral critical habitat, the Council **requested NMFS PIRO continue coordination with the territory governments in advance of the final rule to designate critical habitat for ESA-listed coral species, including follow up with the Guam and the CNMI governments to provide specific reasons for not accepting the territorial objection of the NMFS negative determination on the CZMA federal consistency provisions.***

Moved by Sword; seconded by Dunham.
Motion passed.

XI. Pelagic and International Fisheries

A. American Samoa Longline Fishery Report

Keith Bigelow, PIFSC, provided the 2021 semi-annual report for the American Samoa longline fishery. Fishing performance in American Samoa was relatively poor in 2020, with 11 active vessels deploying approximately 3.6 million hooks and landing 30,000 albacore. The CPUE in 2020 was the worst in the history of the fishery at approximately 8.4 albacore per 1,000 hooks, compared to the fleet’s ideal CPUE of approximately 12 fish per 1,000 hooks. From

January to May 2021, the fishery performed slightly better, catching 8.9 fish per 1,000 hooks, compared to six fish per 1,000 hooks in 2020 for the same period. There have been interruptions in flights slowing down the processing of logbooks at PIFSC, and PIRO staff in American Samoa has assisted with retrieving logbooks and electronic reporting (ER) implementation.

Dueñas asked how size composition of fish landed in the American Samoa longline fishery has changed, and whether El Niño or La Niña has had an effect on any observed changes.

Bigelow said the El Niño cycle impacts more tropical waters. The size frequency of albacore is fairly similar throughout history, approximately 42 pounds per fish on average, much smaller than the Hawai‘i-caught tuna. Bigelow said that PIFSC noted changes in the size frequency from the longline fishery. He added that South Pacific albacore is smaller than its North Pacific albacore counterpart, and the average size per fish has remained unchanged. Troll fisheries at higher latitudes catch juveniles, while American Samoa catches adult fish typically at 9 or 10 years old.

Sword asked how the logbook information and other data from the region may help fishermen increase their CPUE.

Bigelow said there was a new stock assessment in 2021 and catches from China and Taiwan have been high. Effort controls are likely needed by the WCPFC to reduce pressure on the stock and help CPUE. American Samoa is in a difficult place because the U.S. EEZ is relatively small, with other nations’ EEZs surrounding American Samoa, meaning that there is not a lot of opportunity compared to other Pacific Island countries that have a larger area to fish.

Sword asked if the condition could improve for American Samoa vessels if they could reach high seas areas to fish.

Bigelow said American Samoa vessels do have the opportunity to fish on the high seas and had fished on the high seas in the past, but have stayed in the U.S. EEZ in recent years.

Soliai asked if the CPUE compares to other nations of similar fleet sizes.

Bigelow said some nations have higher catch rates, but CPUE declined across the board in 2020. China and Chinese Taipei vessels are larger and have the ability to move around to fish on high seas.

Soliai asked if the 8.4 and 8.9 fish per 1,000 hooks for the last two years was roughly average for the region.

Bigelow said the other Pacific Island countries have similar CPUE, but this is the poorest CPUE in the history of the American Samoa fleet. Vessels prefer to get approximately 12 albacore per 1,000 hooks, so 8.4 is approximately a 30% reduction.

Peck asked if other species, such as yellowfin and mahimahi, are included in the full longline report.

Bigelow said the 2021 annual report will be presented in March 2022 and will include incidental species such as yellowfin, wahoo and mahimahi.

Peck asked if the CPUE for the incidental species have changed.

Bigelow said he did not know.

B. Hawai'i Longline Fishery Report

Russell Ito, PIFSC, provided the 2021 semi-annual report for the Hawai'i longline fishery (deep-set and shallow-set components). The report described fishery statistics including participation, effort and catch in 2020 and 2021. Participation peaked at approximately 140 vessels in February 2020, started dropping in April 2020 to a low of 115 vessels in August 2020, but has been increasing slowly up to approximately 130 vessels as of July 2021. There was an increase in monthly trips since the COVID-19 pandemic, which peaked at 220 trips in March 2021. Fishing effort was approximately 2,200 longline sets from early 2021 through June 2021, increasing from a low of 1,600 longline sets in April 2020. CPUE and catch for bigeye tuna has fluctuated with peaks in April 2020 and winter 2021 at approximately four fish per 1,000 hooks,. Swordfish catches were relatively high by the end of 2020, with higher catches seen in 2021 compared to previous years. Ito noted that higher swordfish catches in March and April 2021 are likely related to more flights and the ability to move product. Ito also provided updates on the Hawai'i longline fishery's gear modifications for shark conservation and recovery from COVID-19.

Ito summarized the implementation of ER, noting that 124 out of the 147 active vessels have been equipped with ER tablets. Tablets were also sent to American Samoa and are undergoing testing with the PIR Observer Program staff, but outreach to deploy tablets has not yet started. The NOAA OLE is replacing old VMS units that are having issues synchronizing with the ER tablets. Replacement tablets have been made available and VMS connectivity has greatly improved. Software development continues to incorporate fishermen's suggestions into the application, and software updates for vessels operating out of California have been accomplished. Ito noted challenges with COVID-19 protocols, timing for intercepting captains and captain turn-over.

Rice asked if the decline in bigeye tuna during the summer can be attributed to La Niña.

Ito said he was not sure, but suspected La Niña may have influenced how vessels were operating. He added that the timing when the economy opened up was helpful because the fish prices were high and boats were able to continue operating even with the poor bigeye catches.

Rice said La Niña definitely impacted his fishing with a bad summer for yellowfin, but he has seen conditions improve in the last couple of months. He asked if the Hawai'i longline fishery catches have also picked back up.

Ito said conditions have improved into the fall, but the fleet was struggling a couple of months ago due to the low catch per trip. He added that troll fishery catches were also poor around Kaua'i over the summer.

Dueñas asked if there are changes with size frequency and CPUE in the Hawai'i longline fishery.

Ito said bigeye tuna CPUE was lower in 2021 compared to 2020, but size frequency has not changed from approximately 80 pounds per fish. Swordfish average size is approximately 160 pounds per fish, which has been consistent over the years.

Dueñas said that Hawai‘i has the healthiest fish stocks out of the entire Pacific region and the consistent sizes over the years confirm that, which is relevant in the WCPFC’s quota issues for the Hawai‘i longline fishery. He asked about the Hawai‘i longline fishery’s switch to milkfish bait and whether that has made a difference, noting that Guam fishermen tried using milkfish bait for a few years, but was not continued.

Ito said some boats have tried using milkfish as an alternative to sanma (saury) and sardines due to supply and cost issues. He is not sure if that had an impact on CPUE, but suspected that the fleet had some success with milkfish as it continues to use it.

Dueñas asked if there is research on fishing impacts following the monument closures.

Ito said he has not done research on the impacts as he is focused on ER deployments, and said he would leave that up to the stock assessment scientists.

Soliai asked what impact climate or climate change may have on American Samoa and Hawai‘i longline fisheries.

Bigelow said the question would be better addressed by PIFSC’s Ecosystem Sciences Division.

Soliai said he would consider it as a recommendation to PIFSC.

Amani asked if ER tablet in-person training will be provided in American Samoa beyond the training videos, and about the average time to train users.

Ito said none of the American Samoa vessels have tablets deployed now, but test tablets were sent to American Samoa and are undergoing testing with PIR Observer Program staff, with plans to conduct outreach with the boats at a later time. Training in American Samoa is problematic because there is currently no experienced or dedicated staff for tablet deployment there. Training can be done in approximately 15 minutes for tech-savvy operators, and those who are not comfortable will file paper logs along with their ER transmission so that data can be cross-checked.

Soliai said he had issue with the characterization that training in American Samoa was “problematic” and that lack of progress should not be attributed to boat owners as they are eager to transition to ER. Soliai asked for a timeline for conducting the training in American Samoa.

Bigelow said the delay was due to PIFSC staffing issues that the agency hopes to solve eventually, and agreed that it was not an industry problem.

Dang said he appreciated the progress with the fleet’s adoption of the ER system, and said he was glad that some of the challenges, including language and technology barriers, are being worked through.

C. Hawai'i Community Tagging Program

Melanie Hutchinson, Cooperative Institute for Marine and Atmospheric Research (CIMAR), provided an overview of the Hawai'i Community Tagging Program. The Program began in 2016 as a collaborative research program focused on the use of advanced telemetry technologies to elucidate shark behavior and habitat requirements. The focus began on bigeye thresher sharks but shifted to oceanic whitetip sharks as the Program developed. This work depends on the efforts and local ecological knowledge of the fishing community to deploy tags, collect data and pursue practical and sustainable solutions to mortality mitigation. The Program has conducted eight workshops and trained 160 fishers in Hawai'i as participants. One of the major issues addressed in community outreach is improved shark identification. Research objectives include improving knowledge of habitat use, stock structure and demographics around Hawai'i, and research to reduce the risk to key shark species in fisheries. Tagging initiatives include the use of acoustic, satellite and individual identification tags.

Molly Scott, CIMAR, summarized oceanic whitetip shark movements related to FADs using electronic tags. Other research efforts investigated the association of silky and oceanic whitetip sharks with offshore aquaculture pens and State FADs. An offshore aquaculture cage that broke loose from its mooring in July 2021 provided an opportunity to compare movement patterns of these sharks with respect to presence and absence of the cage.

Hutchinson summarized large scale satellite tagging studies throughout the Pacific Ocean and the impacts of habitat conditions on vertical movement. She also presented depredation mitigation efforts, including galvanic releases on "jugs" and magnetic deterrents. Researchers used photo identification to observe movement and site fidelity of more than 150 individual sharks.

Scott summarized outreach efforts and future steps, which include collaboration with other scientists to develop improved species distribution maps and partnering with the U.S. Animal Telemetry Network and International Ocean Tracking Network. Scott explained the outreach and media component of the program, including filming with the Planet Shark series with National Geographic that will focus on community-based shark conservation programs. Next steps will be to integrate habitat-use, fishing interaction and environmental data to create species distribution models in collaboration with colleagues from the Southwest Fisheries Science Center and PIFSC. This will enable the scientists to elucidate potential biological hot spots and drivers of movements for these highly migratory species.

Gourley said a similar effort in the Mariana Archipelago to track shark movements would be beneficial and that an identification key for sharks that could update an old NOAA booklet is needed.

Rice said most sharks are on the west side of the Big Island of Hawai'i now that two buoys have been redeployed, and the sharks stay on the down-current side of those buoys. Rice also said he was glad to know that sharks known as bronze whalers are actually silky sharks. Rice said the large fish pens was taking fish away from natural ledges, which a lot of people did not like, and he is glad they are gone. Rice asked if the fishermen that the team is working with also took them to the private FADs to work with the sharks.

Hutchinson said her team has not fished with anyone since COVID-19, but noted that the purpose was to train fishers to tag themselves and that some have reported tagging on private FADs. Hutchinson said she will send Rice an ID guide.

Rice suggested that fishermen tag sharks at OTEC and TP buoys because it would be interesting to see if those sharks stay in the area. He said he has caught a shark at C buoy in the past that had five or six hooks in its mouth, suggesting that it may be a resident shark.

Muña-Brecht said DAWR had a shark depredation proposal that includes swabs of depredated catch, and asked whether shark avoidance strategies have already been developed or determined to be effective.

Hutchinson said the avoidance strategy is a component still to come, as her team is still in the data-generation phase and has not yet published anything from the project. She noted that the quarterly newsletter posted on the CIMAR webpage includes a featured fishermen section, and the fishermen are always asked about their depredation avoidance strategies. The team is documenting the information from fishermen, which will be part of a forthcoming overarching report for the entire program. Hutchinson also referred to Iwane's publication, which includes some ideas from fishermen on strategies they are using or interested in testing.

Amani said she has noticed more sharks while spearfishing, trolling and bottomfishing. Amani asked if a time will come when information will be gathered on whether there are too many sharks and that some action is needed.

Hutchinson said the team does not make those decisions, as its role is to generate information for decision makers.

Amani asked why aquaculture pens off Kona were removed.

Hutchinson said a private company owned it and it was removed after it broke free of the mooring. Her team had a partnership with the company that owned the pen, so the team was able to generate some data around the time the pen broke loose. The mooring was later recovered and the company is considering next steps for the pen.

Rice said the pen was shipped to the mainland and not likely to be brought back to Kona.

Dueñas said Guam has been dealing with shark depredation for more than 20 years, including when he used to fish at one of the FADs where it was almost guaranteed to get depredated by a shark at some point, but would never see the actual shark. Dueñas said that many of the FADs used by the large purse-seine fisheries are lost, some of which became snagged on Guam reefs. He believes the FADs could be bringing in the shark ecosystem toward Guam. He compared the conservation of sharks at a time when large amounts of fish are harvested from the ocean to releasing wolves back into the wild when the deer population is small. Dueñas hopes the tagging program can expand beyond Hawai'i, and suggested color coding the tags by location so that fishermen can easily identify whether the shark was tagged at a specific FAD or bank.

Hutchinson said she liked the idea of color coding the tags.

Soliai asked how he can get similar research done in American Samoa, noting increases in depredation and a recent fatal shark attack. He asked if there is a place to report fatal shark attacks.

Hutchinson referred to the International Shark Attack Database run by the Florida Museum at the University of Florida.

Ramsey said shark attacks are not that rare in Hawai'i, noting some that had occurred recently. He asked about the method of sharing information and results with the fishermen, noting that successful tagging programs rely on good circular communication between fishers and scientists.

Hutchinson said communication started from fishing with fishermen and word of mouth through those established relationships, and later expanded to workshops and multiple social media platforms. Tagging results are communicated back to the fishermen anytime data are received from the tags. The team also has a quarterly newsletter. The communication back to the fishermen includes not only what their tags did, but the impacts of what is learned from the tags.

Ramsey said he is interested in learning how the breakaway jug system works, noting issues with jugs used in drone fishing.

Hutchinson said that the breakaway is called a galvanic timed release, and she could follow up with Ramsey.

Rice said sharks work on instinct, noting that he once used a sandwich container to distract a shark while catching tuna.

Tosatto reminded the Council members and fishing community that oceanic whitetip sharks are listed as threatened under the ESA. While there are no take prohibitions under Section 4(d) provisions, impacting and affecting the behavior of the species would not be consistent with the ESA. He said that NMFS needs to learn more about the jugging practice, including the need for a 4(d) rule. The Forever Ocean Aquaculture Project (the fish pens) was always intended to be a temporary project that received a special permit under the Coral Reef Ecosystem FMP. When the fish pen broke free, it was on its last harvest round and was due to come out of the water shortly after that event happened. Learning about how sharks interact with those aquaculture cages in federal waters, as well as the impacts on fisheries, is something that PIRO will be considering with the Council in its aquaculture Programmatic Environmental Impact Statement.

Dang asked about the level of interactions that troll and handline fisheries have with sharks.

Hutchinson said that is one piece of information the team is trying to generate with the tagging effort, noting that reporting of shark interactions is voluntary.

Rice said fishing on the up-current side of a FAD would be a deterrent to catching sharks in his experience. Rice also said the practice of jugging for sharks was happening in the 1980's prior to the ESA determination.

D. Area-Based Management Working Group Reports

1. Council Coordination Committee Working Group

Mark Fitchett, Council staff, reported on the CCC subcommittee on area-based management (ABM), which was formed at the May 2021 meeting. The subcommittee is preparing a draft report of regional area-based measures for federal waters in the U.S. EEZ by May 2022. Fitchett described eight principles of the Biden Administration’s “America the Beautiful” initiative and how they may apply to ABM. The CCC is operating on the definition of “conservation” agreed upon before its October 2021 meeting as the initiative does not have a definition for conservation at this time. Fitchett also described the subcommittee’s proposed criteria for conservation based on the International Union for the Conservation of Nature guideline, including the need for evidence to support the need for ABM for the purpose of conservation. The CCC subcommittee is now collating regional ABM measures for the purpose of conservation that may be intended for fisheries management, protecting species of interest and protecting habitat. Each member from each region is in charge of cataloging this information. 61% of Western Pacific waters are closed off or protected in one way or another, including through marine national monuments. Other regions do not have equivalent levels of protection. The Western Pacific Region, like other regions, prohibits the use of bottom trawls, bottom tending gears and destructive gears. Fitchett described the next steps for the subcommittee, noting that the draft report is expected to be available at the next CCC meeting in May 2022.

Dueñas asked if the subcommittee recommends looking at mitigation and conservation efforts, noting that mitigation is more important than closures.

Fitchett concurred and said that one of the objectives that the subcommittee discussed was the ability for a conservation area to generate ecosystem services like producing fish and jobs. The SSC noted that a goal for conservation should not be just 30%, but rather if an area is being effectively managed for sustaining target and nontarget fisheries—then it would be 100% effectively managed. Fitchett also reiterated the Western Pacific Region is approximately 61% within the definitions of conservation proscribed by the CCC subcommittee, and the Western Pacific Region also has 100% protection against destructive gears.

2. SSC Working Group

Fitchett reported the aim of the SSC working group is to provide advice on the use of ABM to achieve goals provided by the Biden Administration “America the Beautiful” initiative and ongoing U.N. Biodiversity Beyond National Jurisdiction (BBNJ) negotiations. Both have a goal to conserve 30% of lands and water by 2030. The BBNJ negotiations target waters on the high seas, and are not to interfere with existing legal instruments and frameworks such as regional fishery management organizations. Fitchett also provided an overview of additional international issues, including the expected opening of the Phoenix Islands Protected Area (PIPA) in Kiribati, and a summary of major domestic area closures to be evaluated by the ABM working group. Fitchett described the work plan and scope of deliverables, with the first deliverable expected at the March 2022 Council meeting, consisting of an outline of a policy-focused paper to address domestic and international issues impacting Western Pacific Region fisheries. In June and September 2022, the working group is expected to inform U.S. positions at the U.N. Committee on Fisheries that is addressing BBNJ and ABM on the global high seas. One question that the SSC working group will be examining is whether executive orders requiring ABM goals will circumvent evidence-based analyses such as the National Environmental Policy

Act and MSA. The working group will also consider the international landscape and whether the U.S. domestic closures are a pyrrhic victory for conservation with unintended consequences.

Gourley said the “America the Beautiful” campaign could have positive outcomes if it helps to clarify the definition of what conservation entails and how conservation areas can prove their worth. It may also be possible to move marine monument creation away from advocacy into a science-based decision-making process, firm up definitions and establish standards for ABM sectors. He said the Council needs to participate in all sectors of the ongoing ABM movements, and he noted the SSC recommendations on the CCC subcommittee and the SSC working group that the Council should follow up on.

Dueñas said he is glad the SSC is looking at the efficacy of the existing closure areas, especially around the Pacific Remote Island Areas (PRIA). He expressed concerns that the areas are becoming missed opportunities for conservation seeing that foreign fishing efforts around the PRIA are still extensive, and about the lack of assets in the area to determine if vessels are turning off VMS or using FADs to attract fish to the high seas areas around the PRIA. He said the United States is at the forefront of conservation as exemplified through the management of the Hawai‘i longline fishery. He is disturbed that U.S. fisheries are called industries because they are inherently community-based fisheries that are much smaller than distant-water fishing nation vessels, and are limited in range and scope because of the regulations. Distant-water fishing nations are apparently not obligated to comply with any type of international regime, exemplified by reports of 2,000 loggerheads killed in Baja California, Mexico, while the Hawai‘i fishery is dealing with seven or nine interactions a year that are not even mortalities. Dueñas also said he is disappointed the United States does not have a prepared action plan for international fisheries.

Muña-Brecht asked how the work of the SSC working group will consider impacts of deep-sea mining activities allowed in areas where fishing is restricted.

Fitchett said deep-sea mining is an international issue that is tied into BBNJ, and warrants consideration by the SSC working group. The United States is not a member of the International Seabed Authority, which is dealing with that very issue. Most activity is on the high seas, with some interest inside EEZs of some nations.

Muña-Brecht recalled a presentation from a previous Council meeting that showed some deep-sea mining activity under consideration near the MTMNM.

Fitchett said Doug McCauley was the expert who presented on Deep Sea Mining Watch at the March 2020 Council meeting and it could be beneficial to have him weigh in on this issue again.

Sword asked if there is information available on how much Chinese purse seiners pay to fish in Kiribati. He also asked if there was dissent from the Parties to the Nauru Agreement (PNA) since the issue with China fishing in Kiribati might be in counter to the compliance monitoring scheme. These issues affect the ability to maintain supply for American Samoa with just 13 U.S. purse seine boats. He added that PRIA closures are not helping the United States, while it was apparent Kiribati looks after its own economic interests.

Fitchett said he did not have information about the payments and deferred to Tosatto.

Brinkman said the International Seabed Authority is not his office's responsibility, but his sister office at the State Department does have purview over that issue. He said if the Council is interested, he could seek availability for a more in-depth brief on the International Seabed Authority and mining in the international zone.

Peck asked what depth the SSC working group is interested in with respect to resources and if the focus is only on pelagic fisheries. He also said a Taiwanese longliner that ran aground at Rose Atoll in 1993 spilled 100,000 gallons of diesel fuel and devastated the atoll, which is still causing impacts. The ASG supported the establishment of the Rose Atoll Marine National Monument in part to create a buffer zone to prevent future incidents of ships running aground on the atoll.

Fitchett said the SSC working group would only be able to address whether areas are reaching efficacy based on available data streams. For Rose Atoll, the working group would need to look into whether data are available to support an evaluation of the effectiveness of the intervention.

E. International Fisheries

1. Western and Central Pacific Fishing Commission 17th Technical and Compliance Committee

Emily Crigler, PIRO International Fisheries Division (IFD), presented on the WCPFC 17th Technical and Compliance Committee (TCC) Meeting held Sept. 21-28, 2021. Eight cooperating nonmember renewal applications were reviewed this year for Curacao, Ecuador, El Salvador, Liberia, Nicaragua, Panama, Thailand and Vietnam, all of which were ultimately forwarded for review during the 18th Regular Session of the Commission (WCPFC18). No new vessels were nominated for inclusions in the Illegal, Unregulated and Unreported Fishing Vessel List for 2021, and three vessels are remaining on the list. The European Union submitted a proposal to amend the current conservation and management measure (CMM) for the Illegal, Unregulated and Unreported Fishing Vessel List to include a number of cross-listing procedures (with other organizations), but the proposal did not move forward due to lack of agreement from the Pacific Islands Forum Fisheries Agency (FFA) members. The Compliance Monitoring Review (CMR) process was held in a closed session, and the final CMR was adopted at WCPFC18. This was the first year the TCC was able to review the new aggregated tables summarizing information on alleged infringements, which is a fairly new requirement from the most recent CMR measure.

TCC meeting participants adopted three recommendations on COVID-19-related issues, including the continued suspension of the three intersessional decisions until March 2022, review of the possible phasing in of the removal of the suspensions and consideration of the effects of COVID-19 in developing the list of obligations for assessment in the 2022 CMR. New Zealand provided a last-minute proposal for a recommendation to require ER for operational catch and effort data, but it was not adopted and New Zealand committed to develop a more detailed recommendation for future consideration. The VMS working group, cochaired by Terry Boone, NOAA OLE, also adopted 12 recommendations.

TCC meeting participants also discussed the applicability of the tropical tuna measure (CMM 2020-01) with respect to ISC advice on reporting from Indonesia and Philippines pole

and line and handline fisheries. The European Union also sought clarification on the application of the FAD closure exemption in footnote 1 of CMM 2020-01, asserting that the application of a FAD exemption [by Small Island Developing States, or SIDS] applies to flag vessels and not chartered vessels. PNA members have maintained their position that it applies to both flag state and chartered state vessels. The TCC meeting participants also discussed guidelines on reporting purse seine processor data and endorsed best practices and safe handling of cetaceans. The United States submitted comments on the draft guidelines developed by the FAD Management Options Working Group, which aligned with PNA and FFA members, and included concerns regarding the logistical constraints of obtaining nonentangling and biodegradable FAD materials in remote ports like American Samoa. Regarding the treatment of crew on fishing vessels, Indonesia and New Zealand have been leading work intersessionally with members to develop a proposed CMM, but members agreed a lot of work still needs to be done. The United States submitted a couple of proposals for consideration at the TCC meeting that were not adopted. One proposal related to the adoption of specific Regional Observer Programme Minimum Standard Data Fields to be collected and report by observers during transshipment events, and another was to use observer reports to monitor and assess compliance with adopted management measures.

2. Western and Central Pacific Fisheries Commission 17th Northern Committee Report

Valerie Post, PIRO IFD, provided an overview of the WCPFC 17th Regular Session of the Northern Committee that was held in October 2021. A Northern Committee and IATTC Joint Working Group on Pacific Bluefin Tuna Management agreed to consider a new CMM and a new resolution in the Western and Central Pacific balance of catch between “small” and “large” fish. The joint working group also agreed on increases for large fish throughout and a catch limit for Korea, who previously did not have a large fish catch limit in a table. A new provision allowed 17% of catch from previous years to be carried over to the next year. The FFA had some questions about the stock assessment and discomfort it had expressed the previous year at the ISC, but it eventually conceded that it would not block the Northern Committee’s recommendation. There were disagreements on baseline fishing effort for North Pacific albacore stock. Vanuatu proposed language to amend it, but it was disapproved by Japan. The ISC gave a presentation on results from the Management Strategy Evaluation. The United States got recommendations approved at the Northern Committee work plan to revisit the limit reference points and adopt a target reference point (TRP) next year, and to adopt a harvest control rule and a threshold reference point in 2023. Next year, the Northern Committee will discuss North Pacific albacore further and draft a CMM to ensure an end to illegal, unregulated and unreported fishing on the stock.

3. Permanent Advisory Committee

Goto, United Fishing Agency, provided an update on the Permanent Advisory Committee to Advise the U.S. Commissioners to the WCPFC (PAC). The PAC agreed to propose an increased U.S. longline catch limit for bigeye tuna and keep language on retaining the U.S. position on the Effort Limit Areas for Purse Seine Fisheries. The PAC also made recommendations for the U.S. delegation on South Pacific albacore and striped marlin, and a proposal to remove wire leaders in WCPFC longline fisheries to reduce impacts on sharks. The wire leader removal proposal was based on the Council’s actions. Regarding the Hawai‘i longline quota, the United States continues to request an increase in the U.S. longline bigeye tuna

quota as it has for more than 10 years. The United States has the smallest quota relative to other countries and is subject to the highest standards.

Dueñas asked if there needs to be an amendment to the South Pacific Tuna Treaty for American Samoa to have its own lateral agreement with Pacific Island countries, which could allow the U.S. purse seine vessels or super alias to fish around other islands.

Tosatto said the PAC only advises the United States on the WCPFC and not the treaty. U.S.-flagged American Samoa longliners can already engage in agreements with foreign nations to fish there, given proper notifications.

Soliai asked what would be involved if American Samoa-based longliners wanted to fish in the EEZ of the Cook Islands.

Tosatto said that arrangement is between the vessel owner and the host country, noting in the past U.S.-flagged vessels did fish in the Cook Islands EEZ. To get permission from the Cook Islands government, the vessel would have to seek registry in the Cook Islands, and a vessel would need to choose its flag, but not without consequence of being a foreign vessel when back in American Samoa.

4. South Pacific Albacore Management Issues

Fitchett presented issues regarding South Pacific albacore and action at WCPFC18. Poor performance with respect to the American Samoa longline fishery was discussed as well as a proposal by the United States to expand the CMM for South Pacific albacore to encompass the entire stock range. He also presented results from the 2021 stock assessment, including a summary of issues despite the stock not being overfished or experiencing overfishing. Region 2 and 1 had the highest degree of depletion, relatively. Region 2 is the area around American Samoa where there is very little high seas area. The current CMM for the stock only applies to waters south of 20° south latitude to reduce high seas effort, but that region does not have the lowest depletion.

Fitchett described how the American Samoa longline fishery has declined in participation and fishery performance since 2007, from more than 5,000 mt catch to fewer than 1,200 mt in 2020. In 2007, the ratio of Chinese to U.S. catch of South Pacific albacore was approximately 1 to 1. Since that time, Chinese catches of South Pacific albacore are more than 20 times that of U.S.-flagged catch. For example, in 2019, much larger Chinese longliners fished in the EEZs of countries near American Samoa, such as the Cook Islands and Vanuatu, where they caught more than 5,000 and 4,000 mt of albacore, respectively. In 2018, WCPFC adopted an interim TRP with the goal to increase biomass and resulting CPUE. WCPFC members have suggested a reduction in fishing effort in the South Pacific targeting the stock, noting that the stock has gradually declined and CPUE has declined even more. Despite all of this, the stock is not overfished, nor experiencing overfishing. However, regional depletion in waters around American Samoa is the highest in a region comprised mostly of the EEZs of Pacific Island States. There is little to no chance of an interim TRP for the stock being reached under status quo levels of catch and effort. Therefore, there was a need for WCPFC18 to consider a revision to CMM 2015-02 for South Pacific albacore to encompass the entire stock distribution and develop harvest strategies. Otherwise, fishery performance and profitability for the American Samoa

fishery continues to decline due to an increasingly disproportionate burden, despite being entitled to special consideration as a SIDS.

Alex Kahl, PIRO IFD, presented the United States' positions at WCPFC18. The United States has expressed extreme concern regarding China's increased fishing effort. Since 2017, the United States has expressed a need to reduce fishing pressure to reach an interim TRP. The United States was unable to find any other cooperating commission members to support a proposal to strengthen the effort control of the existing CMM by taking better accounts of the vessel levels and expanding the measure to north of the equator where the stock is mostly exploited, noting that the current CMM applies to waters south of 20° south latitude. Other members could not agree to binding language to expand it. The South Pacific Group (SPG), a consortium of members, did express a desire to "freeze" fishing effort to current levels and expressed concern limited to high seas fishing. Unfortunately, the WCPFC18 made no progress on reducing catches towards a biomass target and instead was fixated on reducing catches on the high seas. Kahl said there was hope for improvement in 2022, noting the South Pacific Albacore Working Group led by Fiji, and given the level of increasing interest at the ISC, TCC and now the WCPFC18 in 2021. The United States remains optimistic that there will actually be motivation and momentum to revise CMM 2015-02 in 2022.

Amani said that considering the lack of fishing participation in American Samoa and issues with demand, it would be expected for less fish being caught. She was concerned that the lower fish catch now could affect the territory in the future, and hoped that someone is considering that aspect so that the fleet is not hindered with the pelagics.

Fitchett said disrupting supply can have long-term impacts, whether due to poor performance or closures because of market confidence. The fishery in American Samoa supplies the cannery, and that is not a supplier that it wants to lose.

Sword said the disparity in catch between China and American Samoa is alarming, at a ratio of 20 to 1. Scientists should be alarmed if the fishery is overcapacity.

Fitchett said American Samoa fishes in the U.S. EEZ around American Samoa exclusively because of its Marine Stewardship Council (MSC) certification stipulations and since it is surrounded by EEZs of other countries. A lot fishing effort in EEZs around or near American Samoa is by Chinese longline boats that are much larger in size. Those vessels are subsidized and can move to the Eastern Pacific zones or anywhere. They also have capital to engage in charter arrangements with countries to fish in their EEZs. The American Samoa fleet, which is much smaller, epitomizes a SIDS fleet and should be using SIDS status to its advantage. It is also a gold standard fishery, but is limited to within its own EEZ. In contrast, the Chinese vessels that are able to operate for much longer have a longer range.

Sword said there is not enough being done to fix the situation and other countries are able to get things working to their advantage, citing Kiribati.

Soliai said there is probably a red wall around the U.S. EEZ around American Samoa (referring to a map shown in Fitchett's presentation) preventing the albacore from coming in because there are so many Chinese fishing operations in the area. Soliai also said a lot of island nations no longer have their own fleets and thus most effort in the U.S. EEZ around American

Samoa is done by charters. Soliai said it would be interesting to see for the islands that do have local fleets if the CPUE is comparable to the American Samoa longline fishery. Soliai pointed out StarKist production is going to be severely impacted if most (if not all) of the MSC-certified albacore through the cannery is not coming from the local fleet. Soliai recommended the United States engage the FFA and SPG, and include American Samoa in the discussion.

5. Outcome of Western and Central Pacific Fisheries Commission 18th Regular Session

Tosatto presented outcomes of WCPFC18. The longline component of the CMM for tropical tunas was the key issue for the Council. The United States was seeking some changes for TRPs for bigeye tuna and management objectives, which provide the basis of a catch increase for the U.S. longline fishery. Referring to the previous agenda item discussion on South Pacific albacore, Tosatto echoed concerns by Soliai and Sword, noting there is a need to relinquish control of the issue by just FFA members and have New Zealand assume more leadership on the matter. Also discussed at WCPFC18 were overfishing issues with respect to striped marlin, and oceanic whitetip and silky sharks. The United States proposed strengthening the measure for sharks by prohibiting wire leaders and the use of shark lines, noting removing wire leaders would have reduced fishing mortality by 28 and 36% for silky and oceanic whitetip sharks, respectively, but the proposal did not reach agreement.

With respect to tropical tunas, the United States went into WCPFC18 with the objective to get recognition of American Samoa's purse seine fleet and bring equity for American Samoa as a U.S. Participating Territory. In 2020, the United States agreed to rollover bigeye tuna catch limits for one year on the contingency that tropical tuna workshops would be held to develop a new CMM. Despite two tropical tuna workshops and science supporting a U.S. proposal to increase the U.S. catch limit for the Hawai'i longline fishery, no substantive changes were made. No new management objectives were agreed upon and no new TRP was adopted for tropical tunas. The only progress was in recognizing the disproportionate burden of conservation on American Samoa, principally, and all territories participating in the WCPFC.

Tosatto discussed other stocks of interest. There was no progress on adopting a rebuilding plan for North Pacific striped marlin. There was agreement for a new striped marlin stock assessment in 2022 that will use a "dynamic B_0 ," or unfished biomass. WCPFC18 also addressed issues covered by the Northern Committee, and there was no progress on harvest strategies.

Rice asked what benefit the United States has in the WCPFC and whether the nation needs to be part of it, noting the United States does not get anything out of the negotiations.

Tosatto said the United States at one time was the largest purse seine fishery in the region, so there is history of the United States having an impact on resources. Tosatto noted that sea turtle measures, sea turtle mitigation, shark measures, striped marlin rebuilding and Bluefin tuna rebuilding would not be in place in this region without U.S. effort. He said the United States is driving the conservation and management of these stocks in the WCPFC. The question of why the United States is not getting its needs met is more difficult to answer.

Rice said the United States is not benefiting today and vessels are reflagging with more benefits with PNA and FFA. American Samoa relies on U.S. purse seiners. U.S. fishermen need to benefit from WCPFC.

Amani asked why agreement to ban wire leaders was not reached at WCPFC, noting that there is enough information to support that measure.

Tosatto said there was a desire to get more scientific information and operational considerations. He noted the United States also resisted the ban for many years out of operation and crew safety issues.

Amani said the United States makes more rules but is getting penalized by not being able to catch more fish than the other countries that are not held to the same standards.

Sword asked how much money China is giving Kiribati to open up PIPA to fishing.

Tosatto said the United States has a cooperative agreement with PIPA and has reached out to its partners, but has not been able to get more information. What he has heard was that the PIPA partners were surprised by the Kiribati government's announcement. He said it would be difficult to uncover what China pays to get its outcomes in the region.

Sword said that China's state-sponsored subsidies influencing fisheries hurts American Samoa. Sword asked if there was dissent within the PNA because of PIPA.

Tosatto said there is a rift among the PNA, with Micronesia leaving the FFA. He has not seen that same rift translate through the FFA or the PNA grouping. He noted members in Micronesia that are part of the PNA remain tightly aligned with it likely because these issues are economic rather than political in its nature. PNA has been at odds with Kiribati for some time.

Sword noted the shortcomings to the United States at the WCPFC and said Soliai was chastised after he made remarks on the floor at WCPFC18. He asked what can be done to make it better for the United States.

Tosatto said WCPFC18 was different with setting the tone that American Samoa is speaking for itself and the United States is supporting American Samoa. Every country typically enters the meeting with the need to satisfy its own interests first, and the ability to agree to a management package comes second. However, while the United States did not accomplish what it needed, WCPFC18 was different in that it was not the meeting where everybody was standing up against the United States. Unfortunately there will be 364 days of cooling off where everyone could retrench into their old way of thinking. Tosatto said it is on the United States to figure out how to continue the dialogue about getting its fisheries what is needed. Tosatto noted that several people complimented the performance of the U.S. longline fishery in comparison to the Asian longline fisheries.

Sword said he is concerned for the next two years of WCPFC meetings and if the United States will have any purse seiners left.

Soliai said Alexa Cole did a superb job leading the United States on the floor and wondered if a deal that was broken up into separate pieces would have had a different outcome. Soliai said the United States needs to keep holding others to its standards like observer coverage. Soliai recommended having a workshop on zone-based management leading up to the next WCPFC meeting so that the United States can make an attempt to cooperate, or try to get some FFA participation to address the objectives that will help the United States, Pacific Island

countries and American Samoa. He added that American Samoa needs to be recognized as a SIDS. Soliai asked how Japan was able to walk away with its requests for bluefin tuna increase and the skipjack TRP being kept at its status quo.

Tosatto said Japan got its top priority achieved largely through the summer joint working group and Northern Committee cycle. Japan gave FFA a lot of accommodation on the two issues to remove its objections to the bluefin tuna assessment. The United States helped a lot in the bluefin negotiations on balancing catches between the eastern and western sides of the Pacific. He added that government's control for managing nearshore waters in Japan was about to change, which made it the right time to go with the increase.

Soliai compared WCPFC18 to watching a football game, noting one team cannot get any referee calls on its side.

Rice asked if Japan also got an increase in quota in the IATTC.

Tosatto said that Japan is an IATTC member and it agreed to the bluefin catch increases of 15%, but the catch is only allocated to the United States and Mexico.

Dang said from what he saw, the countries aligned against the United States without clear reasoning while the United States has a much smaller impact on the resources. Dang called for the United States to take a "multi-prong" approach in the future. He asked what progress on harvest strategies is expected in 2022, noting that the Hawai'i longline fleet is applying for MSC certification, which includes harvest strategies as a big component of the review.

Tosatto said the focus on the meeting for many was tropical tunas, while others wanted progress on harvest strategies so MSC certifications are not at risk. The United States cares about MSC because the stakeholders do, but MSC certification means absolutely nothing to the U.S. government because it do not endorse, support or in any other way add value to these MSC certifications or any of the certifying bodies. Tosatto said that Soliai's recommendation for zone-based management is valid.

Dang said the zone-based management workshop should include an objective for issues that the United States already does and others might be willing to adopt, such as observer coverage and no transshipping so that some incremental gains can be adopted.

Tosatto said the United States did have alignment with the FFA on monitoring and surveillance issues, but everyone is aware that such incentives would not necessitate change of behavior on the part of the United States, and they will become suspicious if the United States is proposing them.

Soliai said he was disappointed that members of the Freely Associated States were combative to every U.S. proposal and the State Department needs to do more ahead of time.

Simonds referred to the section of her executive director's report calling for a new U.S. strategy in the Pacific Islands with the WCPFC. This includes the Departments of State, the Interior and Defense working together in order to make the landscape workable for the United States at the WCPFC.

F. Advisory Group Report and Recommendations

1. Advisory Panel

There were no AP recommendations regarding pelagic and international fisheries.

2. Fishing Industry Advisory Committee

Goto, FIAC chair, presented the report and recommendations.

Regarding the U.S. longline catch limit for bigeye tuna, the FIAC recommended that the U.S. delegation to the WCPFC work to ensure that the U.S. longline catch limit for bigeye tuna is increased, given that bigeye is not subject to overfishing and that the area where the Hawai‘i fishery operates entirely had the lowest regional depletion estimated in the 2020 stock assessment. The U.S. delegation should further note to the WCPFC that the Hawai‘i longline fleet is highly monitored, does not tranship its catch at sea and is not characteristic of a “distant-water” fishery (based on fleet capacity, limited range and vessel size limits).

3. Non-Commercial Fishing Advisory Committee

There were no NCFAC recommendations regarding pelagic and international fisheries.

4. Scientific and Statistical Committee

Hospital, SSC member, presented the SSC report and recommendations.

Regarding the CCC ABM Working Group, the SSC recommended that the Council provide a comment letter to NMFS, based on CCC subcommittee report, that conservation areas defined under “America the Beautiful”: 1) be informed by empirical evidence and scientific veracity, 2) be adequately monitored and enforced, 3) be adaptive to address climate change—especially in the Pacific Islands, and 4) recognize existing subsistence and native rights.

Regarding the SSC Working Group on ABM, the SSC endorsed the work plan as presented and expect an outline for a policy-focused paper centered on domestic and international issues impacting Western Pacific Region fisheries.

Regarding the WCPFC18, the SSC endorsed continuation of specified fishing agreements between Hawai‘i-based U.S. vessels and Participating Territories and recommends that the United States ensure that Paragraph 9 of the current CMM for tropical tunas be retained to formally recognize these agreements within the WCPFC.

The SSC endorsed the U.S. proposal to increase longline catch for the U.S. fishery and to increase the WCPFC observer coverage minimum for WCPFC longline fisheries because it is supported by best available science as provided to the WCPFC Scientific Committee. The SSC further recognizes that analyses provided by the WCPFC Scientific Services Provider demonstrates that the bigeye tuna stock is in a condition that may sustainably

withstand a modest increase in longline catch for the Hawai‘i-based fishery, noting it operates in a region of low levels of biomass depletion.

G. Pelagic and International Standing Committee

Dang, Pelagic and International Standing Committee chair, presented the report and recommendations.

Regarding WCPFC Tropical Tuna CMM, the Pelagic and International Standing Committee recommended that the U.S. delegation to the WCPFC work to ensure that the U.S. longline catch limit for bigeye tuna is increased, based on the fact that bigeye is not subject to overfishing and Hawai‘i-based U.S. fleet operates entirely within a region with the lowest regional depletion estimated based the 2020 stock assessment, and that the fishery is truly a Pacific Island fleet providing fresh fish to its local island community. The U.S. delegation should further note to the WCPFC that the Hawai‘i longline fleet is highly monitored, does not transship its catch at sea and is not characteristic of a “distant-water” fishery (based on fleet capacity, limited range and vessel size limits).

Dang referred Council members to the written report for the recommendation regarding the seabird action.

H. Public Comment

Tam, AP chair, commended the presentation by Hutchinson and Scott. Based on the results from their shark study, Tam expressed concerns about plans for the Bureau of Ocean Energy Management and alternative energy for putting 30-40 wind turbine platforms around O‘ahu. These platforms may serve as FADs and increase sharks or impact highly migratory species, including protected species.

Kingma, HLA, expressed disappointment over the inability for WCPFC to adopt an agreeable catch limit for the United States for the last 10 years. Kingma appreciates Council members who know the situation and how different the Hawai‘i fleet is compared to Asian distant-water fishing fleets that are on the high seas, transshipping and not following any environmental regulations. The distant-water fishing fleets do not match the levels of monitoring for the Hawai‘i fleet, which calls into question the accuracy of the information from these foreign fleets. Kingma also said the U.S. government needs to work more with U.S. commissioners in negotiations, and called for the United States to develop a new strategic plan for the next two years to be a leader in Pacific fisheries, involving relevant stakeholders in the process. He said that HLA is heavily invested in the international issues as the fishery is the largest food producer for Hawai‘i, and the outcomes of WCPFC matters for Hawai‘i’s food self-sufficiency and security.

I. Council Discussion and Action

Regarding impacts of La Niña on Hawai‘i longline fisheries, the Council **requested NMFS PIFSC Ecosystem Sciences Division report to the Council on whether the 2020-2021 reductions in catch rates are attributed to La Niña and/or other oceanographic conditions.**

Moved by Rice; seconded by Sword.
Motion passed.

Regarding the Hawai‘i Community Tagging Program, the Council **requested NMFS find funding to expand the community-based tagging work and species identification improvement work by the Hawai‘i Community Tagging Program to the Mariana Archipelago.**

Moved by Rice; seconded by Sword.
Motion passed.

Regarding ABM working groups and subcommittees, the Council **directed staff to send a comment letter to NMFS, based on the CCC subcommittee report, that conservation areas defined under “America the Beautiful”: 1) be informed by empirical evidence and scientific veracity, 2) be adequately monitored and enforced, 3) be adaptive to address climate change—especially in the Pacific Islands, and 4) recognize existing subsistence and native rights.**

The Council endorsed the work plan for the SSC ABM Working Group as presented and expects an outline for a policy-focused paper centered on domestic and international issues impacting Western Pacific Region fisheries at the March 2022 Council meeting.

The Council requested the State Department provide an update on relevant issues with the International Seabed Authority at its March 2022 meeting.

Moved by Sword; seconded by Rice.
Motion passed.

Regarding the American Samoa South Pacific albacore fishery, the Council **requested NMFS to continue talks with Pacific Island nations and to request that American Samoa be a part of the discussions with the SPG and other FFA members.**

Tosatto asked for clarification on the intent of the motion, noting that NMFS cannot invite American Samoa to discussions among the SPG as those would not be NMFS’s meetings, but NMFS could invite American Samoa to meetings that it has with those groups.

Soliai said the intent was for American Samoa to be a part the discussions that the U.S. government has with the Pacific Island nations.

Dueñas said that in the past, territories have participated in several FFA meetings, which provided an opportunity to network with the attendees from the Pacific Island nations.

Moved by Rice; seconded by Sword.
Motion passed.

Regarding outcomes of WCPFC18, the Council **directed staff to write the governors of U.S. Participating Territories to ensure broader participation of their delegations at the WCPFC.**

The Council directed staff to send a letter to the Secretaries of State, the Interior, Commerce, Defense and Homeland Security outlining the outcomes of the WCPFC18, expressing the Council’s disappointment, and to request that the Biden Administration develop a new high-level strategy that will prioritize improving negotiations at the WCPFC, enhancing cooperation across all relevant federal departments, including the Departments of State, the Interior, Commerce, Defense and Homeland Security.

The Council directed staff to work with NOAA NMFS to develop a workshop on zone-based longline management for WCPFC fisheries in cooperation with the FFA. Topics should include: 1) sub-regional-tailored management objectives, 2) protecting the rights and benefits of territories like American Samoa, 3) incentives for monitoring, compliance and surveillance, 4) applicability towards vessels with respect to size limits or transshipment history, and 5) facilitating harvest strategies.

The Council directed staff and requests NMFS to update stock projections on oceanic whitetip sharks incorporating updated information from Hutchinson et al. (2020), building upon analyses submitted to the 17th Science Committee Meeting of the WCPFC, and to publish the stock projection analyses.

The Council requested NMFS and the State Department to convene meetings with American Samoa and the SPG with respect to South Pacific albacore fisheries, and develop a mutually agreed upon plan to reduce regional depletion of albacore in waters north of 20° south latitude.

The Council requested NMFS and the State Department to develop a strategic plan well in advance of the PAC meeting with the goal of increasing the U.S. longline bigeye tuna catch limit, ensuring the long-term continuity of the American Samoa cannery, and to phase-in increases of the WCPFC observer coverage minimum for WCPFC longline fisheries.

Tosatto said he is not aware of PIFSC’s ability to do the stock projections, noting assessments are done through international collaboration. He also noted that the last two recommendations look duplicative of the previous motion.

Nakoa suggested adding Department of Homeland Security to the second recommendation, noting that the USCG is in that department and not in the Department of Defense.

Moved by Rice; seconded by Sword.

Motion passed.

Regarding the Global Fishing Index, the Council recommended the CCC coordinate with its SSCs to develop a more comprehensive assessment of U.S. fisheries and publish it in a peer-reviewed journal to support evidence-informed discussion.

Moved by Rice; seconded by Sword.
Motion passed.

XII. Hawai'i Archipelago and Pacific Remote Island Areas

A. Moku Pepa

Rice reported the Kona charter fleet had seen a decrease in charters during the fall. The small-boat fishers have had a couple of small runs of tunas, but overall the fishing has been slow. The fleet is hoping that fishing and charters will pick up in the winter as the visitor count is anticipated to increase. The fleet was previously able to dispose of oil at the harbor but the State discontinued the drop-off, and fishermen have not had much luck with outside disposal sites they have contacted, causing an environmental hardship for boaters. Large oil containers are being disposed of at trash cans and left at docks and fishermen are suggesting Sport Fish Restoration Funds could be used to assist boaters and fishers. Previous federal funding paid for a tank and pump for the boats, but was not installed by the State and sits at the harbor unused six years later.

Ramsey reported the Omicron variant of COVID-19 was just showing up in Hawai'i and that the governor has gone on record to say he does not expect any sort of major changes or restrictions. In the interest of time, he referred Council members to the briefing materials for his report.

Dueñas said he has been doing oil recovery on Guam with the GFCA for almost 20 years and the environmental laws do not allow the oil to be burned by power plants, necessitating it be shipped off-island. It costs Guam \$8 per gallon of waste oil to ship off-island and be picked up by a certified recovery program.

Tosatto was unsure of what part of the federal government provided the funding but noted it was worth pursuing and agreed to look into it but was unsure of where it might go as they would need to find the responsible agency.

B. Department of Land and Natural Resources / Division of Aquatic Resources Report (Legislation, Enforcement)

Bryan Ishida, aquatic biologist for Hawai'i DAR, presented the State's report for August through October 2021. The deep-seven bottomfish 2020-2021 season wrapped up in August with 320 commercial marine license (CML) holders having made 2,094 trips, catching 163,940 pounds of mixed deep-seven species. The season tracked closely to what was seen in the 2019-2020 season, with a slight increase in catch in the last week. There was an abnormal species distribution in the catch, with 'ōpakapaka contributing 36% of the total catch, whereas it is typically closer to 50%. The trend did not hold for all species, as ehu and gindai contribution was above average. For the current 2021-2022 season, fewer than 56 CML holders made 324 trips and caught 24,939 pounds of deep-seven species as of the end of October, showing a seasonal peak in catch as fishers start to target deep-seven species for the holidays and take advantage of the nice weather. While it is too early to draw conclusions on the current season, the trend of low 'ōpakapaka contribution to the total catch seems to continue, representing 38%.

From January to October 2021, 18 CMLs made 53 trips and caught 3,346 pounds of Kona crab. After the season reopened in September, there was relatively low catch from

commercial fishers, but that is not surprising as the fishery is overwhelmingly recreational. For uku, 195 CML holders made 777 trips and caught 49,082 pounds from January to October 2021, which is a similar trend to what was seen in 2018, with not much of an increase expected in the last two months of the year. For all commercial fisheries, 2,776 CMLs were renewed for a revenue of \$280,180 as of the end of October, which is below average, but above 2020 numbers.

Ishida reported that one permit was granted for the PMNM that did not require DLNR approval. There has been a decrease in the number of permit requests due to the wrap up of the field season, deteriorating weather conditions and continued COVID-19 restrictions. The PMNM is revising its best management practice for disease and introduced-species prevention protocol for permitted activities in the marine environment. This is in response to the presence of the invasive algae *Chondria tumulosa* at Pearl and Hermes and Midway atolls. The revision will result in a *Chondria*-specific best management practice with biosecurity protocols.

The State's FAD program had no activity between August and September, and FADs HH, P, SO, K, OT, C and TT were replaced in October as part of a long-awaited deployment that was slowed down in part due to supply chain issues and shipping delays. There are plans for another big deployment on Kaua'i and O'ahu replacing nine buoys. The State has concluded consultations with the Environmental Protection Agency and USCG regarding the vessel incidental discharge national standards of performance. West Coast states, including Hawai'i, have requested additional engagement with the Environmental Protection Agency to address concerns regarding ballast water treatment and exchange, biofouling and in-water cleaning and monitoring systems to evaluate the performance of discharge standards. Lastly, the application period for round two of the CARES Act funding closed Sept. 30, 2021, with 290 applications received. DAR made a final review of all the claims and passed it on to the PSMFC, which is reviewing applications for eligibility. DAR does not have an estimated time frame for disbursement of funds as the process is ongoing.

Rice asked if the FADs that were replaced included structure under the buoy.

Ishida said there was no change to the configuration.

Rice suggested C buoy as a test to include structure the next time it needs to be replaced.

C. Green Turtle Management

Joshua DeMello, Council staff, provided an update on green sea turtle management. At the September meeting, the Council directed staff to continue looking at the feasibility of the cultural take of Hawaiian green sea turtles. Staff developed a feasibility study to analyze the regulatory and policy pathways that could afford a cultural take of green sea turtles to determine the Council's options for potential green turtle management. This study is based on developing an exemption through the ESA 4(d) process and explored the pathways of how take could occur if a 4(d) rule is available. In any pathway, an individual, community or the state would need to develop a harvest plan. If a 4(d) rule is available, the Council could look at options such as an FMP or an EFP. Outside of the Council's management, there are considerations for the State of Hawai'i as well as international actions that could be an issue. The United States is a party to the IAC which prohibits the intentional capture, retention or killing of, and the domestic trade in, sea turtles, their eggs, parts or products. The IAC has a provision for each participating party to allow a take exception for satisfying economic subsistence needs of traditional communities. The

IAC passed a resolution that provides a procedure on how that traditional community exemption would take place, under which a management plan that takes into account the IAC recommendations would need to be developed.

Simonds said the draft feasibility study was sent to NMFS headquarters and PIRO for review and comments. Due to the IAC issues, Council staff developed questions for GCPI and invited David Hogan, director of the Office of Marine Conservation at the Bureau of Oceans and International Environmental and Scientific Affairs at the U.S. State Department, to speak to the Council about the IAC and to answer some of these questions.

Hogan said the State Department had taken a look at the staff's questions and consulted with NOAA in advance of the meeting to ensure providing as comprehensive an answer as possible under the circumstances. The IAC, which his office negotiated on behalf of the United States along with NOAA and USFWS, is designed specifically to conserve and protect sea turtles. The exception for economic subsistence take was a very specific exception that is available for countries within the Convention Area, which includes the United States, including Hawai'i. The negotiating dynamic at the time was specific to the coastal communities in Latin America, particularly Central America, who directly harvested turtles and eggs during nesting activities. The negotiations centered on the type of exception to the objectives and the prohibitions within the IAC, which includes conservation and protection of turtle and the prohibition of a direct take. The development of the procedure was specific to the economic subsistence, that is, the use for food and nutrition for those coastal communities. The consideration of the federal government at that time was that the agreements would rely on and link with U.S. domestic regulations regarding sea turtles that occur in the United States, but are listed under the ESA as threatened or endangered. Those existing domestic laws and regulations were cited in the transmittal package sent to the Senate regarding the treaty for advice and consent, and resulted in a determination that no further implementing legislation would be needed (for the United States to ratify the IAC) because of the existing prohibition on direct take of turtles. It is not clear to the State Department at this moment whether there is any avenue that exists under the IAC to seek an exception to the prohibition on direct take of turtles.

Hogan said one of the challenges is that without any specific petition for a take exception that the State Department can respond to, and not knowing whether the take would be for cultural take or economic subsistence take, it is not clear whether a take would qualify for an exception. Generally, if take is prohibited by the ESA and its implementing regulations, it would not be possible for the United States, as a matter of policy, to advance a request for an exception. Similarly, because the U.S. government at the time (of the ratification) indicated that the exception mechanism under the IAC would not apply to the United States because of the pre-existing status of turtles under the ESA, it is not very clear whether, or even how, they could proceed as a matter of policy to advance a cultural take exception. The ESA and the IAC essentially reinforce each other and if there is a domestic prohibition under U.S. regulations for direct take, the State Department would not be able to take any action under the IAC. Similarly, any action at the IAC would not in any way affect the status of turtles under the ESA. In fact, any consideration of an ESA action to exempt green turtles in Hawai'i from the prohibitions that are in force under regulation would have to bring into the deliberation for prohibition on direct take under the IAC. So it does not appear clear to the State Department whether there is any way to make progress.

Dueñas said the IAC should remove the barriers to the take of Hawaiian green sea turtles. He noted that the Hawaiian green sea turtle exploitation was done by non-Hawaiians and that the indigenous Hawaiians managed and protected the species. There should be the ability for a cultural take to perpetuate Hawaiian culture rather than pickle their culture and put it in a jar.

Gourley said he would like to see this move forward if at all possible. The Council has been trying to get a cultural take of sea turtles for a long time and Hawai'i would be a good test example to get this movement going.

Amani said enforcement would be needed for a cultural take to work. The islands of Micronesia have the ability to take turtles so it should be opened for a limited take for cultural purpose in the U.S. Pacific Islands.

Muña-Brecht said it sounded like the IAC has a process but it conflicted with the ESA. She asked if the IAC could move forward with a process if it is presented with a substantive request.

Hogan clarified that the exception process under the IAC is only for economic subsistence, that is taking turtles to eat or to provide an economic activity for traditional communities. It is not an exception that is available for cultural take. There is also no way that the IAC can affect the ESA listing, and there is no way that an ESA listing would unlock the exception under the IAC. They are two separate legal regimes. The ESA listing existed at the time that they negotiated the IAC and so the prohibition on direct take of turtles for any reason under the ESA is the primary domestic legal barrier to taking green turtles in Hawai'i. The State Department could not proceed with any action of the IAC if green turtles remain prohibited for direct take for any reason under the ESA. Hypothetically, if there was an action under the ESA to allow for a green sea turtle take in Hawai'i or any sea turtles anywhere, that does not automatically mean the U.S. federal government would put forward a request under the IAC primarily because it could only proceed for reasons of economic subsistence and not cultural take. This is a matter of policy between the federal agencies that represent the United States at the IAC. There would have to be quite a lot of things changing in the United States, and then it also would be subject to decision-making under the IAC through the Consultative Committee, which is linked to its exception process. The process would also need approval from other parties, particularly parties that have been driven to increase their sea turtle conservation and protection in fisheries on shore-side and nesting, as well as its habitat over the last few decades. It would not be politically accountable to then go and ask for the kinds of exceptions that others have asked for and have been denied.

Muña-Brecht asked if there is really no avenue to pursue a change for even economic subsistence because there is an ESA listing.

Hogan said that was his point. The basis for advice and consent and essentially ratification of the IAC was the status of the green turtle and the other turtles listed in U.S. waters under the ESA. While that remains the case, and based on the way the treaty was negotiated, he did not see a path for cultural take of turtles in Hawai'i, green turtles, or otherwise. He also said that it would be difficult to meet the threshold for an economic subsistence take as well.

Muña-Brecht asked what the threshold is for economic subsistence.

Hogan said that in general, it is the need for take of turtles for the purposes of nutrition, traditional diet or essentially as a critical economic activity. None of those cases were considered as applicable for the United States at the time that the treaty was ratified.

Muña-Brecht said that would be the United States as a whole, not necessarily considering each of the territories or island jurisdictions.

Hogan said that would be the United States as a whole, including anything that is subject to U.S. law.

Muña-Brecht said economic subsistence is subjective for each island, especially when compared to the continental United States.

Hogan said he understood that, but the Convention Area does not create any distinctions between the cultures and economic subsistence practices in Hawai‘i and the Pacific Islands, the West Coast, the East Coast or the Gulf Coast. As long as there is a federal prohibition under the ESA, and as long as the United States remains a party to the IAC, it would not be viable.

Dueñas said it is unfair that the United States is a signatory to the IAC that allows other countries to harvest and at the same time denies its own citizens the same opportunity. If it is about conservation, there are instances where hundreds of turtles are found dead on the Baja Peninsula, yet the natives of the Pacific Islands are not able to harvest for consumption and culture. Other countries are allowed to harvest turtle eggs, but Americans are not allowed to harvest anything. Economics seems to be the magic word in this whole exercise and he hoped someday economics can include the practice of lifelong cultural values.

Hogan said stakeholders who are focused and interested in this issue may want to give significant consideration to the economic subsistence because a process to examine a cultural take is not available under the IAC even if something were to change in the ESA. The exception for economic subsistence is what is available for countries that have been able to make a petition, get the approval from the Consultative Committee’s review, and undergo decision-making under the convention that included participation by the U.S. government. Exceptions were approved for other countries because the status of those turtles under domestic law for them is different than the status of the turtles under U.S. laws and regulations. The ESA applies in the United States for activities that are subject to ESA, which includes any direct take of sea turtles or turtle eggs. The ESA is U.S. law and the regulation that serves as the foundation for the policy work that the State Department does to promote sea turtle protection and conservation internationally because of the restrictions on U.S. economic activities, including commercial fishing that results from the need to protect those species as required under the ESA, whether it is the prohibition on take of turtle as bycatch in longline fisheries or prohibitions on take of turtles in trawl fisheries. The difference between what is protected under U.S. law and what is protected under other countries’ laws is important and why they negotiated the IAC. The other reason was that the United States prohibited shrimp trawling unless fishers could demonstrate that they could exclude sea turtles from the trawl nets, and the United States wanted to make that a requirement across the board for all the countries that would sign under the agreement. Fisheries bycatch has been a significant purpose of the United States. Direct take was also subject to the negotiation, and it was the basis of the ESA prohibition on direct take that was used to negotiate the treaty. It is a different approach for other countries and why the domestic regulatory structure and the interaction

between the Hawai'i stakeholders and the implementation of the ESA is the primary controlling mechanism for cultural harvest in the United States. The IAC is essentially running in parallel to that.

Simonds asked how removing the green sea turtle from the threatened list would affect the IAC and management of turtles.

Hogan said if there was a change under the ESA for Hawai'i green sea turtles or species-wide, then the IAC would remain as-is in regard to the international obligation of the United States to prohibit direct take of sea turtles. The activity that the stakeholders in Hawai'i would want to petition the federal government to seek an exception for would need to meet the provisions of the IAC for the purposes of economic subsistence. As a matter of policy, the federal government might still not move that petition forward because there might be very little chance of succeeding, either in convincing any of the parties that the United States would qualify for the exception because it would contradict the position it took in negotiations and it would essentially contradict what the State Department told the Senate at the time. It would be a very challenging situation as a matter of policy to have the federal government advance a petition for an exception. Even if that were able to be overcome, the IAC would still have to go through decision-making, the Consultative Committee, input from the Scientific Committee and then the decision-making process of the parties. There are a lot of variables that might not go the way the Hawaiian stakeholders might wish, and there is no guarantee that it would come out positively. One of the big challenges would be getting the federal government to agree to advance that position.

Simonds said if the green sea turtle was recovered and removed from the ESA, there would still be hoops to go through, but the United States could take it on if it wanted to. It is not the answer the Council wanted to hear and asked what would have helped during the enabling legislation and if exceptions could have been made at that point.

Hogan said when the Senate provides advice and consent to ratification, the agreement usually is what it is at that moment. It is very rare that the United States would decline to ratify an agreement and then go back and reopen it, but it has happened in the past. In this case, the United States was the initiator of the negotiations of the IAC and pressed very hard to negotiate it and the outcome was one that satisfied the U.S. political and international relations objectives at the time in terms of conservation of sea turtles and exporting the U.S. bycatch reduction policies, generally, and in particular for the trawl fisheries. It is difficult to say what would have changed anything at the time during the ratification process, though the United States could have opted not to negotiate the treaty as there were different outcomes in different parts of the world. The IAC is the only legally binding sea turtle conservation agreement. The United States attempted to negotiate a similar agreement for the Indian Ocean and Southeast Asia, but the countries there would not agree for it to be legally binding and the United States ended up with a memorandum of understanding, which is less strong. Because the United States was implementing U.S. law and U.S. regulations as it stood at the time and as it has remained in regard to procedural conservation, the treaty reflects what the U.S. approach was then. As a matter of policy, it also reflects the current view of the U.S. government regarding the status of the turtles. If there is a change based on any action under the ESA, which is not State Department jurisdiction, the IAC would still be in place with a prohibition as an international obligation and

there would be a number of hoops that would have to be cleared to make any progress under the treaty.

Tosatto said there is a difference in status of green sea turtles in the region, with the DPS for Hawai'i listed as threatened and DPSs around American Samoa and the Mariana Archipelago as endangered. There are no options to pursue potential take allowance under Section 4(d) of the ESA for populations listed as endangered. Potential changes in future status would be needed to provide for a take allowance. The bar is high to get the IAC to allow for a take under the exception for economic subsistence of traditional communities. Identifying the traditional communities would need to be convincing in the IAC, though subsistence would be the easiest bar to reach based on consumption compared to medicinal or other cultural uses. Exemptions for economic subsistence when they were pursued and agreed were for traditional communities in places that were subsisting on sea turtles and there were no other alternatives for nutrition. Turtle consumption in Hawai'i has not been done in a number of years so it would be a high bar to cross. That is a consequence of the wording of the agreement that the United States pursued and agreed to that kept the exception very narrow. The community in Hawai'i is looking for a broader use, a more cultural use and not one of economic subsistence, and that could be an issue.

Sakoda said there seems to be a growing recognition of indigenous rights at the international level. He asked if there is a process to renegotiate the terms of the IAC to include cultural take and how difficult that would be.

Hogan said anything is possible, but it would be difficult. The IAC would require renegotiation and that would also allow other parties to introduce provisions that the United States may not like in terms of conservation management, habitat or trade. It would also need ratification by all of the existing parties. It is not necessarily something that the United States could undertake easily or lightly, even if there was an interest in the federal agencies of doing so. The United States would have to remain coherent between domestic laws and regulations and any amendment. There is a growing recognition of indigenous rights, and under the current administration there is a significant effort to reintroduce consideration of indigenous rights, practices and knowledge. A legally binding treaty would not be able to be negotiated today in terms of sea turtle conservation and management given what the other countries understand to be the United States' approach, making renegotiation very difficult. The United States would face an uphill challenge from many of those countries if it were to reopen the treaty for an exception.

D. Northwestern Hawaiian Islands Proposed National Marine Sanctuary Update

Eric Roberts, deputy superintendent for PMNM, provided an update on the initiation of the NMSA 304(a)(5) designation process with the Council. Over the last month, NOAA initiated several actions related to PMNM. On Nov. 19, 2021, NOAA published a Notice of Intent in the *Federal Register* to initiate the process to consider designating marine portions of PMNM as a national marine sanctuary. As part of that process, NOAA is also coordinating its responsibility for review under the National Historic Preservation Act. On Nov. 22, 2021, NOAA formally initiated the NMSA Section 304(a)(5) process through a letter to the Council, as well as letters inviting consultation to approximately 275 major organizations and others interested in historic properties. The letter to the Council provides an opportunity under Section 304(a)(5) of the NMSA to prepare draft fishing regulations for the proposed sanctuary within PMNM.

As part of the process, the Council may choose one of three actions: recommend draft fishing regulations for the proposed sanctuary, recommend that fishing regulations are not necessary or choose not to act at all or in a timely manner. Additionally, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary of Commerce or fails to prepare the draft regulations in a timely manner, the Secretary shall prepare the fishing regulations. The goals and objectives of the sanctuary, the purposes and policies of the NMSA and existing Presidential Proclamations specific to PMNM are the criteria against which the Council's action shall be compared.

Roberts provided an overview of the anticipated sanctuary process. The section 304(a)(5) timeline for drafting fishing regulations lines up with the rest of the process and is consistent with the NMSA to provide adequate time for two Council meetings. NOAA is providing 120 days to conduct the 304(a)(5) process and requests the Council complete its review and initial recommendation on the necessity of sanctuary fishing regulations, along with the preliminary draft of fishing regulations and a proposed timeline, no later than March 31, 2022.

NOAA is in the public scoping phase and working to gather initial comments from the public on the proposed sanctuary designation process, which is expected to wrap up in early 2022. This correlates with the same timing for the 304(a)(5) process where the Council may provide a preliminary draft of fishing regulations along with a proposed timeline for the remainder of the Council's role in the rule-making process. The next major phase will be the publishing of a draft Environmental Impact Statement and draft Sanctuary Management Plan, which NOAA anticipates releasing during winter 2022-2023, with a final Environmental Impact Statement and Sanctuary Management Plan expected in fall 2023. This would also be the time when the Council would draft and publish a proposed rule and final rule.

For the original area designated by Proclamation 8031 and ratified by Proclamation 8112, ONMS believes the current MSA regulations under 50 CFR Part 404 are consistent with the both the relevant provisions of Proclamations 8031 and 8112 and the goals and objectives for the proposed sanctuary. ONMS recommends that the Council propose regulations for the Monument Expansion Area (MEA) that are consistent with both the fishing provisions of Proclamation 9478 and the goals and objectives of the proposed sanctuary. Roberts said that it is NOAA and ONMS' goal to make the process as transparent and as collaborative as possible.

Maria Carnavale, Council staff, provided an update on the Council's role and tasks as part of the sanctuary designation process. She provided a background on previous Council discussions, including the Council's previous recommendations for potential goals and objectives. Staff also participated in an Office of Hawaiian Affairs Native Hawaiian Cultural Working Group workshop dedicated to fisheries in the Northwestern Hawaiian Islands. The Council received the NMSA 304(a)(5) package and will need to respond by March 31, 2022. This meeting provides an initial discussion of options that the Council may choose to recommend for fishing regulations. At the last meeting, the Council endorsed policy objectives, of which many concepts were brought up by members of the public in the public meetings held by NOAA. Ideas about boundaries, fish as food and cultural connections and minimizing impacts to fishers were representative of the larger public conversation.

The Council will need to decide in March 2022 whether fishing regulations are necessary. If the Council decides that regulations are necessary, it will need to provide draft fishing

regulations. The Council could also decline to make a determination. If draft regulations are provided to NOAA and accepted, the Council would initiate its FEP amendment process.

NOAA recommends that the Council propose regulations for the MEA and contends that the MSA is the appropriate statute for managing fishing within the proposed sanctuary. The ONMS approach is to spring-load the regulations, meaning that NOAA is intending to potentially duplicate the MSA regulations, which would remain dormant unless the MSA regulations go away or change, at which point the Sanctuary regulations would spring into action.

The Council has worked on fishery regulations in the other monuments in the Western Pacific, including noncommercial fishing and customary exchange, or the nonmarket exchange of marine resources between fishers and community residents for good or services and/or social support for cultural social and/or religious reasons. Carnevale said the Council also worked on fishery regulations for the MEA when it was designated by President Obama in 2016. The Council at its 168th meeting recommended staff conduct public scoping sessions with the purpose of determining what information is available for the Council to begin the process of analyzing alternatives and recommending management regulations. She provided the Council with a summary of comments from the public scoping and noted that creating different zones for fishing, allowing for research fishing, determining whether charter fishing can occur, a streamlined permitting process, and clear and enforceable regulations were concepts that came forward.

For marine zones, Carnevale said there are distinct regulatory and jurisdictional considerations to think about, including zero to three, three to 50, and 50 to 200 miles. Commercial fishing is prohibited by the proclamations, so the Council could take no action or prohibit commercial fishing. For noncommercial fishing, the Council may consider no action, permitting noncommercial fishing, defining commercial fishing with or without customary exchange and prohibiting noncommercial fishing. The Council was asked to consider the marine areas and potential fishing activities and provide input for staff to develop a response.

Gourley asked if the sanctuary regulations allow the sanctuary to be enlarged.

Roberts said the direction that has come out from the various proclamations, the executive order and the more recent direction from Congress is very specific in terms of considering the designation of PMNM as a National Marine Sanctuary. However, through the process there will be a range of alternatives that could be considered and/or brought forward by the public. Discussion regarding these alternatives will take place over the coming months and years as both public scoping and public hearings are completed. It is too early for NOAA to consider or think about what the public could want at this point.

Gourley said he was trying to find out if there is regulatory authority under the NMSA that allows this type of change when a sanctuary is created.

Roberts said sanctuary designation is an act of Congress and a public process. The consideration for any sanctuary boundary could be brought forward to Congress and it would be a congressional determination whether to accept that. He said yes, there could be a consideration for any boundary. The process is to allow that information to come out during the designation process.

Gourley said he was concerned that groups would use the sanctuary process to expand the MTMNM. He said that the sanctuary designation could be used as a tool for certain people to make the monument boundaries bigger and increase the removal of fishing rights.

Rice said charter fishing is noncommercial because fishers give the fish away. He said that they are also involved with customary exchange in the charter industry by giving away the fish to friends and family. He hoped that the determination is made that charter fishing is included in the noncommercial fishing definition.

Dueñas noted that charter is considered recreational fishing under the MSA. He said he appreciated that the ONMS recognized that fishing is still important under the sanctuary designation process, but expressed concern regarding its potential use in the Mariana Archipelago. He said ONMS should afford the region the same opportunity to participate if that happens in the future.

Sakoda said the sanctuary would overlay the monument and asked if any regulations developed by the Council would require a monument permit or if fishers wanted to fish they could just go there as long as they comply with the regulations.

Roberts said since the sanctuary could overlay the marine portions of the monument, it is likely that fishing would need to be a permitted activity. The process of what that permit will look like and what those activities would be will not come forth until the process works its way through and could be based in part on the Council's recommendations.

Simonds said the PIRO regional administrator reminded the Council in previous meetings that it was delinquent in providing fishing regulations for the MEA. That proclamation allowed for subsistence and recreational fishing. The Council did attempt to develop fishing regulations with public scoping meetings, but those fishing regulations were not developed. At the next meeting, the Council will consider those regulations and what types of activities should be allowed with permitting and reporting. She said that this process should not take years.

Tosatto said the Council's outstanding task from the expansion is now conjoined with this process of designation. He said fishing regulations for the sanctuary would be an MSA action and NOAA would coordinate so that it is approvable and consistent with the sanctuary objectives as the process moves through the MSA process. He said the Council could act in a timely manner to help the whole process along and address the Council's side of those issues. The spring-loaded concept has a precedent in other sanctuaries and is a smart NOAA outcome. As issues evolve, regulations might need to stay the same so the concept of spring-loaded gives the Council the flexibility to be dynamic and the sanctuary program responsive for the area. He said the idea of determining boundaries was also part of the sanctuary designation process in American Samoa where the Fagatele Bay National Marine Sanctuary was added to the Rose Atoll designation process to create the National Marine Sanctuary of American Samoa. However, the sanctuary designation did not expand the Rose Atoll Marine National Monument, as only a president can do that.

E. Advisory Group Report and Recommendations

1. Advisory Panel

There were no AP recommendations regarding the Hawai‘i Archipelago.

2. Fishing Industry Advisory Committee

There were no FIAC recommendations regarding the Hawai‘i Archipelago.

3. Non-Commercial Fishing Advisory Committee

There were no NCFAC recommendations regarding the Hawai‘i Archipelago.

4. Scientific and Statistical Committee

There were no SSC recommendations regarding the Hawai‘i Archipelago.

F. Public Comment

Dueñas, speaking as the president of the GFCMA, emphasized that the national marine sanctuaries program was created to protect or repair damaged areas. The prime example is Fagatele Bay in American Samoa, which was destroyed and is now one of the premier sites in American Samoa. National marine sanctuaries should revert back to looking at areas in the United States that have been devastated or need environmental help to recover, rather than locking down areas where there is still an opportunity for management.

G. Council Discussion and Action

*Regarding the proposed Northwestern Hawaiian Islands sanctuary, the Council **directed staff to initiate the process for the proposed sanctuary designation 304(A)(5) fishery regulation consultation by gathering relevant information for Council action at its March 2022 meeting.***

Moved by Dueñas; seconded by Sword.

Motion passed.

*Regarding green turtle management, the Council **directed staff to send a letter requesting the Biden Administration pursue an avenue to recognize indigenous cultural harvest of Hawai‘i green sea turtles within the IAC.***

Tosatto said while he supported the pursuit of indigenous and cultural interests, the action rings counter to current U.S. policy and therefore would abstain from the vote.

Moved by Dueñas; seconded by Sword.

Motion passed with Tosatto abstaining.

XIII. Administrative Matters

A. Council Member and Staff Ethics Training

Tucher presented the ethics overview, focusing on lobbying and conflicts of interest. This included financial disclosure and when members must recuse from decision-making. Government ethics regulations that apply to federal officials are under 5 CFR 2635, while state

officials on the Council follow the applicable state or territory ethics requirements. Tucher explained that nominated members of RFMCs are treated as federal employees under the criminal conflict of interest statutes, such as Section 208 but MSA Section 302 applies in lieu of Section 208, as members are not fulltime federal employees. MSA Section 302 requires the disclosure of relevant financial interest and recusal from voting on decisions which have a significant and predictable effect on those interests.

Tucher provided examples of when a Council member is exempt from MSA Section 208, or the process of identification through disclosure and recusal from voting. A Council decision such as an approval of an FMP or FMP amendment that has a significant and predictable effect on a member's financial interest would require a recusal. A request for review of a monument prohibition in a proclamation is not a request for an amendment of a regulation and would be an example of when a recusal would not be required. Tucher stated a member can determine there is a disproportionate benefit to his or her financial interest when voting on a Council decision if his or her interest is greater than 10% in the total harvest of the fishery, marketing or processing. This also includes full or partial ownership of more than 10% of the vessels used in that fishery or sector using the same gear type.

The NOAA GCPI conducts recusal determinations before every Council meeting by reviewing the notice of Council meeting actions. Council members may participate in Council and committee deliberations if the Council is notified of the voting recusal and affected financial interest have been identified in the record. Council members who are subject to a full recusal determination for matters of unique individual concern are restricted from voting and deliberation on that matter. There are penalties if Council members fail to disclose or comply with recusal requirements. Council members also have safe harbor if they have filed a timely and accurate financial disclosure and there is an issue with the recusal determination by GCPI.

Tucher presented on lobby restrictions and the regulations that apply, as well as the Office of Management and Budget Circular A for Cost Principles for Non-Profit Organizations. Members are prohibited from using grant funds to influence federal, state or local elections, federal or state legislation or any enactment or modification through communication with a member or employee of Congress or State legislature. This includes the preparation, distribution or use of publicity or propaganda to influence legislation or contribute to or participate in demonstrations, fundraising, letter writing and telephone campaigns. A Council member may lobby the executive branch, an example being that a member using Council letterhead could write a letter to the Secretary of the Interior expressing support for proposed legislation that would reduce the size of a marine national monument. Council members also have a constitutional right to petition the government on their personal views while not using Council equipment, materials or on Council time.

B. Financial Reports

Simonds referred members to the financial report in their briefing materials.

C. Administrative Reports

Simonds reported that the Council has no staff changes and reported on two FOIA requests from *Civil Beat*. The first was for all contracts between the Council and Leimana DaMate, Edward Glazier, Noah Shirakawa, Gillnetters of Hawai'i, Salty Marine, Stove Boat,

Hawai‘i Production Associates, Svein Fougner, Samoa Tuna Processors, Blue Continent Communications, KHNL and KGMB. The Council responded to that FOIA Nov. 15, 2021.

The second FOIA request from *Civil Beat* was for the 2021 and 2022 salary information for the executive director and staff, including breakdowns for base pay, locality and any benefits. The Council responded to that FOIA Nov. 29, 2021.

D. Fall Council Coordination Committee Report

Soliai reported that the CCC met in October 2021 and highlighted the support for the workshop on EJ.

1. Environmental Justice

Carnevale referred members to the letter sent to Ambassador Susan Rice and recent executive orders in their briefing materials. The letter to Ambassador Rice emphasized opportunities within the MSA that could foster and promote traditional indigenous fishing practices, and the executive orders added a definition of equity for underserved communities including native Hawaiians, Asian Americans and Pacific Islanders. The CCC reported that it has established an Equity and Environmental Justice National Working Group and one of the co-chairs is from the Western Pacific Region. The goals of the working group are to coordinate and share information about NMFS efforts to embed equity and EJ in external programmatic work and support the implementation and response to the suite of presidential actions focused on racial equity, EJ and support for underserved communities. The Council has been working with other RFMCs, along with NMFS SFD, to develop a design document in preparation for a workshop on EJ and fisheries management. The process would include the RFMCs, in coordination with NMFS, to identify regionally distinct issues and protocols and how to implement some of the target outcomes.

E. Proposed Coral Reef Projects

DeMello reported the NOAA Coral Reef Conservation Program has requested proposals for the funding provided to the Councils. Council staff has been working on a list of ideas with the island agencies for review. This includes ecosystem modeling to develop ecosystem indicators and thresholds, life history data gaps, genetic connectivity and supporting local capacity and coral reef ecosystem-associated species, and refining EFH. Other items discussed included investigating length-based SPR, species distribution models, impacts of offshore development and creating a baseline of ecosystem data. DeMello requested review and suggestions for project ideas from the Council for the 2022-2024 \$500,000 three-year grant proposals, due at the end of January 2022.

Dueñas asked that Council staff consider an assessment on the sedimentation issue and revisit the salinity project previously conducted by the Council.

F. Council Family Changes

Mark Mitsuyasu said the Council received a request from Guam DAWR to appoint Biggs to the SSC and the Archipelagic Plan Team. Biggs will replace Jay Gutierrez on the SSC and

Martinez on the Archipelagic Plan Team. The Council also received a request from CNMI DFW to appoint Frank Villagomez to the SSC, replacing Tenorio.

G. Meetings and Workshops

Mitsuyasu referred members to the list of upcoming meetings and workshops in their briefing materials.

H. Standing Committee Report

Mitsuyasu said the Standing Committee did not meet and there is no report.

I. Public Comment

There were no public comments.

J. Council Discussion and Action

Regarding EJ, the Council directed staff to help organize and convene the upcoming CCC EJ and fisheries management workshop, while offering Hawai'i as the host site.

The Council requested NMFS PIFSC support regional upcoming EJ efforts through an examination of available data that will both better define our regional EJ lens and also assist in understanding data-related EJ impacts.

Moved by Dueñas; seconded by Sword.
Motion passed.

Regarding proposed coral reef projects, the Council supported the projects as developed by staff for inclusion in the Council's next coral reef conservation grant and directs staff to finalize the proposal in consultation with the appropriate state and territorial agencies.

Moved by Dueñas; seconded by Sword.
Motion passed.

Regarding Council family changes, the Council appointed Jason Biggs, Guam DAWR, to the SSC, replacing Jay Gutierrez, and to the Archipelagic Plan Team, replacing Jude Martinez.

The Council appointed Frank Villagomez, CNMI DFW, to the SSC, replacing Michael Tenorio.

Moved by Dueñas; seconded by Sword.
Motion passed.

Regarding administrative matters, the Council endorsed the 189th Council meeting financial and administrative reports as provided by staff.

Moved by Dueñas; seconded by Sword.
Motion passed.

XIV. Other Business

Fitchett read a resolution in recognition of the distinguished services of Tom Graham, division chief of PIRO IFD.

There was no other business.

XV. Election of Officers

This item was covered in a prior agenda item.

[Meeting adjourned.]