



WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

MEMORANDUM

February 16, 2023

TO: Interested Parties
FROM: *Kitty* Kitty M. Simonds

SUBJECT: Summary of Action Items for the 194th Meeting of the Western Pacific Regional Fishery Management Council

1. **Northwestern Hawaiian Islands Fishing Regulations -Native Hawaiian Subsistence Permit and Cost Recovery**
 2. **Main Hawaiian Islands Kona Crab Status Determination Criteria**
 3. **Gold Coral Management**
 4. **Review of Marine Conservation Plans for Guam, Commonwealth of the Northern Mariana Islands and the Pacific Remote Island Areas/Hawaii**
 5. **Multi-Year Territorial Bigeye Tuna Catch & Allocation Specifications**
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The 194th meeting of the Western Pacific Regional Fishery Management Council will convene in-person March 27-28, 2023, at the Crowne Plaza Hotel, Garapan, Saipan, Commonwealth of the Northern Mariana Islands (CNMI), and March 30-31, 2023, at the Guam Hilton, Tumon Bay, Guam. Remote participation option will be available by web conference (Webex).

The Webex link is <https://tinyurl.com/194CouncilMtg> (if prompted, enter event number: 2459 032 8940 password: *CM194mtg*). Specific information on joining the meeting, instructions for connecting to the Webex and providing oral public comments during the meeting will be posted on the Council website at: <https://www.wpcouncil.org/event/194th-council-meeting/>

The Council will consider and may take action on the issues summarized below, including any public comments on them. Written public comments on final action items should be received by the Council's executive director by 5 p.m. (HST), Thursday, March 23, 2023, by postal mail, fax or email as indicated below.

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Summary of Action Items at the 194th Council Meeting

1. Northwestern Hawaiian Islands Fishing Regulations -Native Hawaiian Subsistence Permit and Cost Recovery (Final Action)

In 2016, President Obama via Presidential Proclamation 9478 set aside an area of 50-200 nautical miles adjacent to the Papahānaumokuākea Marine National Monument (PMNM) as the Monument Expansion Area (MEA). Through the Proclamation, the Secretary of Commerce (NOAA), in consultation with the Secretary of the Interior (U.S. Fish and Wildlife Service), are responsible for management of activities and species in the MEA within their respective authorities (e.g., Magnuson-Stevens Fishery Conservation and Management Act [MSA], National Wildlife Refuge System Administration Act, Endangered Species Act, etc.). The Proclamation prohibits commercial fishing activities and anchoring on any living or dead coral. However, it also allows for regulated fishing activities, including Native Hawaiian practices (the exercise of traditional, customary, cultural, subsistence, spiritual and religious practices) within the MEA, and non-commercial fishing (provided that the fish harvested either in whole or in part, does not enter commerce through sale, barter or trade, and that the resource is managed sustainably).

At its 193rd meeting, the Council recommended a suite of regulations for permitting fishing in the MEA of the Northwestern Hawaiian Islands (NWHI). Among those regulations were recommendations for Native Hawaiian subsistence fishing permits and cost recovery for those permits.

Cost recovery, as voted by the Council at that meeting, could not exceed \$15,000 per trip and a permittee would be required to document and report the direct costs associated with each trip as well as the amount and value of any catch that is sold, bartered or traded. This cost was calculated based on estimated costs of fuel, ice, bait and food associated with previous trips to the NWHI in the bottomfish fishery. An analysis of historical trip costs and current prices was conducted by NOAA and will be presented to the Council at the 194th meeting for its consideration of potentially changing the cost recovery maximum.

The Council, at its previous meeting, also recommended a meeting with advisors and Native Hawaiian groups to provide the Council with the details of Native Hawaiian practices and a review process for the Native Hawaiian subsistence fishing permit. Council staff will report on this meeting and its suggestions for the Council to consider developing a process for permit review and what constitutes Native Hawaiian practices under that permit.

At its 194th meeting, the Council will consider a process for reviewing Native Hawaiian subsistence permits and an analysis of the total cost that may be recovered through these permits, and may consider a final recommendation for the Secretary of Commerce.

2. Main Hawaiian Islands Kona Crab Status Determination Criteria

The most recent benchmark stock assessment for Kona crab in the main Hawaiian Islands (MHI) indicated that the stock is not overfished nor experiencing overfishing. However, the Council's Fishery Ecosystem Plan (FEP) for the Hawaii Archipelago does not specify status determination criteria (SDC) for the Kona crab management unit species (MUS). Thus, despite the results of the assessment, the stock status of MHI Kona crab remains "unknown" under the National Marine Fisheries Service (NMFS) Species Information System, a national database that serves as the repository for stock assessment and status determination results. Additionally, due to the lack of MHI Kona crab SDC, the Hawaii FEP currently does not meet the requirements of National Standard 1 of the MSA, and does not allow for the determination and reporting of stock status consistent with section 304(e) of the MSA.

At its 194th meeting, the Council will consider taking initial action on establishing SDC for Kona crab in the Hawaii Archipelago FEP and may identify a preliminary preferred option and direct staff to develop the associated analyses to amend its Hawaii Archipelago FEP.

The purpose of this proposed action is to comply with section 303(a) of the MSA and implementing regulations at 50 CFR 600.310(e)(2), which require the specification of SDC for the Kona crab stock in the MHI as an MUS under the Hawaii Archipelago FEP. The need for this action is to allow for the determination and reporting of stock status consistent with section 304(e) of the MSA. This action is also needed to further support the sustainable management of the Kona crab fishery in the MHI.

The Council will consider the following alternatives:

- 1) No action (status quo/current management).
- 2) Amend the Hawaii Archipelago FEP to establish SDC for MHI Kona crab based on technical guidance provided by Restrepo et al. (1998), consistent with the SDC implemented for other Council-managed fisheries and the most recent Kona crab stock assessment (Kapur et al. 2019).
- 3) Amend the Hawaii Archipelago FEP to establish SDC for MHI Kona crab based on management provisions for crab fisheries outside of the Western Pacific Region (e.g., domestic fisheries for other crab species and international fisheries for Kona crab).

3. Gold Coral Management (Final Action)

The Western Pacific Region's gold coral fishery is currently dormant, although research on gold coral remains somewhat active. Based on research that indicated gold coral growth is much slower than previous estimates, the Council recommended a five-year moratorium on the harvest of gold coral in the Western Pacific Region, which NMFS first implemented in 2008. The current moratorium will expire on June 30, 2023.

Annual catch limits (ACLs) have been developed for all MUS in the Western Pacific Region except gold coral due to the moratorium. Two studies conducted since the original moratorium was put into place indicate that gold coral growth may be slower than what was known in 2008, but also that gold corals may be slow growing only when established on older substrates. An extension on the moratorium would provide time for the gold coral estimates to be reassessed, as well as for this information to be incorporated into a better assessment of the

stocks and the development of a proper ACL. The Council and NMFS have yet to prepare an ACL or other management strategy for the fishery that is appropriate given the recent changes in the science on gold coral growth.

The Council, at its 194th meeting, will review options in advance of the expiration of the moratorium in June 2023 and may consider taking final action to extend the existing moratorium while developing a long-term management strategy for gold coral to ensure the sustainability of the gold coral fishery in the Western Pacific Region. This long-term strategy is needed to prevent the renewal of a fishery under regulations that may not be sufficient to prevent overfishing.

4. Review of Marine Conservation Plans for Guam, Commonwealth of the Northern Mariana Islands and the Pacific Remote Island Areas/Hawaii

The Marine Conservation Plans (MCPs) for Guam, CNMI and the Pacific Remote Island Areas (PRIA)/Hawaii expire in 2023. At its 194th meeting, the Council will review the MCPs for concurrence and approval. After review by the Council, the MCPs are transmitted to the Secretary of Commerce for approval. If approved by the Council and Secretary of Commerce, the MCPs are valid for three years; however, an MCP can be modified at any time and resubmitted for approval.

Section 204(e) of the MSA authorizes the Secretary of State, with the concurrence of the Secretary of Commerce and in consultation with the Council, to negotiate and enter into a Pacific Insular Area Fishery Agreement (PIAFA). A PIAFA would allow foreign fishing within the 200-mile U.S. exclusive economic zone (EEZ) around American Samoa, the CNMI, Guam or the PRIA with the concurrence of, and in consultation with, the applicable governors. According to the MSA, before entering into a PIAFA, the appropriate governor, with the concurrence of the Council, must develop a three-year MCP providing details on uses for any funds collected by the Secretary under the PIAFA.

In addition to PIAFA funds, the MSA provides that fines and penalties of violations by foreign vessels occurring within the EEZ around the Pacific Insular Areas, including sums collected from forfeiture and disposition or sale of property seized by the federal government, are to be deposited into the applicable local government's treasury and to be used to implement the respective MCP. Also authorized by the MSA is the Western Pacific Sustainable Fisheries Fund, which allows the Council to use funds to implement MCP projects.

The MSA requires that the MCPs shall be consistent with the Council's FEPs. The MSA also requires that the MCP include, but not be limited to, the following conservation and management objectives:

- (i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary determines are adequate to monitor the harvest, bycatch and compliance with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area fishing agreements;
- (ii) Conduct of marine and fisheries research, including development of systems for information collection, analysis, evaluation and reporting;

- (iii) Conservation, education and enforcement activities related to marine and coastal management, such as living marine resource assessments, habitat monitoring and coastal studies;
- (iv) Education and training in the development and implementation of sustainable marine resources development projects, scientific research, and conservation strategies; and
- (v) Western Pacific community-based demonstration projects under section 112(b) of the Sustainable Fisheries Act and other coastal improvement projects to foster and promote the management, conservation and economic enhancement of the Pacific Insular Areas.

5. Multi-Year Territorial Bigeye Tuna Catch & Allocation Specifications

Bigeye tuna comprises a Pacific-wide population that is internationally managed and assessed as separate stocks in the Western and Central Pacific Ocean (WCPO) and Eastern Pacific Ocean by the Western and Central Pacific Fisheries Commission (WCPFC) and the Inter-American Tropical Tuna Commission, respectively. The most recent stock assessment conducted in 2020 for the WCPO indicate the bigeye tuna stock is not subject to overfishing, nor overfished. In December 2021, the WCPFC agreed on conservation and management measure (CMM) 2021-01, which maintained the 2016 longline bigeye limits of six countries, including the United States, which has a limit of 3,554 metric tons (mt). CMM 2021-01, like earlier measures, does not establish an individual limit on the amount of bigeye tuna that may be harvested annually in the Convention Area by Small Island Developing States and Participating Territories, including American Samoa, Guam and the CNMI. CMM 2021-01 will expire at the end of 2023, with a possibility of new catch limits for fishery sectors and flag states under the WCPFC. The WCPFC may also decide to resume current catch limits for flag states and participating members through 2023 and beyond.

Amendment 7 to the Council's Pacific Pelagic FEP established a management framework that provides catch or effort limits applicable to the U.S. Participating Territories. The framework includes the authority of the territories to use, assign, allocate and manage the pelagic MUS catch and effort limits agreed to by the WCPFC through specified fishing agreements with U.S. vessels permitted under the Pacific Pelagic FEP for responsible fisheries development. At its 178th meeting in June 2019, the Council took final action to modify the territorial catch/effort and allocation limit framework under Amendment 7 and specify multi-year catch/effort and allocation limits for U.S. Participating Territories. The Council recommended an amendment to the Pacific Pelagic FEP to remove the requirement for establishing separate total catch or effort limits for the U.S. Participating Territories to establish an allocation limit, and allow multi-year limits. The Council would annually review any established limits to determine whether the best available scientific information or the needs of fishing communities warrant modifying or rescinding such limits. The Council also recommended removing catch limits for the U.S. Participating Territories and establishing allocation limits for 1,500 mt per territory for 2020-2023, based on their marginal impact on the bigeye stock. This action was delayed due to administrative prioritization, among other reasons.

In the process of developing draft proposed regulations to implement the framework modifications to Amendment 7, Council and PIRO staffs identified additional considerations that warrant Council direction and action. Considerations that may warrant further analyses include:

1) timing of multi-year specifications (e.g., how many years, structure of agreement timing) and the fishing years in which the limits will take effect or expire, 2) if multiple concurrent agreements may be made with U.S. Participating Territories, 3) if catch limits for U.S. Participating Territories are necessary, 4) allocation limits from Territories to U.S.-flagged Hawaii longline vessels, and 5) the scope of framework with respect to applicable pelagic MUS. At its 194th Meeting, the Council may provide direction on further analyses on these issues for implementing the framework modifications to Amendment 7, accounting for a requirement for annual review or further review contingent upon the availability of new scientific information.

At its 194th Meeting, the Council will also consider taking initial action and may select a preliminary preferred option for specifying multi-year territorial bigeye tuna catch and/or allocation limits to take effect beginning no earlier than 2024, under the Council's recommended modification of the territorial catch, effort and allocation limit framework. The Council will consider the following options specifically for WCPO bigeye tuna:

1. No catch or allocation limits (no action).
2. 2,000 mt catch limit and up to 2,000 mt allocation limits.
3. No catch limit and up to 2,000 mt allocation limits.