



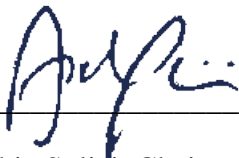
WESTERN  
PACIFIC  
REGIONAL  
FISHERY  
MANAGEMENT  
COUNCIL

**MINUTES OF THE  
193rd MEETING OF THE  
WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL**

**December 5-8, 2022 Council Plenary  
By Web Conference and Host Site:**

**Pagoda Hotel  
1525 Rycroft Street  
Honolulu, HI 96814  
(808) 522-8220**

Approved by Council:



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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)
- Roger Dang, vice chair (Hawai‘i)
- Manny Dueñas, vice chair (Guam)
- John Gourley, vice chair (Commonwealth of the Northern Mariana Islands [CNMI])
- Will Sword, vice chair (American Samoa)
- Judith Guthertz (Guam)
- Shaelene Kamaka‘ala (Hawai‘i)
- Matthew Ramsey (Hawai‘i)
- McGrew Rice (CNMI)
- Sarah Malloy, National Marine Fisheries Service (NMFS) Pacific Islands Regional Office (PIRO) (designee Jarad Makaiau also in attendance)
- Chelsa Muña-Brecht, Guam Department of Agriculture (DOAG)
- 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) LCDR Jessica McCollum (designee for Rear Adm. Michael Day, commander for U.S. Coast Guard [USCG] District 14)
- Brian Peck, U.S. Fish and Wildlife Service (USFWS)

Also in attendance were Council Executive Director Kitty M. Simonds; Fred Tucher, Elena Onaga, and Sarah Sheffield from NOAA General Counsel Pacific Islands (GCPI); Jim Lynch, Scientific and Statistical Committee (SSC) chair; and SSC chair designees Steve Martell and Don Kobayashi. Colin Brinkman, U.S. State Department was absent.

Soliai opened the 193rd Council meeting with a prayer.

## **II. Approval of the 193rd Council Meeting Agenda**

The 193rd meeting agenda was approved by general consent.

## **III. Approval of the 192nd Council Meeting Minutes**

The 192nd meeting minutes were approved by general consent.

#### **IV. Executive Director's Report**

Simonds presented the executive director's report. The Council was not able to meet in the Mariana Islands as planned. Instead the meeting was held at the Pagoda Hotel in Honolulu, where the Council hosted its first meeting in October 1976.

April 2023 marks 20 years since the establishment of the NMFS Pacific Island Region, when management and science transferred from the Southwest Region to PIRO and the Pacific Islands Fisheries Science Center (PIFSC). To support the new region, a Joint Strategic Planning Effort was undertaken in 2004 by the leadership and staff from PIRO, PIFSC, NMFS, Office of Law Enforcement (OLE) and the Council, the report of which was published in March 2004 and was included in the briefing material for this meeting. The Council hosted three facilitated workshops with the purpose of supporting and expanding research, conservation management and administration of the region's marine resources. It was a great collaboration with every employee of all four agencies participating. To help inform the plan, facilitators conducted confidential interviews of stakeholders representing a cross section of environmental groups, natural resource management and enforcement agencies at the state, territorial and international levels, as well as the full spectrum of fishing interests. Simonds highlighted the following critical issues that the agencies identified at the time, some of which have been accomplished, some still ongoing and some that remain critical issues:

- 1) Management Based on Ecosystem Principles: the Council held three workshops and in 2011 published the outcomes in a book entitled "*Ecosystem Based Fisheries Management in the Western Pacific.*" It laid out the way this Council should approach ecosystem management based on discussions from scientists, social scientists and indigenous peoples in attendance. Simonds encouraged new members to review the book, and noted Council staff will be reporting later in the agenda on the joint Ecosystem-Based Fisheries Management (EBFM) meeting that was held with PIRO and PIFSC in October 2022.
- 2) Recovery and Management of Protected Species: this continues to be a critical issue and of high priority in the region.
- 3) Successful Conservation and Management of Fisheries: the Council established annual catch limits (ACLs) for the bottomfish fishery and limited-entry programs as well as other initiatives.
- 4) International Management through International Cooperation: The Council continues to participate with PIRO and PIFSC in various international meetings on data and management.
- 5) Effective Data Gathering and Management: good data continues to be a critical issue in the region. PIFSC has developed a process for completing assessments to update the current American Samoa and Guam bottomfish statuses, which are overfished and overfishing conditions. The region is moving toward electronic technology reporting and monitoring, but there is still a need to collect basic information to monitor and assess the status of the fisheries.
- 6) Understand and Consider Social, Economic and Cultural Factors: the Council has made significant improvements, but the Council has not been able to get out to the Territories for the past few years due to COVID-19. The Council started meeting years ago with the communities, such as in the Mariana Archipelago where the Council worked with the



mayors and the fishermen to develop Community Fishery Development Plans. This process needs to continue into 2023.

- 7) Increase Education, Outreach and Communication: This is central to every program in the region, noting the evolving nature of communication today with social media electronic communication. The Council was the first council to establish a newsletter in 1984.
- 8) Use Effective and Appropriate Management Strategies: A vessel monitoring system (VMS) was first implemented in the region's longline fishery in the early 1990s and is now used all over the world.
- 9) Maintain Compliance with the National Environmental Policy Act (NEPA): The Council, PIRO and PIFSC work on NEPA documents for all Council actions.
- 10) Increase and Coordinate Regional Administration, Information and Technical Services: This priority continues to be a work in progress. The important objective under this issue has been interagency leadership and staff communication and coordination. The Council has been unhappy in the last decade about how things have not evolved, and is looking forward starting this year to making this happen with the new leadership. The Council will be working with acting PIRO Regional Administrator Malloy and acting PIFSC Director Tia Brown to improve the working relationship to meet the region's obligations, and staff is coordinating meetings for January and February 2023.

Regarding Council funding, PIRO provided funds to hold this December meeting. Simonds discussed the issue with leadership in Washington, D.C. during the October 2022 Council Coordination Committee (CCC) meeting and also met with Janet Coit and Malloy during Coit's visit to Hawai'i in November 2022. The Council, PIRO and PIFSC will meet in early January to discuss shared obligations, how to accomplish what has been done in the past, and continue to receive funding for capacity-building, the Stock Assessment and Fisheries Evaluation (SAFE) Report contractor and other projects.

Simonds highlighted several items on the meeting agenda, including SSC review of a paper inferring spillover benefits of the Papahānaumokuākea Marine National Monument (PMNM), the Northwestern Hawaiian Islands (NWHI) fishing regulations and the NMFS biological opinions (BiOps). The Council heard about the bottomfish fishery BiOp at the September 2022 meeting, and PIRO subsequently completed the supplemental BiOps for the Hawai'i deep-set and American Samoa longline fisheries that concluded "no jeopardy." While the Council was not afforded the opportunities to review the draft supplemental BiOps, PIRO has committed to providing the Council full BiOps before the March 2023 Council meetings. All regional fishery management councils are also working with NMFS Headquarters to improve the Endangered Species Act (ESA)-Magnuson-Stevens Fishery Conservation and Management Act (MSA) Integration Policy Directive.

The 19th Regular Session of the Western and Central Pacific Fisheries Commission (WCPFC) in Da Nang, Vietnam concluded with positive outcomes for U.S. fisheries. Simonds recognized the women continuing to lead the way in international fisheries, highlighting Rhea Moss-Christian, former WCPFC chair, replacing Feleti Teo as WCPFC executive director, and Josie Tamate of Niue replacing Riley Kim of Korea as WCPFC chair. The WCPFC adopted a shark conservation management measure that follows the Council's recommendation for the prohibition of wire leaders (also known as traces) in longline fisheries that target tuna and

billfish in waters from 20 degrees south latitude to 20 degrees north latitude. More outcomes will be discussed during the Pelagic and International Fisheries section of the agenda.

Makaiau said he is not sure that PIRO can commit to delivering the BiOps before the March 2023 meeting, as the process may be impacted by litigation.

Dueñas said he hoped the reality of the Council working cooperatively with the other agencies will come to fruition. He commended Simonds for her insight into how women have ruled, noting that women being in charge is a 4,000-year old tradition on Guam and in the Mariana Archipelago. He added that people of Guam have never used gendered pronouns such as him or her, and instead use us and we when describing their communities.

## **V. Agency Reports**

### **A. National Marine Fisheries Service**

#### **1. Pacific Islands Regional Office**

Makaiau presented the PIRO report and started with a spotlight on the Permanent Advisory Committee (PAC) to the WCPFC U.S. Delegation. PIRO hosted the PAC annual meeting in October 2022 and the committee provided several recommendations on a number of topics including sharks, skipjack tuna and North Pacific swordfish. WCPFC outcomes will be reported under the Pelagic and International section of the agenda.

PIRO published a proposed rule Dec. 5, 2022, to implement the 2022-2025 ACLs for main Hawaiian Islands (MHI) deepwater shrimp and for black, pink, red and bamboo precious corals. The 30-day public comment period will close Jan. 4, 2023.

In November 2022, PIRO hosted the NMFS Leadership Council, which is comprised of NMFS Assistant Administrator Coit, deputy administrators, chief scientist, program office, regional office and science center directors, and senior policy analysts. The meeting started with a site visit to a number of Pacific Island climate and equity projects to learn about the importance of place-based indigenous local knowledge, practices and biocultural approaches in natural resource management. Leadership Council members also traveled to Kona for a number of site visits, including the Kiholo Fish Pond, to learn about restoration and conservation actions as part of NOAA's West Hawai'i Habitat Focus Area, Blue Ocean Mariculture hatcheries and cages, the State of Hawai'i Ocean Science and Technology Park, and the Marine Mammal Center's Ke Kai Ola - Hawaiian monk seal (HMS) hospital. The Leadership Council meeting was convened on O'ahu, where members also had the opportunity to visit the Honolulu Fish Auction and some fish ponds.

The Habitat Conservation Division (HCD) continues to work with local partners in American Samoa, Guam and Hawai'i to develop and assist in development of Jurisdictional Coral Reef Fisheries Management Plans (FMPs). This effort involves a high-level coordination with PIFSC to enable completion of the fishery components of these FMPs. In American Samoa, HCD continues to support the implementation of the American Samoa Coral Reef Restoration Action Plan and related initiatives for management of coral reef fisheries and habitats. In the CNMI, HCD continues to oversee the Saipan Coral Nursery Pilot Project and coral sexual propagation projects and coordinate a reef resilience study for Rota and Tinian.

NMFS and USFWS partnered with the Center for Environmental Conflict Resolution to establish a Pacific Remote Islands Marine National Monument (PRIMNM) Community Group that can contribute to stakeholder and community perspectives as the agencies continue to develop the monument management plan. The community group met in September 2022 and a draft plan is expected in late 2023, with a final plan by the end of 2024.

PIFSC and PIRO convened the Western Pacific Stock Assessment Review (WPSAR) of Level 1 and Level 2 essential fish habitat (EFH) models for uku in the MHI. This information will help the Council as it endeavors to refine EFH designations for the management unit species (MUS).

PIRO participated in meetings of the WCPFC Technical and Compliance Committee, South Pacific Regional Fisheries Management Organization Scientific Committee, WCPFC Northern Committee, as well as the Pacific Community (SPC)'s 5th Regional Technical Meeting on Coastal Fisheries and Aquaculture.

Regarding protected resources, PIRO completed the supplemental BiOps for giant manta ray and oceanic whitetip sharks (OWTs) for the American Samoa longline fishery and the Hawai'i deep-set longline (DSL) fishery. PIRO also convened the False Killer Whale Take Reduction Team (FKWTRT) in November 2022. Makaiau also provided an update on the development of a recovery plan for humpback whale distinct population segments. NMFS anticipates publishing a rule on the coral critical habitat (CCH) and a proposed rule on the green sea turtle critical habitat in 2023. PIRO is also aware of the Council's letter to the Biden Administration to find avenues for allowing cultural traditional practices with green sea turtles for U.S. Pacific Island communities.

PIRO, in coordination with PIFSC, has supported a staff on detail to help coordinate between the Council, PIFSC, PIRO and the industry to find a way forward on electronic monitoring (EM) and how it can help meet the region's goals for fishery management. In October 2022, PIRO also started to search for additional observers to help support its mission and hosted a fisheries observer training class that graduated 13 students.

In November 2022, PIRO staff joined Council staff in statewide meetings to solicit community input and alternatives for fishery management in the Monument Expansion Area (MEA) of the PMNM. These meetings gathered community perspectives on what they believe are appropriate uses of noncommercial and Native Hawaiian traditional fishing that the Council should consider as it continues to develop draft proposed fishing regulations for the proposed sanctuary.

Coit announced at the October 2022 CCC meeting that NMFS is considering a review and revision of National Standard (NS) 4 on allocation, NS 8 on fishing communities, and NS 9 on bycatch, which has not been done for many years. Revising the NS guidelines is a significant undertaking and will require opportunities for interested public stakeholders and the Council to provide input into the process. NMFS anticipates issuing an Advance Notice of Proposed Rulemaking (ANPR) to gather input from the Council and stakeholders to inform the next steps.

Soliai asked if there is potential to host a Leadership Council meeting in any of the U.S. Pacific Territories, noting the importance for leadership to see the different issues in each of the jurisdictions.

Makaiau said the importance of reaching out to the communities and face time with leadership is on NMFS's radar, especially as the agency develops its national Equity and Environmental Justice (EEJ) Strategy, and PIRO can continue to reiterate its importance from the territorial and Pacific perspectives.

Ramsey asked what the timeline is for the NSs review process, and whether the review was expected to take a long time to complete.

Makaiau said he cannot speak to the timeline, but can describe the process. Following the start of the discussions at the October 2022 CCC meeting, the next step is publishing an ANPR, which provides an opportunity to gather broad input from the public on the issues. The ANPR comment period may last 60 days or longer, and the process following that step is more uncertain, depending on how long it takes NMFS to formulate a strategy to address the public input and prepare for rulemaking. Once at the rulemaking stage, it could take a year or longer. As an example, the ANPR for NS 1 was issued in the early 2000s, and the first draft of the final rule was issued in 2009, and then the fallout from that continued until 2016.

Gourley said the process that the territorial governments went through with PIRO on the CCH was good, although somewhat painful. As he understands that the regulatory process for the green turtle critical habitat has not actually started, Gourley asked if it is possible to set up the same procedures of getting the territorial governments together before the proposed rule is published to discuss the direction of the action.

Makaiau said certain rules may apply once the process reaches proposed rulemaking, but to the extent there can be open communication before the proposed rule stage, he thinks that would be beneficial and helpful. He said he can take the request back to the regional administrator and PIRO Protected Resources Division (PRD), noting PIRO may need to consult with the Office of Protected Resources (OPR) at NMFS Headquarters to figure out how to embark on communications prior to delivery of a proposed rule.

Gourley asked if PIRO has done an assessment of the CNMI bottomfish permitting program and whether any data are being collected through that program.

Makaiau said PIRO has looked at how many permits have been issued and how many logbook reports have been submitted over the last 10-15 years and acknowledged the numbers were small. The information gathered from the permit and reporting mechanisms is not very useful because of the small number. Makaiau acknowledged some responsibility for the lack of information, noting that PIRO is not doing a good job with outreach in putting the word out that a permit is required when fishing in federal waters for commercial purposes in the CNMI. There is also uncertainty with how much fishing effort is occurring in federal waters, and there is a need to work with the CNMI government to tease out more location information through creel surveys to get a better handle of the actual fishing effort.

Gourley said it would be useful to discuss with the CNMI government about whether the federal bottomfish data collection program is working, noting that having more data collection programs in the territories often confuses the fishing community. It is best to get rid of systems that do not work and allocate funds to more productive programs in the territories related to data.

Makaiau said progress is being made with improving data collection systems in the territories, and if the federal permit and reporting is to be eliminated, he said there still needs to be a system in place for NMFS to manage fisheries through stock assessments and ACLs.

Dueñas expressed concerns over various issues including delays in resolving catch issues associated with striped marlin, failure to adjust the Hawai‘i longline quota, lack of focus on issues pertinent to successful fisheries, and a need to shift representation on the WCPFC Northern Committee from the former regional administrator to ensure the region’s interests are appropriately represented.

Guthertz supported Dueñas’s comments and suggested the Council consider requesting the change in representation on the important international body.

Simonds indicated that the subject of increasing the bigeye tuna quota for the Hawai‘i longliners was not up at the recent WCPFC meeting, and the discussion on the entire tropical tuna measure is scheduled for the 2023 meeting. The Council is working hard to prepare for that meeting through informal deliberations with the Pacific Island countries in advance of the WCPFC workshops to be held in 2023.

Soliai said the Council has had a lot of concerns related to the main commercial fisheries for this region, namely the Hawai‘i and American Samoa longline fisheries and purse seine fishery, and the international arena continues to be a contentious and strategic point. The U.S. purse seine fleet continues to decline with only 12 vessels remaining, which may eventually lead to the United States not having skin in the game. The rulemaking to separate the Effort Limit Area for Purse Seine (ELAPS) is also a concern, as expressed during the PAC meeting and through the notice of intent (NOI) to sue sent from American Samoa Governor Lemanu P.S. Mauga to NMFS. Soliai noted these concerns need to be taken into the whole context of issues affecting these U.S. fisheries. A lot of communication and collaboration needs to happen leading up to the next WCPFC meeting, and the U.S. government, the Council and the territories should start as early as January to develop a meaningful resolution.

Makaiau said PIRO will continue to make sure it is engaged and communicating with the Council. PIRO is aware of the different rules for various nations throughout the Pacific and recognizes that the United States is a global player in the market of fisheries, and will continue to remind the Biden Administration the effects domestic laws are having on the region’s fisheries’ ability to compete in the global market. When the NS 1 guidance was issued in 2009, the Administration recognized that NMFS should not unfairly penalize U.S. fishermen for overfishing that is occurring predominantly at the international level. NMFS also recognizes under MSA that applying requirements on just the U.S. portion of the catch, while other fishing nations fish without additional measures, would not fix the problem and may disadvantage U.S. fishermen. Makaiau said he thinks the Administration should also look at how other laws may support and regulate U.S. fisheries by implementing measures that have international influence, so that U.S. fisheries can continue to be touted as the highest environmentally regulated fisheries. Overall, it does not help if the United States is regulated and no one else is.

## **2. Pacific Islands Fisheries Science Center**

Michael Seki presented the PIFSC report, his last presentation as the PIFSC director due to his pending retirement. The Life History Program (LHP) had successful biological sampling

during the Mariana Archipelago Research Cruise, with the goal of developing area-specific life history estimates to support future bottomfish stock assessments.

PIFSC Stock Assessment Program staff represented the region at the annual meeting of the Center for the Advancement of Population Assessment Methodology. The Center, funded by NOAA, has a mission to improve quantitative methods used in stock assessment modeling efforts and provide educational and training opportunities to produce the next generation of stock assessment scientists. The goal of this year's meeting was to document different practices in stock assessment development, recognizing that there is no single set of best practices that will fit the diverse range of fisheries, management needs and data limitations for all stocks. Felipe Carvalho presented the results from the program-wide effort to identify model diagnostics that are objective, transparent and can be automated. The workshop papers will be published in a future issue of *Fisheries Research*.

PIFSC Stock Assessment Program staff also attended the International Science Committee for Tuna and Tuna-Like Species in the North Pacific (ISC) Billfish Working Group convened in Japan from Nov. 28 to Dec. 5, 2022. The goals of the meeting were to finalize the Western and Central North Pacific Ocean (WCNPO) striped marlin stock assessment and to prepare the data for the WCNPO swordfish stock assessment.

The LHP is improving the striped marlin, swordfish and blue marlin stock assessments by leading research to refine life history information through the International Billfish Biological Sampling Program. The intent of the program is to collect, process, age and assess the reproductive maturity of individuals from across the Pacific Ocean using standardization sampling, specimen preparation and interpretation methodologies. This will result in robust parameter estimates and allow identification of spatial variability at age, growth and maturity for appropriate incorporation into the stock assessments. The LHP is working with the Pacific Islands Regional Observer Program (PIROP) to collect samples from the Hawai'i longline fleet, as well as with international partners in Japan and Taiwan to collect samples across the Pacific Ocean. As of November 2022, PIFSC has collected 115 striped marlin samples, and Japan and Taiwan has collected 140 and 354 striped marlin samples, respectively. A two-day workshop will occur in December in Japan to begin the standardization of specimen processing and interpretation among the collaborators.

The MHI Bottomfish Fishery-Independent Survey that feeds the stock assessment for the MHI deep-seven bottomfish complex started in August 2022. The survey was completed in partnership with Hawai'i bottomfish fishermen and the Pacific Islands Fisheries Group, and included camera deployment and research fishing. Supplemental camera deployments were conducted through the NOAA ship *Oscar Elton Sette*.

The successful 2022 field season of the HMS Research Program within the PMNM was completed, recording at least 178 pups born at the six major pupping sites, which was the most since 2004. The first known Lana'i-born HMS was also observed.

Regarding sea turtles, PIFSC staff traveled to Southeast Asia to assess the coastal areas, particularly in Indonesia, for the reproductive output of leatherback turtles, as well as to reduce the poaching and take of female turtles, and collect genetic samples. Regarding green sea turtles at French Frigate Shoals, PIFSC's survey staff counted 635 unique turtles in 2022, which is

about half of the high counts seen in 2021 and is considered a normal fluctuation between years. Satellite tags were also deployed on a few individuals and egg samples were collected to assess how Hawai‘i green sea turtles are adapting to the changing climate.

The Hawaiian Islands Cetacean and Ecosystem Assessment Survey will take place in Hawaiian waters in 2023 (normally during summer to fall), and a survey for the MHI is also expected for 2023. The 2020 winter survey was the first multi-species assessment of the winter cetacean abundance around the MHI and it did not find seasonal difference in small cetacean abundance, but did detect an expected increase in the relative abundance of large whales.

The EEJ Strategy is in the implementation phase, which involves stakeholder engagement in the territories. Feedback received through this effort indicated that stakeholders experience science or management engagement as top-down or extractive. To improve the process, feedback suggested that NMFS should increase local capacity and staff representativeness, increase communication with other line offices for cross-agency issues, build local partnerships to enhance work already being done and remove the funding application barriers. Feedback also highlighted that sea turtle harvest as an indigenous right is important in the CNMI, Guam and Hawai‘i.

Seki reported PIFSC Deputy Director Brown will serve as acting PIFSC director until a new one is selected. He also acknowledged the recent passing of Bill Hogarth, who served as the NMFS assistant administrator when the Pacific Islands Region was established in 2003.

Rice asked if any of PIFSC’s striped marlin work will be done in the eastern Pacific to determine whether there are one or two stocks in the Pacific.

Seki said he is unsure but knows sampling is occurring in the Hawai‘i longline fleet by the observers, and if the vessels are fishing in the eastern Pacific, the samples would be incorporated into that collection.

Dueñas asked if there will be a future assessment on striped marlin. He believes they are more susceptible to being harvested within the 200-mile range rather than on the high seas.

Seki said striped marlin have a wide distribution and are vulnerable to different types of fishing gear. One of the big striped marlin fisheries occurs in Japan’s coastal waters. The new stock assessments for the WCNPO striped marlin will use all available datasets, including driftnet data from the 1980s and 1990s, as well as data from coastal areas and high seas. The assessment will be presented in summer 2023.

Gourley thanked PIFSC for providing researchers from the CNMI the opportunity to participate in PIFSC’s cruises, noting that Tony Flores, Saipan Biosampling Program project manager, participated in the recent Mariana Archipelago Research Cruise.

Dueñas and Soliai expressed their immense gratitude to Seki for his service to the region over the course of his career.

## **B. NOAA Office of General Counsel Pacific Islands Section**

Sheffield provided the GCPI report. The *Conservation Council of Hawai'i v. NMFS* filed in May 2022 alleges that NMFS failed to ensure through a completion of ESA BiOps that the operation of the Hawai'i DSLL and American Samoa longline fisheries will not jeopardize the OWT or giant manta ray. After NMFS completed supplemental BiOps in September and October 2022, the parties filed a joint stipulation of dismissal. The Court granted this motion Nov. 7, 2022, and dismissed the case without prejudice.

*Wille v. Raimondo* was filed in the District of Maryland in March 2022. This case challenges NMFS's 2021 rule that prohibits approaching Hawai'i spinner dolphins within 50 yards on the grounds that it violates the Appointments Clause of the U.S. Constitution. NMFS filed a motion to dismiss the plaintiff's complaint in July 2022. Briefing on this motion concluded in September 2022, and the Court's order on the motion is still pending.

The Center for Biological Diversity (CBD) sent NMFS a 60-day NOI to sue Sept. 20, 2022, on NMFS's denial of CBD's 2020 petition to promulgate ESA Section 4(d) regulations for 20 species of threatened coral, 15 of which are found in the Pacific. NMFS denied CBD's 2020 petition May 5, 2021, because it determined that protective regulations were not necessary nor advisable for the listed species. NMFS responded Nov. 16, 2022, explaining that the NOI did not include any additional information that would change NMFS's original decision.

The Conservation Council for Hawai'i sent NMFS a 60-day NOI Sept. 29, 2022, alleging that NMFS unlawfully failed to complete ESA Section 7 consultations on the effects of the Hawai'i DSLL and American Samoa longline fisheries on all ESA-listed species, including sea turtles and insular false killer whale critical habitat.

The Territory of American Samoa sent NOAA a letter Nov. 18, 2022, notifying the agency of the Territory's intent to file a lawsuit if NMFS finalizes the portions of its proposed rule that would repeal the ELAPS. The notice letter alleges that repealing the ELAPS violates the WCPFC Implementation Act, the Administrative Procedure Act, the American Samoa Deeds of Cession and President Biden's directives requiring the advancement of environmental and economic justice in U.S. Pacific Territories.

Sword asked if GCPI had sent a reply to the American Samoa governor.

Sheffield said not yet, as far as she is aware. Responses to NOIs are generally sent from the agency (rather than from the GCPI), so NOAA and NMFS would issue the response in this case.

## **C. Enforcement**

### **1. U.S. Coast Guard**

McCullum provided the USCG report. The United States and the Federated States of Micronesia (FSM) signed an extended shiprider agreement allowing remote coordination of authorities. This expanded agreement is the first of its kind, and allows the United States to act on behalf of the FSM to combat illicit maritime activity and to strengthen international security operations. USCG has already enacted the agreement and conducted three vessel boardings in the exclusive economic zone (EEZ) of the FSM.



USCG Cutter *Frederick Hatch* recently conducted a counter illegal, unreported and unregulated fishing patrol in the Palau EEZ in September 2022. During their three-week patrol, the crew conducted several bilateral boardings of Japanese and Chinese Taipei-flagged fishing vessels with an officer from the Palau Bureau of Public Division of Marine Law Enforcement.

In October 2022, the USCG Cutter *Oliver Henry* was the first fast response cutter to visit Ulithi Atoll, FSM. During the visit, the crew delivered 20 boxes of supplies, 50 personal floatation devices and sporting equipment donated by various organizations.

Sword said there was an incident where cutters came down to American Samoa and tried to board a Chinese longline vessel, and they encountered a lot of problems. Sword asked if there had been any other incidents like that.

McCollum said she would need to look into that particular incident for details. However, she is aware that in District 11 on the West Coast, there were some legal issues with USCG not being able to board vessels from China for a while. USCG now has the legal authorities to do so and is continuing enforcement efforts.

## **2. NOAA Office of Law Enforcement**

Martina Sagapolu provided the NOAA OLE report. There were 97 incidents reported, which included a slight increase in fisheries incidents related to several boardings taking place on the Big Island and O'ahu.

OLE continued to see an increase in spinner dolphin activities on the Big Island, resulting in several summary settlement notices issued to violators. OLE will conduct additional outreach events in anticipation of increased activity over the next couple of months considering the borders have opened and the increase of passengers visiting the islands will continue to grow.

One particular incident on the Big Island included collaboration with the National Park Service and the Hawai'i Division of Conservation and Resources Enforcement, on their immediate response to an individual whose unleashed dog was harassing a resting HMS. The quick collaboration between the three agencies resulted in this individual receiving several fines, both at the state and federal level.

Patrols and inspections covering the MHI at sea and on land continue together with USCG, and OLE anticipates increased patrols in the first quarter of 2023.

OLE conducted joint boardings with USCG in American Samoa relating to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) over the summer. OLE noted an increase in foreign vessels, particularly of Chinese-flagged vessels, that normally transship their catch in Apia but are instead bring fish to port in Pago Pago. In the previous week, OLE received a response from Pago Pago that staff had seen three vessels that had not been into port for the last four or five years. OLE provided outreach to the vessel agents to ensure compliance with MSA prior to these vessels coming into port.

OLE has noticed an increase of minor infractions relating to failure to stow fishing gear upon arrival and unmarked fishing gear. OLE agents, together with Joint Enforcement

Agreement partners from American Samoa DMWR have communicated with vessel representatives to ensure the vessels are in compliance prior to entering the U.S. EEZ and delivering catch to the canneries.

OLE will continue to monitor and patrol recreational and charter vessels in the NWHI and MHI to provide compliance assistance with marine mammal and commercial fishing regulations.

OLE conducted a PSMA workshop in Manta, Ecuador with participants from various local fisheries departments. There were a lot of classroom activities and tabletop exercises, as well as a mock PSMA boarding. The capacity-building training was well received, and OLE anticipates continuing this event in the next two years.

OLE together with USCG visited the Fagatele Bay National Marine Sanctuary both by land and sea, giving them an opportunity to see what it looks like patrolling the area.

As part of a joint inspection effort with DOAG relating to increased seafood shipments arriving in Guam, OLE communicated with the Republic of the Marshall Islands (RMI) and Palau about some of the regulations relating to seafood. The Seafood Import Monitoring Program inspections highlighted some seafood coming into Guam was buried and seemed to be undersized. OLE plans to work closely with the RMI and Palau so they have a better understanding of the territorial or state regulations and ensure compliance with local regulations prior to shipping these products to Guam, American Samoa or Hawai'i.

Dueñas said the RMI and Palau have their own internal regulations, with Palau now prohibiting export of reef fish. He is concerned about fish coming from the FSM, as there have been shipments from the FSM including species that are under protection of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Dueñas said much of the export issues may be remedied by providing outreach on fish identification to Customs agents who are conducting the inspections, and offered the assistance of Guam Fishermen's Cooperative Association (GFCA).

Sword and Soliai thanked OLE for actually looking at the longline vessels in American Samoa because they want to encourage those vessels to provide fish for the cannery. They indicated the outreach OLE and USCG provide for the region is helpful, especially for those sensitive issues pertaining to the foreign fleets.

### **3. NOAA Office of General Counsel Enforcement Section**

The NOAA Office of General Counsel Enforcement Section representative was unable to attend the meeting and no report was provided.

#### **D. U.S. State Department**

The U.S. State Department representative was unable to attend the meeting and no report was provided.

#### **E. U.S. Fish and Wildlife Service**

Peck provided the USFWS report. Regarding the Marianas Trench Marine National Monument (MTMNM), Refuge Supervisor Rick Lopez visited Saipan in November 2022 and met with CNMI officials. The USFWS outreach and education staff in CNMI provided presentations on marine life and marine habitat protection throughout the Mariana Archipelago, including the connections between traditional fishing and the seamounts. Two research expeditions to the serpentinite mud volcanos were permitted in the Mariana Trench National Wildlife Refuge in 2022.

USFWS visited Rose Atoll Marine National Monument in November 2022 during the peak of the green sea turtle nesting. During the visit, a small plane was seen at the atoll, which was part of an effort to conduct LiDAR transects across several islands and seamounts within American Samoa. The LiDAR is capable of collecting bathymetry data up to approximately 30 to 50 meters depth, and data from the transects are expected to be available in the next year.

Gourley asked for a status update on the Marianas Trench Monument Advisory Council (MTMAC) in terms of the approval of nominees.

Peck said he always asks for an update before the Council meetings, but there is no update that he is aware of and the nominees are still being vetted.

Gourley said he is under the impression that the MTMNM Management Plan will not be finalized until the MTMAC has been reconstituted and it has a chance to reach out to the community for additional comments, and asked if that is a correct assumption.

Peck said he is not sure, but said there is nothing prohibiting the MTMAC and he believes it has met informally and can provide input.

Gourley asked why the two research expedition permits were issued under the National Wildlife Refuge and not the Marine National Monument, and whether that indicated the USFWS is taking charge of the MTMNM.

Peck said he is unsure about the MTMNM, but it may be similar to Rose Atoll, where there is a permitting process in place for the Wildlife Refuge System but no system in place for the Marine National Monument or Rose Atoll.

Gourley said there seems to be a lot of confusion with the MTMNM, USFWS, the National Wildlife Refuge and the MTMAC sitting dormant for a year. He expressed concerns about the lack of progress with this particular issue.

Guthertz suggested the Council write another strong letter expressing its disappointment with the MTMAC process and requesting in writing the appointments and participation.

Dueñas expressed concern with USFWS issuing permits for research activities occurring in waters under NMFS jurisdiction and asked where the USFWS and NMFS boundaries are, considering that the Volcanic Unit of the MTMNM is approximately 20 miles offshore from Guam. Guam is not at the table when it comes to the MTMAC, so there is limited voice for the Chamorro people. He was also concerned about the United States giving away 1,200 square miles of the deepest part of the Mariana Trench to the FSM, even though protecting that part was the reason for designating the MTMNM.

Peck said regarding the permitting issue, he would have to look at the proclamation that established the MTMNM, but monument proclamations typically state that USFWS has co-management responsibility with NMFS, and with that comes the existing permitting processes.

Sword asked what other activities are happening at Rose Atoll, and whether the eradication of rats has been completed. He also asked if the USFWS has a report on what has been happening with volcanic activity at the Vailulu'u Seamount.

Peck said Rose Atoll is special in that there are no nonnative animals or plants, except for a few ant species. The rats and cats have been eradicated and have been maintained that way through strict quarantine, which allows the seabird and turtle nesting colonies to thrive without the additional pressures. Vailulu'u Seamount is not within the Marine National Monument, but is within the National Marine Sanctuary of American Samoa. Based on information from USGS, the recent earthquake tremors were not from Vailulu'u.

Gourley said he asked at the September 2022 Council meeting about prior coordination with the territorial agency staff on the green sea turtle critical habitat. A USFWS staff member indicated the agency was approximately 80% finished with the proposed rule for the green sea turtle critical habitat, and that she had met with territorial agency staff. Gourley asked for a list of names, but there were no responses to the five follow-up emails or to a separate request from Guam about the potential impacts of green sea turtle critical habitat on private landowners. Gourley said he just received an email from the USFWS staff member in the last few hours stating that the answers were in the written correspondence from the USFWS field supervisor in Honolulu to the Council. He said the Council's letter was different from the request for a list of names and the separate request from Guam. The letter from the field supervisor also indicated that USFWS wrote letters to the territorial agencies, but there was no reply, indicating that more effort is needed to coordinate beyond the letter, following the model set by PIRO in coordinating on the CCH rule. Ultimately, there needs to be a two-way discussion on green sea turtle critical habitat.

Peck said he will convey the concern back to USFWS staff, including the clarification that the letter sent to the Council did not address the questions that were raised in Gourley's e-mail correspondence.

Muña-Brecht seconded the comments provided by Gourley related to the lack of communication with state agency staff regarding green sea turtles. Guam DOAG posed the question about the potential for green sea turtle critical habitat to impact private landowners and there has been no response. She said NMFS has been doing a good job so far in communicating with the local agencies about the green sea turtle issue, and has also conveyed to them about the potential impacts to private landowners. The Department of Defense is also the largest landowner with the most turtle habitat, and so far those areas are not included in the critical habitat designation map. She said the maps that have been provided also caused concerns similar to the CCH map, encompassing the entire outline of the island, with the exception of Department of Defense lands.

#### **F. Public Comment**

There were no public comments.

## G. Council Discussion and Action

*Regarding the NMFS PIRO agency report, the Council requested NMFS to consider holding a future Leadership Council meeting in the U.S. Pacific Territories of American Samoa, Guam or the CNMI.*

Makaiau said NMFS can support this recommendation.

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

*Regarding the NMFS PIRO agency report, the Council reiterated its request to USFWS and NMFS to meet with the territory governments of American Samoa, the CNMI and Guam to review the information at least 30 days in advance of publishing the green sea turtle critical habitat proposed rule.*

Gourley suggested strengthening the language to be more specific by changing “to coordinate” to “meet,” and adding “to review the information.”

Tenorio suggested there needs to be additional clarification on what needs to be reviewed.

Gourley said the topic of green sea turtle critical habitat is included in the recommendation and the intent would be to meet to discuss what is in the proposed rule. He suggested leaving the language as broad as possible in the Council’s request.

Muña-Brecht and Dueñas suggested adding language requesting the review at least 30 days in advance of publishing the proposed rule.

Dueñas and Sword agreed to the changes suggested by Gourley and Muña-Brecht.

Makaiau said NMFS will abstain from this recommendation because while NMFS supports opening communications in general, it has some reservations about what the review may entail and how the communication may occur.

*Moved by Dueñas; seconded by Sword.*  
*Motion passed with Makaiau abstaining.*

*Regarding the NMFS PIRO agency report, the Council requested NMFS consider nominating a new vice chair to the WCPFC Northern Committee.*

Makaiau said NMFS intends to abstain on this recommendation because NMFS does not want to get involved in recommending to itself replacement of its current vice chair. Later during the vote, Makaiau said upon further consideration, NMFS will vote no because this is a personnel matter and the agency does not support replacement of its current vice chair.

*Moved by Dueñas; seconded by Sword.*  
*Motion passed with Makaiau opposing.*

*Regarding the USFWS report, the Council requested USFWS and NOAA reconvene the MTMAC with expanded participation from Guam to expedite the completion of the MTMNM Management Plan.*

Dueñas said he has concerns that convening a body like MTMAC could be a fruitless exercise if it does not have any regulatory authority for issuing or approving permits and agencies will issue permits without review or consideration by the MTMAC. He said he does support the recommendation because he is in favor of Guam being part of the discussion.

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

*Regarding the U.S. State Department, the Council petitioned the U.S. State Department to consider returning 1,200 square miles of U.S. EEZ waters around Guam forfeited to the FSM to the patrimony of Guam.*

Guthertz requested the Council's consideration for petitioning the U.S. State Department to reconsider forfeiting Guam's 1,200 square miles of Mariana Trench waters under the EEZ and to arrange for its return to Guam from the FSM. She acknowledged the unusual nature of the request but it would be important for it to be on the record, noting that this could have been discussed with the U.S. State Department representative at this meeting but the representative was not present.

Soliai said this Council is in a very unusual region and in unusual times, so he wants to ensure that all of the Council members and their jurisdictions are taken into consideration.

Dueñas noted that the FSM and all the other adjacent countries have distant-water fishing fleets, and the forfeited waters bring this fleet 65 miles closer to Guam and less than 60 miles from Guam's Southern Banks. It is disheartening to practice conservation measures while trying to take away ocean access from U.S. citizens through a National Marine Sanctuary in addition to the allowance of expansion by the distant-water fishing nations closer to Guam's resources. He added that the VMS currently in place does not take into account the length of fishing lines used by the vessels of the distant-water fishing nations, as the VMS would only show the vessel's location and not the 50-60 miles of line it deploys. Foreign fishing gear ending up in Guam's waters and taking Guam's fish is a major concern for the local fishermen.

Sword said he agrees with Dueñas that there are so many techniques that foreign distant-water fleets use to take resources out of the protected monuments. For example, a fleet may deploy a fish aggregating device (FAD) on the north side of the PRIMNM, and another fleet would be waiting on the other side for the FAD to come through U.S. waters and pick up fish through the area, creating a situation in which the United States is essentially supplying fish to the foreign fleets through movement of FADs. Overall, the United States needs to wise up and acknowledge what is happening, and at least help local fisheries to monitor and enforce conservation efforts in these protected waters.

Makaiau said NMFS will abstain from the recommendation as it does not have enough information on the facts that the U.S. State Department used to modify the U.S. EEZ boundaries.

He acknowledged the concerns expressed by Council members about the unintended consequences by removing certain features that were previously under U.S. jurisdictions.

*Moved by Guthertz; seconded by Dueñas.  
Motion passed with Makaiiau abstaining.*

## **VI. Hawai‘i Archipelago and Pacific Remote Island Areas**

### **A. Moku Pepa**

Ramsey reported that the Hawaii Fishing News monthly magazine has celebrated its 45th year anniversary with more than 600 issues published to date. In November 2022, the magazine finished its Legacy Archive Project that allows fishers, researchers and managers to do online digital searches of its issues. A recreational fishing meeting was held in November 2022 to provide updates on the National Saltwater Recreational Fisheries Policy. The meeting was led by Keith Kamikawa and Russell Dunn, and approximately 18 people were in attendance including NMFS managers, scientists and fishermen. Overall, the policy is good as-is, although some small edits are needed, and there was a call for better implementation and enforcement.

Rice reported fishing has slowed down along with the decreased amount of tourists. Due to the increase in construction jobs, there have been fewer boats when he goes to the different tuna schools. The fleet observed smaller blue marlin in the past several months with water temperature remaining up to 82 degrees Fahrenheit through October 2022, which is unusual but may be due to the La Niña.

Kamaka‘ala reported that with the transition into the Makahiki season, there has been more rain and the communities observed a shift of that season that falls in line with the fall equinox. With the rising constellation of Makali‘i (Pleiades), communities have observed that the constellation is going through an interstellar dust storm that led them to anticipations of larger environmental phenomena seen through the eruption of Mauna Loa. They shared that the stars were showing a lot of white and blue which led to their predictions and anticipations for a much wetter Makahiki season. On the Hamakua Coast of Hawai‘i Island, communities have observed less whales and anticipate more will come later than expected.

Dang reported that the market remains soft and slower than usual during the Thanksgiving and Christmas seasons. There are concerns about the economic health of the fleet as catch remains at lower levels. Regarding swordfish, a few vessels started the season strong, but they will take a pause and focus on red fish for the holidays until after the new year. The costs for bait, gear and supplies still remain the same as the cost of fuel has decreased. This has not been a good summer for fishing, with owners and operators reporting that they barely broke even. They are hoping for a more cheerful holiday season as tourists come in and increase the demand for fish.

Dueñas asked if the State of Hawai‘i maintained its tagging program following Clay Tam’s departure and what is being done to lessen sea turtle interactions with fishing line.

Sakoda said the Hawai‘i State Legislature passed a bill banning the use of drones for fishing that would reduce sea turtle interactions with fishing line. The State of Hawai‘i’s protected species team work with the federal government to conduct outreach and education to

fishers on how to deal with hooked or entangled turtles. Regarding the tagging program, the state is now more focused on inshore species like moi and goatfish.

Rice said the 'ahi prices have remained high on the Big Island as they have averaged \$6 or \$7 per pound for yellowfin.

Dang said he has heard from his contacts that the neighbor islands are doing very well. The local fishermen continue to get support from the local businesses and this has been a good season for the past couple of months. The hotels and restaurants on the neighbor islands are reporting strong numbers close to 80-90% capacity, while Honolulu is at 50% capacity.

Dueñas asked if there are longline boats on the neighbor islands.

Rice said there are no longline boats on other islands, but there are two shortline fishermen who go out to the Cross Seamount off of Hawai'i Island.

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

Bryan Ishida, Hawai'i Division of Aquatic Resources (DAR) commercial fisheries biologist, presented the State's report for August to October 2022. As of the end of the deep-seven bottomfish season, 379 commercial marine license (CML) holders made 3,120 trips and caught 189,493 pounds of mixed deep-seven species. The 2022 fishing season closed out at a catch just above the 2018-2019 season and below the 2016-2017 and 2017-2018 fishing years. The 'opakapaka and onaga catch for the season were below the 10-year average, and the ehu and gindai catch were above the 10-year average.

As of the end of October 2022, 15 CML holders made 43 trips and caught 1,949 pounds of Kona crab. The season resumed Sept. 1, 2022, and had a slow start. The fishery has seen a consistent dropout of fishers. Fishers found that the current suite of regulations are difficult to retain crab due to the size limits and no-take of females restriction. DAR is moving forward with repealing the no-take of females which should offer commercial and noncommercial fishers better opportunities to retain crabs in the future.

As of the end of October 2022, 200 CML holders made 705 trips and caught 45,776 pounds of uku, which was similar to 2020 and 2021. The demand for fish at hotels and restaurants has returned to normal, although catch seems to be lagging despite good prices at the market.

As of the end of the reporting period, 2,720 CMLs were issued or renewed for a revenue of \$374,300, which was a slight increase over 2020, but still below the 10-year average in number of licenses issues. During the reporting period, one conservation and management permit, and one research permit was granted for entry into the PMNM. The Permit Coordinators Group is reviewing three applications for the next period. The Permit Working Group, Resource Protection Working Group and the Permit Coordinators Group met in September and October 2022 to discuss multiple topics, including integration of the current HMS Research Program Permit into the Co-Manager's Monument Permit, modification of marine debris disposal protocol for Chondria Mitigation Zone and disposal of the car carrier *Sincerity Ace* lifeboat recovered by the Monument Debris Project at Pearl and Hermes Atoll. In October 2022, two FADs were reported missing and one was recovered.



Regarding aquatic invasive species management, the State of Hawai‘i has submitted an emergency rule regarding vessel traffic for consideration by the Board of Land and Natural Resources at its upcoming meeting. The proposed rule would require vessels traveling from affected ports to take stricter precautions and provide DAR with additional travel information. This proposed rule was presented at the Alien Aquatic Organism Task Force meeting Oct. 20, 2022. DAR continues to monitor invasive algae around Sand Island and is still outplanting collector urchins in Kaneohe Bay for invasive species control.

Regarding the Coronavirus Aid, Relief and Economic Security (CARES) Act funding, the 290 Hawai‘i fishery participants who applied continue to wait for disbursement of funds. Applicants will be notified with updates.

Sakoda reported DAR plans to provide an update on the Stony Coral Tissue Loss Disease Emergency Rules to the Board of Land and Natural Resources to address the risk of that disease coming to Hawai‘i, but it has run into legal issues that are still pending review by the Attorney General.

Rice said the reason there was a decline in bottomfish catch was due to the good prices for ‘ahi. The highliners who target bottomfish are the same highliners for the ‘ahi, and are likely not going to switch to bottomfish until Christmas and the new year.

Dueñas said the Guam fishery experiences similar shifts, noting that during the peak of the mahimahi season, the fishers do not go bottomfishing since they make more money selling mahimahi at \$3.50 per pound. He said he was impressed by the steady increase of the bottomfish catch through the season, indicating that this is a healthy fishery, even though there are many more participants in the Hawai‘i fishery than the Guam bottomfish fishery.

Muña-Brecht asked if the State of Hawai‘i ran into any road blocks when it issued its emergency planning for the stony coral tissue loss disease as it relates to the Vessel Incidental Discharge Act. Based on her understanding of the law, no state can impose rules that are stricter than what is outlined in the Act.

Sakoda said there is a preemption clause in the Act that states that it takes effect once the EPA sets standards and the USCG implements regulations, but the EPA has not yet set standards, so the State of Hawai‘i planned to take precautionary measures due to the rapid spread through the Caribbean basin.

Muña-Brecht asked for a copy of the State of Hawai‘i’s plan since this has been discussed at the Port Users Group Guam meetings.

Sakoda agreed.

Soliai also requested a copy of the plan, noting it would be helpful for the region and the Council to work together to express concerns about the slow pace of developing processes to prevent stony coral tissue loss disease from coming to the territories. Soliai asked if there were other factors that affected the lower than average catch for ‘opakapaka and onaga.

Sakoda said there are a number of possible factors including fishers entering and leaving the fishery and environmental shifts. DAR heard from fishers that ‘opakapaka was difficult to

find in the typical areas during that period and especially in the 2021 fishing season. There has been a higher percentage of ‘opakapaka in the past year and fishers are reporting that more fish are now returning to their usual spots.

Rice said from 2008 through 2010, the construction business decline led to more people going fishing to make extra money. The number of catch was higher since people would use their unemployment check to pay for gas to go fishing. Once the construction business came back, then number of catch started to go back down as well.

Dueñas said in his experience with bottomfish, the species composition will continue to change in its various locations, and asked if this is something that the Hawai‘i fleet also observes.

Ishida said based on DAR’s reports, it observes the fish composition does change and the fish continue to move.

### **C. Office of Hawaiian Affairs Ocean Policy**

Office of Hawaiian Affairs (OHA) representatives were not available to provide the requested briefing. Council staff reported OHA hosted nine public meetings from October through November 2022 to look at how to develop and incorporate an ocean policy that allows for Native Hawaiian cultural lifestyle and values.

### **D. Review of Paper Inferring Spillover Benefits of the Papahānaumokuākea Marine National Monument**

Ray Hilborn, University of Washington professor and SSC member, presented a review of a paper published in *Science* entitled “Spillover benefits from the world’s largest fully protected MPA” by Sarah Medoff and colleagues. The paper estimated that the abundance close to the expanded PMNM boundaries had increased more than the abundance farther away, with a particularly strong effect for yellowfin tuna and some effect for bigeye tuna. That gradient increase was attributed to the monument closure. The authors’ argument was that an increased catch per unit effort (CPUE) closer to the closed area indicated higher abundance inside the monument, and that higher abundance was spilling over to benefit the fishery outside the boundary.

Hilborn explained there were a number of flaws with the Medoff et al. paper. First, even if abundance was higher inside the reserve, that does not mean it benefitted the fishery or total abundance. Any time there is an area with higher abundance, a gradient is expected at the edge of the reserve, even if it had no benefit to the fishery. Additionally, the amount of harvest inside the MEA prior to the closure was very small with only an estimated 3.5% of the population inside the boundaries, and no major change in abundance can be expected from a reduction in that small amount of harvest. Further, the timing of the increase could not have happened that rapidly, as sufficient amount of time is needed following a closure to build up the population inside which would allow those additional fish to reproduce and mature. The final problem is that Hilborn and Milani Chaloupka, SSC member, have not able to replicate the Medoff results showing higher CPUE closer to the closed areas. Instead, analyses conducted by Hilborn and Chaloupka found that the CPUE increased the most farther away from the monument, the increase was not significant, and does not show any real trend.

The reason for the difference in results between the Medoff paper and the analyses conducted by Hilborn and Chaloupka are unclear. However, the Medoff paper used observer data (which is 20% of all deep-set fishing trips) whereas Hilborn and Chaloupka used logbook data (which is 100% coverage) summarized at one-degree squares and provided by John Hampton, SPC. Hilborn is working to get access to the same dataset that Medoff used to replicate the methods. The Medoff paper also standardized CPUE by its variability, but Hilborn noted that the standardization was the right thing to do.

Hampton and Hilborn wrote a letter to the editor of *Science* pointing out there was not much catch in the area and there was no spillover effect. *Science* refused to publish it, but Hampton and Hilborn are planning to prepare a technical comment for the publication. Hilborn is also seeking a bigger outlet for a broader paper on how to evaluate if a marine protected area (MPA) is working as intended.

Dang said CPUE is a great metric to devise fishery action plans, but may not correspond with high productivity for the fleet. For example, one of his boats recently had high CPUE but the size of its fish were smaller than usual, so it was not a productive trip. Size, catch composition and catch condition are important considerations from what is coming out from a particular spot in the ocean.

Rice asked if observer data from the foreign fishing vessels were available for Hilborn's analysis.

Hilborn said the data used in his analysis come from the WCPFC and the SPC where Hampton works, but he was not sure if those entities have the same resolution of logbook data for non-U.S. fleets. His analysis concentrated on U.S. fleets because that was the focus of the Medoff paper. Hilborn pointed out that using CPUE as an index of abundance would not be representative since there are differences between the U.S. fleet and other fleets.

Rice asked if the paper inferring spillover benefits considered environmental effects, which could also affect fishing.

Hilborn said they were not considered and the paper also failed to mention the stock assessment, which showed that the abundance of yellowfin tuna had increased a lot throughout the western Pacific, and the increase started before the monument expansion.

Dueñas said he was a student of MPAs and their benefits but it was his understanding that the NWHI monument was supposed to supply the MHI. Tam's tagging study found that fish were traveling into the monument rather than coming down to the MHI. On Guam, he has caught tagged fish that came from the RMI and Japan. There are also studies from Guam that found that out of five reef species studied, three of them did not stay in the marine reserve despite the fact that these are fish aggregation areas. He said he was baffled by the findings of this study that seem to be redefining highly migratory species by making them more localized species.

Hilborn said there is no reason to believe that any large marine reserves would have any impact on highly migratory species, considering that the average distance that tagged animals travel is on the order of 500 to 1,000 kilometers per year. A paper by Hampton and his SPC colleagues evaluated the impacts of the Phoenix Islands Protected Area and concluded the

reserve had no measurable impact for an area that was fished for yellowfin tuna pretty intensively.

Soliai thanked Hilborn for his report and said it is troubling to know that the findings from the Medoff paper are misleading. He hopes that Hilborn can find another avenue to critique the authors' findings and include observer data in the analysis. Soliai asked what the stock-wide catch of yellowfin tuna was within the region versus the monument area.

Hilborn said estimated yellowfin tuna biomass for the stock assessment region including Hawai'i is approximately 60,000 to 80,000 metric tons (mt) and the catch of yellowfin in the monument was 1,000 mt.

Mark Fitchett, Council staff, said the total catch in 2018 was more than 700,000 mt for the entire stock with a maximum sustainable yield of 1,100,000 mt. The stock is healthy and not overfished or experiencing overfishing.

Gourley said he was amazed how the Medoff paper was picked up by various media outlets including East Coast newspapers and nongovernmental organization newsletters, but the Hampton paper was not. When there are two groups of scientists with opposite claims and opinions, there is a need for an independent group with PIFSC to get a good dataset and put this issue to rest. This dataset has been used and touted as justification of shutting down thousands of acres of marine waters for fishing. It would be valuable to create a group to look at the reproducibility of the original paper and come up with a final paper that either dispels the findings or supports them.

Hilborn encouraged PIFSC to devote staff to be part of the effort. He said what the Medoff paper claimed to do was show there was a gradient in how much the CPUE had increased and say that this means the fishery is benefiting. The challenge is whether it can be determined that the gradient really exists, and the bigger challenge would be if an evaluation can be done on whether the monument's closure has benefitted fish abundance and the catch of the fishermen.

Soliai asked if the Medoff report was subject to peer-review before it was released.

Hilborn said the paper was peer-reviewed and published through *Science*. The journal has a board of reviewing editors, and when papers are submitted in certain fields, the member of the board recommends who to review the paper. For seven years, Hilborn was the member who would assign reviewers for fisheries-related articles. The current member is Daniel Pauly, who is a very strong MPA advocate and closely tied to the Pew Charitable Trusts that funded his work. Hilborn suggested that Pauly could have assigned reviewers who are MPA advocates and do not know anything about the Hawaiian Islands or tuna.

Soliai asked if PIFSC was involved with the development or review of the Medoff report.

Hilborn said he did not know but PIFSC was likely not involved in any formal way.

T. Todd Jones, PIFSC, said the lead author is a student with the University of Hawai'i and with the Cooperative Institute for Marine and Atmospheric Research, so the organization had access to the observer data through a nondisclosure agreement. PIFSC performed a review to

ensure the data was aggregated, but the paper as a whole did not go through the PIFSC review process because no PIFSC scientist was an author. Rob Ahrens, PIFSC, has been looking at the effects of the monument and his initial analyses show that the increases in catch happened prior to the monument expansion and there is no relationship with distance or CPUE close to the MPA. Ahrens has been in conversation with Hilborn and others, but next steps on whether to do a joint analysis or paper has yet to be determined.

Soliai said discussion on next steps would be important, and PIFSC together with the SSC should be able to make some recommendations to the Council on how best to address decisions related to fishery closures or MPAs based on science.

Kamaka'ala asked if staff reached out to the authors to share with the Council or others to make sure there was a well-rounded perspective.

Simonds said no.

Kamaka'ala said it would be helpful as a Council member to ensure that both perspectives are represented.

Sword said through the MSA, the Council has to ensure that sustainable fishing is practiced, but if the fleet is not fishing, he wonders what there is to sustain.

## **E. Northwestern Hawaiian Islands Monument Expansion Area Fishing Regulations**

### **1. Report of Public Meetings**

Joshua DeMello, Council staff, presented the report of the public meetings for the NWHI MEA fishing regulations. At its 192nd meeting, the Council directed staff to solicit additional input from the community on the revised alternatives that included prohibition on commercial fishing, requirement of noncommercial fishing federal permitting and reporting, and requirement of a federal subsistence fishing permit for Native Hawaiian practices. Public meetings were held in November 2022 in Kaua'i, Maui, Hilo, Kona, Moloka'i and Honolulu.

Communities generally supported fishing in the MEA, not only noncommercial and Native Hawaiian fishing, but also commercial fishing. There was also general support for cost recovery, as many participants said those who fish in that area would have to be a millionaire due to the distance and associated costs. One idea brought up at the Kona meeting was that the federal government could look at providing a subsidy or funding those trips for Native Hawaiians to go fishing in the area and practice their culture instead of cost recovery. There were concerns about enforcement and safety at sea since Mother Nature is the ultimate manager in the MEA due to the distance from shore. A former NWHI bottomfish fisherman said he did consider himself a subsistence fisherman because he provided his fish to pay for his bills and not for commercial reasons of making money.

### **2. Alternatives for Fisheries Management Measures in the Northwestern Hawaiian Islands Monument Expansion Area (Final Action)**

DeMello presented the alternatives for fisheries management measures in the NWHI MEA for final action. The Council is considering this action because there is a need to establish management measures consistent with the 2016 Presidential Proclamation 9478, which set aside an area of 50-200 nautical miles adjacent to the PMNM as the MEA. Proclamation 9478 authorizes the Secretary of Commerce to permit and regulate fishing activities in the MEA. Concurrently, there is a proposed sanctuary that is going through the designation process, and the fishing regulations under Council consideration pursuant to Proclamation 9478 would also be reviewed under the proposed sanctuary to determine whether the regulations are consistent with its goals and objectives.

The main alternatives under Council consideration were: 1) no action; 2) expand existing PMNM fishing regulations to the MEA; and 3) allow noncommercial fishing and Native Hawaiian subsistence fishing practices. DeMello presented the considerations for management issues associated with commercial, noncommercial and Native Hawaiian subsistence fishing. For commercial fishing, if the Council chooses not to prohibit commercial fishing, it is likely that the prohibition would be implemented through a Secretarial amendment for consistency with Proclamation 9478, a process that is currently underway for the Northeast Canyons and Seamounts Marine National Monument.

For noncommercial fishing, the Council may consider recommending that NMFS develop a permit for authorizing that practice in the MEA. As part of its action on noncommercial fishing, the Council could include limits on sustainability, which could include limits on allowable MUS, gear or catch. Due to the depth and distance from the islands, it is unlikely that crustaceans, precious corals and other ecosystem component species would be caught in the MEA. Allowable gears under existing regulations for the Pacific Pelagic and Hawai'i Archipelago Fishery Ecosystem Plans (FEPs) include handline, hook and line, rod and reel, and spear. The Council could adopt these as the allowable fishing gears in the MEA, or the Council could consider prohibiting specific gear or allowing other gears. Establishing a catch limit would further the objective of sustainable fishing in the MEA for consistency with Proclamation 9478. The Council could apply catch limits based on international stock assessments or based on catch data from the years leading up to the original monument closure. Alternatively, the Council could consider applying the catch limit that would have occurred for five years following Presidential Proclamation 8031 that originally established the PMNM, which was 180,000 pounds for pelagic species and 350,000 pounds for bottomfish. The Council could consider putting in a provision that says a catch limit would be established based on future catch.

For Native Hawaiian subsistence fishing, the Council could consider recommending that NMFS develop permitting and reporting requirements in the MEA for this activity that may be subject to similar sustainability limits for gear, species and catch as noncommercial fishing. The main difference between the Native Hawaiian subsistence fishing and noncommercial fishing permits would be the disposition of catch, whereby the Council could consider allowing sustenance only (to be consumed in the MEA) or allow bringing fish back to the MHI. The Council could also consider allowing traditional and customary sharing ability with a cost recovery component under the Native Hawaiian subsistence fishing permit. This may include cost recovery through monetary reimbursements and other means for actual trip expenses including, but not limited to ice, bait, fuel or other expenses. While some community input has indicated that the NWHI was not used for fishing, other reports indicate that there were Native

Hawaiians who went up to Nihoa and practiced fishing. While fishing may have not been the main intent of going to the NWHI, they did catch fish for food and in some cases brought that back. When considering socioeconomic barriers, Native Hawaiians are the ethnic group with the highest rate of poverty, homelessness and chronic diseases. Providing the opportunity to recover costs would also allow Native Hawaiians to participate in both fishing and eating fresh seafood.

Ramsey thanked all the cultural practitioners, fishermen and others who attended the public meetings. Their comments provided insight that the Council may not have had if only staff was consulted or relied only on research.

Rice asked if the permit for noncommercial fishing would allow cost recovery.

DeMello said under the Proclamation, the fish cannot enter commerce through sale, barter or trade, so cost recovery would be limited to the Native Hawaiian subsistence fishing permit.

Dueñas said he wants to provide Native Hawaiians the opportunity to manage their own destiny to provide for the health and needs of their people, like the Chamorros and the Carolinians. The Native Hawaiians who still want to fish in the NWHI should be afforded the opportunity to go and fish and provide for their community, rather than relying on corned beef and Spam. Dueñas wondered how many foreign vessels are fishing illegally in the NWHI, noting that illegal, unreported and unregulated fishing is more than a \$7 billion industry. He would like to see the Council help the Native Hawaiians financially to allow the operator of the vessel to recoup the loss, because otherwise it is only the rich people who could afford to go to the NWHI. He said he supports the concept of marine protection but not at the expense of the people.

Sword said EEJ is basic lip service as this instance is not only disenfranchising Native Hawaiians, but also the U.S. Pacific Territories that do not have the opportunity nor the money to make things work the way they should be working. He suggested it may be time for a new direction that could also allow commercial fishers the ability to fish in MPAs to benefit the local communities. If you have a friend who is a longline industry captain, then you know that you will always have fish for your family fa'alavelave (any event in the Samoan culture that involves the gathering of extended family) and everything else.

Rice said the expense of going up to the NWHI would likely average \$3,000, and a typical noncommercial fishing vessel is not capable of going up to the NWHI, spending a week there and coming back. Most may be able to go to the eastern end if they leave from Kaua'i and turn around. He said it would be beneficial if local commercial fishing boats could go up to NWHI and provide sustenance for certain groups. He said giving a permit for Native Hawaiian subsistence fishing is positive, but wondered how many of those fishers would have the ability to go up to the NWHI. Similarly, if bringing back catch is not allowed for the noncommercial permit, then it would be the million dollar game boats that are able to go up into the NWHI, fish there, release a bunch of marlin, eat them and give them away for nothing. The way to provide benefit would be to have a commercial entity that can afford to go to the NWHI and provide subsistence for other people in some other form.

Sakoda said he is having trouble wrapping his head around the difference between noncommercial fishing and Native Hawaiian subsistence fishing, and why cost recovery would not be allowed under noncommercial fishing.

Tucher said the term customary exchange does not apply in this context, as that was a unique concept developed to reconcile some tension in the three western Pacific and southern Pacific monuments where their Proclamations authorized traditional indigenous fishing. In this case for the MEA, traditional indigenous fishing does not appear in the Proclamation, but it allows for noncommercial fishing, defined as fish harvested either in whole or part that cannot enter commerce through sale, barter or trade. Thus the starting proposition is that sale, barter or trade cannot be authorized for noncommercial fishing. However, the Proclamation also states that the Secretary may permit Native Hawaiian practices, including the exercise of traditional, customary, cultural, subsistence, spiritual and religious practices. The Proclamation's usage of noncommercial fishing follows the traditional restriction that appears in the MSA. However, Native Hawaiian practices allowable under the Proclamation cannot be authorized under a strict MSA definition of commercial fishing, so there needs to be some allowance in order for Native Hawaiian practices to be carried out pursuant to the president's wishes. The Council is going to have to make some concessions in that unique circumstance on the conduct of barter, trade and sale. It is up to the Council and its committees to advise what Native Hawaiian practices do occur in the MEA.

Rice asked for clarification on the definition of Native Hawaiian practices and who is allowed to engage in them.

Tucher said those are for the Council and its advisory groups to decide as part of its action. Notwithstanding the Equal Protection Clause of the U.S. Constitution, the president through the Proclamation decided to give special attention to the Native Hawaiian practices in the MEA and thus NMFS would need to meet the strict scrutiny analysis to sustain a carve-out for Native Hawaiian practices. The task for the Council, NMFS, agency and state partners, and GCPI is to bring that to fruition.

Sakoda asked for further clarification about the conflict between prohibiting the commercial use of resources from the MEA and Native Hawaiian practices. In his understanding, he did not see a conflict because Native Hawaiian subsistence practices can still be allowed in the MEA without allowing the sale or barter of those resources, meaning that those resources would be consumed or shared for free.

Tucher said the Council can deliberate and discuss such an interpretation. However, the president clearly expressed a desire to promote Native Hawaiian practices in the MEA, but if prohibiting cost recovery would make it too costly, then no one would engage in the practice. Tucher said it comes down to what the president meant to allow when he allowed a broad list of categories for Native Hawaiian practices, and whether he intended to say Native Hawaiian practitioners would have to take \$3,000 out of pocket to go to the MEA because there is no way to recover the cost of that trip. The Council could also decide that cost is not an issue and say no cost recovery. However, from its limited role as legal advisor, Tucher said GCPI is not prepared to say that the Proclamation prohibits cost recovery and in particular cost recovery that is necessary to allow Native Hawaiian practices to occur as the president intended through the Proclamation.



Dueñas said cultural definition is a subject of the mind, and suggested it may be beneficial to have a meeting of the minds amongst Native Hawaiians to listen to the concerns, as some say they do not want that area touched because it is sacred. Dueñas said to him, life is sacred and this is a part of their traditional culture. For generations, the Pacific Islanders have been harvesting turtles and fished for marlin and mahimahi, and it was not until the 1970s when turtles were all of a sudden worthy of protection while the other islands surrounding Guam continue to kill them. They never went out to exploit the resources, but rather with the interest of feeding their people in the best manner possible. He is concerned that the Council may endeavor into an action that defines the culture, whereas a culture is ever-evolving according to the environment and how the people adapt to it. He wants to see his Chamorro people flourish with pride like they did 100 years ago and 1,000 years ago by being able to exercise their freedom of roaming the ocean as a people. He said he would like to see cost recovery because it opens the door for the native people to evolve and to define their past and destiny.

Rice said based on how the Proclamation is written, it appears that the president was not well advised on what it entails to be able to go and fish in the MEA.

Makaiau offered some considerations for the Council in evaluating what are Native Hawaiian practices and a considering a process for moving forward. It is difficult for a western organization to deem what is a cultural practice, as Native Hawaiians in different places across the islands have different practices. He would look to the Council's processes of using its advisory bodies and other partners to help make the decisions. The Council may utilize its Advisory Panels (APs) or consult with other federal agencies as it does for other existing permit process. The Proclamation clearly states that the Secretary of Commerce, in consultation with the Secretary of the Interior, shall manage fishing, so the Council could utilize the expertise of the Office of National Marine Sanctuaries (ONMS) in the permit review process. ONMS advisory groups do not advise the Council, the ONMS advisory groups could advise internally within the agency, which in turn could provide advice to the Council. A similar process could be utilized for the State of Hawai'i and other state agencies. Regarding the commerce aspect, commercial fishing under the MSA is defined as fish intended to enter commerce through sale, barter or trade. Similarly, the ONMS has a definition for commercial fishing that is sale or trade intended for profit. As the Council considers what is allowable in terms of customary exchange, there needs to be some sidebars on making sure that whatever is used in cost recovery does not start entering into the realm of profit or commerce. The Council may consider a cap on the amount of fish that might enter into customary exchange to ensure it does not exceed what is reasonable as cost recovery, based on available cost estimates of what it might take to take a vessel to the NWHI.

Sakoda said he has concerns with the ability to enforce what would be allowed under the noncommercial and Native Hawaiian practices permits. He said it would be difficult to enforce the cost recovery limit of \$3,000 or whatever amount is allowed, or to ensure that no one is going to slip over some cash in exchange for fish brought back under a noncommercial fishing permit.

Makaiau said existing regulations for other fisheries provide some examples of how enforcement can be done. In the NWHI, lobster fishermen were required to submit a sales report in addition to a catch report, and the sales report would document the amount of fish they sold to the vendors. He acknowledged that it is not perfect, but it would provide another mechanism for

enforcement or requirement for individuals with a permit to submit records of what they catch and what they sell so there would be follow up when they make a trip.

Dueñas agreed with Makaiau and said the Council could include accountability measures to ensure there is no abuse of the system.

Ramsey said accountability measures and recognizing cultural practices go hand-in-hand with transparency, and asked whether there would be any differences in processes between the noncommercial and Native Hawaiian subsistence permits so that the public would be aware of it.

Makaiau said the Council can make the permit process as simple or complicated as it wants. As an example, for the Experimental Fishing Permit that allows the Council and NMFS to authorize an activity that is otherwise prohibited, the permit process requires public notice through the *Federal Register* and requires the Council to deliberate on that permit through an open process in consultation with other federal and affected state agencies. Conversely, under a simple permit process, as in the case of the commercial longline permit or noncommercial bottomfish fishing permit, the Council has established some criteria and an applicant can submit an application meeting those criteria, and a permit can be issued by PIRO in a short period.

Rice asked whether a permit is needed to enter the area if a fisher wants to fish in the NWHI today and eat the fish.

Makaiau said aside from the existing Council regulations under the MSA, there are no regulations that would prohibit someone from going noncommercial fishing in the MEA and bringing back the resources.

Ramsey asked what the repercussions of the Council taking no action could be.

DeMello said for the Northeast Canyons and Seamounts Marine National Monument, the Mid-Atlantic and New England Fishery Management Councils decided to take no action so the Secretary of Commerce has the ability to implement the regulations as directed under the Proclamation. In that case, the Secretary has the option of either an emergency measure or a Secretarial action. The Secretary has decided to hold public meetings in anticipation of developing a Secretarial amendment to the two councils' FMPs.

Sakoda said from the State's perspective, traditional and customary Native Hawaiian gathering rights are protected by the Hawai'i State Constitution, so it is the government's duty to ensure that these rights can continue to be exercised to the fullest extent possible. However, it also means that the government must protect the integrity of the definition of traditional and customary Native Hawaiian gathering rights and not water it down by expanding it beyond what the constitution protects. There is legal precedent established by Hawai'i case law that provides guidance in determining whether an asserted traditional and customary practice should receive constitutional protections, which provides that the right must be asserted by a Native Hawaiian and that the practice must not be conducted for a commercial purpose. The State legislature has defined commercial purpose as it relates to fishing as the taking of marine life for profit or gain, or as a means of livelihood, when the marine life is taken in or outside of the state, and when the marine life is sold, offered for sale, landed, or transported for sale anywhere in the state. He said catching and selling fish needs to be done lawfully and by definition it cannot be considered a traditional and customary Native Hawaiian practice. Regarding fishing regulations, the State

prefers the simplest and most enforceable regulations that would allow fishing for sustenance purposes in the MEA similar to the PMNM. The State would also be open to considering a noncommercial fishing by permit where resources may be taken out of the MEA, but must comply with gear, species and catch limit, such as only allowing handline, hook and line, rod and reel and spear, only allowing pelagic MUS to be taken, and setting limits on the total amount of fish taken per trip. Further, fish should not be sold or exchanged for monetary compensation. The State does not see a need for a separate subsistence fishing permit since it appears the only reason for it would be to create an avenue for fish to be sold to recover costs, and cost recovery is not a constitutionally protected traditional and customary Native Hawaiian right. The State has discussed having a committee or an advisory board to inform what is or is not a Native Hawaiian activity, so the State could also be open to having a separate Native Hawaiian subsistence permit that is subject to the criteria that it has to be exercised by Native Hawaiians and for noncommercial purposes only. However, the State would not support cost recovery under the Native Hawaiian subsistence permit.

Rice asked whether federal law would trump state law if there is a difference between the federal and state laws.

Tucher said the State of Hawai‘i is a stakeholder and partner in this process, and he is not diminishing the importance of what the state constitution requires or what the state law mandates. Speaking in terms of how the MSA construct works, Tucher said the supremacy clause applies in federal waters, which comprise the MEA. Under the MSA, if regulations go through the Council process and NMFS approves them following stakeholder input, those regulations would have the force and effect of the law and become the supreme law applicable in the MEA. If there is a conflicting state law, then MSA Section 306 applies, under which the State may regulate its registered vessels in the federal EEZ, which includes the MEA, to the extent those regulations are consistent with the federal FMP. It cannot conflict with the federal FMP because the federal regulations have the force and effect of law. Tucher said for the issue under Council consideration, his legal advice is that there could be a small-scale barter, trade or sale up to, and including trip costs that would be permissible for Native Hawaiian practices, but not for general noncommercial fishing. If the Council decides on that path, then that would be the applicable federal regulations in the MEA, and those regulations would be predominant over conflicting state law.

Kamaka‘ala said the term Native Hawaiian subsistence is a narrow term since their cultural practices go much farther and beyond subsistence, such as practices related to archeology, phenology, ecology, solstice, equinox, feather gathering and language. She suggested that the Council consider changing the title of the permit to the Native Hawaiian practice permit, consistent with the permit that is place for the original PMNM.

Tucher said the reason subsistence is used in the GCPI legal advice to the Council is that “Native Hawaiian subsistence” is specifically addressed in the Proclamation, and that is the lynchpin for the Council’s jurisdiction over fishing practices. He agrees that the Proclamation does broadly touch on traditional, customary, cultural, spiritual and religious practices in addition to subsistence practices.

Soliai asked for clarification from Sakoda that the State of Hawai‘i is not going to provide equity to Native Hawaiians.

Sakoda said the State is not trying to make things inequitable for Native Hawaiians, but it recognizes that there are established laws that define who is a Native Hawaiian and what is considered a constitutionally protected traditional and customary practice. The State believes those practices should be protected and preserved, and definitions retained to the extent they can be carried over to the federal side in implementing federal regulations.

Soliai asked if Sakoda's office was part of the Council's outreach engagement for this action.

Sakoda said he did not participate, and while some staff attended the meetings, the State was not an official cohost of the outreach events.

Soliai said it is important to consider the feedback from the community in developing policy, whether through the state, Council or federal regulations.

Kamaka'ala said it is important for the Council to remember that whatever it proposes or recommends, the action will have an impact on the other multitude of cultural practices engaged in this area. This action could erode the other practices that are just as important for Hawaiians culturally. The NWHI is not a place in which humans inhabited, but a realm of wao akua, or the highest mountain peaks, which is used as a term to inform what is the appropriate human interaction in that particular space. It is an area where some of the most intact native and unique sensitive ecosystems exist, which is why traditionally and culturally not just anyone could go up in the wao akua and do what he or she pleased. The MEA as an ocean scape is also a wao akua for the Hawaiians culturally, and fishing was not a practice of that area as seen in a lot of testimonies when the original monument was created. In her personal assessment, the Council is getting ahead of itself by integrating Native Hawaiian subsistence practice into this action item when she has heard testimonies that are adverse to that. In looking at the history of the creation of the original monument, she understands that subsistence is not a cultural practice in this area.

## **F. Advisory Group Report and Recommendations**

### **1. Advisory Panel**

Gil Kualii, Hawai'i AP vice chair, presented the Hawai'i AP recommendations.

*Regarding fishing regulations for the MEA*, the Hawai'i AP recommended the Council take the following actions to maximize fishing in the MEA:

- Permit commercial fishing in the MEA.
- Permit noncommercial fishing in the MEA.
- Permit Native Hawaiian subsistence fishing in the MEA.
- Promote fishery research in the NWHI in order to manage the fisheries effectively and provide for appropriate sustainability limits.

*Regarding Hawai'i fisheries*, the Hawai'i AP recommended the Council request a presentation on the Holomua 30x30 to determine the impacts on the fisheries managed by the Council.

### **2. Scientific and Statistical Committee**

Martell, SSC member, presented the SSC recommendations.

Regarding the review of the paper inferring spillover benefits of the PMNM, Martell reported that the SSC discussed the analyses conducted by Hilborn and Chaloupka, and noted the importance of spatial recruitment patterns was also not taken into account in the paper.

*Regarding the NWHI MEA fishing regulations*, the SSC recommended that any potential federal fishing permits involve data collection, reporting and monitoring in line with federal FEP requirements. Further, any fishery should have limits that are managed with ACLs based on stock assessments or other science-based information.

Martell reported that the SSC discussion on this action focused on customary exchange and subsistence fishing definitions as developed by the 145th SSC ad hoc working group and highlighted NS 8 considerations and the diverse social, cultural and traditional benefits fish provide to underserved populations and broader island communities. One SSC member supported a separate subsistence fishing permit for Native Hawaiians and suggested against permitting shortline gear because it is not a traditional fishing method. The SSC recognized that gear types must be in compliance with law and applicable policies and regulations. SSC members emphasized the importance of data collection associated with any future fishing activity in the MEA, regardless of permit type. However, some SSC members expressed apprehension about wading into policy decisions in the context of the question of catch disposition or gear allowances for any potential fishing permits. In general, SSC members were in support of affording some level of fishing access to the MEA through federal fishing permits that align with the goals, objectives and language of the MEA Proclamation. SSC members noted that permitting and reporting would provide scientific information about the condition of the resources in the MEA and any potential impacts of permitted fishing activities.

Dueñas said he was concerned with the concept that shortline gear is not a traditional fishing method, as it suggests that modernization of fishing gear takes away cultural values, whereas to him the cultural value in fishing is feeding the people to keep them healthy and alive.

### **3. Hawai'i Archipelago and Pacific Remote Island Areas Standing Committee**

Ramsey reported that the Hawai'i Archipelago and Pacific Remote Island Areas (PRIA) Standing Committee deferred recommendations to the full Council meeting.

#### **G. Public Comment**

There were no public comments.

#### **H. Council Discussion and Action**

*Regarding the paper inferring spillover benefits of the PMNM*, the Council **requested NMFS staff to work with SSC members to evaluate the impacts of large static closed areas in the Pacific Islands Region (including the Marine National Monuments) on target and nontarget species, to address the SSC's concerns about a lack of reproducibility**

of findings by a recent paper published in *Science*, and also evaluate socioeconomic impacts.

The Council reiterated its previous recommendation from its 191st meeting for NOAA to allocate funding support for external experts to evaluate the impacts that Marine National Monuments have on fisheries, working in collaboration with NOAA and the Council's advisory bodies.

*Moved by Rice; seconded by Sword.*

*Motion passed.*

Regarding NWHI fishing regulations for the MEA, the Council recommended amending the Hawai'i and Pacific Pelagic FEPs to prohibit commercial fishing and allow for sustainable noncommercial fishing and Native Hawaiian subsistence fishing practices in the MEA, including bringing back resources to the MHI. Fishing regulations would include:

- **Commercial Fishing Prohibition:** Commercial fishing as defined in 50 CFR 665 – Western Pacific Fisheries would be prohibited in the MEA.
- **Allowable Species:** Only Hawai'i bottomfish management unit species (BMUS) as defined at 50 CFR 665.201 and western Pacific pelagic MUS as defined at 50 CFR 665.800 would be allowed to be caught in the MEA. Fishing for all other Hawai'i FEP and ecosystem component species, as defined in 50 CFR 665 Subpart C - Hawai'i Fisheries, would be prohibited.
- **Allowable Gear Types:** Only handline, hook and line, rod and reel, and spear as authorized at 50 CFR 600.725 – General Prohibitions would be allowed to be used to catch BMUS and pelagic MUS in the MEA. All other gear types, including longline, bottom set longline, trawl and poisons would be prohibited from use in the MEA.
- **Catch Limits:** Establish a preliminary ACL for BMUS at 350,000 pounds and pelagic MUS at 180,000 pounds for the MEA. NMFS and the Council would monitor catches from within the original monument authorized by NOAA, and in the MEA authorized by NMFS toward this limit. As an accountability measure, if NMFS forecasts the limit would be reached, the agency would prohibit all fishing in the MEA for the remainder of the fishing year.
- NMFS and the Council will report fishery performance (e.g., number of permits issued, catch and effort information, etc.) in the Annual Hawai'i FEP and Pacific Pelagic FEP SAFE Reports. NMFS and the Council will also evaluate fishery performance after an appropriate time not to exceed five years from the effective date of the fishery regulations and will continue to conduct evaluations as necessary in order to ensure the resources are managed sustainably. Such evaluations will take into consideration the best scientific information available (BSIA) and evaluate whether additional specific actions are necessary for the proper care and management of monument objects, including fishery resources, consistent with Proclamation 9478.
- **Noncommercial Fishing Permit and Reporting:** Any person engaging in noncommercial fishing in the MEA must obtain a MEA noncommercial fishing permit and comply with reporting and record keeping requirements codified at 50

**CFR 665.14 – Reporting and Recordkeeping, as required for all MSA permits issued by NMFS.**

- **Disposition of Noncommercial Catch:** BMUS and pelagic MUS legally caught by an individual holding a valid MEA noncommercial fishing permit may be brought back to the MHI for consumption, including community sharing. However, fish caught from within the MEA under this permit cannot enter commerce through sale, barter or trade and may not recoup costs associated with the trip to the MEA.
- **Native Hawaiian Subsistence Practices Fishing Permit and Reporting:** Any person engaging in Native Hawaiian subsistence practices must obtain a Native Hawaiian Subsistence Practices Fishing Permit and comply with reporting and record keeping requirements codified at 50 CFR 665.14 – Reporting and Recordkeeping, as required for all MSA permits issued by NMFS. In addition, under this alternative, there would be specific permit review and issuance processes for a Native Hawaiian Subsistence Practices Fishing Permit.
  - An applicant for a Native Hawaiian Subsistence Practices Permit must complete and submit an application to NMFS that includes, but is not limited to a statement describing the objectives of the fishing activity for which a permit is needed, including a general description of the expected disposition of the resources harvested under the permit.
  - If an application contains all of the required information, NMFS will forward copies of the application to the Council, USFWS, ONMS, OHA, and the chair of the Hawai‘i DLNR. The Council may consult with its advisory bodies to provide comments on the application.
- Following receipt of a complete application, NMFS will consult with the Council through its executive director, and the USFWS, ONMS, OHA and the chair of the Hawai‘i DLNR concerning the permit application and will receive their recommendations for approval or disapproval of the application.
- **Disposition of Native Hawaiian Subsistence Practices Catch:** BMUS and pelagic MUS legally caught by an individual holding a valid MEA Native Hawaiian Subsistence Practices fishing permit may bring catch back to the MHI for consumption, including customary exchange. Additionally, permittees may sell, barter or trade catch to recoup costs associated with the trip to the MEA, not to exceed the actual direct costs associated with the trip, subject to the limit below. Direct costs include costs of supplies such as bait, fuel or ice needed for the trip, but do not include purchase, berthing, or maintenance of vessels or other costs external to the trip. This restriction ensures that the activity is not for commercial purposes.
- NMFS and the Council would limit the total value of catch traded, bartered or sold not to exceed the cost for fuel and ice, and other trip costs to make a trip from the MHI to the MEA and in no case exceed \$15,000 per trip. A permittee would also be required to document and report to NMFS the direct costs associated with each trip conducted to the MEA and the amount and value of any catch that is sold, bartered or traded.
- **Trip Mixing:** To ensure fish caught from inside the MEA for noncommercial and Native Hawaiian practices are not commingled with fish caught commercially seaward of the MEA, NMFS and the Council would prohibit any person from fishing both inside and outside the MEA on the same trip. Similarly, to ensure fish caught inside the original monument area for sustenance purposes are not

commingled with fish caught in the MEA for noncommercial and Native Hawaiian practices and sharing in the MHI, NMFS and the Council would prohibit any person from engaging in both noncommercial fishing inside and outside the MEA as well as sustenance fishing in the original monument area on the same trip. However, sustenance fishing in the original monument and MEA on the same trip shall not be prohibited.

- **Observer and VMS Requirements:** All fishing vessels must carry an activated and functioning NOAA-provided VMS unit on board at all times whenever the vessel is in the monument, and an observer, if directed to do so by NMFS.
  - **Notification:** Permit holders must notify NMFS prior to making any fishing trip to the MEA so NMFS may place a VMS unit and/or an observer on board as directed. Additionally, permit holders must contact NMFS at least 24 hours before landing any catch harvested under an MEA permit, and report the port and the approximate date and time at which the catch will be landed.
- Other Requirements:** All fishing vessels must also comply with regulations codified at 50 CFR 665 – Western Pacific Fisheries, applicable in the EEZ comprising the MEA.

Further, the Council deemed 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 Chairman 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 Chairman 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.

*[This recommendation was originally passed with the inadvertent omission of specifying a limit on the total value of catch traded, bartered or sold under the Native Hawaiian subsistence practices fishing permit. The Council subsequently reopened this motion to reconsider the provision for specifying the limit, and voted on a dollar value for that limit. The final adopted recommendation is shown above.]*

Sakoda said regarding the paragraph on catch limits, he understands that the proposed catch limit for bottomfish was based on prior limits, but knows that there is little bottomfish habitat in the MEA so the stock in the area might be impacted. He suggested that the catch be based on the percentage of bottomfish habitat that is in the MEA compared to the entire area.

Soliai clarified that future catch limits would be subject to annual Council review based on data from the previous years.

Sakoda said regarding the paragraph on disposition of Native Hawaiian subsistence practices catch, the State of Hawai‘i does not believe that any cost recovery should be allowed and he proposed removing the second half of the paragraph referring to allowing trade, barter or sell catch to recoup cost, and any other language that might allow for cost recovery.



Soliai asked GCPI to provide clarification on cost recovery.

Tucher said there is a Hawai'i Constitutional provision that requires that the State reaffirm and protect all rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by the ahupua'a tenants, who are the descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. Tucher said he believes the State of Hawai'i's concern is the case law, which goes through a number of elements that determine whether there was a traditional and customary Native Hawaiian practice, and if it is, then it allows the participant to act in conflict with the State law. This State law is not binding on the Council, but he said he understands the State's position that it cannot act contrary to its own requirements. However, one of the six elements is that the practitioner cannot engage in a commercial practice, and Tucher suggested that the action considered by the Council is not allowing a commercial purpose and that cost recovery is simply a vehicle to allow this traditional and customary activity to be undertaken because without that ability, the practitioner would not engage in that practice due to the cost. Commercial activity would be prohibited by the Proclamation and the Council is in fact prohibiting commercial activity through the proposed regulations. This activity would only allow for a limited capped recovery of trip costs, which is not commercial activity.

Dueñas said this is an opportunity for the Native Hawaiians to afford themselves with some of the natural resources that every country in the world has abused. He thinks that people should be allowed to have the ability to take care of and feed their own people in a subsistent manner. He hopes this comes to fruition. He challenged everyone to go on a boat in the deep blue sea to see how it really is in the open waters.

Sakoda said he does not disagree with Tucher, but highlighted that the State of Hawai'i defines commercial purposes in terms of fishing as any sale of marine life, whether it is for profit or to recoup cost, which is reflected in its policies for CML requirements. He said the State could support the action if cost recovery is removed, but he understands that the Council wants to keep it, so the State will be voting no on this recommendation.

Rice said if someone hired him to charter into the MEA, it would cost the person approximately \$3,000 per day plus fuel to go fishing and not sell the catch.

Sword said it is important for the people of the Pacific to have the opportunity to go and fish these MPAs. It is important to provide the opportunity, but if cost cannot be recovered for that trip, then it would be impossible to go fish in the area. It is ridiculous to ask the community to get a loan. As a fisherman, he does not sell any of his fish, but sometimes the family will give money to help with the cost of the trip. This is not paying for the fish, but instead it is offered as a donation.

Ramsey said as the recommendation reads now, a Native Hawaiian who was interested in getting a Native Hawaiian Subsistence Fishing Permit would also have to apply for the Noncommercial Fishing Permit. He wants to ensure that was not the intent and minimize the effort and burden for potential applicants.

Makaiau said it appears to be a mistake as the intention was to have two separate permits, and suggested an amendment to the recommendation to reflect the intent.

The paragraph on the noncommercial fishing permit was amended by general consent to remove the reference to Native Hawaiian practices.

Kamaka‘ala said mirroring the existing regulations of the original PMNM in the MEA would be a more streamlined way to ensure efficient management for government and users. In that hypothetical case, she asked if it would be necessary to have a data-sharing agreement since it would be the same permitting processes for both areas.

Makaiau said the PMNM has its own separate permitting requirements under 50 CFR 404, whereas the MSA regulations do not live in that section, and there is a separate permit and reporting requirement under 50 CFR 665. To the extent of getting the data, the Monument’s program readily shares the data on catch that occur under the six different permits and obtaining data is not a problem between the two agencies.

Kamaka‘ala asked if there was a legal avenue for developing MEA fishing regulations outside of the MSA and Council authority and under the 50 CFR 404 authority so that the regulations are consistent with the original monument, noting that the Council operating under the MSA authority results in permit requirements being created in a different CFR section than the existing PMNM permitting regulations.

DeMello said not for fishing, as fishing regulations have to come under the MSA, unless it is explicitly authorized under the Proclamation or through an act of Congress. That is why there is an effort to establish the proposed sanctuary, which will likely add more things into the EEZ through the National Marine Sanctuary Act, which allows for fishing regulations.

Kamaka‘ala clarified that the concern is that a user would have to decide whether he or she would be going to the PMNM or to the MEA or both to determine which permit is needed to make the trip. She said it would be safest for the user to apply for a permit for both the PMNM and the MEA to account for potential weather and ocean changes, so it would make more sense to ensure that the regulations for the PMNM is mirrored for the MEA.

Tucher said the provisions of the monuments are defined by their respective Proclamations. The MEA Proclamation incorporates the restrictions of the original PMNM.

Soliai intervened and requested that members restrain discussion to the motion under consideration.

Kamaka‘ala said she feels that the Council is close with the draft regulations, but thinks that creating a new permit and reporting process would be cumbersome for future applicants. She recommended that the Council change the name of the Native Hawaiian Subsistence Fishing Permit to Native Hawaiian Practice Permit as it would afford the proper scope. She also asked that the Council consider accepting the name of Papahānaumokuākea rather than using NWHI as the name holds mana (power). Kamaka‘ala said she supports the prohibition of commercial fishing as it is in line with the Proclamation, but feels that more revisions are needed in terms of the Native Hawaiian practices integration. She respects the State’s comments and position for sustainable noncommercial integration into the draft fishing regulations, but does not think those are appropriate and are not in line with the Proclamation.

Sakoda requested OHA be included under the paragraph listing the agencies to which NMFS will afford copies of the application and consultation for the Native Hawaiian Subsistence Practices Fishing Permit.

The amendment was adopted by general consent.

Makaiau said NMFS provided ONMS with a copy of the draft regulations, and ONMS has a number of concerns. He requested the vote be postponed to allow more time for PIRO and GCPI to have a discussion with ONMS to ensure the agencies are on the same page.

Further discussion and vote on the motion was postponed by general consent.

*[Discussion resumed at a later time. A revised language for this recommendation reflecting further advice from GCPI was read into the record.]*

Ramsey asked if Native Hawaiian fishing falls under the definition of noncommercial.

Makaiau said the two permits are for two separate practices. If a Native Hawaiian individual is looking to do cultural fishing practices, then that would not fall under the criteria of the noncommercial fishing permit. The intention is not to have Native Hawaiians apply for two permits.

Gourley asked regarding the paragraph on observer and VMS requirements if the intention is to require both a NOAA-provided VMS unit and an observer, or if it should read “or” to provide maximum flexibility.

Makaiau said the intention is to require vessels to have a VMS unit at all times, and to carry an observer when directed.

Dueñas said he was uncomfortable with the thought of including an observer if there is not enough room on the vessel, and requiring a NOAA-provided VMS unit should be sufficient for enforcement.

Gourley asked if the observer has to be a NMFS employee.

Makaiau said the intention is to have an independent observer onboard the vessel to document catch and other information consistent with the PIROP implemented for the longline fisheries. There are certain criteria of seaworthiness for NMFS to put someone onboard, which would have to be evaluated on a case-by-case basis for the vessel and equipment onboard.

Sakoda said while he appreciated the edits that have made the recommendation better, he will be voting no because the cost recovery goes against the State’s definition of tradition and customary Native Hawaiian rights.

Kamaka‘ala said she supports establishing fishing regulations for the MEA, but believes it was the president’s intent in his Proclamation to simply expand the original monument and not to create two different management areas with two sets of regulations. She believes that the recommendations create more inefficient management of the MEA and the PMNM for both the government and users, and she would like to adopt the original Monument regulations to the

extent possible. Kamaka‘ala said for these reasons she will be voting no. She also recommended that the Council abstain from voting until it can gather more information about Native Hawaiian practices.

Makaiau said he will abstain as the action is coming to NMFS for review.

Moved by Dueñas; seconded by Guthertz.

Motion passed with Sakoda and Kamaka‘ala opposing and Tenorio and Makaiau abstaining.

**The Council reconsidered the recommendation on the NWHI fishing regulations for the MEA regarding the provision on specifying a limit on the total value of catch traded, bartered or sold under the Native Hawaiian subsistence practices fishing permit.**

Gourley requested that the Council reopen discussion on the previous recommendation due to an undefined cost under the provision for specifying a limit on the total value of catch traded, bartered or sold under the Native Hawaiian subsistence practices fishing permit.

Moved by Gourley; seconded by Dueñas

Motion passed.

**The Council recommended \$15,000 as the limit on the total value of catch traded, bartered or sold under the Native Hawaiian subsistence practices fishing permit.**

Gourley said there was a need to address the undefined cost under the disposition of catch, and also wondered why there is a need to put a ceiling on the value of the trip as it would be variable. He also noted there is the issue of who determines the cost of a trip and who would determine the cash value of the barter or trade.

Tucher said it was critical that the Council put sideboards on cost recovery. The Council can choose a number for that ceiling, but it is essential for the Council to have firm sideboards for this action to be legally approvable and approvable by the Secretary of Commerce. The Council can always review and revise the limits through the regulatory process, but there has to be something in place since the Council is pushing the boundary line between noncommercial fishing, Native Hawaiian subsistence fishing and commercial fishing.

Gourley asked if the Council could set the limit as the actual cost of the trip, or if the Council has to consider an exact value.

Tucher said there were concerns from various stakeholders and for purposes of this action they are equating commercial with profit, which is not always the case. Many businesses operate on revenue. If a trip somehow incurs \$50,000 in expenses and sells \$50,000 in fish, then that would be difficult to argue that is not commercial fishing even if there is no profit involved. He recommended that the Council consider a de minimis high-end threshold over which one shall not pass to recognize that there are costs incurred in a trip that, if not recovered, would discourage people from engaging in the practice that the Council is allowing them to do.

Dueñas said the Council should consider an allowable expense list which could include food, ice, fuel, oil and vessel maintenance. He said identifying a dollar amount is difficult, and

he would like to consider the allowable expenses because these will be detrimental to whether any Native Hawaiian will want to access those waters.

Sword said he goes fishing in the Swain Islands, which is approximately 200 miles away from Tutuila. It takes about 24 hours on a boat running at eight knots and at five gallons per hour times \$5 per gallon. That would cost about \$600 per day to transit 200 miles. If the trip is another 1,000 miles, then that would cost \$3,000 just for gas.

Rice said the total cost would be approximately \$10,000 for ice, bait, and other necessities for a three- or four-day trip.

Soliai said \$10,000 is a reasonable number and should consider this as the de minimis, noting that the Council will be revising it next year.

Dueñas recommended that the Council consider \$15,000 as the de minimus if the Council is trying to control the allowance of expenses.

Makaiau said PIRO has been looking at past studies by PIFSC to look at socioeconomic information for the bottomfish fisheries. The agency estimated an annual variable cost of approximately \$40,558 per vessel including fuel, ice, bait provisions and supplies with about 15 trips to the NWHI per year. Dividing this annual cost by the number of trips results in a cost estimate of about \$2,700 per trip in 2003 prices. Makaiau suggested that the Council provide an opportunity for PIRO to do a little more research and dictate the information to be presented in the amendment document and analysis that the Council would submit with the package.

Soliai said the Council will be taking this action up again next year and noted the Council needs to come up with a number. He thought that the estimate of \$2,700 per trip is outdated and a lot of uncertainties remain.

Rice said regardless of the limit on cost recovery, any boat that could go up to the NWHI would not be able to catch enough fish to reach that limit.

Sword said he prefers \$15,000 as it is a not-to-exceed number.

Tucher said there are a lot of stakeholders present and without scientific basis there are going to be plenty of opportunities for disguised profit with a \$15,000 limit. He cautioned that the Council should not lose an important win by aiming too high for this cost recovery limit.

Dueñas said in 2003, diesel cost \$1 per gallon, whereas today it is \$7.50. He said \$15,000 is the gross expectation of a cost rather than a goal, and the expenditures will need to be scrutinized.

*Moved by Dueñas; seconded by Guthertz.*

*Motion passed with Sakoda and Makaiau abstaining.*

**Regarding NWHI fishing regulations for the MEA, the Council directed staff to organize a meeting with Council 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 for its consideration at its next meeting.**

Kamaka‘ala asked that the PMNM Advisory Council and its Cultural Working Group are engaged in these meetings.

*Moved by Sword; seconded by Rice.*

*Motion passed.*

*Regarding Hawai‘i fishery issues, the Council requested the State of Hawai‘i provide a presentation on the Holomua Marine 30x30 to the Council and its advisory groups to determine the impacts on fisheries managed by the Council.*

Sakoda said he will abstain from the recommendation because this is not a matter for Council jurisdiction as it pertains to nearshore resources from the shoreline to the 50-meter depth. The State has information on their website and Sakoda said he would be happy to talk offline with any interested Council member. The State is undergoing stakeholder engagement and there are no current proposals that pertain to impacts on bottomfish or pelagic species, but the State would be happy to answer any questions offline.

DeMello said this recommendation came from the Hawai‘i AP following the recent findings on a diet study of mahimahi. The study found that mahimahi were eating goatfish and DeMello said this is something the Council should monitor as there may be a need to protect goatfish to ensure the health of mahimahi in federal waters.

*Moved by Guthertz; seconded by Sword.*

*Motion passed with Sakoda abstaining.*

## **VII. Mariana Archipelago**

### **A. Guam**

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

Muña-Brecht presented the DOAG / DAWR report. All 24 scheduled shore-based creel surveys were conducted this quarter. The top species harvested include pulonun (triggerfish), ti’ao (juvenile goatfish), dogtooth tuna, atulai (big eye scad), tarakito (jack) and reef squid. The top gear used was hook and line followed by castnet, gillnet and snorkel spear. Eight boat-based creel surveys and two participation surveys were done monthly, totaling 30 surveys for the reporting period. All scheduled boat-based creel surveys were conducted, with skipjack tuna reported as the top species caught and outnumbering the rest, including the blue-spine unicorn fish and the Pacific blue marlin, yellowfin tuna and onaga. The top method used in boat-based surveys was trolling, bottomfishing, snorkel spear, atulai night jigging and gillnet.

DAWR held a groundbreaking ceremony July 11, 2022, for the Agat Marina Dock B repair project. Improvements include the use of no-rot recycled plastic composite material, marine-grade aluminum frames and stringers, stainless steel components, connections and accessories. The Wildlife and Sport Restoration Program will provide \$500,000 with the Port Authority of Guam to pay for the rest, for a total \$1.49 million. Updates were also provided on

ongoing improvements projects at the Harbor of Refuge, Merizo Pier and Boat Ramp, and Agaña Boat Basin.

Regarding enforcement, six arrests were made during the period, all for illegal fishing in the marine preserves. Four were in Tumon, one in Piti and one in Achang.

Regarding the proposed fishing license initiative, a community outreach group has been conducting meetings with more events expected.

Special fishing permits to allow fishing for seasonal take of atulai, i'e, ti'ao and mañahak in the MPAs continue to be issued.

DAWR is working on the Coral Reef FMP with the University of Guam Marine Lab. A working group comprised of the marine lab and other stakeholders will go through the decision tree assessment for roughly 20 priority species with sufficient data. A follow-up meeting will be facilitated to take the results and come up with logical scenarios to be considered for the plan, which will then be shared with stakeholders. The marine lab will create and submit a technical report summarizing the process and the outcomes. The Guam Bureau of Statistics and Plans is providing additional funding. A subcommittee was created to start organizing the community conversations to share the data with the fishing community to ensure their input is included.

The contracting grant for FADs was extended to 180 days due to shipping delays. There are plans for three echo-sounders but DAWR is awaiting approval from the USFWS. The request for quotes remain pending from Guam's General Services Agency for deployment of 31 to 34 shallow-water mooring buoys.

Work continues with the Guam Visitors Bureau to replace and maintain cultural signs around Tumon and at other sites. Research is being done on equipment needs and costs.

The Na'Boka (to feed) Clam Project will import 1,000 giant clams and create village-owned clam farms. They will work with Hima (clam) Ambassadors, youth recruited from each village and taught to maintain the sites, how to grow and handle the clams. An amended contract extending the original agreement from one year to two years has been received from the Pacific States Marine Fisheries Commission (PSFMC), and NEPA permits are now waiting for final review by the U.S. Army Corps of Engineers.

The DAWR Bumphead Parrotfish Reintroduction and Integrated Management Project, a telemetry project, is waiting on the importation of the fish and the necessary permits for review and approval. The fish will be released into the MPAs and through collaboration, local anglers will be trained to study the fish movements.

Gourley asked which species of giant clam species is being brought into Guam. In Saipan, clams in the 17- to 23-inch size range were brought in and placed in the lagoon but they were taken by people.

Muña-Brecht said she is not sure of the species, but they will be brought in from Palau at a size not yet edible.

Soliai asked what the penalties are for violations in the MPAs and if the conservation officers have arresting powers.

Muña-Brecht said the vehicles and equipment are seized, and a \$500 fine is imposed for the violators to try and get back their vehicles. The equipment is not returned. Legislation was introduced earlier in 2022 where citations would be issued instead of effecting an arrest. It takes between two to three hours for conservation officers to process the arrests and accompanying reports and to forward the case to the Guam Attorney General's Office for prosecution. Most violations are now misdemeanors or felonies. Repeat offenses are taken more seriously. She said the conservation officers do have arresting powers.

Sword said American Samoa loses FADs to longliners. He asked at what depth the Guam FADs are anchored, what support is used to deploy them, how far from land they are and what the average cost for each unit is. He said the ones in American Samoa are four miles out and 2,000 feet deep.

Muña-Brecht said the FADs are deployed to varying depths and at around 1,500 feet. She added the cost is \$20,000 each to bring them to Guam and deployment is another \$20,000. Only one vendor can deploy them in Guam, so it names its price. This is the reason smaller-sized, experimental designs are being brought in that are easier to deploy. Members of the fishing community contributed to the new design, but are concerned they may be stolen due to their smaller size since they are easier to handle.

Dueñas added the Guam FADs are normally between 3,000- to 4,000-feet deep and anywhere between 12- to 14-miles offshore. The complicated part is getting them deployed. The new design is made of polyurethane. With the original cylinder design, military and cargo traffic bump into them and leave dents since they have about a 1-mile radius from its anchor point and may be in the shipping lanes. He noted the new design is painted green, which makes it difficult to see in the ocean and he has been researching how to paint them yellow to be more visible.

Sword asked if radar detectors are attached to the FADs.

Muña-Brecht said no radar detectors are attached. An echo-sounder was accidentally deployed without the USFWS approval a year ago, and they still have a few units in inventory.

Dueñas said the echo-sounder was to provide fish biomass data beneath the FADs. The fishing community recommended they be installed under the FADs in a protective sheath because the one previously installed was sitting on the surface, something fishermen could entangle when trolling over the tether. They should be dropped 20 feet below the surface to give it a longer life span.

Tenorio asked if the work on the Guam FMP is the same as the one worked on with Gerry Davis, PIRO.

Muña-Brecht said no, noting that the one that Davis was involved in was the Fisheries Working Group under the U.S. Coral Reef Task Force. However, Davis contributed and lent his staff Jonathan Brown to assist with coordination and maintaining timelines for the Guam FMP. DOAG did request funding from PIRO to assist with data collection and are funding Peter Houk



and Brett Taylor, University of Guam, to conduct a meta-analysis of all fisheries-related data reports to consolidate and analyze all the available fisheries data. Funding from the Guam Bureau of Statistics and Plans is supporting the management strategy evaluation of the 12 species that do not already have information.

Regarding FMPs, Dueñas said it is always the fishermen working with scientists and creating an output because fishermen know more about the environment. He expressed concern that the names mentioned by Muña-Brecht are anti-fishing, and said if there is to be buy-in from the community, the arrangements of gathering data and getting input must be changed or they will return to an agenda-driven type of management.

Muña-Brecht said she respectfully disagrees. From the first meeting, members of the fishing community were invited to join, which they did. That was also the case when FishPath was conducted. Now that meta-analysis is being conducted, all the information will be presented to them. PIRO is funding the media and marketing materials to be circulated with the fishers to see if they agree with the information presented. The outcome will be incorporated into the plan, rewritten, then shared with the fishing community for approval.

Dueñas noted he is the president of the largest fishing community, and he has not seen a letter or documents related to the matter and requested a copy be sent to him.

## **2. Isla Informe**

Guthertz reported Guam is experiencing use of small boats by immigrants from China coming to Guam illegally from the CNMI. They were issued temporary work visas to work in the CNMI and make their way to Guam over a period of four to five months to apply for asylum, as political asylum cannot be claimed in the CNMI. She acknowledged the Council and the USCG for their assistance in intercepting the vessels. She thanked NMFS, who she notified during the New Council Member Training in Maryland. NMFS investigated the matter and alerted the Department of Homeland Security, which was not aware of the situation. Local and federal prosecutions are underway with those arrested, but local laws are not applicable to passengers of the small vessels. Since the arrests, things have slowed down and she hoped this deterrence will continue. The safety and welfare of those on the small boats are a concern and if interdiction does not occur, more will try. The CNMI also assisted with the matter.

The Inarajan Boat Ramp Repair Project is being paid for by the Guam Power Authority as part of a mitigation process. There is no timeline but when done, it will allow easier access for recreational and rescue vessels to the east side of Guam.

Guthertz also reported on the stalled renegotiations between the United States and the Compact of Free Association (COFA) countries of the FSM, the RMI and Palau. The current COFA agreements expire in 2023 and 2024. There has been no apparent activity with the renegotiations, and no formal meetings with the RMI since December 2020. A diplomat in charge said the United States is squandering its COFA advantage in the Pacific with the negotiations at a standstill. Major issues face the FSM, the RMI and Palau, including social and racial equality, and climate change issues. Mass economic inequities, lack of healthcare access, and a disproportionately high level of COVID-19 deaths all face their nationals. Due to their strategic importance, the United States is competing with China, Japan and others for

involvement with the island nations. Repeated requests by the COFA nations to restart the renegotiations have not been heeded by the Biden Administration. Despite the challenges, the United States continues to enjoy a local relationship with the COFA countries. Acute climate change effects are driving increased migration out of the low-lying islands into the United States, especially to Guam and Hawai'i. In the context of escalating tensions between the United States and China, the COFA states have a unique position beyond paramount strategic importance. Palau and the RMI are the last two nations that diplomatically recognize the Republic of China or Taiwan. Micronesia has had a diplomatic relationship with the People's Republic of China since 1989 and has been expanding that relationship in recent years, to the point Micronesia has been described as the next U.S.-China battleground.

Dueñas provided an update on Guam's fisheries, highlighting that catch rates are up with wahoo and mahimahi. He noted that the concerns about Guam's bottomfish catch exceeding the ACL was related to poor pelagic catch rates over the last few years. Most fishermen who fished for bottomfish last year are now fishing for mahimahi at the FADs and can catch up to 700 pounds per 4-hour trip.

Dueñas reported on implications and effects of live-fire ranges, open-air demolitions and its residual impacts to the shoreline, cliff lines and waters around Guam. The Prutehi I Litekyan group asked Dueñas to present a briefing paper on two major issues regarding the live-fire shooting range on Andersen Air Force Base. One is regarding the demolition of explosives on the coastline less than 100 feet from the shoreline, which has been ongoing for years. The other is regarding open-air burning proposed by the military. Explosions are occurring along the same coastline where hundreds of green sea turtles were noted to be. Regarding open burning, there are many impoverished and underserved communities that are suffering skin lesions and breathing problems from the effects of open-air burning. There are five firing ranges in Guam, an area of 212 square miles, smaller than Kaho'olawe. There had been four major contamination sites in Guam that over the last 10 years were cleaned up by the military. One cliff line is white where the contaminated material was removed. No replanting or terrestrial protection was done. One area, Double Reef, used to have a white sandy beach on the shoreline, and above it is a red dirt trail coming from military development, which resulted in the beach now overgrown with trees. This area was enjoyed by many and historically was known as the home of giant clams. The military jurisdiction range is 12 miles from shore. With the new firing range, 15 square miles of northern access to fishing will be closed. The total shoreline area to be closed is approximately 20 square miles, including areas of seasonal fishing and deep bottom slopes, which, along with the Cocos Island Lagoon, are also polychlorinated biphenyl-contaminated. The largest green sea turtle nesting area is located on Andersen Air Force Base, right below the proposed firing range that is in the path of sea turtles that nest several times a season. The range will see use of 50-caliber machine guns. He expressed concern that there are efforts to protect corals and turtles but not on military bases. The cumulative effect of the many protection efforts is that the federal government will receive Department of Defense money to do research, while the people of Guam suffer. Dueñas also noted issues with the military using CNMI lands and waters against agreements.

Dueñas invited Council members to read a synopsis he authored about the history of Guam, and the issues surrounding rule under the United States after World War II, the evolution of politics up to the creation of the Organic Act of Guam in 1950 which gave the islanders U.S. citizenship and their first locally elected governor. When Guam fell under the U.S. federal

government regulations, the people were told not to eat green sea turtles, when Chamorros had been eating turtles for 3,500 years but the practice did not result in wiping them out. Now they are deemed endangered and the federal government has taken away a cultural practice. In Hawai‘i, the turtles were found to be overpopulated but people still have not been allowed to harvest.

## **B. Commonwealth of the Northern Mariana Islands**

### **1. Arongol Falú**

Gourley reported on the CNMI’s elections in November 2022, which was a three-way gubernatorial election. The Republican Party was led by the incumbent Governor Ralph Torres, the Democratic Party was led by Christine Sablan, a Congresswoman, and the Independents were led by Arnold Palacios, the lieutenant governor. A runoff election was held due to none of the candidates receiving more than 50% of the registered voters, which resulted in Palacios and David M. Apatang winning the election. Palacios is very familiar with fishery issues, having been a former Council chair, former DLNR secretary and former DLNR Division of Fish and Wildlife (DFW) director.

The CNMI economy has not been doing well. However there is some good news, with a hotel that had been closed for a couple of years reopening in October 2022 following renovations under a new franchise and renamed the Crowne Plaza. The direct flight from Saipan to Narita, Japan has also restarted, although passengers so far have been mostly locals going back to Saipan and not many visitors. The Japanese yen is very weak against the U.S. dollar, which is hurting the CNMI from developing its tourism. CNMI had an average hotel occupancy rate of 26% as of October 2022. Regarding fuel prices, Saipan had the cheapest prices and Tinian had the most expensive gas at \$6.85 per gallon. Rota had the most expensive diesel at \$10.07 per gallon.

Gourley further reported that fisheries had not changed much, and wholesale price of fresh fish is stabilizing. CNMI went through an era of fluctuation, and markets are battling over trying to get fish to sale, which increased prices. At times the BMUS not sold would go bad, indicating that local fish demand cannot keep up when markets are flooded. This was in part due to the lack of tourists that drive the local demand for fish.

Regarding the five-year review of the nomination of the Mariana Trench National Marine Sanctuary, the Council executive director sent a letter Oct. 12, 2022, to ONMS requesting an update on whether it will be retained or removed from the Sanctuary Inventory List. No response has been provided to date. Inquiries with ONMS staff indicate that the sanctuary nominations are still under review after eight months. Gourley said it is clear from the letters submitted during the two comment periods that the CNMI does not want a sanctuary, with the governor, lieutenant governor, DLNR, DFW and the indigenous groups all opposing. The Center for American Progress wrote a newspaper article Nov. 22, 2022, entitled “16 National Monuments and Marine Sanctuary Biden Should Create or Expand,” in which it said the nomination for the proposed Mariana Trench National Marine Sanctuary was submitted by the Friends of the Mariana Trench, an indigenous-led organization based on Saipan, with support from the governor. Gourley said the article is misleading, making it seem the governor currently supports a sanctuary in the Mariana Archipelago. While the CNMI governor initially supported it when it was first introduced around 2016 or 2017, he became opposed to it when he found out what was in the

nomination package. Gourley expressed his frustration with ONMS that it has taken eight months to review when there is clear opposition from the local representatives.

Soliai asked when the new CNMI governor will take office.

Gourley said Jan. 9, 2023.

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

Tenorio provided the CNMI DLNR report. Staffing has improved for the boat-based creel survey program, with one new hire for a data technician under the Western Pacific Fisheries Information Network who started in late October 2022. Between September and October, DLNR conducted eight boat-based creel interviews. Of those interviews, one was trolling, two were spearfishing and five were hook and line, mainly for atulai (akule). Staffing continues to be an issue for the shore-based creel program, which is funded by the Sport Fish Restoration Program. Recently a person was selected for one of the vacant shore-based creel positions, and a candidate list was developed for the other advertised position. The data section manager is also working on advertisements for two vacant data technician positions for the shore-based creel program. Between September and November, 21 shore-based creel interviews have been conducted and all were hook-and-line.

Regarding market performance, commercial purchase data system receipts were collected from participating vendors, hotels and restaurants up through the month of October. Receipts are usually collected at the end of the month and entered into the database in the following month, causing a lag in the data. Between September and October, sales were estimated at 452 pounds of bottomfish, 1,056 pounds of reef fish, 7,312 pounds of pelagic fish, 34 pounds of invertebrates and 1,095 pounds of miscellaneous fish. The majority of the miscellaneous fish were atulai.

Regarding fishery assistance, all applications have been provided through the CNMI Grants Office to the PSFMC for final review and disbursement. The CNMI Grants Office will follow up with the PSFMC on the status of fund disbursement.

DFW staff in the Fish Life History Program sampled 887 pieces of blue-barred parrotfish from commercial fish markets. The majority of the samples were purchased at commercial fish markets on Saipan between 2013 and 2016. The samples are undergoing processing. Gonads were also sent to the John Burns Medical School at the University of Hawai'i for histology work earlier in 2022. DFW staff is currently conducting histological analysis of the blue-barred parrotfish to determine its reproductive status.

Regarding the Boating Access Program, repair and maintenance work is underway on the Smiling Cove Marina Dock to fabricate and replace a gangway. These repairs are supported by the Federal Emergency Management Agency Typhoon Recovery Funds. An invitation to bid was announced for the upgrades to the Tinian Marina parking lot and for the construction of restroom facilities and other infrastructure improvements. A vendor was selected and a notice to proceed was issued Oct. 31, 2022. An invitation to bid was also announced for the Tinian dock replacement project, and the vendor selection process is still pending.

The Garapan Fishing Base Shoreline Revetment Project is delayed due to regulatory compliance issues. CNMI DLNR is working with the contractor and regulatory agencies to address the issues before the project can proceed.

Soliai asked about the cost of sending samples to the John Burns Medical School at the University of Hawai'i.

Tenorio said he will get the cost information and will follow up with Soliai.

Dueñas said he is happy to see DFW working on biosampling in addition to Gourley's work, and asked why DFW is also involved.

Tenorio said there are many species of fish and some of the species that Gourley is working on were species that DFW was not interested in. He added that DFW's program started before Gourley's.

Dueñas said he was happy that DFW was conducting life history work, noting that more information on life history is needed as the federal partners continue to reduce their effort. He was proud of Guam's biosampling program.

### **C. Advisory Group Report and Recommendations**

#### **1. Scientific and Statistical Committee**

There were no SSC recommendations.

### **D. Public Comment**

There were no public comments.

### **E. Council Discussion and Action**

*Regarding the Mariana Archipelago fisheries issues, the Council **requested NMFS evaluate the efficiency and value of the existing CNMI bottomfish permitting program and data collection efforts to provide recommendations on potential changes to the Council that would assist in meeting management goals.***

Dueñas asked if this will also investigate the closed area that requires permitting.

Gourley said it was a separate issue from this recommendation.

Moved by Dueñas; seconded by Guthertz.

Motion passed.

*Regarding the Mariana Archipelago fisheries issues, the Council **requested NMFS PIRO and PIFSC to provide an analysis of potential impacts of military activities on the marine and coastal environments in the following areas situated at or near the northern military boundaries in Guam:***

#### **a. Open detonation areas**

- b. Open burn pits**
- c. Turtle nesting, transit and foraging areas**

Makaiau asked whether the military impacts are in regard to activities that are proposed or already authorized.

Muña-Brecht said they are proposed, as the military is seeking a renewal of a permit.

Makaiau asked whether the military is preparing any environmental impact statements in preparation for that renewal and whether they are available for public review.

Muña-Brecht said no.

Dueñas said apparently the military is going to the Guam Environmental Protection Agency (EPA) for clearances, and that is where they prefer to keep it at because they are really concerned about the open burn pits.

Makaiau said this recommendation appears to be asking NMFS to do the work that the military is obligated to do if it is proposing a federal action. He said at this point he will probably not vote against the recommendation, but expressed some concern about whether this is NMFS's responsibility to actually do the impact analysis.

Guthertz said to her knowledge, the military did not do an appropriate environmental impact statement and did not look at the impacts that this would cause, which is why NMFS's assistance is being sought. She said the pressure is being placed on Guam EPA to approve its permit, but the people of Guam have spoken up and said they do not want this. The location of these activities are on the beach at the edge of the ocean, on land that was previously privately owned and taken from the owners after World War II. She said the only avenue to stop this from happening is for the Guam EPA Board to say no to renewing the military's permit. She said in her opinion, what was submitted to EPA was not adequate.

Simonds said the Council has handled these kinds of request in different ways, such as going directly to the military in Guam to resolve certain problems, or relying on NMFS's working relationship with the military to find out what is going on first. She said the recommendation's intent is the latter, and asked that NMFS find out more information on the issue to start the dialogue.

Dueñas clarified that he is concerned with the plume that comes out of both activities and potential contamination of coastal pelagic species such as akule, mahimahi and wahoo as they transverse from nearshore areas into federal waters. He expressed concerns about the impacts on sea turtles in particular, noting that 100 turtles were identified in that area. He believes PIRO and PIFSC can be neutral parties in determining if there are any potential impacts rather than having a military-funded program do the impact analysis.

Simonds suggested that PIRO's Habitat Conservation Division staff work on this issue.

Makaiau said he will abstain as he did not want to commit agency resources at this time, but noted that he understood the request, and will look into what NMFS can do.

*Moved by Dueñas; seconded by Guthertz.  
Motion passed with Makaiau abstaining.*

## **VIII. Program Planning and Research**

### **A. National Legislative Report**

Gourley provided the National Legislative report, noting the last day of the 117th Congress will be Dec. 31, 2022. The midterm elections resulted in the Republicans controlling the House, and the Senate was split in half, with results from one runoff election still pending. There was a lot of discussion on MSA reauthorization in the past year through HR 4690 introduced by Congressman Jared Huffman, but unless action is taken in both houses in the next couple of weeks, that legislation would die and would have to start over in January 2023. However, there does not seem to be too much interest in moving toward reauthorizing the MSA. Congress and its committees will be revamped and he is unsure what will be their priorities.

One notable bill in discussion is the National Defense Authorization Act that is a must-pass bill before the end of the year. Congress has the opportunity to attach unrelated legislation to this bill at the last minute because it has to pass it, and there have been amendments introduced to include fishery and marine mammal provisions. There were concerns that sections of HR 4690 would be tacked onto the National Defense Authorization Act bill.

### **B. Alternatives for an Aquaculture Management Framework in the Western Pacific (Final Action)**

Zachary Yamada, Council staff, presented alternatives for an Aquaculture Management Program in the Western Pacific. The Council took final action at the 192nd meeting in September 2022 to implement a management program and related components for aquaculture in the western Pacific but the recommendation only included the Hawai‘i Archipelago and Pacific Pelagic FEPs. The Council’s action at this meeting was to consider amending the final action to include the American Samoa Archipelago, Mariana Archipelago, and PRIA FEPs as part of the aquaculture management program.

Gourley said this action would be correcting an inadvertent omission from the 192nd meeting and include the same program and components for the other island areas.

### **C. Report of the Regional Ecosystem-Based Fishery Management Workshop**

Matthew Seeley, Council staff, reported on the Council and regional efforts to implement EBFM in the western Pacific. The Council, PIRO and PIFSC hosted a workshop Oct. 4, 2022, to determine EBFM priorities and identify future directions for the region. The workshop included presentations on environmental and climate impacts on pelagic fisheries, socioeconomic risks, protected species, and large-scale changes on fishers and fishing. Additional presentations on indicators for stock assessments, quantitative decision tools for interactions and ecosystem considerations, and scenario planning around climate change provided for a focus on communities and EBFM approaches.

Participants discussed EBFM needs and capabilities to identify road maps, actions and program plans. Each agency identified EBFM priorities to understand what the next steps should

be to move forward as a region. The result of the workshop was the creation of a collaborative working group comprised of the Council, PIFSC and PIRO staffs to develop a process to implement EBFM by identifying actionable items and potential projects. The working group will also identify the necessary data and funding to help direct the flow of EBFM work in the region.

#### **D. Report of the Council Coordination Committee Area-based Management Subcommittee**

Fitchett provided an update on the CCC Area-Based Management (ABM) Subcommittee. The purpose of the subcommittee is to review the Biden Administration's "America the Beautiful" report, which includes the 30x30 initiative to conserve 30% of lands and waters by 2030 as required under Executive Order 14008. The subcommittee is taking an inventory of each of the region's conservation areas to develop a manuscript showing how conservation and supporting fisheries are not mutually exclusive. The manuscript looks at the durability of historical fishery management areas, including the Council process that is used to establish an ABM measure, compared to other methods that circumvent processes like NEPA. It also documents conservation efforts in each region including overlap of existing management areas, which show that 29.1% of the 30% conservation goal already resides in the western Pacific portion of the U.S. EEZ. The manuscript is expected to be completed and published by May 2023.

Dueñas said he hoped that all of the Council's mitigation measures are given consideration as part of this effort and not just ABM. Each of the conservation measures developed by the Council enhance and perpetuate fishing, while at the same time providing conservation benefits.

Gourley asked how the CCC definition of a MPA was received by NMFS and the Council on Environmental Quality (CEQ).

Fitchett said NMFS leadership at the October 2022 meeting was very receptive to the subcommittee's definition, although it would still need to follow advice from the CEQ.

Gourley said it would be important to get the CCC definition published, noting there are competing interests by various groups that may have different definitions that they want the CEQ and NOAA to adopt.

Dueñas said rehabilitation of depleted areas should also be included such as Fagatele Bay that was rehabilitated through management and mitigation measures.

#### **E. Territorial Bottomfish Management Unit Species Revision Working Group Reports**

Seeley presented an update on the revisions to the territorial BMUS list in the FEPs. The Archipelagic Plan Team (APT) developed working groups to refine the BMUS complex to reflect the current state of the bottomfish fisheries in American Samoa, Guam and the CNMI. For the proposed BMUS list for each of the FEPs, the shallow-water species are being designated as ecosystem components and the deep-water species will remain BMUS. The working groups completed draft reports on management components in the FEPs including status determination criteria, ACLs and accountability measures, monitoring and bycatch, EFH and fishing



communities. The working groups will provide the reports to the APT for review, then they will be included in a draft amendment for a Council decision in 2023.

Dueñas asked if the species of concern would be separated or aggregated. He said Guam has three different types of bottomfish (shallow, mid-water and deep), and each type are caught with different types of gears. He expressed concern that the life history information being used for stock assessments and management is not based on local information, noting that preliminary studies from Guam's biosampling shows that the local fish are growing twice as fast as those in the Great Barrier Reef. He also said applying the concept of ACLs in a diverse ecosystem is a challenge, noting that a large variety of coral reef and bottomfish species are caught while bottomfishing in Guam.

Seeley said the APT will review the material, including the application of life history information in the management approach, and will take into consideration the data that are available in open, public meetings.

Makaiau said the criteria that the working groups are considering to revise the BMUS list are based on the requirements in the MSA and NS guidelines.

Jones, PIFSC, said the ability to aggregate is a separate issue to the BMUS list. The revised BMUS list identifies the assemblage of deep snappers that will be included in the MUS. Separate to the list, the existing FEP states that when a stock assessment is done, species can be grouped and assessed as a complex, or can be assessed using indicator species. That assessment would use all of the available data, with data workshops held with the communities in advance of the assessment, and look at how each individual species on the list could be assessed either individually through catch data or through length-based assessments, or aggregated for a group or a complex.

Dueñas said he was involved in the biosampling program for 12 years recording observations of reproduction on every fish and life stage, and found it to be different from what is reported in Hawai'i. It is important to incorporate fishermen's knowledge into this exercise, including what they have seen locally.

Jones said PIFSC is moving forward with the biosampling summit in summer 2023, which aims to bring everyone together.

Soliai said compared to where the fishery was a few years ago, having working groups consider these components is a positive step forward, especially in light of the willingness to engage the community. This is an important part of the work that the Council does, to ensure communication with the community and those involved.

Gourley asked if the working group was planning to redefine EFH.

Seeley said the working group report provides definitions of EFH for the newly proposed species at different life stages.

Marlowe Sabater, PIFSC, said the report defines what EFH is, not what is non-EFH.

Gourley asked if that means that EFH will be revised from a broader definition to something more refined that actually fits EFH.

Sabater said yes.

Tenorio asked about the rationale for adding the giant ehu, *Etelis bowenii* to the BMUS list.

Seeley said the revised BMUS lists were a result of a hierarchical cluster analysis presented to the Council by PIFSC, and the species was part of the cluster of deepwater species.

Tenorio said *E. bowenii* is relatively new as there has been difficulty in differentiating the species from *E. carbunculus*. He asked if it is on the list to find out more information or to use it as an indicator species.

Seeley said this is up for discussion with the APT. One of the factors is that since it is a newly defined species, there needs to be a way to go back into the history of the time series to see if there are any records before deciding to use it as an indicator species.

Gourley said *E. bowenii* does not meet the purpose and need presented as it is not a major or minor component of the CNMI bottomfish fishery.

Seeley reiterated that the cluster analysis that had been presented to the Council showed that *E. bowenii* was part of the deepwater cluster of species caught together.

Gourley said he had concerns with using a species that is rarely caught as an indicator species.

Tenorio said when there is difficulty differentiating between two species, it is difficult to know if it composes a majority of the catch. The surveys could have misidentified the species and he worried that this species could close the fishery if used as an indicator.

Jones said the biggest concern with the situation is that the MUS complex had jacks, emperors, deep snappers, shallow snappers and groupers. The APT recognized the need to revise the list to ensure the BMUS was comprised of those species represented in the data and in the fishery. A review of the available data led to the separation of the deep snapper and shallow snapper, emperor and jack species. The other species, like *E. bowenii*, that showed up in that review could not be ignored and the concern about not having enough information is valid. He said *E. bowenii* would not be selected as the indicator species because of the inability to differentiate between species, and the species that is more easily identified could be an indicator species. In this BMUS revision, the changes being made would direct how the species would be assessed either individually, as an aggregated complex, or through indicator species.

Dueñas said misidentification is common and there are tricks to identifying certain species in Guam.

## **F. Regional Communications and Outreach Report**

Amy Vandehey, Council staff, presented a report on the Council's regional communications and outreach efforts. The 2023 lunar calendars were finalized and electronic copies are available on the website. The Hawai'i calendar was developed in partnership with the Hanalei River Heritage Foundation on Kaua'i and highlights native ways of knowing through stories and poems that look at how climate change has affected that watershed. The calendars for American Samoa, CNMI and Guam continued that theme of environmental monitoring and fishery seasonality throughout the year.

Council staff also developed and shared the fall 2022 issue of the newsletter, articles in Hawaii Fishing News, and press releases related to meetings. From August to November, there were 20 instances that the news outlets either picked up Council press releases or mention the Council. There have also been media requests about the spillover benefits of the PMNM and the public meetings on the NWHI MEA fishing regulations.

Regional initiatives included support for events in the CNMI and Guam. The CNMI AP continue to be active and assist Council staff at events such as the Tasi To Table student mini-fishing tournament, the Luta fishing derby and an underwater treasure hunt. At Tasi To Table meetings, the AP provided information on traditional navigation and resource management, and staff shared about the Council process and the scholarship program. In Guam, the Council supported DAWR by providing a digital scale as well as promotional items for the fishing derbies. Hawai'i outreach initiatives continued with the *Go Fish!* radio program with Mike Buck promoting the Council's public meetings and lunar calendars, and discussing outcomes from the APs.

Ramsey commended the Council's outreach efforts and said he was happy to see all of the ocean-related outreach activities with students in the territories because in Hawai'i it is impossible to do that unless liability concerns are addressed.

Soliai said the newsletter is one of the great accomplishments of the Council and a positive method of getting information to the community.

## **G. Advisory Group Report and Recommendations**

### **1. Scientific and Statistical Committee**

There were no SSC recommendations regarding Program Planning and Research.

## **H. Public Comment**

There were no public comments.

## **I. Council Discussion and Action**

*Regarding final action on the Aquaculture Management Framework, the Council **amended the previous 192nd Council meeting recommendation which was “to establish an expanded aquaculture management program, as a preferred alternative for managing aquaculture in the Western Pacific Region and directs staff to finalize the amendment to the Hawai'i and Pacific Pelagics FEPs for transmission to PIRO.”***

Moved by Rice; seconded by Guthertz.  
Motion passed.

Regarding final action on the Aquaculture Management Framework, the Council **recommended alternative 3, to establish an expanded aquaculture management program, as a preferred alternative for managing aquaculture in the Western Pacific Region and directs staff to finalize the amendment to the Hawai'i Archipelago, American Samoa Archipelago, Mariana Archipelago, PRIA and Pacific Pelagic FEPs for transmission to NMFS PIRO.**

**Further, the Council deemed 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 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 Chairman 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 Chairman 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.**

Makaiau expressed PIRO's support for final action to establish an amendment and associated regulations that would manage aquaculture in the Pacific Islands. He said he will abstain from the vote because this is a final action that would go to NMFS for review and decision.

Moved by Rice; seconded by Guthertz.  
Motion passed with Makaiau abstaining.

Regarding the EBFM Workshop, the Council **recommended a working group that consists of program staff participate in quarterly meetings with NMFS PIFSC and PIRO to develop an EBFM process and prioritize projects.**

Moved by Rice; seconded by Guthertz.  
Motion passed.

Regarding the territorial BMUS revision, the Council **directed staff to develop an action team with participation by PIFSC, PIRO and the territorial agencies to begin drafting the amendment.**

Soliai requested that the territorial agencies be included in the recommendation. Guthertz and Dueñas agreed to the change.

Moved by Guthertz; seconded by Dueñas.  
Motion passed.

## **IX. Public Comment on Non-Agenda Items**

There were no public comments.

## **X. Protected Species**

### **A. Review of Cross-Taxa Impacts of Longline Management Measures**

Asuka Ishizaki, Council staff, presented an update on the development of a one-page infographic to provide a simple communication tool on the potential cross-taxa impacts for various management measures in place for the Hawai‘i DSLL fishery. The project resulted from a Council recommendation made at the 192nd meeting in September 2022. Staff has been conducting a literature review on cross-taxa impacts and identifying examples compiling similar information, and considering ways to apply those examples to the DSLL management measures and affected species. Ishizaki presented a preliminary compilation of DSLL-specific information in the form of a color-coded gear-specific impact matrix that presents the pros and cons of different mitigation measures in place. The infographic is intended to serve as a resource for the Council and SSC members as well as to communicate to the public the tradeoffs that need to be addressed to manage impacts to the ecosystem. Staff will continue to review available information as well as additional measures such as spatial management measures prior to completing the infographic, and invited Council members to provide input on any additional considerations.

### **B. False Killer Whale Take Reduction Team Meeting Report**

Elena Duke, PIRO PRD, provided a report of the FKWTRT meeting held in November 2022 in Honolulu. The FKWTRT reviewed the Take Reduction Plan (TRP) goals, discussed the Southern Exclusion Zone (SEZ) analysis and the weak hook study, and began discussions on measures for reducing mortality and serious injury (MSI) of FKWs in the DSLL fishery. The MSI estimate for the Hawai‘i pelagic stock of FKWs is currently 17, which is above the stock’s potential biological removal (PBR) of 16.

Gear measures discussed by the FKWTRT included modifications for weaker hook or stronger branch lines, development of a combined fighting line and line cutter device to straighten the hook, standardization of leader length and deployment of a camera device to determine hook location and the condition of the hooked animal. FKWTRT also discussed deterrent measures such as devices to protect the catch, dynamic closures or management areas including the SEZ, EM, outreach and education, and research needs. FKWTRT formed five work teams to further discuss high priority topics in advance of the next FKWTRT meeting in March 2023.

Dueñas said there is a need to look at the concentration of the FKW’s food source, similar to advice provided to longline fishermen to avoid certain areas due to known concentrations of sea turtles, as well as the impacts from the distant-water fishing nations that are larger than the Hawai‘i longline fleet. He wondered if there will be efforts to export the information from the FKWTRT to other nation’s fisheries through WCPFC and Inter-American Tropical Tuna Commission, similar to the efforts made through the International Fishers Forum series in the past, so that conservation efforts can be implemented where they will actually make a difference.

Rice said foreign fleets also do not have as much observer coverage as the Hawai‘i longline fleet. He asked where the idea for the fighting line and line cutter device originated, and also asked about a video shown to the FKWTRT of a hook visible in the corner of a mouth of a FKW.

Duke said the fighting line idea primarily came from a fisherman as a way to reduce tension on the branch line as well as potential flyback for improving crew safety. Regarding the video, Duke said it was of an interaction recorded by a NMFS observer, and it was a rare interaction in that it occurred toward the end of the haul around 6 a.m. in daylight, whereas most interactions occur during the dark. In the video, the FKW surfaces multiple times and it was hooked in the lip.

Rice said the animal should have been cut loose right away, and that type of advice should be part of the training. He asked if it is the FKWTRT’s opinion that more FKWs may be hooked in the corner of the mouth, but they are considered to be an MSI because the observer cannot see where the hook is, and whether the FKWTRT will be looking into this issue further.

Duke said some FKWTRT members expressed those types of comments. In preparation for the March 2023 FKWTRT meeting, Duke will be reviewing the data to determine how often it happens, and noted that there may be only a few cases where the animal is confirmed as lip hooked as there is not enough information or it is too dark in most cases.

Rice said not knowing whether the FKW is injured is hurting fishermen because the assumption is that the FKW is likely to die if the condition is unknown. He recommended that more data and research is needed to understand post-release survival of FKWs. Rice asked Ishizaki to provide the perspectives of the Council representatives on the recent FKWTRT meeting.

Ishizaki said as the Council representative on the FKWTRT, she will be participating in most of the work teams leading up to the March meeting, and plans to work with SSC and other advisory group members as needed to prepare for those work team discussions. Ishizaki plans to bring those work team discussions back to the March 2023 Council meeting so that the Council can review its position statement and provide further direction if needed. Ishizaki noted positive developments at the November FKWTRT meeting were the renewed focus on improving handling through clarifying guidance and consideration of a fighting line device, less focus on going to a weaker hook and discussion surrounding the mouth-hooked FKW. Ishizaki also reported that PIFSC announced the next EEZ-wide cetacean survey will be conducted in 2023, the first one since the 2017 survey, and it will generate updated abundance estimates in the foreseeable future. Ishizaki said the FKWTRT has been charged with developing a consensus recommendation at or around the March 2023 meeting to reduce the fishery impact to under the PBR.

Dueñas noted that the survey transects would be inside the EEZ while the area is off limits to fishing, and asked if the population dynamics of the FKWs will be improved as a result of the upcoming survey. He reiterated that more aggressive efforts are needed to determine where the FKWs are and their range to better manage the longline fleet rather than continuing to punish them.

Ishizaki clarified that some portions of the EEZ are still open to the Hawai‘i longline fishery, but noted that when the SEZ closure is triggered, the open portion is reduced to 17% of the EEZ. She deferred to PIFSC on the details for the upcoming survey.

Dang shared his takeaways from the FKWTRT meeting from the industry’s perspective, noting that there was agreement that the weak hook is not effective and a safer way of handling line is needed following the adoption of wire leader removal. The idea of a fighting line combined with a cutter to remove most of the gear would address concerns with safety, as it is counter intuitive and dangerous to try to straighten the hook when an animal is surfacing repeatedly near the vessel as was seen in the video.

Rice said based on his experience releasing blue marlin, the longer the animal is handled near the boat, the less chance it will survive, and reiterated the importance of cutting the line close to the hook as quickly as possible.

### **C. Endangered Species Act Section 7 Consultations**

#### **1. Final Supplemental Biological Opinions for the Hawai‘i Deep-Set and American Samoa Longline Fishery Draft Biological Opinions**

Melissa Snover, PIRO PRD, provided an overview of the supplemental BiOps for the Hawai‘i DSLL and American Samoa longline fisheries. Following internal discussions and consultations with the GCPI, NMFS decided to complete supplemental BiOps on OWTs and giant manta rays for both longline fisheries. The supplemental BiOps analyze the impacts on these two species listed in 2018, and supplement existing BiOps rather than replacing them. The Hawai‘i DSLL supplemental BiOp was completed Sept. 28, 2022, and the one for the American Samoa longline on Oct. 27, 2022.

Both supplemental BiOps concluded “no jeopardy,” meaning that the proposed action is not expected to appreciably reduce the likelihood of the survival and recovery of the species. The Incidental Take Statement (ITS) included in the supplemental BiOps is based on the maximum five-year running sum in the historical data. The Hawai‘i DSLL fishery is not expected to exceed 6,335 OWT interactions and 144 giant manta ray interactions over five consecutive years, and the American Samoa longline fishery is not expected to exceed 3,520 OWT interactions and 57 giant manta ray interactions over five years.

The reasonable and prudent measures for minimizing fishery impacts to the species states that NMFS shall require that the two species incidentally caught alive be released from fishing gear in a manner that minimizes injury and the likelihood of further gear entanglement or entrapment to increase their post-release survivorship. NMFS shall also ensure the longline fisheries have a monitoring and reporting program sufficient to confirm the take limit is not exceeded. Terms and conditions associated with the reasonable and prudent measures include minimizing the amount of gear left on the animal, requiring observers to collect standardized information on each interaction, requiring observers to identify hooking location and estimated length of gear left to the extent possible, and requiring PIRO Sustainable Fisheries Division to provide an annual bycatch report to PRD.

Dueñas asked if the requirement is to dehook the animal or to cut the line, noting that giant manta rays and OWT are large and dangerous, and that he has seen many fish and sharks that have embedded hooks but are alive.

Snover said the requirement is to the maximum extent possible and practicable, so the preference would be to take the hook out in a reasonable amount of time if that is feasible, but in reality, cutting the line as close to the hook as possible will be likely in most instances.

## **2. Status of the Full Hawai‘i Deep-Set and American Samoa Longline Fishery Draft Biological Opinions**

Snover reported the status of the all-species BiOps for the Hawai‘i DSLL and American Samoa longline fisheries. The existing BiOp for the Hawai‘i DSLL fishery was issued in 2014 and supplemented in 2017. Consultation was reinitiated in October 2018 because the ITS was exceeded for the Eastern Pacific green sea turtle. At that time, NMFS determined that the continued authorization of the fishery would not violate ESA Section 7(a)(2) or 7(d) during the period of reinitiated formal consultation. NMFS has periodically reviewed and updated that determination throughout the course of the consultation, thus the 2014 BiOp remains valid for the species covered and any taking in compliance with the ITS is not prohibited. PIRO estimates completing the all-species BiOp for the Hawai‘i DSLL fishery in spring 2023, which will allow the agency time to complete stakeholder and Council coordination and to resolve complex modeling issues involving sea turtle species.

Similarly, the American Samoa longline fishery is covered by the BiOp issued in 2015, and the consultation was reinitiated in April 2019 in part because the fishery exceeded the ITS for hawksbill, olive ridley and green sea turtles. The 2015 BiOp remains valid for the duration of the consultation for the same reason as the Hawai‘i DSLL fishery, and the all-species BiOp for American Samoa longline fishery is also expected to be completed in spring 2023. Snover noted the all-species BiOps will also consider OWTs and giant manta rays, so any comments the Council may have on the supplemental BiOps completed in 2022 could be incorporated into the all-species BiOp.

Dueñas asked if NMFS is conducting surveys of the seasonal distribution of species of concerns, noting he had seen approximately 50 hammerhead sharks all averaging about three to four feet in length aggregating below his boat when he took his children akule fishing in the past. He would like to see more information provided to the community so that fishermen can help NMFS in identifying species of concern if there are interactions. He also asked why PIFSC is not involved with the BiOp process.

Snover said most of the interaction information for the longline fisheries come from PIROP, and observers undergo extensive training for species identification. PIRO is also closely working with PIFSC on the sea turtle modeling for the BiOp, and PIFSC will review the documents.

Soliai thanked Snover and Dawn Golden for making progress on actively moving the BiOps forward after they have been pending for several years.

## **D. Endangered Species Act and Marine Mammal Protection Act Updates**



Duke presented the ESA and Marine Mammal Protection Act (MMPA) updates. NMFS determined Nov. 14, 2022, that the listing of the shortfin mako shark as threatened or endangered under the ESA is not warranted. NMFS concluded based on the best available scientific and commercial information that while overutilization will likely continue to be a threat in certain parts of its range through the foreseeable future, the species is at low risk of extinction. NMFS also issued a negative 90-day finding Nov. 9, 2022, on a petition to list the great hammerhead shark under the ESA.

NMFS convened internal working groups in 2022 to develop a three-part ESA recovery plan consisting of a status review, plan and implementation strategy for three distinct population segments of humpback whales that occur in U.S. waters. NMFS anticipates publishing the draft documents and opening a public comment period in 2023.

For the CCH rule, NMFS is considering two options for the next step—to publish a final rule to designate critical habitat or to issue a new proposed rule based on the feedback received from the territorial governments.

NMFS has a court-ordered settlement deadline of June 30, 2023, to submit a proposed rule to the *Federal Register* to designate green sea turtle critical habitat. NMFS will propose a rule that covers marine habitat and USFWS will simultaneously publish a rule for the terrestrial habitat. NMFS and USFWS will hold joint informational sessions and public hearings on the green sea turtle critical habitat proposed rules during summer 2023.

Duke also presented updates on FKW interactions in the Hawai‘i DSLI fishery, noting two out of the five interactions to date in 2022 have occurred in the EEZ and resulted in serious injury determinations. Duke noted the MSI of the Hawai‘i pelagic stock is above the stock’s PBR.

Dueñas asked who makes determinations under ESA and MMPA processes, such as determining whether a species is threatened or endangered, and why management of protected resources is not part of the Council process. He noted that MSA, ESA and MMPA were all created by Congress and resource management is by nature the responsibility of the Council.

Makaiau said processes for listing species and designating critical habitat under the ESA are different from processes under the MMPA, although there are some interfaces between the two statutes when a negligible impact determination must be made for marine mammals that are also listed under the ESA as endangered. ESA and MMPA do not specifically carve out a role for the Council, although NMFS utilizes the opportunity through the Council’s public process to bring information to the Council on the status of ESA and MMPA processes. As there is no requirement to involve councils in the process, NMFS does so through its policies, such as through the ESA-MSA Integration Policy Directive for ESA Section 7 consultations.

Dueñas said for MMPA, the Council should have the ability to determine whether the resource is manageable because that is the Council’s role, not to close areas or deny opportunity to access the resource.

Tucher said the law would have to be changed because Congress created ESA and it specifically authorizes the Secretary of Commerce to perform acts such as listing species and consulting on federal actions. Similarly, MMPA empowers the Secretary for decision-making.

Tucher acknowledged that the ESA-MSA Integration Agreement recognizes the important role of the Council in managing fisheries as well as the ecosystems upon which those resources depend, and to that extent the Secretary has agreed to collaborate with the councils at certain points of consultation under those authorities.

Simonds said this is why the Council always tries to coordinate early in the process, such as in the example of working with industry on changes to mitigation measures that could be made once a species is listed. The Council would prefer that the MSA process is used for any measures that need to be implemented that affect the fisheries under its authority. There has been one example of a marine mammal measure that the Council asked if it could be done through its process and the NMFS regional administrator said no. However, Congress allows for measures to be implemented through the MSA process. Simonds said the Council involves itself in ESA and MMPA processes when it affects the region's fisheries by working with industry, PIFSC and PIRO early in the process and the issue will come before the Council for its vote.

Guthertz asked how EEJ fits into whether the councils would be involved more in deliberations with the federal partners, noting that there was a lot of focus on EEJ at the recent NMFS new Council member training session.

Makaiau said he has heard from the Administration that it is trying to reach and communicate more effectively with underserved communities, and the Council members serve as the conduit for NMFS to reach those communities. He said NMFS Assistant Administrator Coit intends to attend the Council meeting in American Samoa in 2023.

Guthertz said the territories would not be represented in these federal discussions without the work that this Council has done historically. She said in the Council member training, she did not get a good response to her question about how the equity initiatives would work considering that Council members have limitations on what they can discuss with Congressional representatives and would not be able to inform them of problems or ask for funding to help resolve issues. She urged the Council and federal partners to remember that fairness, justice and equity are important words that previously had never been heard coming from the federal government, and that the words should be used and embraced so that the partnership can be closer in resolving any issues in the region.

Gourley said in reference to NMFS trying to communicate more with underserved communities, USFWS at the September 2022 Council meeting reported that the agency was 80% finished with their green sea turtle critical habitat designation process and had committed to following up with him about who in the territorial governments the agency had met with to coordinate on the development. He said USFWS has not followed up with him, and suspected that the agency is not engaging the territories in any meaningful conversation about the designation. Gourley said NMFS has done really well with the CCH and the territories have had good discussions about working together, although it has been a long process. While the outcome of that coordination is not known yet, he hoped he will be getting a proposed rule to look at before the designation goes to final rule. He asked what percentage NMFS is at with the process of identifying green sea turtle critical habitat in the territories.

Duke said she could not speak to the percentage, but the rule is being coordinated out of the OPR at NMFS Headquarters, which is coordinating closely with PIRO. OPR has been

working with USFWS on coordinating the designation. A lesson learned from the CCH is that NMFS would like to engage the state and territories much more closely for the green turtle critical habitat process. The agency plans to prepare a critical habitat 101 presentation before the proposed rule comes out to provide clarity on what critical habitat is and is not.

Golden, PIRO PRD, said the agency heard from the Council members at the last meeting how things went with the CCH process, and immediately had Lance Smith, PIRO's CCH staff lead, involved with OPR and PIRO's team member to follow the CCH example as a way to work closely together. OPR is coordinating the green sea turtle critical habitat rule and working with USFWS counterparts, and is on track to meet the court-ordered deadline. PIRO will continue to communicate with OPR, and OPR will continue to communicate with USFWS. NMFS plans to travel to the territories to hold in-person public hearings and engage as much as possible within the boundaries of what is allowed and not predecisional information.

Gourley said NMFS's public outreach is typically done after the proposed rule has been published, at which point it is a one-way street with not a lot of feedback. However, if the outreach occurs before the proposed rule, then back and forth dialogue can happen, and that would benefit the underserved communities of the territories more than developing the proposed rule in a vacuum. The communities have had bad experiences with the top-down approach of federal rulemaking. Gourley asked what the chances are of getting the green sea turtle critical habitat court deadline of June 2023 extended, noting that there is still a fair amount of communication to do before the deadline.

Golden said it would be up to OPR as the lead on the rule if it felt the need to request an extension, and noted that the agency would need to stick as close as possible to the deadline because there was a lawsuit due to the critical habitat designation taking longer than the statutory timeline. Golden said NMFS has an agreement with territorial governments and can take information from them, and encouraged territorial governments to share any information and data that can be considered for the proposed rule. OPR has shared with each territorial government the information it had on green sea turtles. Golden emphasized that a proposed rule is not a final rule, and the agency can consider new information submitted after the proposed rule is published, as in the case of CCH. If the territorial governments have information to provide for consideration ahead of time, NMFS would welcome that and there is some opportunity for communication back and forth, and NMFS is looking at the boundaries of its policies and laws in what it can do.

Gourley said policies can change, whereas laws are much more difficult to change, and he would like to see NMFS's policies be more flexible in working with the territorial governments, joining hands to develop proposed rules. He said territories would like to be more involved than just providing NMFS with data for the agency to interpret, and would like to help NMFS interpret that data as was done for CCH. He acknowledged that the CCH process had a rough start and the territory governors signed letters asking for comment extensions, but he appreciates how things started moving once Smith became involved. He hoped that NMFS and USFWS can modify their policies to engage the territorial governments more in the pre-proposal rule phase.

Soliai asked whether the deadlines for the green sea turtle and CCH rules are the same, and what the timeline will be for the public hearings.

Golden said for the CCH, the timeline would depend on whether it will be a proposed rule or final rule, but NMFS will not be able to have open conversations and discussions about the rules until they are published. The public hearings would occur after the rule comes out and while the public comment period is open. She said NMFS is looking to have some conversations with the territorial government representatives ahead of time.

Soliai asked if NMFS may be able to share a draft proposed rule with the territorial governments.

Golden said her staff are looking into that now, in terms of what NMFS can share and discuss with the territorial governments before the rule is published through an existing agreement.

Soliai said it would be highly encouraged that the territorial governments be afforded that opportunity to review and discuss any concerns that they may have. He shared the concerns expressed by Gourley, noting that most of the time the territories are kept in the dark until a rule publishes, and that the territorial governments had to escalate the CCH issue so the process could be paused to ensure the data were accurate and not misinterpreted. He thanked NMFS for looking into options and asked that the agency be mindful of the concerns expressed and ensure that information is expressed in a way that facilitates dialogue between the parties. He said when considering the key stakeholders, there is a separate language that needs to be discussed or conversations need to be had so that all parties are on the same page.

Golden thanked Soliai for his comments and said she understands the issues as PIRO has gone through similar issues in Hawai‘i with the HMS and insular FKW critical habitat when there was no critical habitat previously designated in the marine environment. She hopes that the critical habitat 101 presentations will provide an opportunity to engage with the public and have dialogue with territorial governments and stakeholders using case studies in terms of what critical habitat means and what it can do, even though PIRO would not be able to discuss specifically what will be in the upcoming rules.

Muña-Brecht thanked Golden for her comments. She emphasized that while the CCH process has tremendously improved through conversations with Smith, the process had an extremely rough start, with the proposed rule issued shortly before Thanksgiving and DOAG did not have an opportunity to review it right away because no one was aware it had been published. The governors sent a unified letter pleading, arguing and lamenting the fact that the territories were not given opportune time and none of the territorial agencies were consulted. The meeting with Sam Rauch that followed was mildly informative, but condescending statements were made at that time about the jurisdictions' inability to grasp the implications of critical habitat. Muña-Brecht said the islands in the territories are much smaller than Hawai‘i, so there are implications of how critical habitat will impact the residents more so than in Hawai‘i because federal consultations could be triggered easily due to the proximity of private land ownership and government lands. The territories would like to see the true action behind the words of equity and justice for all of the region's native and indigenous people, which would mean having extreme flexibility in NMFS's policies so that informal conversations can take place with the communities before the proposed rules are issued. Green sea turtle critical habitat could impact private lands as well as territorial waters, and building a house on private property could trigger a critical habitat review, delays from which could be costly for the private landowner and could

affect the decision of whether to build the house. Muña-Brecht said there are a lot of unforeseen implications that will impact the communities in the larger conversations about critical habitat, and she hopes that there is an opportunity to have informal information sessions prior to issuing the proposed rule.

Soliai said there is a need for working together because the corals and their critical habitat are all within territorial waters, and these federal regulations have the potential to impact territorial waters. In a past Council meeting, there was discussion about critical habitat potentially impacting federal funding, which sounds like the territories are being held hostage. That mindset needs to change and the agencies need to work together with the territorial governments to find amicable solutions moving forward rather than saying “you take this, if you don’t like it, tough luck.” He said sometimes the federal process feels like it is just a checklist.

Dueñas asked the federal government to work with the communities and frontload the issues, noting he comes from the community and represents about 100 local fishermen, most of whom are Chamorro, and that ESA and MMPA issues are impacting the community. If there is a problem, the community may be able to develop its own solution to address it. The communities are recipients of draconian measures, as was the case when the green sea turtle was uplisted from threatened to endangered, and he asked that ESA and MMPA decisions foster greater transparency.

## **E. Advisory Group Report and Recommendations**

### **1. Advisory Panel**

There were no AP recommendations regarding protected species.

### **2. Scientific and Statistical Committee**

Kobayashi, SSC member, presented the SSC recommendations.

*Regarding the review of cross-taxa impacts of longline management measures, the SSC recommended developing a simple version of the infographic to help readability in addition to the more detailed tabular form presenting technical information for use by the SSC and managers.*

Kobayashi reported the SSC noted that the amount of information presented in the draft matrix demonstrates the amount of measures that are in place for the fishery, and an SSC member pointed out the need for reviewing some of the technical details to be included, such as whether prohibition on light sticks serves as a turtle mitigation measure.

Regarding ESA consultations, Kobayashi reported the SSC found that analysis of OWTs and giant manta rays in the supplemental BiOps to be robust and concurs with the findings. The SSC awaits the draft full BiOp, which will include all other ESA-listed species.

## **F. Public Comment**

There were no public comments.

## **G. Council Discussion and Action**

*Regarding the review of cross-taxa impacts of longline management measures, the Council **endorsed the SSC recommendation to develop two versions of the infographic and directs staff to continue development of the infographic.***

*Moved by Rice; seconded by Sword.*

*Motion passed.*

*Regarding the FKWTRT, the Council **directed staff to coordinate with SSC and AP members as appropriate for the FKWTRT working groups, and further directed staff to provide an update on considerations for FKWTRP modifications at the March 2023 Council meeting in preparation for the next FKWTRT meeting.***

*Moved by Rice; seconded by Dueñas.*

*Motion passed.*

*Regarding the BiOps, the Council **directed staff to coordinate SSC, AP and Council review of the draft full BiOps and any necessary mitigation measures in advance of the March 2023 meeting.***

*Moved by Rice; seconded by Dueñas.*

*Motion passed.*

## **XI. Pelagic and International Fisheries**

### **A. North Pacific Striped Marlin Catch Limits (Final Action)**

Fitchett, Council staff, presented the alternatives for North Pacific striped marlin catch limits. The WCNPO striped marlin stock was considered overfished and subject to overfishing under the Pacific Pelagic FEP and NMFS sent a letter in June 2020 notifying the Council of its obligations under the MSA Section 304(i) to make domestic and international recommendations to address overfishing within one year. The WCNPO striped marlin stock is subject to an interim rebuilding plan by the WCPFC, but with no specified catch limits. At its 185th meeting in March 2021, the Council made domestic and international recommendations to address the MSA Section 304(i) requirements. For the domestic recommendations, the Council took final action to amend the Pacific Pelagic FEP to establish a management framework using a phase-in approach, with an initial catch limit of 457 mt for 2022, and specification of catch limits for U.S. vessels proportional to a total WCNPO stock-wide catch limit to end overfishing for subsequent years. The Council was asked to revisit the catch limits at this meeting considering some changes in international scientific information.

Fitchett summarized the uncertainties in the 2019 stock assessment as noted by the ISC, including irregular patterns in increased fishing mortality after the largest historical source of mortality on the stock ceased. The ISC conducted a new benchmark stock assessment in 2022, but it did not recommend the new assessment be used for management. Instead it recommended a new stock assessment be conducted in 2023 to continue reconciling the uncertainties. Since the 2022 stock assessment is considered a work in progress, the Council is obligated to use the 2019 stock assessment as it is considered BSIA.

The following alternatives were presented for Council consideration: 1) No action/status quo (do not set a catch limit); 2) Set a longline retention limit of 443 mt and a catch limit of 457 mt, consistent with WCPFC conservation and management measures and previous Council action; 3) Set a longline retention limit of 397 mt and a catch limit of 409 mt, consistent with a reduction of the relative contribution of U.S. vessels to international overfishing of this stock; and 4) Prohibit retention of WCNPO striped marlin. All alternatives would only affect U.S. longline vessels with a Hawai'i longline limited-entry permit, and would not restrict catch on nonlongline fisheries such as troll and handline fisheries. Alternatives 2 and 3 would impose an accountability measure to cease retention of striped marlin once 97% of a catch limit is reached, because non-longline fisheries account for less than 3% of landings.

Even if the U.S. longline fishery ceased to exist, overfishing would still persist and the relative impact may have been reduced by other management actions. The relative impact of U.S. fisheries on the stock, in terms of landings, is less than 6% since 1975, and 14 to 18% in the last five years (up to 2021). Since striped marlin was first deemed overfished, several closed areas were implemented through Marine National Monuments. According to PIROP data, catch rates in those closed areas were three times the areas that remain open today, and 16% of observed catches in years preceding those closed areas occurred in waters that are now closed. If total recent catches among all fisheries in the WCNPO decreased by 13.4%, then fishing mortality would fall below overfishing levels. Under MSA NS 1 (Optimal Yield), internationally managed fisheries do not require ACLs so as not to prejudice domestic fishermen if the United States were to take unilateral action and have a unilateral catch limit on its fishery given its relative impact. The Hawai'i longline fishery has also prohibited wire leaders that some studies indicate reduces catchability and mortality. The use of circle hooks in the fishery is also known to further reduce post-hooking mortality of striped marlin. Ceasing retention of striped marlin would mean regulatory discards associated with the Council's action.

Rice said striped marlin have been known to cross over stock boundaries and move into the eastern Pacific where catch rates have been extremely high in recreational fisheries. He asked if small-boat fisheries take a small percentage of catch.

Fitchett said the small-boat fisheries land a relatively low amount of catch (10 mt), which is taken into account in the accountability measure to cease longline retention once 97% of the catch limit is met.

Rice asked if alternative 2 would keep the United States compliant with the MSA.

Fitchett said alternative 2 would be consistent with international measures and would restrict and limit the relative impact of U.S. fisheries.

Rice asked if the Council would be able to change its recommendation if new information expected in 2023 suggests a new status.

Fitchett said yes and that the Council process is iterative and may change its actions if the stock is better or worse after the 2023 assessment.

Rice asked if the new assessment and Council action will "level the playing field."

Fitchett said he cannot speak to that but that the U.S. impact is still relatively low and reiterated the management actions the Council had already taken including the wire leader prohibition and required use of circle hooks.

Rice asked if Japan and Taiwan, the two nations with most of the catch, would take reductions in their quota if the stock is not rebuilding.

Fitchett said the WCPFC would have to take action and include specifics into the rebuilding plan, but it was unlikely that those two countries would take unilateral domestic actions.

Dueñas said this issue has been around for 20 years, and asked if the stock assessment accounted for spatial impacts. He said he does not prefer having regulatory discards, noting alternative measures that would allow the fishery to retain certain species if there is an observer on board. He also noted the high catches of sharks and non-target species in Taiwan and Japan longline fisheries, and the sale of large volumes of marlin coming from those fisheries. Misidentification of marlins is also a major problem. He would prefer to see the limit increased to 500 mt and allow vessels to retain beyond the limit if they have observers on board.

Makaiau said the U.S. fleet's impact is approximately 15% and there is no clear guidance on what "relative impact" means to trigger U.S. catch reductions. Makaiau asked if the potential benefits from the closed areas, wire leader prohibition and use of circle hooks is quantifiable in terms of catch reduction for striped marlin.

Fitchett said species-specific information on the improved survival rates with circle hooks is available in peer-reviewed literature, and the 16% reduction in striped marlin catch from the closed areas is quantifiable using PIROP data. Fitchett said there is no guidance on what actions need to be taken commensurate with a "relative impact" based on catch and if relative impacts need to be estimated within a certain historical frame. The long-term U.S. relative impact is very low and the Japanese driftnet fishery is mostly responsible for putting the stock into an overfished state.

Makaiau said the relative impact is an untested provision under the MSA as this region may be the first region that is dealing with the requirement. He said it is not certain that the 457 mt catch limit under alternative 2 provides a clear path forward in meeting MSA 304(i) obligations because it would authorize a catch limit that is generally higher than the catch that the U.S. fleet has had over the past decade, when those levels still have contributed to the overfishing and overfished status of the stock. He is cognizant of how reductions may disadvantage U.S. fisheries, but the law states something has to be done. Alternative 3 provides some comfort because there is a quantifiable reduction while it still provides some buffer as the limit is higher than what the fleet has caught in recent years. He said he understands the uncertainties associated with the stock assessment, but NMFS has to follow the 2019 assessment consistent with its rules and policies.

Dueñas said the United States needs to evaluate the efficacy of these MPAs that have been created to quantify the effect of U.S. fisheries harvesting fish only outside of the protected areas because the closures were supposedly created to protect the breeding stock around the island. He is also interested in "zone-based" evaluation by the WCPFC because the greater impacts could be coming from coastal areas.



Soliai asked for clarification on the estimated U.S. relative impact, and whether it was less than 6%.

Fitchett said 6% is the long-term historical impact the United States has had on the stock, including a period when catches from international and Japanese driftnets were highest. The relative impact is higher when looking at only the last five years, but there is no guidance on how to define relative impact.

Soliai said there is no reason to set an ACL lower when the U.S. impact may be insignificant.

Fitchett said there is no precedence on when catch reductions are needed based on relative impact and there is no definition for how much relative impact is “significant.”

Rice said leaving the catch limit at 457 mt for one year will not impact the striped marlin stock, noting the new assessment anticipated in 2023 and pending research between Japan and Taiwan.

Dang said the longline fishery has likely reduced its interaction rate with striped marlin noting the monument closures, removal of wire leaders and use of circle hooks. Dang asked Makaiau his comfort level, on a scale of one to ten, for alternative 2 considering these issues.

Makaiau said right in the middle.

Dang said while the fishery may have gone over the alternative 2 limit once, from a fishermen’s perspective, they have the spirit of conserving the stock and do not want to further overfish but also do not want to waste the catch. Dang also said it is unlikely that one year will make a difference on the small impact that the Hawai’i longline fishery has on the stock, especially considering that, based on information from fishermen, the fleet is not likely to be fishing in areas with high striped marlin catch for the next six months. The fleet moves where it wants to catch target species and is not deliberately catching striped marlin and he has confidence in the fishery to operate efficiently and with compliance.

Makaiau said Council staff has made a good start outlining other issues influencing the U.S. impact and advised that staff look to 50 CFR 600.310 on considerations for addressing relative impact. He asked that the Council provide rationale and support to the extent possible in a quantifiable manner, so that NMFS can consider that information when the recommendation is submitted to the agency.

Soliai said the U.S. fishery is the most regulated in the world, setting the world standard, and the Council does not want to prejudice U.S. fishermen. He supported alternative 2, noting that economic impacts and the importance of sustaining the fishery need to be considered.

Dueñas said he was disheartened to hear of more regulations and asked if the fishery can continue if it hits 443 mt.

Fitchett clarified that the 443 mt is an accountability measure and the fishery can continue to fish, but would not be able to retain striped marlin. PIFSC will need to provide catch

limit tracking and has been successful with bigeye tuna. He also said there are no rollover provisions.

Dueñas said regulatory discards are a problem, noting that the fleet has limited bycatch because it retains many of the species it catches.

Fitchett said there will be regulatory discards regardless of which limit is chosen. About half of the striped marlin discarded are released alive.

Rice explained the regulatory discard issue of bluefin tuna in the Gulf of Mexico, noting 1,500 mt of yellowfin tuna must be harvested before one bluefin can be retained, which has led to high discards of bluefin tuna.

## **B. Electronic Monitoring: Best Practices for Implementation and Options for the Western Pacific Region**

Claire Fitz-Gerald, PIRO detailee from the NMFS Greater Atlantic Regional Fisheries Office, presented on common design questions and considerations for implementing an EM program in the Pacific Islands Region. She provided some general background information on typical EM system components, an overview of EM testing ongoing in the Hawai‘i longline fishery since 2017, and an overview of existing NMFS policy directives related to EM implementation. NMFS published an overarching policy directive on electronic technologies in 2013, which encouraged NMFS and the regional fishery management councils to consider the use of electronic technologies, including EM in fisheries monitoring, as a potentially more cost-effective and sustainable means for science, management and compliance needs. NMFS subsequently published a series of policy directives specific to EM programs in response to questions that were raised by members of the fishing industry, EM service providers and stakeholders. The policy directive on cost allocation issued in 2019 provided a potential framework for allocating the cost of EM programs between NMFS and the industry. NMFS recommended it should be responsible for the administrative costs associated with EM programs, while the fishing industry should be responsible for the cost of sampling at sea. The policy directive on a third-party minimum data retention period issued in 2020 recommends a 12-month minimum retention period for EM data specifically held by third-party providers. The policy directive on information law issued in 2022 provides guidance on the application of the Federal Records Act, the Freedom of Information Act and the MSA 402(b) confidentiality provisions.

The Pacific Islands Electronic Technologies Steering Committee (ETSC), comprised of PIFSC and PIRO staffs, NOAA OLE, Council staff and fishing industry representatives, reconvened to inform what a potential EM program in the region might look like and define the scope of the program and data elements to be collected. The ETSC has met twice to date and discussed a number of topics including an EM program purpose and need, data gaps and necessary data collection elements, and needs for meeting management requirements. ETSC plans to continue considering these topics, keeping the Council informed of its progress.

Once a purpose and need is established, managers and scientists need to determine what data are to be collected, who manages the data, who pays for what elements of EM, frequency of camera usage, and who reviews the data. Funding mechanisms for existing EM programs around the country vary, but there are currently no EM programs with permanent government funding. The management of EM data may also vary depending on the entity that is receiving and

reviewing the data. Data requested and possessed by NMFS would become federal records and may be subject to Freedom of Information Act requests, but data held by a third-party provider (e.g., industry managing its own data) would not. Some EM programs in other regions require full coverage with cameras turned on for 100% of trips, whereas others only require partial coverage in which cameras are turned on for a subset of trips when the vessel is selected. Video review may be done as a census or an audit, depending on data needs and other specific program considerations. Based on experiences from other regions, successful EM program components include vessel monitoring plans, industry outreach and trainings, video reviewer performance standards and data specifications, IT infrastructure, data stream integration plans and performance monitoring.

Ramsey asked if machine learning has been considered for video review.

Fitz-Gerald said scientists across all regions, including those at PIFSC, are looking into machine learning to increase the efficiency and cost-effectiveness of their EM programs.

Soliai asked about the cost burden of EM systems to participating vessels.

Fitz-Gerald said cost for vessels would be contingent on the purpose of the EM program to be implemented as well as the data elements to be collected. On average, EM systems run roughly \$10,000, depending on the number of cameras and necessary system components. The Atlantic highly migratory species fishery's EM program that collects data on bluefin tuna catch and live and dead discards of sharks runs approximately \$280 per day.

Soliai said it appears to be a hefty bill.

Dueñas said while he recognizes the potential utility of EM as more conservation and management measures are developed, he is a proponent of dockside monitoring, which is less intrusive.

Dang wondered if machine learning could be utilized in the near future, noting considerable advances in the technology in other sectors and the potential ease of transferring the technology from identifying humans to identifying marine species. He said machine learning could reduce the cost, and development of options is needed to improve data collection and achieve conservation objectives.

## **C. International Fisheries Issues**

### **1. Western and Central Pacific Ocean Longline Management Workshop**

Fitchett reported on the Western and Central Pacific Tropical Tuna Longline Management Workshop held Nov. 1-2, 2022, in Honolulu. The workshop was co-convened by Simonds and Glen Joseph, Marshall Islands Marine Resources Authority, with a primary goal to identify key areas of consideration toward developing new longline measures within the WCPFC tropical tuna measure, taking into account the best available information. WCPFC Executive Director Feleti Teo was present, and members from the Pacific Islands Forum Fisheries Agency (FFA), Parties of the Nauru Agreement (PNA), SPC, and Australian National Centre of Ocean Resources and Security were representing international bodies. Also in attendance were agency representatives from Guam, American Samoa, the FSM and NMFS, and representatives from the

Hawaii Longline Association (HLA). The four themes of the workshop were: 1) Describing regional and operational characteristics of longline fisheries in the WCPO; 2) Zone-based longline management scheme and its compatibility with fisheries; 3) Needs from the scientific services provider; and 4) Management objectives.

Workshop participants came to agreement that many smaller longline fisheries, including the Hawai'i longline fishery, have different operational characteristics (e.g., crew sizes, vessel sizes, no transshipment) and monitoring compliance compared to larger distant-water fleets. Other considerations emerging from the workshop included the recognition that climate change remains a prevailing issue for Pacific Island fisheries and nations, and ongoing work to address climate change needs to be a high priority. Monitoring, compliance and surveillance capabilities also need to be considered in the next tropical tuna measure. The principle of transferability remains very important for some fisheries so one state can transfer fishing privileges to another. The workshop also documented the first step in acknowledging that the principle of compatibility is a key consideration if the WCPFC to develop zone-based or high seas longline measures. The next tropical tuna measure needs to consider mixed-fishery issues. Workshop participants mutually agreed on several management objectives including optimizing yield and catching fish efficiently, acknowledging the product quality of fresh fish fisheries for markets, ensuring food security for island communities, maximizing market value, promoting human rights at sea, minimizing impacts on other species, and providing accurate catch reporting.

The workshop was recognized at the 19th Regular Session of the WCPFC (WCPFC19) through an intervention made on the floor by Joseph, and the workshop report was submitted as a delegation paper. The workshop and its report were well received at WCPFC19 and the idea of more follow-up informal workshops was also favorable.

Soliai commended Simonds and staff for convening the workshop and said it will lead to traction for a new tropical tuna measure in 2023.

Simonds said this workshop was needed to get key individuals to the table to meet and talk.

Dueñas commended Simonds on the workshop, recalling the International Fishers Forum series that the Council supported in the past to bring countries together to understand the dynamics of conservation and mitigation measures. Dueñas also said ultra-low temperature vessels and sophisticated refrigeration systems have given foreign fisheries an edge over the United States. Dueñas said there were 500 foreign longliners in Guam during its peak.

## **2. Outcomes of 19th Regular Session of the WCPFC**

Fitchett and Jason Philibotte, PIRO International Fisheries Division, presented outcomes of the WCPFC19, held Nov. 27 to Dec. 3, 2022, in Da Nang, Vietnam.

Fitchett outlined meeting outcomes of interest to the Council. WCPFC members adopted a climate change provision, adopted an improved shark conservation and management measure which followed the Council's past recommendations, adopted a harvest strategy workplan and skipjack management procedure affecting U.S. fisheries that are Marine Stewardship Council certified, and developed a workplan for revising the tropical tuna measure in 2023. The stock statuses for WCPFC tropical tunas and South Pacific albacore are not overfished and not

experiencing overfishing, leading to approximately 60% of the global tuna supply. Fitchett reviewed fishery trends in WCPFC fisheries, noting most fisheries have stabilized and harvests are 2.6 million mt per year.

Philibotte described the adoption of measures and workplans at WCPFC19. A U.S. proposal cosponsored by the FFA to keep climate change as a standing agenda item at all WCPFC meetings and subsidiary bodies had unanimous support. The United States also cosponsored a proposal with Canada to remove wire leaders and sharklines in longline fisheries in waters south of 20 degrees north latitude. A proposal was introduced and adopted to revise the harvest strategy conservation and management measure allowing the WCPFC to adopt harvest control rules for the tropical tunas and South Pacific albacore before stocks fall below maximum sustainable yield levels. A workplan for South Pacific albacore was adopted to implement management procedures in 2024. Yellowfin tuna and bigeye tuna will have management procedures in place by 2026 and 2028, respectively. The roadmap will give the WCPFC a head start on this process with the recognition that the Western and Central Pacific Tropical Tuna Longline Management Workshop received providing a good starting point. Effective Jan. 1, 2024, all high seas fisheries will need to have some sort of electronic reporting system in place. The South Pacific albacore troll fishery will have a one-year deferment. WCPFC19 also agreed that transshipment observers will have 90 days to report on data.

Fitchett said history was made in the election of the first female executive director of the WCPFC, Rhea Moss Christian from the RMI. Josie Tamate of Niue was elected as the WCPFC chair, replacing Riley Kim. PNA and FFA are also led by women, Sanga Clark and Manu Roosen from the Cook Islands, respectively. The U.S. delegation and the Council are also led by women.

Soliai said the outcomes were positive and much needed, and he is optimistic a new tropical tuna measure can be successfully made. Soliai said the United States needs to support more workshops and continue to move quickly.

## **D. Advisory Group Report and Recommendations**

### **1. Advisory Panel**

Tam, Hawai'i AP chair, presented the group's report and recommendations.

*Regarding striped marlin*, the Hawai'i AP recommended the Council implement alternative 2 to set an annual catch target of 457 mt in U.S. longline fisheries, consistent with WCPFC conservation and management measures and previous Council action, with an annual retention limit of 434 mt as an accountability measure.

Tam said the AP recommended alternative 2 because there is a pending stock assessment. He also noted landings were low at one point because there was no sense in bringing striped marlin into the auction during COVID-19 when the auction was limiting loading to 10,000 pounds per boat per day. The closures of the NWHI also reduced impacts on the stock. More research is needed. These fish do not respect political boundaries and the true stock boundary is not defined by the stock boundary defined in the assessment.

### **2. Scientific and Statistical Committee**

There were no SSC recommendations.

### **3. Hawai‘i Archipelago and Pacific Remote Island Areas Standing Committee**

Ramsey reported that the Standing Committee deferred recommendations to the full Council meeting.

#### **E. Public Comment**

Theresa Labriola, Wild Oceans Pacific program director, provided public comment on the striped marlin action. Labriola said current BSIA renders the stock overfished and experiencing overfishing, and urged the Council to set an ACL no greater than that outlined in alternative 3 at a minimum, which recognizes the United States’ relative contribution to international overfishing of the stock. Alternative 3 addresses the increasing relative U.S. impact over time by reducing catch and there is a need to reduce Pacific-wide catch. She believes alternatives 1 and 2 would allow an increase in catch and is not consistent with the MSA. Labriola also asked the Council to consider a more conservative accountability measure than prohibiting retention for longline fisheries when 97% of landings limit is reached, such as the mandatory release of all live and healthy striped marlin, release of live striped marlin when 30% or 60% of an annual limit is reached, or quarterly limits. Labriola supports more research on striped marlin and removal of surface hooks in longline fisheries. Labriola also mentioned post-release mortality is variable and asked the consideration of dynamic protections for spawning grounds of striped marlin.

Eric Kingma, HLA executive director, provided public comment on striped marlin. Kingma said Congress was wise when including provisions on international stocks under MSA 304(i) and omitting an ACL process like domestic fisheries. Kingma noted the U.S. longline fishery is not on an equal footing internationally because most fleets in the WCPFC have very low observer coverage, and the veracity of data from foreign fisheries is unknown while the United States has well documented incidental catches. Kingma also noted the fishery has been below the alternative 3 catch level and the Council should not use the lower catch of striped marlin in recent years to put in a reduction. Kingma said it is most prudent to set the catch limit to 457 mt per year. On the previous day, a vessel landed 10 striped marlin and the value of that striped marlin catch was more than \$2,000, noting that with expenses and costs of production up 40%, it matters to peoples’ livelihoods. Kingma also discussed the impact of the Billfish Conservation Act on the Hawai‘i longline fishery’s ability to utilize striped marlin, and noted that much of the striped marlin caught in the Hawai‘i fishery comes from waters not included in the stock assessment boundaries. Kingma also commented on EM implementation for the longline fishery, noting that HLA recognizes EM as an important monitoring tool and has been supporting pilot projects, but cost is an issue. The monitoring objective for the fishery’s PIROP is protected species, therefore NMFS should be required to pay the cost according to its cost allocation policy directive. He noted that while HLA could consider some sort of cost allocation scheme in the future, it currently does not have funds to dedicate toward EM implementation.

#### **F. Council Discussion and Action**

*Regarding the WCNPO striped marlin catch limits, the Council took into consideration the following:*

- a. **Uncertainties noted in the current 2019 WCNPO striped marlin stock assessment and by the ISC Billfish Working Group related to historical catch, stock structure and life history inputs, among other referenced issues;**
- b. **The historical relative impact of U.S. fisheries on the stock is 6% based on total historical catches and 14.8% based on recent catches, while catches by U.S. fisheries have not demonstrated a trend, as indicated in the 2019 stock assessment;**
- c. **Other fishery management actions on U.S. fisheries have likely further reduced the relative impact of U.S. fisheries on WCNPO striped marlin stock as presented, including the use of circle hooks for which published studies demonstrate reduced mortality, the prohibition of wire trace in U.S. tuna longline fisheries which published studies indicate may reduce mortality and catchability, and spatial closures to areas with higher historical catch rates of striped marlin.**

**Therefore the Council recommended the development of a regulatory amendment to set a WCNPO striped marlin catch limit of 457 mt applicable to U.S. fisheries, consistent with previous Council action and a WCPFC measure. As an accountability measure, the Council recommends the specification of an annual retention limit of 443 mt of WCNPO striped marlin applicable to the Hawai'i-permitted U.S. longline fishery. If the 443 mt limit is reached, the U.S. longline fishery would not be allowed to retain WCNPO striped marlin, whereas other fisheries would not be restricted. The Council will evaluate this catch limit again when a new stock assessment is provided, anticipated in 2023.**

**Further, the Council deemed 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 Chairman 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 Chairman 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.**

Sakoda said the State of Hawai'i at the 185th meeting voted against the 457 mt limit because it was not sure that it would address the obligation under MSA to address the relative impact. He said the State of Hawai'i will vote no, as he was not sure if anything has changed since then and the State prefers alternative 3.

Makaiau said he will be abstaining as this is final action.

*Moved by Dueñas; seconded by Sword.*

*Motion passed with Sakoda opposing and Makaiau abstaining.*

*Regarding EM, the Council recommended the ETSC and Pelagic Plan Team begin development of options and scenarios for the implementation of EM in U.S. longline fisheries in the Western Pacific Region by September 2023.*

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

*Regarding international fisheries issues, the Council requested financial support from NOAA for a series of informal follow-up workshops on western and central Pacific longline management to run in concert with workshops by WCPFC on development of a new tropical tuna measure in 2023.*

Makaiau said NMFS will be abstaining as the recommendation involves a commitment of resources.

*Moved by Dueñas; seconded by Sword.*  
*Motion passed with Makaiau abstaining*

*Regarding international fisheries issues, the Council directed staff to engage with the RMI and other WCPFC members to refine follow-up workshop objectives and identify a facilitator for these workshops.*

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

## **XII. American Samoa Archipelago**

### **A. Motu Lipoti**

Sword reported that for American Samoa, fuel sales are an important indicator of the number of fishing boats stopping into the port. Fuel sales have dropped approximately 60% since 2010. As the purse seiners make up 85% of the fish processed at the cannery in American Samoa, their use of fuel indicates the amount of time overall that they stop in Pago Pago Harbor. There are currently 11 U.S.-flagged purse seiner vessels, compared to 45 at its peak.

Several Taiwan Fong Chun Formosa longline vessels have recently been coming in to deliver albacore tuna, and USCG has been helpful in making their entry into American Samoa hassle free. The deliveries have helped the cannery pack white fish meat, and Sword said they are trying to encourage the Taiwan-based longline vessels to come back to American Samoa so there is an alternative to the purse seiners.

Under the leadership of Chief Executive Officer Carlos Sanchez, the shipyard brought up approximately 25 different boats on the 3,000-ton capacity dry dock. The vessels have included commercial vessels from Samoa and Tonga as well as a couple of Asian longline boats. Plans are underway to widen the slipway so the shipyard can do work on the exterior of purse seine vessels more easily. The shipyard hopes to service the first purse seiner in 2023. Sword also reported that the Department of Defense has been looking at the shipyard, and the agency hopes to have a



cutter placed in American Samoa to help patrol the U.S. EEZ around the territory, as well as the PRIMNM expansion.

Recreational fishing has had a busy past month, with a two-day tournament called Buds and Suds held Nov. 25-26, 2022, in which up to six boats from neighboring Samoa participated in addition to approximately 11 boats from American Samoa. More than 3,000 pounds of weighable fish were caught in the two days, which did not include fish that were taken home. The fish was sold to local vendors, hotels and restaurants, with proceeds going to Hope House, which is managed by the Catholic Church taking care of the elderly. Participants also reported a larger number of shark predations occurring during this tournament than in previous years. The I'a Lapoa tournament will be held in April 2023 for the first time in three years, and will include eight boats coming in special freight weight from New Zealand.

The Super Alia is currently being built in the Seattle, WA area. The first one will be experimental, and they are looking for people to run the first boat when it arrives in American Samoa in mid-2023. The Super Alia is designed after the local alias and can be used for sport fishing or commercial fishing.

## **B. Department of Marine and Wildlife Resources Report**

Domingo Ochavillo presented the DMWR report, highlighting recent work it has been coordinating with SPC staff to utilize available tuna fisheries reporting platforms also being used by other countries. Ochavillo presented a figure showing data of catch offloaded at the American Samoa cannery by purse seine and longline vessels, which showed a significant decline through time. The albacore CPUE data for American Samoa from the platform also showed a declining trend, consistent with data presented in the Pacific Pelagic FEP Annual SAFE Report. DMWR has also been tracking fish received by the cannery, which has declined 15-20% since 2018. Data also showed an increase of miscellaneous fish species received by the cannery, and DMWR is interested in looking at this further as they may be a good fish source to support the community.

The boat-based creel survey data for 2022 show that bottomfish fishing landed the least amount of catch, indicating that the fishery has significantly declined. Nearshore subsistence fisheries accounted for approximately 33,000 pounds, and miscellaneous catch from the longline fishery accounted for 44,000 pounds, showing that the tuna fishery drives the economy and also sustains the community.

Shore-based creel survey data for 2022 show around 30,000 pounds of fish caught, with most coming from rod and reel, followed by enu traps (a traditional fishing method) and gleaning. During the COVID-19 social restrictions, there was more shore-based and subsistence fishing compared to other years. Coral reef fishery landings from Western Pacific Fisheries Information Network data show a decline throughout the years, with the exception of the uptick during the 2021-2022 COVID-19 restrictions.

Data analysis has been completed for three fish species in the population genetic research for the Samoan Archipelago. Samples were collected from Savai'i, Upolu and Apia in Samoa as well as Tutuila Island in American Samoa, and analysis results show that the fish targeted by fishermen in these areas are basically one genetic stock. The implication is that there should be coordinated management for these coral reef fisheries. DMWR has also started to collect and

analyze data from Manu‘a Island and Rose Atoll, and started collecting shallow bottomfish species samples.

The most notable achievement of the Community-Based Fisheries Management Program in 2022 was reengaging communities to be part of the program and three villages signing a cooperative agreement with DMWR. The other notable achievement was that staff underwent scuba training in Samoa, increasing staff capacity for conducting underwater surveys.

Samoa will be providing American Samoa with 500 giant clams, and DMWR is working to develop quarantine protocols so that there will be no disease introduced into the territory. The clam transport is scheduled for the first quarter in 2023. As part of the giant clam population recovery, DMWR worked with the University of Hawai‘i staff and graduate students to update giant clam surveys in American Samoa. Data from NOAA grid diver surveys from 2002 to 2015 show that Rose Atoll and Ta‘u have higher abundance of giant clams, whereas the quantity around Tutuila, Ofu and Olosega is low. Swains Island has very low giant clam abundance, indicating that factors such as the influence of climate may be affect population size, rather than fishing pressure alone. DMWR is interested in figuring out what kind of variables are influencing the abundance of giant clams in the territory and developing a giant clam population restoration plan.

Three FADs are currently active, and staff have made minor repairs. DMWR has ordered around five FAD units from New Zealand and hopes they will arrive before the next fishing tournament. DMWR is also conducting more education and outreach activities to prevent vandalism of the FADs.

Regarding enforcement, officers boarded and inspected five vessels, most of which were domestic vessels. Officers are also monitoring containers of albacore tuna at Star Kist and Samoa Tuna Processors docks, and conducted land and sea patrols in the last quarter.

Rice asked about the cost of purchasing and deploying FADs.

Ochavillo said each unit costs approximately \$4,000 to \$6,000 to purchase and cost of deployment depends on how it is coordinated. Deployment cost is free if coordinated through the port, but otherwise \$3,000 to \$4,000 is budgeted for deploying each unit.

Rice asked how well the FADs are working.

Sword said the FADs work well, noting that DMWR does a great job in prepping the FADs for tournaments. Sometimes two weeks before the tournament DMWR will dive down and tie up fronds underneath, which works well. During the last tournament, a lot of fish were caught around one of the FADs, and a month earlier mahimahi were being caught at another FAD.

Rice asked whether adding structure underneath the FADs makes a big difference.

Sword said the structure added a couple of weeks before the tournaments works really well, whereas on normal days, catches at FADs can be hit or miss.

Guthertz asked why the FADs get vandalized and by whom, noting that there are also a lot of problems with the FADs on Guam.

Soliai said bigger yellow buoys on the FAD are being stolen. Somebody is taking the time to dive there, disconnect and remove the bigger buoy from the whole FAD, and then reattach the strand to secure it, but DMWR does not know why or who is taking them. The agency has looked at some VMS data to see which vessels were around that area, but it has not been able to identify a vessel. It is likely some foreign longline vessels that are in the area passing through, and perhaps taking them to use as part of their fishing gear, but it is unconfirmed.

Ochavillo said DMWR installed a satellite buoy for some of the FADs to determine whether these FADs are working. The agency has noticed that there are yellowfin and bigeye tuna and possibly skipjack tuna hanging around the FADs, but staff still have not figured out how to catch them. DMWR has considered some kind of vertical longlining training for its staff in the future so the FADs can be used more effectively to catch those fish.

Muña-Brecht asked if the FADs are federally funded through USFWS.

Ochavillo said yes.

Muña-Brecht asked for confirmation that DMWR received a waiver to be able to order the FADs from New Zealand using federal funds.

Ochavillo said yes.

Dueñas said he was glad that the foreign longliners that are fishing for albacore are dropping fish off in American Samoa, noting that Guam had approximately 500 foreign vessels at its peak because of the proximity to Japan to send sashimi-grade tuna, but most have left. Many of the foreign vessels in the earlier days were fined for landing on Guam by the foreign countries under which they were licensed. With the shark-finning prohibition and other regulations, foreign vessels no longer want to land on Guam. He asked whether the same regulations on penalties for foreign vessels that land in American Samoa are being imposed by the other countries surrounding American Samoa. If so, he suggested those may be best negotiated under the South Pacific Tuna Treaty to allow the penalties to be waived so that American Samoa's canneries can have fish available, and hopefully some day in the future, Guam can provide tuna loins again. Dueñas also expressed concern with the United States providing \$70 million to Pacific Island nations that will continue to penalize and make the U.S. fishery suffer. He asked how many vessels are participating in the American Samoa bottomfish fishery, noting that the last time he was in American Samoa there was only one alia left. Dueñas also expressed concern with the impact of military activity and associated sedimentation on Double Reef, where there are a large number of juvenile giant clams of several different species.

Soliai said he does not think there are any prohibitions for foreign fleets delivering to American Samoa, noting there is likely some common misconception as he had also recently heard concerns from RMI contacts about there being prohibition of direct delivery to American Samoa by foreign vessels.

He said American Samoa welcomes any vessel that is willing to deliver to the territory and land its catch in American Samoa. The cannery has a tax exemption from the local government that allows and encourages vessels to deliver their catch to the local cannery. The only drawback some years ago was the feeling of the overzealous USCG regulations, but that has

changed in the past five years with American Samoa escalating the concerns to USCG Headquarters in Washington D.C. about how the enforcement efforts were impacting deliveries, and as a result there has been an increase in those foreign vessels coming back to the territory.

Dueñas clarified that the penalty is coming from the countries that licenses these vessels, and they have a penalty clause in their license agreement that prohibits them, or discourages them from landing in ports outside their zone.

Ochavillo said the bottomfish catch has declined in the last few years, with total bottomfish catch at approximately 1,000 pounds and BMUS approximately 400 to 500 pounds, which is much smaller than the ACL of 5,000 pounds. He added that DMWR is interested in planning to revive its giant clam trade.

Tenorio asked for clarification as to whether the bottomfish resources have declined or the bottomfish activities have declined.

Ochavillo said bottomfish fishing activity has declined, noting there is only one full-time commercial bottomfish fisher.

Soliai provided additional updates related to American Samoa fisheries and DMWR activities. The StarKist Samoa cannery has a new chief executive officer, Chae-Ung Um, who will replace Andrew Cho as of January 2023. Production has improved to approximately 400 mt per day over the last several months, in large part supported by the guest workers. However, production is still down approximately 25% over the last two years because of COVID-19. There is some discussion about possibly changing to three shifts next year, a positive sign as far as the investments into the cannery.

Regarding CARES act funding, reviews for American Samoa are still pending and will be done after reviews for Hawai‘i and California are completed. Soliai anticipated that some relief will be provided to the eligible applicants in early 2023.

The Two Samoa Talks between American Samoa and Samoa is now called the Atoa o Samoa. Key outcomes in the October 2022 meeting were the highlighting and underscoring the importance of the fishery sector in food security and economic development of both countries, and tying that into ensuring that the viability of the StarKist cannery is maintained, noting that approximately 80-85% of the cannery’s workforce are citizens of Samoa. The two governments acknowledged the importance of working collaboratively at the regional level within the international bodies, namely the WCPFC. Samoa is supportive of American Samoa’s request to join the South Pacific Group, and working together with those six island countries on albacore. Furthermore, the two governments acknowledged the need to improve the performance of the local alia longline fleets, which is also in decline in Samoa. Another key outcome was Samoa’s willingness to support aquaculture and inshore development projects in American Samoa, including the giant clam and seaweed farms.

DMWR completed the joint bottomfish data workshops in Tutuila and Manu‘a with PIFSC Fisheries Research and Monitoring Division over the past several months. The WPSAR review for the next stock assessment will be held in American Samoa in the first quarter of 2023. Soliai acknowledged and thanked PIFSC for recognizing the importance of bringing the review meeting to the territories.

There is a request from the local longliners to address the difficulty in recruiting U.S. masters for vessels. There will be forthcoming requests to try to find some relief for them, because the regulation is hindering progress on their side.

American Samoa has not heard anything about the Pacific Remote Island Coalition proposal to expand the PRIMNM. There has been no information in response to the letters from Governor Lemanu Mauga and Congresswoman Amata Radewagen expressing their opposition. In November 2022, the governor also sent a NOI letter to file suit based on the proposed rulemaking on the ELAPS issue, but no response has been received to date. The proposed action may have a negative impact on the U.S. purse seine fleet based in American Samoa and supply direct delivery fish to the cannery, which would have a negative repercussion on the territory. The WCPFC tropical tuna measure is up for review and discussion at the December 2023 meeting, and American Samoa is hoping to get some headway prior to the planned workshop in June 2023. American Samoa's request is for the purse seine fleet based in American Samoa to be regulated as a locally based fleet. There are benefits afforded to Small Island Developing States and Pacific Island Countries that have charter agreements with foreign fleets, and American Samoa could benefit if the fleet is recognized as such.

Simonds asked if the 2015 request to NMFS about American Samoa being treated as a Small Island Developing State is dead in the water, noting that NMFS said it was going to work on this in April 2022.

Soliai said it was his understanding it was not going to go anywhere. It was still on the unified agenda earlier in the year, but has since been removed.

Malloy said NMFS is currently pursuing that particular rulemaking. She emphasized that NMFS is eager to work hard toward a tropical tuna measure in 2023 that gives special recognition to the purse seine fleet in American Samoa. The agency already started by having meetings since staff returned from Vietnam to debrief what happened in 2022 and to set the stage for beginning work in January well before the first draft is supposed to come from the WCPFC chair. Malloy said NMFS is fully aware of the concerns about the petition to expand the PRIMNM. The agency has been asked to provide some preliminary statements about the impacts of a potential expansion, and Malloy was able to offer a lot of the information that the Council had put together, as well as some of the information that NMFS provided back when the first PRIA expansion occurred. She also said she is going to continue to work to ensure those concerns are elevated to the right ears. Malloy said there will be some communication forthcoming from the Administration in response to American Samoa's NOI.

Simonds said it will be nice to receive a response on the NOI, because the Council has also been writing official correspondence on the issue but had not received a response. She called on Fitchett to report on what was discussed in the longline workshop related to this issue.

Fitchett said based on discussions at the workshop and on the margins at the WCPFC meeting, it would be preferable to have some sort of formal process that would recognize U.S.-flagged vessels to offload, which is similar to what NMFS's proposed rulemaking would do. The preference would also be to have a provision in which any vessel, either foreign or U.S., that offloads a significant percentage of its catch in American Samoa would not prejudice vessels based on flag that have a history of offloading in American Samoa.

Soliai said the American Samoa Government has proposed local legislation to create a landing license for U.S. purse seine vessels. The purpose for the license is to recognize the purse seiners that are supporting the U.S. and American Samoa economy in the event that they are creating the database and a record of those vessels so that when they go to the larger WCPFC discussions, they will have that record of which vessels are supporting the economy. He anticipates that it will be reintroduced in 2023 and move through both chambers in January 2023. He also noted that NMFS for the first time listed American Samoa as the fifth largest total tonnage in fish production in the United States or Territories, which gives more leverage for people to appreciate what the canneries are doing for the nation.

Dueñas said he commends American Samoa's efforts to create a local landing license. He said in the past, he was sent to sit in on the meetings with FFA, and suggested that such engagement be revisited to provide more opportunity for dialogue with the neighboring countries. Regarding the issue of the required U.S. masters and engineers, he said in the past when the U.S. purse seine fleet expanded, Congress provided a waiver on that program.

Simonds said regarding continuing participation in the FFA meetings, the Council has observer status with the FFA and used to send members to attend the meeting, but has not sent anyone over the last six or seven years. She also spoke to Joseph, who welcomed having Council representatives at the FFA meetings. Simonds said a recommendation from the Council to continue this observer status is in order.

Sword said with that there are people capable of getting their master's license, but it is a long, tenuous process to fulfill the requirements, especially for American Samoa. He hoped that USCG can help with the process.

### **C. Western Pacific Stock Assessment Review Terms of Reference for American Samoa Bottomfish Stock Assessment**

Carvalho, PIFSC, presented the background information for the American Samoa Bottomfish Stock Assessment Review. A new benchmark stock assessment is due February 2023 for all 11 species in the American Samoa BMUS, with stock status to be provided for each individual species. The previous 2019 assessment was conducted for all species as a complex. Carvalho provided an overview of the American Samoa Bottomfish Stock Assessment Improvement Plan developed jointly by PIFSC, the Council, DMWR and PIRO, to identify key steps to improve the science to support management of the BMUS. These included exploring available data for the stock assessments, which involved producing more than 300 pages of scientific literature regarding creel survey data in American Samoa in 2021 and 2022. The reports concluded that the information being used to expand the creel survey data for catch and effort estimates was BSIA, and contained an in-depth exploration of all the data available for bottomfish in the territory. The result of the data exploration was shared with the community through two data workshops on Tutuila and Manu'a. This was followed by data analysis and then a return to the community to share the changes made and lessons learned from its concerns. PIFSC staff traveled to the territory in 2022 and held several community meetings to gather feedback, and describe the results of the data workshops and data exploration.

The resulting benchmark assessment will go through a WPSAR process in February 2023, which will be chaired by an SSC member and will have two additional reviewers from the

Center of Independent Experts. Marc Nadon and Megumi Oshima, PIFSC, will present the stock assessment to the reviewers over five days. PIFSC will bring the WPSAR report together with the Stock Assessment Report before the SSC and the Council for review.

Fitchett, Council staff, presented the WPSAR Terms of Reference for the American Samoa bottomfish stock assessment. The WPSAR panel will first evaluate a series of technical and front-end issues, including whether the data considered for inclusion in the assessment, CPUE standardization, and assessment models are appropriate, and whether decision points and input parameters are reasonably chosen. Regarding uncertainty and stock status determination criterion, the reviewers will look to see if the report outlines the sources of uncertainty and whether they are adequate. The WPSAR Standing Committee confirmed that the final results can be scientifically sound, even if a status determination criterion cannot be inferred. The WPSAR panel will also evaluate whether the methods used on the future population state are adequate, the choice of indicator species is appropriate and the results can be used to address management goals in the relevant FEP. The WPSAR panel will develop a report addressing the Terms of Reference and including suggestions for needed improvements and research. The SSC nominated Erik Franklin, University of Hawai'i, as the WPSAR chair and Martell as backup WPSAR chair.

Rice asked if the data collection has improved and whether there is new data available since the last stock assessment, noting that getting accurate data was a big issue when the Council was working on this matter two years ago. He further noted that Ochavillo reported there is currently only one commercial bottomfish fisherman in American Samoa, and the rest of the data are from recreational or subsistence fishermen.

Calvalho deferred the question about data collection improvements to DMWR data collectors, but said the treatment of data has improved as a result of the data exploration and data workshops, through which PIFSC was able to identify issues not addressed in the 2019 assessment. From 2016 forward, much of the information from the evaluation perspective has been good in terms of submission and issues with the data. There is confidence that the data analysis received better treatment before it goes into the stock assessment. Improvements were made since the last assessment but there is still work ahead. Data collection improvements are a top priority for PIFSC and DMWR, and they are working on many fronts to improve fisheries science, data collection and assessment as well as discussions with PIRO on management options.

Dueñas said Guam's small fishing community decided to take a survey of the data collection program. Of the preliminary 30 fishermen who responded, five were removed because they were shoreline fishermen. The other 75% had an average of 30 years of fishing in Guam, bottomfish but do not do so exclusively and will troll when pelagic fish are in season. The average number of intercepts by creel surveyors was three, or one survey intercept every ten years. When this percentage is compared to the ACL of 31,000 pounds for Guam, questions arise as to who the surveyors talked to and whether experienced fishermen are surveyed. He expressed concern with how the efficacy of the data collection program can be determined through the WPSAR Terms of Reference. The CNMI should be commended because its fisheries staff help and cooperate with fishermen, including during the fishing derbies, whereas in Guam, there is one NMFS fisheries biologist, Eric Cruz, who helps with fishing tournaments. Activities like these are where there is interaction and trust among fishermen. The agencies need to talk to the fishermen, cooperate and show them they are a part of the community, and listen to the concerns

and challenges of a community trying to comply to provide good data. Dueñas also said American Samoa's low bottomfish ACL of 5,000 pounds is a concern. He expressed support for the WPSAR process, which makes the assessment process more transparent, but said if it is garbage in, it will be garbage out. A NOAA vessel with local fishermen on board once fished for bottomfish on the northern banks but could not catch anything, whereas the cameras that were sent down showed an abundance of fish, but somehow the information from the camera has not been publicized. He said the fishing community should be allowed to explain what is happening in its fisheries.

Gourley commended Carvalho for having a good plan for the analysis and a different one for the assessment than the one produced in the 2019. He agreed with Dueñas that data is most important, noting that similar results would be expected if the data are still the same. Gourley asked whether there is life history information for all 11 species included in the American Samoa benchmark assessment.

Carvalho said for the current assessment, PIFSC had to use the available data to meet the timeline, which meant that there is no local life history information available for many of the species. PIFSC Stock Assessment Program and LHP had to decide on the best alternative to use for the stock assessment, and used the best available methodology and life history information. He said this is why there is a need for a strong presence of life history research in American Samoa.

Gourley asked whether there is a threshold whereby the BSIA is evaluated. He asked if there is a dataset available, whether a BSIA determination will always occur even if the dataset is not the best, or whether there are situations in which a dataset is determined to be unusable.

Carvalho said when a stock assessment is presented for review by the Center of Independent Experts, it will evaluate not only the stock assessment model, but also the input information, including a full description of the 11 MUS, the data used, any limitations and improvements from 2019, any issues found, and reasons for decisions to remove or keep certain datasets. PIFSC also spent the last two years subjecting the data to the same level of scrutiny as it does with stock assessments, and produced the technical report on the creel survey design and expansion methods. The WPSAR in February 2023 will provide reviewers with enough information about the data, how it was treated and what was changed since 2019. The WPSAR panel, based on the Terms of Reference, can say whether there are problems with the data and if a proper stock assessment cannot be done using that data. He said PIFSC's job is to be fully transparent about the issues, the changes made and to propose a certain stock status.

Jones, PIFSC, said the life history for all 11 species have not yet been worked out. Work continues across American Samoa, Guam and the CNMI. PIFSC's marching orders is the FEP with 11 MUS in American Samoa and 13 MUS in Guam and the CNMI. There was a delay due to COVID-19, with no travel to American Samoa until November 2022. A shore-based approach is planned to sample from the fishery and coordination is ongoing with Ochavillo and Soliai. Jones said this is an ongoing process with continuous improvements and constant reviews to improve the parameters that go into the assessments. PIFSC will continue to update the next benchmark assessment with the latest life history information available. For each individual species, there could be some life history already worked out, looking at growth and age at maturity or length at maturity.



Sword asked if PIFSC was able to get life history information from neighboring Samoa.

Jones said when PIFSC looks at particular species, information from other areas can be considered and used if it has already been worked out, especially in the Indo-Pacific. It is common practice to use life history parameters from nearby regions in the Indo-Pacific. The stock assessment itself will not look at information from Samoa as the assessment looks at the fishery and the information that is derived from the fishery in American Samoa, but information on life history parameters can be based on information from anywhere throughout the Indo-Pacific.

Dueñas said he has been personally involved in the biosampling LHP with the GFCA for 10 to 12 years. Observations, including the gender of the fish are logged for reef fish to deep bottomfish. Otoliths from onaga were collected with more than 100 otoliths sitting in the freezer with no one interested in size distribution or the growth rate. The GFCA also has gonads, eggs, and sperm samples, all of which are logged. Scientists conducted 10 years of research and concluded the onaga mature at seven pounds and only reproduce during the summertime, but Guam's fish are more prolific reproducers, being at the same latitude north as American Samoa is south. He only hears numbers from scientists that are questionable, but nothing about the advancement on the data that has been collected to determine spawning potential ratio, or growth rate in the report. He said American Samoa should be honored by giving them a \$10 million laboratory promised by NOAA over the past 15 years, because the American Samoa people are being punished and told to control their fishery when there is only one commercial bottomfish fisherman. He said NOAA should show equity, noting that it is a \$50,000 fishery at most, likely much less than federal employees' salaries.

Jones said Dueñas's comments are appreciated but unequivocally no one at PIFSC, including stock assessors, are in the business for overfished and overfishing. He said PIFSC is under the Department of Commerce, fishing should take place, and PIFSC is working transparently, communicating and engaging to improving the process. He asked Dueñas to work together to improve the process.

Dueñas said he will.

Soliai said he attended the meeting in 2019 where the previous stock assessment was presented, which was before he became the DMWR director. He saw how contentious it was and he apologized three years later for his comments. He said while the stock assessment report is still pending, it sounds promising. As the DMWR director, he recognized there was fault with the data and that both American Samoa and PIFSC are to be blamed if there is any blame to be assigned. With PIFSC, the interpretation and misidentification of some of the species were part and parcel to the problem. He said there is now a new development regime that is heading in the right direction and he appreciates the effort being put out. He is hopeful that when the report is reviewed that it will be better than it was three years ago. Regarding life history, he reiterated the importance of including the local agencies in the work and that all are heading in the right direction. All must work together as that helps develop capacity for the territories and help PIFSC's work be more efficient.

#### **D. Advisory Group Report and Recommendations**

##### **1. Scientific and Statistical Committee**

Kobayashi, SSC member, presented the SSC recommendations.

*Regarding the WPSAR Terms of Reference for the American Samoa bottomfish stock assessment*, the SSC recommended that the Council endorse the Terms of Reference. Erik Franklin (lead) and Steve Martell (backup) have volunteered to chair the WPSAR committee.

**E. Public Comment**

There were no public comments.

**F. Council Discussion and Action**

*Regarding the WPSAR Terms of Reference for American Samoa bottomfish stock assessment*, the Council **endorsed the SSC recommendation to approve the Terms of Reference for the American Samoa bottomfish stock assessment and directs staff to initiate the review.**

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

*Regarding supporting American Samoa fisheries*, the Council **requested U.S. departments and agencies to assist and support American Samoa in its collaboration with Samoa in “Atoa o Samoa.”**

Soliai said the the Two Samoa Talks is now called Atoa o Samoa.

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

*Regarding supporting American Samoa fisheries*, the Council **directed staff to prepare a letter reiterating its recommendation that NMFS proceed with rulemaking to distinguish an American Samoa purse seine fleet.**

*Moved by Sword; seconded by Dueñas.*  
*Motion passed with Malloy abstaining.*

*Regarding supporting American Samoa fisheries*, the Council **directed staff to prepare a letter to the USCG with rationale to provide a waiver on requirements for a U.S. Masters certification for operators of American Samoa longline vessels.**

Dueñas said requesting a waiver is not new, noting that many years ago a request was made to the USCG to extend the life of the Solas Pack for 18 months because of the travel time and the expense of going up to Hawai‘i to be recertified.

*Moved by Sword; seconded by Guthertz.*  
*Motion passed with Malloy abstaining.*

*Regarding supporting American Samoa fisheries*, the Council **directed staff to prepare a letter requesting NMFS expedite discussions on a tropical tuna measure leading up to the**

**20th Regular Session of the WCPFC, noting the urgent need to recognize that U.S.-flagged vessels based in American Samoa are to be distinguished as American Samoa vessels entitled to privileges under Article 30 of the WCPFC Convention.**

*Moved by Sword; seconded by Dueñas.*

*Motion passed.*

**XIII. Administrative Matters**

**A. Financial Reports**

Simonds reported on the uncertainties of the Council budget and addressed two funding issues regarding the Council Coral Reef and Protected Species staff. Funding for those positions, such as annual salary and fringe benefits have been supported instead by the Administrative award. Simonds plans to meet with Jennifer Koss, NOAA Coral Reef Conservation Program, in January 2023 to discuss the program's funding and also plans to meet with Brown and Malloy regarding the programs and future funding early in 2023.

Simonds asked members to also consider reducing the number of Council meetings from four to three meetings a year or having three in-person meetings a year and one virtual meeting.

**B. Administrative Reports**

Simonds reported that in addition to the Council members and staff, other Council advisory bodies will be receiving training on the finalized model policies "Addressing Allegations of Harassment in the Regional Fishery Management Council context" developed by the CCC. The initial training course invites were distributed from NOAA via the Everfi Foundry Company. Training is expected to be completed by Feb. 28, 2023.

**C. Ethics Training**

Sheffield provided the annual ethics training presentation. The topics included Rules of Conduct (50 CRF 600.225), Conflict of Interest and Recusal (MSA Section 302(j) and 50 CFR 600.225 and 600.235), Lobbying and Political Campaigning. The Council was presented with questions and hypotheticals on applicable regulatory and statutory citations for the Council member ethics training.

Under the Rules of Conduct, Council members are subject to most federal criminal statutes and are responsible for maintaining high standards of ethical conduct.

Appointed Council members and SSC members are considered federal employees under the Criminal Conflict of Interest statutes. Those Council members must provide full public disclosure on relative financial interest and recuse from voting on decisions that would have a significant and predictable effect on those interest. Ownership in, or employment with, any company engaged in harvesting, processing, lobbying, advocacy, or marketing activity that is being, or will be undertaken in any fishery under the jurisdiction of the Council must be disclosed. Council members must also disclose employment with, or service as an officer, director, or trustee of an association or organization whose members participate in the fisheries;

and disclose entities that participate in a fishery and that own, or are owned by, their employer or their company.

Council members would need to recuse themselves from voting when a decision would have a significant and predictable effect on a financial interest required to be disclosed. Sheffield stated that members can contact the GCPI for review of the office's recusal determination or questions about the financial interest disclosure form.

Council members, Council employees and contractors are prohibited from using grant funds to directly or indirectly lobby Congress and State Legislatures. This includes influence of federal, state, or local elections; influence or attempt to influence the introduction of federal or state legislation; and prepare, distribute or use publicity or propaganda to influence legislation, or urge members of the general public to contribute to or participate in any mass demonstration, march, rally, and fundraising drive, lobbying campaign or letter writing or telephone campaign.

Under Political Campaigning, the Rules of Conduct state that no employee of the Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or nomination for any national, state, country or municipal elective office.

**D. Council Program Planning Report**

There was no report on this agenda item.

**E. October 2022 Council Coordination Committee Meeting Report**

Gourley referred Council members to the October 2022 CCC meeting report in their briefing materials.

**F. Council Family Changes**

Mark Mitsuyasu, Council staff, reported Michael Parke is retiring and will be replaced with Kisei Tanaka on the APT. Brown will replace Seki as the ex-officio member to the SSC.

**G. Meetings and Workshops**

There was no report on this agenda item.

**H. Standing Committee Reports**

**1. Executive and Budget Standing Committee**

Soliai referred Council members to the Executive and Budget Standing Committee report in their briefing materials.

**I. Public Comment**

There were no public comments.

**J. Council Discussion and Action**

*Regarding administrative matters, the Council approved the 193rd Council Meeting financial and administrative reports.*

**The Council directed staff to continue to work with NMFS to restore funding for the Council's protected species staff and program, capacity-building program, Annual SAFE Report coordinator and territorial science initiative; and send a letter to the assistant administrator for Fisheries informing her of the Council's efforts to work with NMFS PIRO and PIFSC regarding program and funding issues.**

Dueñas emphasized the need to fund the protected species coordinator position.

Malloy said NMFS will be abstaining from the second recommendation regarding funding.

*Moved by Dueñas; seconded by Sword.  
Motion passed with Malloy abstaining.*

*Regarding the FFA, the Council directed staff to write a letter to the director general of the FFA requesting the Council be reinstated with observer status in FFA meetings.*

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

*Regarding Council family changes, the Council appointed Kisei Tanaka to the APT replacing Michael Parke.*

**The Council appointed Tia Brown as an ex-officio member of the SSC to replace Michael Seki.**

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

*Regarding regional planning, the Council directed staff to work with the PIRO and PIFSC on strategic planning efforts to review and coordinate on program priorities, activities and funding.*

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

*Regarding capacity-building and fisheries development, the Council directed staff to review the U.S. Territorial Scholarship/Fellowship program for opportunities to expand the program scope to include technical fishery training opportunities (e.g., diesel and outboard engine mechanics, boat building, fiberglass fabrication).*

Dueñas said he endorses this motion as Guam is in need of boat mechanics.

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

*Regarding 2023 meetings, the Council directed staff to plan for four Council meetings, of which three will be in-person and one will be a virtual meeting.*

Malloy asked if there is a set schedule for the upcoming Council meeting locations as Coit is interested in attending the American Samoa and potentially the Mariana Archipelago meeting.

Soliai said the Executive Committee met to discuss the upcoming schedule along with this recommendation and decided that the American Samoa meeting will be held in June.

Simonds said the March Council meeting will be in the Mariana Archipelago.

Dueñas asked that Council members join physically so that the Council can have a more in-depth discussion on understanding the issues on the table.

*Moved by Guthertz; seconded by Sword.*

*Motion passed.*

#### **XIV. Other Business**

##### **A. Election of Officers**

Dueñas reported that Soliai agreed to have Gourley as the next chairman as he finishes out his term and that there is no disagreement among the body as a whole.

*Regarding Council Officers, the Council appointed the following members as its 2023 officers:*

- a. John Gourley, chair**
- b. William Sword, American Samoa vice chair**
- c. Anthony Benavente, CNMI vice chair**
- d. Manny Dueñas, Guam vice chair**
- e. Roger Dang, Hawai'i vice chair**

*Moved by Rice; seconded by Sword.*

*Motion passed.*

Soliai expressed his thanks and appreciation to the Council family and all federal partners as the outgoing chair.

[Meeting adjourned.]