



WESTERN  
PACIFIC  
REGIONAL  
FISHERY  
MANAGEMENT  
COUNCIL

**MINUTES OF THE  
187th MEETING OF THE  
WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL**

**September 21-23, 2021 Council Plenary  
By Web Conference and Host Sites:**

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Approved by Council:

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

Archie Soliai, Chair

Western Pacific Regional Fishery Management Council

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## **I. Welcome and Introductions**

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

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

Also in attendance were Council Executive Director Kitty M. Simonds; Fred Tucher, Elena Onaga, Kristen Placek and Sarah Sheffield from NOAA Office of General Counsel Pacific Islands (GCPI); and Justin Hospital of the Scientific and Statistical Committee (SSC) (designee for Chair James Lynch).

Soliai opened the 187th Council meeting with a prayer.

## **II. Oath of Office – Manny Dueñas, Matt Ramsey, Will Sword**



Tosatto swore Dueñas, Ramsey and Sword into office.

### **III. Approval of the 187th Agenda**

Solai announced that agenda item 9.C on Green Turtle Management will be taken up under the Hawai‘i and Pacific Remote Island Areas (PRIA) Archipelago section on day three.

The 187th meeting agenda was approved by general consent.

### **IV. Approval of the 186th Meeting Minutes**

The 186th meeting minutes was approved by general consent.

### **V. Executive Director’s Report**

Simonds presented the executive director’s report. Simonds welcomed the new members and said she looks forward to the lively discussions for the next three years.

Hawai‘i is at 66.5% fully vaccinated; however, the daily cases continued to rise. In August 2021, Governor David Ige said it was “not a good time for tourists to come.” This statement led to the 33% drop in the tourism industry. However, Mayor Rick Blangiardi launched the Safe Access Oahu. The mayor’s initiative requires proof of vaccination with the program’s QR code or vaccination card provided with State ID to enter businesses such as restaurants, gyms and theaters. American Samoa is at 60% fully vaccinated. On September 19, American Samoa had their first COVID-19 positive case, although they remain under a code blue, the lowest risk level. Hawaiian Airlines has resumed two monthly flights to American Samoa from Hawai‘i. She continues to wait for Hawaiian Airlines to include additional flights to have the upcoming December Council meeting in American Samoa. Guam is at 78.9% fully vaccinated, but positive cases are on the uptick, with hospitals at a critical point with intensive care units at maximum capacity. They remain at a level 4 destination, which means do not travel. On September 20, Guam had its first vaccinated tourist flight from South Korea. CNMI is at 81% fully vaccinated, with 263 confirmed cases of which 227 were from travel screening, and two deaths related to COVID-19. They still require travelers to quarantine at designated sites with a fifth-day testing requirement.

The U.S. Department of the Interior appointed two native Hawaiian, O‘ahu-born and raised, political appointees Sept. 1, 2021—Keone Nakoa as the deputy assistant secretary for Insular and International Affairs and Summer Lee Haunani Sylva as the senior advisor for Native Hawaiian Affairs. Nakoa previously served as the bureau chief of Office of Hawaiian Affairs, Washington, D.C., office. Sylva was the former executive director of the Native Hawaiian Legal Corporation.

Kelly Kryc joined NOAA September 13 as the deputy assistant secretary for International Fisheries. She filled the position currently held by Alexa Cole as the acting DAS, which Drew Lawler previously held.

In the 117th Congressional session, Reps. Jared Huffman and Ed Case introduced H.R. 4690, the Sustaining America’s Fisheries for Future Act that would amend the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This bill proposed changes that

include adding forage fish, like nehu and opelu, and Essential Fish Habitat (EFH) mitigation. Some provisions in the act directly affect the Council. This includes ensuring geographic representative of at-large member appointments, changing the marine conservation plan (MCP) process to require the Council to work with the governors when developing the MCP, and removing the Council from the Western Pacific Sustainable Fisheries Fund (SFF), which an advisory panel would direct made up of governor appointees. It would define subsistence as customary and traditional use, and prohibit the Council from lobbying the Biden Administration on proclamations and executive orders (EOs). This bill requires having a member with climate change expertise and a member without financial interest balancing fishing interest on the Council with conservation, science, non-consumptive and indigenous voices.

Rep. Raul Grijalva introduced H.R. 3764, the Ocean-Based Climate Solutions Act. This bill requires the Secretary of State, after consulting with the Secretary of Commerce, to develop a plan providing assistance, data and resources for identifying and establishing strongly protected ocean areas in areas beyond national jurisdiction (ABNJ). The Council hosted an ABNJ workshop with SSC member Ray Hilborn and United Nations Food and Agriculture Organization director in 2020, which recommended best practices for establishing marine protected areas (MPAs) from scientists, environmental nongovernmental organizations and other participants worldwide. The workshop proceedings are expected to publish soon. These bills will be discussed in further detail during the Program Planning section of the agenda.

The Council Coordination Committee (CCC) received a request from Reps. Huffman and Case's offices asking for its comments regarding H.R. 4690. The Council has also received a request from Rep. Kai Kahele for comments on H.R. 4690 and several other bills.

At the June 2021 Council meeting, Sam Rauch provided a review of several EOs including EOs 13985 and 14008 for advancing equity and justice for underserved communities. The Council responded to the EOs and expects a report from Susan Rice, Ambassador for Domestic Policy, in January 2022. President Joe Biden and Vice President Kamala Harris met at the White House with 13 Asian Americans, Native Hawaiians and Pacific Islander Civil Rights leaders Aug. 5, 2021. They focused on economy, immigration, voting rights and hate crime issues regarding underserved communities.

On March 11, 2021, the President signed the American Rescue Plan Act, a \$1.9 trillion economic relief stimulus package giving \$3 billion to the Economic Development Administration to invest in underserved communities. This investment includes commercial and recreational fishing, aquaculture, seafood marketers and communities that depend on marine resources.

Following the June 2021 meeting, the Council, Papahānaumokuākea Marine National Monument (PMNM), Office of National Marine Sanctuaries (ONMS) and NMFS PIRO staff met to discuss the Northwestern Hawaiian Islands (NWHI) monument's sanctuary designation. Council and PMNM staff will report on the status during the Hawai'i section.

The Hawaiian Islands Humpback Whale National Marine Sanctuary is updating its charter. The charter revision would move the Council and Office of Hawai'i Affairs from voting members to nonvoting members in its Sanctuary Advisory Council to be consistent with other councils. The Council was appointed as a voting member by virtue of the shared responsibilities,

as the Council has the responsibility for fisheries in part of sanctuary. Remaining a voting member is vital for the Council as our bottomfish fishermen operate in sanctuary waters.

Council and PIRO staff have been preparing the rule-making package for the regulatory assessment prohibiting wire leaders in the Hawai‘i deep-set longline fishery. Regarding the seabird action, the Council will receive a report on the second day of this meeting from Matt Carnes and Eric Gilman on the results of the tori line trials conducted through the region’s first experimental fishing permit (EFP).

The electronic reporting (ER) final rule was published in the Federal Register Aug. 5, 2021, and became effective September 7. The Hawai‘i and American Samoa longline fleets are now required to electronically report once they receive their tablets and training. The Council started working on this in 2014. As of late August, 115 of the 150 Hawai‘i longline vessels have transitioned over to ER. Last year, the Council contracted Kim-Dung Nguyen as the Vietnamese coordinator to ensure that Hawai‘i longline vessels and captains were equipped and trained.

The Council’s work relies on robust and up-to-date scientific information for its fishery management decisions. Council staff worked with the Pacific Islands Fisheries Science Center (PIFSC) and SSC members to update research priorities under the Magnuson-Stevens Reauthorization Act (MSRA), cooperative research, management strategy evaluation (MSE) and the SSC Three-Year Research Plan. Incorporating climate change into these priorities was one of the largest features of the plan. The Council continues to be in step with the Biden Administration’s efforts to mitigate the impacts to make fisheries resilient to climate change.

Territory bottomfish management has been on the Council’s agenda since the 1980s. The Council will take action on the rebuilding plan for the American Samoa bottomfish, preventing overfishing in the territories, and on the annual catch limit (ACL) for the main Hawaiian Islands (MHI) uku stock.

The Council will also discuss Hawaiian green sea turtle (honu) management under the Hawai‘i section of the agenda. The honu is listed as threatened under the Endangered Species Act (ESA). She referred to the PIFSC report section that notes that USFWS and PIFSC recently reported an increased nesting at FFS and in the MHI.

Following the 186th meeting, the Council sent a letter to NMFS General Council Enforcement Section and PIRO requesting the status of the settlement funds from illegal purse seine fishing by the Republic of Marshall Islands in the PRIA. The PRIA case was settled with a fine of \$89,370, which was turned over to finance and PIRO for processing.

## **VI. Agency Reports**

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

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

Tosatto presented the PIRO report, starting with several recent rulemaking actions. The electronic logbook requirement is effective and was put in place in a reasonably timely manner. Tablet deployment and training had started pre-COVID-19 and are still ongoing. The decision on the Pacific Pelagic Fishery Ecosystem Plan (FEP) amendment 9 is due in one week. The

amendment will modify the requirements and permits for the American Samoa Longline Limited Entry Program. The decision is on track with rule implementation to follow. Under the Western and Central Pacific Fisheries Commission (WCPFC) Implementing Act Authority, a framework to implement short-notice decisions by the WCPFC was put in place. During COVID-19, a number of decisions were taken intersessional and became effective immediately, such as the purse seine fishery observers and transshipment requirements. This framework provides the necessary authority to implement WCPFC decisions that are appropriately urgent in their timing and ensures that United States fisheries comply.

PIRO provided a more in-depth update on international fisheries programs in the written report. The intent is to provide more programmatic discussion for PIRO programs to give Council members a better understanding of the broad work that PIRO carries out in addition to providing support for the Council.

PIRO produced the draft Programmatic Environmental Impact Statement (PEIS) for a regional aquaculture program. A draft was shared at a series of public meetings throughout the summer. The public comment period is closed. PIRO staff will work with the Council staff to address those comments and come back to the Council with a final PEIS with supporting documents for the Council to consider for its decision-making.

Gourley asked when the coral critical habitat final rule will be issued.

Tosatto said that generally, the agency has a year from when the draft is published to solicit and consider comments. He noted that staff is working on the comments, and that PIRO has been working with territory staffs to address the comments and working through some refinements of information, which has been beneficial for the rule. Tosatto did not have an estimate for the final rule, but said that he would expect it within the one year period from the release of the draft.

Gourley asked if it would be possible to give the three territories an advance final rule for comment so they know what to expect when the final rule is published, considering the controversial nature of the rule.

Tosatto said no, as nothing is considered final until the rule is cleared for publication by the White House Office of Management and Budget. Tosatto said that he hoped the territories will have confidence that PIRO will draw conclusions based on the best available science, considering the ongoing effort to work with the territories to address their comments.

Gourley said that there are questions on whether or not coral critical habitat is even warranted. Without knowing the direction and extent that PIRO will be accepting or rejecting the suggestions made by the territories, they would be blindsided when the final rule is published. Gourley noted that people are upset over the process and that the science behind the justification seems highly questionable. He asked if it was possible to take a look at the rule before it is sent for final review.

Muña-Brecht said that meetings are scheduled with Lance Smith, PIRO Protected Resources Division (PRD) staff, for Oct. 1, Oct. 6 and Oct. 8, 2021, to discuss coral research on Guam. CNMI may also have similar meetings organized.

Dueñas said he is concerned that Guam does not have a representative on the Marianas Trench Monument Advisory Council (MTMAC). He noted the desire to see the MTMAC expand, not only for protection, but also to allow consideration of geothermal development that could help protect the people of the island from financial issues in light of Guam's high fuel prices. Dueñas described federal actions that impact the community and eliminate the cultural use of the community's use of the environment, such as EFH, military training and deer eradication. He would like PIRO Sustainable Fisheries Division (SFD) come to the community and explain how the federal government is helping the community protect fisheries. Dueñas said that the current coral issue is an example why the eight regional fishery management councils (RFMCs) were created and the new legislation by Reps. Huffman and Case could remove councils from the process. He said that Pacific Insular Area Fishery Agreements (PIAFAs) are negotiated by the U.S. State Department, which has not been generous with the islands, except the Federated States of Micronesia (FSM). Dueñas asked how 24-hour fishing could be stopped. He also asked if Guam could get 10% of the money spent on the South Pacific Tuna Treaty as compensation for fisheries impact loss. Dueñas requested that PIRO change its mindset and support island communities. As an example of EFH, he described Tumon Bay in its original state as a mangrove forest, dynamite cleared and now lauded as a coral mecca in need of protection. Dueñas requested Tosatto assist the community and listen to their concerns.

Soliai asked whether the electronic logbook training for Class C American Samoa longline vessel operators had been scheduled, now that the requirement is effective.

Tosatto deferred to Michael Seki for the training timing for American Samoa. PIRO completed the rule, which is effective Sept. 7, 2021. The requirement becomes mandatory when operators receive the electronic logbook and training from NMFS and are certified as a participant in the electronic logbook program. PIFSC is coordinating this training with fishery participants and the Council.

Seki said that the PIFSC staff in American Samoa is currently off-island, and PIRO has offered preliminary ER training for American Samoa operators until PIFSC staff returns.

Dang asked if PIRO would provide compliance guides or a training manual of an onboard training program to assist in the migration to the ER. He also asked about the status of providing owners access to the logbook information when on land or in port.

Tosatto deferred any technical questions to PIFSC, and responded on the regulatory framework. He said PIRO generally does a compliance guide for the regulations and it would make sense to have recurring training due to captain rollover. He deferred to PIFSC, PIRO and Council staff involved in the program development for response.

Dang stressed the importance of onboard training as critical to the success of the electronic logbook implementation.

Seki confirmed that PIFSC is working on a portal for permit holders to access the real-time longline data.

Dueñas asked if PIRO SFD could provide a book that lists all the fisheries regulations. Dueñas emphasized the importance for the people of Guam and Hawai'i to have this knowledge. He had previously asked the law enforcement personnel in Guam to provide an outline of CNMI

regulations to the Guam community since the fishers use both locations and do not want to violate the law.

Dang agreed with Dueñas's request.

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

Seki, PIFSC director, provided the PIFSC report. Due to a spike in COVID-19 cases, the Inouye Regional Center moved to phase zero so all PIFSC staff work from home.

PIFSC continued long-term efforts to improve the territorial bottomfish. These efforts may not come to fruition before the next stock assessment. The goal is to modernize and validate the data collection that is used by PIFSC. PIFSC will coordinate with the Western Pacific Fisheries Information Network and the partner agencies in the territories.

The Center of Independent Experts review of the shore-based and boat-based expansion creel methods is completed. The review was a hybrid desktop and panel format which included several virtual meetings. The final report including recommendations is due Oct. 23, 2021. Felipe Carvalho, PIFSC stock assessment lead, and his team will present the results of this review to the SSC in December. The fisheries monitoring program began the phase 1 transition of the Catchit Logit app to include the integration of the commercial receipt data of the Sellit Logit electronic application. In the fall, PIFSC staff will begin a potential redesign of the creel survey methodology to ensure that sampling frames, sample sizes and species information will meet the needs of the stock assessment.

The life history program continues several projects that inform bottomfish management unit species (BMUS) stock assessments and management in the territories. The age, growth and maturity of Guam snapper is almost complete. The onaga criteria is almost complete and this analysis will be applicable for both the territories and Hawai'i. Researchers are examining the use of the eye lens for use in growth studies to address the mismatch between otolith research and core reference curves. A cryptic BMUS species contaminated the otolith collection so researchers are looking at ways to tease the mixed collection apart.

The Mariana Archipelago dendrochronology research is moving forward with community workshops prior to data finalization. The data workshops for the American Samoa bottomfish assessment is planned for November 2021 as a virtual event. The stock assessment team is developing a descriptive analysis of the American Samoa bottomfish fishery data as part of the stock assessment improvement plan. This report will be shared with DMWR for feedback prior to publication and presentation to the SSC in December.

The Western Pacific Fisheries Information Network continues the multi-year process to modernize creel survey and commercial landings data collection systems. The program is looking for additional funding to support the data modernization, creel survey ER application development and the enhancements to the Catchit Logit app. Both funding proposals are received, scored and await funding decisions.

PIFSC members of the Archipelagic Plan Team are working with PIRO SFD to assess the science-led approaches to update the MUS. Hierarchical cluster analysis are being explored to develop a better understanding of fishery species associations in territorial waters and evaluate

species complexes. The team presented initial results at its meeting Aug. 16, 2021. Since, the team met with the Guam Division of Aquatic and Wildlife Resources (DAWR) to explore using the analysis for Guam's territorial fishery management plan (FMP).

Interagency consultations regarding high-quality bathymetry and backscatter data determined that the Pacific Islands Benthic Habitat Mapping Center is currently the best available information for the development of fishery-independent surveys.

PIFSC's goal is to maintain open communication about efforts to improve territorial bottomfish assessments. Seki said Carvalho will present on these efforts during the American Samoa section of the agenda.

The PIFSC fisheries program reviewed potential mitigation measures that reduce fishery-related mortality in silky and oceanic whitetip sharks. It applied a model for how silky and oceanic whitetip sharks interact with longline gear in the Western and Central Pacific Ocean comparing two different management measures (removal of shark lines and transition from branchlines from wire leaders to monofilament leaders). It concluded banning shark lines has the potential to reduce fishing mortality by 2.6% and 5.4% for silky and oceanic whitetips, respectively. It also concluded that banning branchline wire leaders has the potential to reduce fishing mortality by 28.2% and 35.8% for silky sharks and oceanic whitetip sharks, respectively. Banning both shark lines and wire leaders has the potential to reduce fishing mortality by 30.8% and 40.5% for silky and oceanic whitetips, respectively. Since observer program data has increased, future analysis would benefit from both in-zone and observer program data to estimate catchability effects from the different gear types.

The MHI bottomfish survey started in July. Seki shared that to date, 467 deep-seven fish were caught in the survey, of which 234 were ehu, 93 onaga, 57 opakapaka, four kalekale, three gindai and one hapu'upu'u. Researchers completed all planned video surveys. Overall, 79% of the survey is complete.

The Hawaiian monk seal (HMS) field season was cancelled in 2020. In 2021, PIFSC deployed 60 field staff members across five of the major reproductive sites in the northwestern Hawaiian islands (NWHI). These sites are French Frigate Shoals (FFS), Laysan Island, Lisianski Island, Pearl and Hermes Atoll and Kure Atoll. The team conducted vessel surveys at Ni'ihau, Mokumanana and Midway Atoll. The team documented 147 pups born in the NWHI and tagged 108 weaned pups and 24 juvenile seals either confirmed or probable pups of the 2020 birth cohort. The team's enhancement activities included the collection of an undersized weaned pup at Midway Atoll and transporting it to Ke Kai Ola, the HMS hospital on Hawai'i Island. The NOAA R/V *Oscar Elton Sette* departed Honolulu Sept. 3, 2021, to release the rehabilitated pup to the NWHI, retrieve the five field camps, and survey Lehua, Nihoa, Mokumanana and Midway Atoll. The ship will return Sept. 30, 2021. On Moloka'i's Kalaupapa's peninsula, 12 HMS pups were born between April and June. Ten of these pups survived to weaning, and all 10 pups completed weaning by the end of July.

PIFSC staff launched its turtle field season ahead of the HMS season in the NWHI. Field staff collected nesting and basking data. Staff recorded 1,009 turtles at Tern Island this season, including 674 nesting females. On East Island, staff observed both successful nests and nests that were being washed out and/or eroded with a berm that eroded over the course of the field season.

East Island has not grown significantly in the last two years. It is similar in size to its 2019 footprint, post-Hurricane Walaka, with slightly more elevation. Research staff equipped 11 green turtles with satellite tags, which included three post-nesting females and two basking male turtles. PIFSC observed another four gravid females and two males copulating on O‘ahu. PIFSC provided 12 satellite tagging kits to the PIRO observer program to deploy in the Hawai‘i longline fishery, seven of which were deployed in 2021. Six tags demonstrated turtle movements across the North Pacific. Marine Turtle Research Program staff were extremely surprised to observe a loggerhead turtle attempt to nest at FFS in early May. Loggerhead turtles in the North Pacific nest exclusively in Japan.

PIFSC completed the first comprehensive exclusive economic zone (EEZ)-wide Mariana Archipelagic Cetacean Survey that focused on cetaceans and seabirds between May and June 2021. The cetacean program conducted visual and passive acoustic surveys aboard the *Sette* during daylight hours, weather permitting. The team surveyed 8,633 kilometers of track line during 59 days at sea. It sighted 77 cetaceans, most frequently sperm whales, false killer whales (FKWs) and the pantropical spotted dolphin.

NMFS social scientists published a research paper that assesses the community participation and social vulnerability for select Hawai‘i commercial fisheries from 2000 to 2018. For this analysis, fishing communities are defined in geographic scale according to the Census County Division, resulting in 41 communities considered in this report. The fishery analysis included the pelagic longline, small-boat HMS, deep-seven bottomfish, uku and nearshore and reef fisheries. Community participation is assessed through a fishing engagement index and metrics detailing community contributions to regional fisheries (the regional quotient), and fishery importance to local communities (the local quotient), relative to a fishery-specific three-year baseline period. The report lays an important foundation for understanding community participation in Hawai‘i commercial fisheries, establishes a baseline for future monitoring and introduces opportunities for future work to refine and explore additional applications of these indicators.

Since COVID-19 affected the availability of the M/V *Rainier*, the surveys in the CNMI were again postponed to 2022. In lieu of that, the PIFSC Ecosystem Sciences Division’s coral program conducted National Coral Reef Monitoring Program dive surveys around O‘ahu from June 7 to Aug. 1, 2021. The team completed 22 days of small-boat and dive operations. These O‘ahu efforts were successful and filled a void that otherwise would have been put off until 2022.

The PIFSC also has a Marine Debris Program at PMNM, which has removed thousands of pounds of netting. PIFSC will report on the marine debris removal results at the December 2021 Council meeting.

Seki asked Carvalho to introduce a new stock assessment staff at PIFSC.

Carvalho introduced a new team member, Nicolas Ducharme-Barth with The Pacific Community (SPC) stock assessment experience for key highly migratory species, including the bigeye tuna assessment conducted in 2020 and the Southwest Pacific swordfish assessment in 2021. While at SPC, Ducharme-Barth improved assessment methods that included developing and applying cutting-edge approaches. At PIFSC, Ducharme-Barth will be involved primarily in



stock assessments for highly migratory species in collaboration with SPC on tuna assessments for the region, and will also help with some of the insular stock assessments.

Dueñas said that he liked that commercial data would be incorporated into the Catchit Logit app. He said the creel surveys are currently incomplete because they are based on fisher interviews and not field sampling. Dueñas said that preliminary reports from the Guam Fishermen's Cooperative Association (GFCA) showed Guam fisheries reproducing faster than the PIFSC data. He asked that biosampling be expanded to all fish instead of a select few species. The GFCA lost University of Guam professor support due to the different approaches. Dueñas shared concerns with shark conservation given the shark depredation issues in Guam. He asked if anyone researched the numbers of shark saved and the need to thin the population, as is done for wolf or deer on the mainland. Dueñas hoped that PIFSC would emphasize social science and community consultation. He mentioned the need for microscale troll surveys to determine if the fish populations are distinct throughout the CNMI and Guam.

Seki offered to follow up on Dueñas's comments.

Sword agreed with Dueñas on many points. He said that the data in the Catchit Logit online app should be verified with fishermen to corroborate it. Sword said that shark depredation remains a major issue for American Samoa and said that PIFSC should look into the shark population status.

Soliai asked that PIFSC consider holding the November data workshop in person. He explained the challenges of virtual meetings and said that commercial flights have resumed to two flights a month with a 10-day quarantine. Soliai acknowledged the long quarantine period, but said that the stock assessment would have a long-term impact and noted the strong desire to do it right this time.

Seki said that in-person is definitely better, and hoped that PIFSC would have been able to travel, but unfortunately that is not possible. NOAA is not allowing travel at this time, but with November a month or so away, he said he would keep it in mind.

Soliai asked if the workshop could be delayed if an in-person meeting was not possible in November. He understood the deadlines, but thought it would be more effective in person, even if pushed back.

Dang thanked Seki for answering his question regarding the compliance guide, and noted that it is critical to have something that is easily digestible for the captain, crew and owners.

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

Onaga provided the GCPI report.

Regarding the Territory of American Samoa v. NMFS court case, the Ninth Circuit reversed the District Court decision on the Large Vessel Prohibited Area (LVPA) rule. In February 2021, American Samoa filed a writ of certiorari with the U.S. Supreme Court, which was denied June 21, 2021. On July 9, 2021, NMFS published the final rule relating to the exemption, which reimplements the 2016 regulations that the Council submitted to NMFS.

The second litigation matter was recently filed in the U.S. District Court, District of Hawai‘i. Plaintiff Steven Hueter and three residents from Alega Village filed a complaint against the Secretary of the Interior, Secretary of Commerce, USFWS, DMWR and its directors and other Jane Doe agents. The complaint essentially alleges illegal fishing practices in the private Alega MPA. The plaintiffs are seeking to compel the federal defendants to enforce the alleged violations.

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

Dueñas asked with respect to EFH if the NOAA General Counsel is able to provide some direction as to how the Council can proceed if it comes down the pike.

Onaga assumed that this comment was for a later date as EFH gets decided and confirmed, and that Dueñas didn’t need an immediate answer.

Dueñas said it was food for thought. He shared concerns about the one-size-fits-all approach and the desire to be generously prepared.

Sword asked for the status of the Hueter case.

Onaga said normally any litigation matters go to the Department of Justice (DOJ) and GCPI assists as the local office that provides guidance. This case has been filed and submitted to the DOJ. The DOJ is working with GCPI to file the appropriate pleading in this matter.

Soliai thought that the Hueter case was the fifth or sixth of the many pleadings that this plaintiff has filed. He noted that he was a party to this suit as the DMWR and as its director, as an individual.

Onaga said those issues would be addressed with the defendant’s response. She said she was not free to discuss further details because she did not know where the DOJ would take the matter. Those issues usually would be addressed in the pleading that the federal government files.

## **C. Enforcement**

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

Holstead provided the USCG report for the period of June 1 through Aug. 31, 2021. The USCG responded to 236 cases consisting of search and rescue, law enforcement activities, marine environmental (both protection and response missions), and ports, waterways and coastal security missions. There was a triple commissioning ceremony held in Guam with newly-named USCG Forces Micronesia, sector Guam. On July 24, 2021, USCG crews assisted 15 mariners on the *S/V Bucky*. This highlighted the regional assets in operation; the three ships in Guam and the fast response cutters (FRCs) located at Station Apra Harbor, as well as sector Honolulu and Maui. USCG continued to conduct search and rescue exercises in the region. Holstead said the safety of life at sea is a paramount mission for the USCG and has a direct impact on our fishing fleet.

Dueñas asked if the USCG mission around Guam was still on Homeland Security mode, noting that he thought several years ago the USCG was limited to 24 miles off the coast instead of patrolling the entire U.S. EEZ. Dueñas also asked about the asset capability of the USCG FRC. Years ago, when Dueñas was appointed deputy director of the Guam DOAG, a whale stranded dead on the reef. At the time, the USCG told NOAA it had no assets to remove the whale off the reef. The smell was a public nuisance, and the carcass was damaging and polluting the water. Dueñas clarified the deepest place on earth is in Yap State, outside the United States. He said that area used to be part of Guam, but the U.S. State Department saw it in their wisdom to give the deepest, darkest place on earth to Yap State.

Holstead said the USCG patrols everywhere beyond inland waters, including the high seas. The USCG routinely conducts high seas boarding and inspections within the WCPFC Convention Area. Operation Aiga was happening toward American Samoa. Those boats are based out of Honolulu and transited from Honolulu to American Samoa. Subsequently, one of the ships went to Polynesia and then back to American Samoa. Those vessels conduct operations throughout Oceania. Holstead referred to the USCG website listing of the capabilities and limitations for every asset, and said that it is situationally dependent whether the USCG has the capability to remove a whale carcass. The biggest challenge is the depth of water. Its 45-foot vessel is a jet-drive boat, which requires at least eight feet of water to operate, often deeper than most areas around a reef. It is very difficult to know the weight limit of an animal that is decaying in the water, and to determine whether or not towing an animal is within the limitations of that specific asset. There are resource constraints in Guam, with USCG Station Apra Harbor being a one-boat station, meaning it has one asset available to be launched within 30 minutes of notification of a search and rescue. If the mission, such as towing a whale, was accepted, then the station's ability to respond to the primary mission of search and rescue would be limited.

Dueñas said it was the seventh whale in that many years, so the discussion is worth reopening.

Sword said there was a buoy tender in American Samoa after approximately three years, which was good to have. He asked for an update on the USCG's plan to station one of the FRCs in American Samoa to patrol, especially the northern islands.

Holstead said he did not think there was a tentative plan to have a FRC nor buoy tender stationed in Apra Harbor. He thought the acquisitions website for the FRCs would show their upcoming locations. Congress funds the total number of USCG assets, and the FRCs are coming online in locations where historically the 110-foot Island class patrol cutters were located, which may be why Guam and Hawai'i received their allotment. Those allocations come from the headquarters Office of Acquisitions, with authorization and funding from Congress. Site logistics are also required, including a mooring, accessible area to take on fuel, electricity, food storage and personnel.

Sword asked if the USCG has a timeframe.

Holstead said he was not sure offhand, but could find out when the actual acquisition rollout ends and send Sword that information.

Soliai asked if USCG could increase patrols in the area if there was no plan to station a cutter in American Samoa.

Holdstead said yes and noted that in the past two years there have been a couple of operations in the area such as Operation Aiga. Those three FRCs stationed in Honolulu will be making patrols to American Samoa. He explained that the FRCs have limited time onsite since there are 18 days of total transit time between Honolulu and American Samoa.

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

John Barylsky, deputy special agent in charge, provided the NOAA Office of Law Enforcement (OLE) report. Over the three-month span from June 2 to Aug. 31, 2021, agents and officers responded to 209 incidents, 156 of which were protected species-related and 53 fisheries-related. OLE settled the case of the foreign fishing vessel that was fishing in the U.S. EEZ around Howland and Baker for \$89,370. This case involved a Republic of Marshall Islands-flagged vessel. OLE believed that the vessel was conducting fishing operations based on the vessel monitoring system signature, but were unable to produce evidence that the vessel was fishing. OLE then requested and received observer reports from the Pacific Islands Forum Fisheries Agency. The case agent obtained sufficient evidence that the vessel was fishing inside the U.S. EEZ through interviews and observer reports, along with the vessel monitoring system signature.

Also in the last three months, one of OLE's agents completed an investigation of a Hawai'i longline fishing vessel fishing inside the Southern Exclusion Zone (SEZ). After receiving the Notice of Violation and Assessment, the respondents settled the case for \$3,150.

In Hawai'i, OLE received a slew of social media postings, photographs and videos of incidents with tourists visiting the Hawaiian Islands. One highlighted incident involved a woman who disturbed a seal while it was resting, causing it to bark and then charge toward her. OLE identified the woman once she returned home to Louisiana and issued a summary settlement in the amount of \$500, which has been paid. The second case involved a mixed martial arts fighter and Instagram celebrity, who disturbed an HMS pup along the west side of O'ahu. OLE identified the man once he returned to the mainland and issued a summary settlement in the amount of \$500, which has been paid.

OLE conducted a joint longline boarding with the U.S. Customs and Border Protection, U.S. Department of Homeland Security, Border Enforcement Security Task Force and Task Force Office of K9, along with the USCG Investigative Service and the USCG Sector Boarding Team members. A vessel arrived to Honolulu from Mexico with six foreign fishermen and two U.S. crew. The vessel fished during the trip. OLE found minor violations and offered compliance assistance with sea turtle mitigation.

OLE Pacific Islands Division initiated an investigation of a Hawai'i longline limited entry fishing vessel that failed to make the required notifications to PIRO for observer coverage prior to departing for a fishing trip off California. OLE issued a \$500 summary settlement offer to the captain.

OLE, State of Hawai'i DLNR and joint enforcement agreement (JEA) partner Division of Conservation and Resources Enforcement patrolled the Kona Coast assisting the USCG with their memorial weekend operation. OLE placed the local patrol boat on the Kona Coast for approximately three months ahead of the upcoming dolphin approach regulations. OLE conducted spinner dolphin regulation educational awareness and assisted with vessel boardings.

Personnel witnessed two Marine Mammal Protection Act (MMPA) violations involving spinner dolphins. Summary settlements are pending.

OLE also sent an enforcement officer to participate in Operation North Pacific Guard, a two-week high seas patrol operation in support of the North Pacific Fisheries Commission. The operation focused on identifying possible illegal, unreported and unregulated fishing activities in the North Pacific Fishery Conservation Area. The officer served as a fisheries boarding officer aboard the USCG cutter *Bertholf*. He embarked and disembarked on the island of Kodiak in Alaska.

OLE and JEA partners from DMWR conducted a Port State Measures Agreement boarding of a Taiwanese-flagged longline vessel in American Samoa. All of the logs and pertinent paperwork were inspected. Gear inspections revealed incorrect marking size on the vessel. OLE notified the captain and ship agent of these discrepancies and recommended corrective measures. JEA partners conducted a complete inspection of the vessel's hold after offloading at the cannery. The flag state is notified whenever they find any violations on the vessels.

OLE officers are busy with their Seafood Import Monitoring Program (SIMP) requirements, which is a new program. An OLE agent, with JEA Partners from the DMWR conducted a SIMP inspection on a local market of a seafood importer. There were no violations. Officers briefed the store manager on the SIMP program and provided educational materials. The 13 priority species listed in the program are comprised of species particularly vulnerable to illegal, unreported and unregulated fishing and seafood fraud. Congress may add all species that are imported into the United States.

An officer participated in the South Kona Community Marine Science and Conservation Outreach Day, hosted by the Hawai'i Marine Education and Research Center, in Miloli'i, Hawai'i. The officer conducted outreach and education with the public and discussed OLE's mission on Hawai'i Island and throughout the Pacific Islands. Many other agencies participated, including the Division of Conservation and Resources Enforcement, mayor's office, Hawksbill Honu Project, NOAA Hawai'i Island Cetacean Response Coordinator, Miloli'i Makai Watch and University of Hawai'i at Hilo Marine Science department.

Dueñas asked if his earlier request to PIRO regarding a handbook of all the fisheries regulations in the region should instead be directed at enforcement. He requested that enforcement assist PIRO SFD to develop a comprehensive handbook.

Barylsky said that OLE had two agents retire and one transfer, and are in the process of filling that capacity. He offered to reach out to the retired officer about a regulatory cheat sheet and will work with PIRO to get a guide for the fishermen.

Soliai commended OLE for their new officer in American Samoa, his proactive approach and the good partnership through the JEA. He said he looks forward to positive things.

Barylsky said OLE was also pleased. The new officer has approximately 15 years experience with U.S Customs and Border Patrol. OLE hired another new officer for American Samoa, but she was delayed in Honolulu until November due to flight logistics. One of OLE's milestones is to do a certain amount of port state measure agreement boardings, which can only

be done on foreign vessels. These boardings occur from either Guam or American Samoa, with the majority in American Samoa, and OLE was previously unable to meet that milestone. The new officer has been in American Samoa for several months, and OLE was able to meet that goal. He worked with JEA Partners to conduct a number of boardings.

Soliai expressed his appreciation for consideration given to find local people to fill OLE positions.

Ramsey thanked OLE for following up on the infractions posted on social media quickly and publicizing the response. He said that visitors disrespecting the islands is a growing problem.

Barylsky said OLE was lucky to find the visitors once they left the islands. He noted that the State of Hawai'i regulations are more stringent, but lack the reach to go to the mainland for an investigation. The officer conducting the investigation explained to the violator that any court case venue will be in Hawai'i, and she paid the penalty.

Simonds asked about the date of the SEZ case, noting that she thought the SEZ was open this year.

Barylsky said the case must be more than a year and half old, but was mentioned in the report because it was settled during this last quarter.

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

There was no report presented under this agenda item.

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

Brinkman, foreign affairs officer of the Office of Marine Conservation, presented the U.S. State Department report. He is the new Council liaison, and provided a brief summary of his professional background, including prior work on North Pacific fisheries and foreign ocean policy with the U.S. State Department Office of Ocean and Polar Affairs.

The U.S. State Department is provisionally applying the most recent amendments to the South Pacific Tuna Treaty, as the treaty awaits consent by the Senate. Some of the terms of access in those amended provisions expire at the end of 2022, so the U.S. State Department is renegotiating those provisions, not the treaty itself. They are also renegotiating the associated 10-year \$21 million per year economic assistance agreement that expires and is up for renewal at the end of 2022. The negotiation focuses on creating operational certainty, i.e., when, and how many and at what price U.S. vessels are going to buy fishing days from the Pacific Island Parties (PIPs), beyond 2022. The parties exchanged informal views in February and then held a formal negotiating session in June. The PIPs focused heavily on the economic assistance agreement and on a U.S. implementation issue within the WCPFC, an issue that cannot be resolved through the treaty discussions. They expect to reconvene in late October for the next round of virtual talks, and David Hogan and Rebecca Wintering will represent the United States. The first two rounds of talks were difficult given how the PIPs view the U.S. implementation in combining high seas and in-zone fishing limits.

Dueñas asked if the WCPFC advisory group model, or a similar type of government oversight, could be applied to fisheries issues related to the Compact of Free Association (COFA). He noted that approximately 15,000 immigrants from COFA nations live on Guam and their fishing practices differ from traditional local habits. He also asked how much money the United States is contributing to the South Pacific Tuna Treaty, noting that the Western Pacific is impacted by the purse seine fishery. He recalled that approximately \$23 million was being paid to 17 nations for 40 U.S. purse seine vessels to participate in the fishery.

Simonds said that the number of U.S. purse seine vessels is down to 13, and clarified that Dueñas's question was about whether the United States could reduce their \$21 million contribution to the treaty by a few million to provide each of the territories \$1 million for fisheries development.

Dueñas said that while \$1 million is not much, a lot more can be done for the communities to build capacity and competency over a 10-year plan.

Sword noted the decline of the purse seine fleet from 48 to 13, as a result of U.S. State Department actions calling for the demise of that fleet. He noted the impact to the canneries on American Samoa. Since the purse seine fleet moved to the Eastern Pacific, the government revenue in American Samoa is down due to lack of fuel sales.

Soliai noted the history and emotion around these longstanding issues that affect their fisheries. The South Pacific Tuna Treaty discussions could bring a better perspective. The purse seine fleet is a U.S. fleet based in American Samoa and its reduction is alarming.

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

Peck presented the USFWS report and referred to the written report for the MTMAC update. The USFWS is on track with the review of Sports Fish Restoration and Boating Access project proposals from Guam, the CNMI and American Samoa. USFWS approved the Hawai'i proposals. The USFWS Ecological Services's aquatic ecosystem conservation team participates in Coral Reef Task Force Fisheries Working Group meetings. The team discusses issues with FMPs, monitoring and various studies. This team is also working with the State of Hawai'i on an artificial reef site plan by conducting surveys to identify specific locations for these artificial reefs.

Peck visited Rose Atoll the week prior and noted fish aggregating devices (FADs) washed ashore with ropes and the netting on the coral reef. He has retrieved five FADs in the last three trips from the reef. Peck has the serial numbers for each, and will be compiling the historic FAD information as these groundings seem to be a growing problem.

Gourley asked for the timeframe of the White House liaison process to vet the MTMAC nominees and get the group together.

Peck said he did not know as it was out of local hands and with the White House liaison.

Dueñas said that USFWS controls the Ritidian National Wildlife Refuge, with a nearby firing range. He asked the agency to relinquish control to the indigenous landowners. He also noted the no fishing zone at the 150-foot depth contour and requested that area back. Dueñas

asked for Guam to be included in the MTMAC as an ex officio member since the monument overlaps Guam's waters. Dueñas wants the Sport Fish Restoration Fund to expand to address boating access, i.e., boat ramps on the eastern side of the island. Western access is less of a need given the conservation areas on that side of the island. Dueñas noted fishermen retrieve derelict FADs and suggested that NOAA and USFWS offer a reward for these actions.

Peck will pass all comments to the appropriate agency representatives. He said the lists of projects submitted for the Sport Fish Restoration Fund were developed by the local agency. He was not directly aware of the no fishing zone and will forward the MTMAC request.

Sword noted the recent WCPFC study on biodegradable FADs and asked what kind of FAD Peck retrieved from Rose Atoll.

Peck said the FAD was not biodegradable, and was made of the typical bamboo buoy frame for flotation and old discarded purse seine netting and ropes.

Sword thought it may be made of biodegradable cotton. He also reiterated Dueñas's request for ramps, noting the request from the American Samoa Advisory Panel (AP). Sword noted that given the bottomfish problem, adding artificial reefs may be good mitigation to develop more bottomfish habitat.

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

There was no public comment.

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

*Regarding the PIRO agency report, the Council requested **PIRO to provide an opportunity to American Samoa, the CNMI and Guam to review the draft final rule and a joint briefing for the three territories prior to finalizing the rule on any changes to the critical habitat designation made in response to territory comments.***

Tosatto said that he intends to vote no, which is indicative that this opportunity is not able to be provided.

*Moved by Rice; Seconded by Gourley.*  
*Motion passed with Tosatto opposing.*

*Regarding the PIRO agency report, the Council requested that **PIRO and PIFSC ensure that a user-friendly compliance guide and training materials on the mandatory ER for permit holders, vessel owners and captains are readily available on the NMFS website.***

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

*Regarding reduction in the U.S. purse seine fleet operating under the South Pacific Tuna Treaty, the Council requested the **U.S. Department of State to consider reallocating \$3 million of the \$21 million in funding previously intended for the South Pacific Tuna***



## **Treaty to the U.S. Participating Territories for the purpose of fishery development.**

Tosatto said the U.S. State Department member is not a voting council member and offered his understanding of the issue on his behalf. The source of funding for the Associated Economic Assistance Agreement to the South Pacific Tuna Treaty comes from a diplomatic source, appropriated for foreign countries. He saw it as impossible to carry this recommendation out, as he did not know of any U.S. State Department funding sources that could be redirected for domestic purposes. It is possible for the U.S. State Department to consider payments of some sort, but not likely out of the \$21 million.

Brinkman said Tosatto's understanding was probably correct. Due to the complexity among whether U.S. territories can receive foreign assistance funds, it is likely that reallocation cannot occur.

Dueñas offered support for the motion since the territories are at the center of fisheries, the surrounding islands receive U.S. assistance and the purse seine fleet declined to 13 vessels. Guam was at the forefront of developing a U.S. fishery in the 1970s. He noted the foreign assistance from Japan and the U.S. to Palau and the desire to see the U.S. State Department look into similar efforts for the U.S. territories.

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

*Regarding the USFWS Agency Report, the Council requests the USFWS consider including **Guam as part of the MTMAC, restoring the indigenous fishing rights by returning Ritidian Point to the people of Guam and increase the funding to adequately address Guam's fishing needs.***

Muña-Brecht said the Sport Fish Restoration Fund and piers being serviced is included in the Guam's report later on the agenda, and asked to include Guam's fishing needs when providing sport fish funding.

Sword concurred with changing the motion.

Dueñas said he did not accept a change in the motion. He said the intent of that language is to encourage the USFWS to look at funding marinas, fishing docks and boating access. He recalled a recent marina project that USFWS supported 82.5% and wanted USFWS to contribute 100%.

Muña-Brecht suggested an edit to the language to "increase the funding to adequately address Guam's fishing needs."

Dueñas and Sword concurred with the edit to the motion.

Peck offered technical edits to the motion and said he would put the recommendation forward within USFWS, noting funding is still to be determined.

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

## **VII. Program Planning and Research**

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

Gourley provided an overview of two bills related to the MSA. H.R. 4690, which is the MSA reauthorization bill introduced by Rep. Huffman of California, resulted from listening sessions held around the United States, including one held in Hawai‘i. H.R. 3674, the Ocean-Based Climate Solutions Act, is a combination of legislative issues that would address climate change issues and has been referred to seven different congressional committees. Gourley noted that while there appears to be little interest by the Senate Commerce Committee in working on MSA issues this year, the Council should pay attention to these developments.

#### **1. Huffman Magnuson-Stevens Act Reauthorization**

Joshua DeMello, Council staff, provided additional details on the two proposed bills, and noted that Rep. Don Young has also introduced H.R. 59 that would amend the MSA.

H.R. 4690 includes a section on defining subsistence fishing for customary and traditional use, which would allow for noncommercial bartering, but would not allow for monetary exchange. Council advisory group review of this issue identified a question of whether the proposed definition includes the Council’s definition of customary exchange and if the definition refers only to indigenous groups.

H.R. 4690 also includes provisions that would require voting members of the RFMCs to include specialized expertise on ecosystem-based fishery management (EBFM) and climate change, as well as to balance out the membership with conservation scientists, nonconsumptive users and indigenous community representation. Other provisions of interest to the Council include making regional council staff federal employees, and prohibiting regional councils from lobbying the president’s administration.

Several provisions in H.R. 4690 are specific to the Council, and include ensuring that at-large member appointments to the Council are geographically representative, along with changes to the MCP process and the SFF. Regarding the MCPs, H.R. 4690 would require the Council to work with the region’s governors in developing the MCPs, issue a Notice of Intent (NOI) to submit MCPs and to have Hawai‘i develop its own MCP separate from the PRIA. Regarding changes to the SFF, H.R. 4690 would establish an advisory panel comprised of governor appointees to make decisions on SFF projects.

Regarding EFH, the legislation would require projects with a federal nexus to minimize and mitigate adverse impacts to EFH. The legislation would also require the RFMCs to address climate change such that the FMPs concentrate on climate-ready fisheries and anticipate changes in stock distributions due to impacts from climate change. Additionally, the Council would need to address forage fish.

Other changes proposed in H.R. 4690 include requiring the regional councils to have a roll call vote on nonprocedural matters, holding in-person meetings to the extent possible while allowing for remote participation, requiring RFMCs to have emergency operation plans in circumstances that make fisheries monitoring or assessment impractical, requiring the

improvement of electronic monitoring (EM) and expanding the use of cooperative research and changing the Disaster Relief Program.

H.R. 3764 includes similar climate-ready provisions and EFH consultation provisions as H.R. 3690. H.R. 3764 also includes provisions regarding MPAs, which would require the Secretary of Commerce to identify and establish MPAs in ABNJ, and agencies would initiate a process of designating a national marine sanctuary for all those within the NOAA inventory.

DeMello noted that the CCC is working on consensus statements with respect to the legislation and the CCC will be considering responses to requests for comments received from several congressional representatives.

Gourley said that this Council also received a request from Rep. Kai Kahele of Hawai'i for feedback on H.R. 4690, so the Council will be providing comments in response to the request. The CCC's Legislative Committee is also developing consensus statements concerning H.R. 4690, and some members from this Council are involved in that effort with a focus on EFH and ABNJ issues.

## **2. Advisory Group Review of the Magnuson-Stevens Act Reauthorization**

DeMello presented a review of the MSA reauthorization legislation by the Council's advisory groups. The Guam AP noted that the territories in the Western Pacific Region are data-poor, but a previous MSA reauthorization required ACLs for all federally managed fisheries and thus the MSA mandates ACLs even for the territorial fisheries when their data collection systems are not set up to implement ACLs properly. The Guam AP agreed that an increase in fishery mandates would have a larger impact on data-poor territorial fisheries.

The Non-Commercial Fisheries Advisory Committee (NCFAC) had concerns regarding the provisions on Council member nominations and requiring additional efforts by governors of the region because the NCFAC feels that the governor of Hawai'i disappointed the fishing community in the current nomination process. The NCFAC inquired if there could be additional language added to the legislation to ensure that fishermen are represented on the Council.

The Hawai'i AP had concerns about previously legislated prohibitions on exporting billfish and wondered if the definition of subsistence in the proposed bill included the definition of customary exchange. The American Samoa AP had concerns about the changes to the SFF, noting that a change to an advisory group comprised of government employees or representatives would not allow for transparency or input from the AP. The CNMI AP wondered about the advantages and disadvantages of some of the legislation's provisions, including the SFF, since the existing SFF process has worked for the CNMI fishing community. The Fishing Industry Advisory Committee (FIAC) noted that the cost of implementing many of these new provisions would be large, and the FIAC opposed having the Council removed from the SFF process.

Gourley said each of the Council members should read the pertinent sections of H.R. 4690 to better understand the repercussions it could have on the Council and its work.

Tosatto said that the Council's advisors should look closely at Section 306 of H.R. 4690, which would amend MSA Section 204 regarding the PIAFAs, MCPs and the SFF, with a

particular focus on the insertion of the State of Hawai‘i. MSA Section 204 pertains to foreign fishing and defines a Pacific Insular Area such that one may enter into a PIAFA as a means of foreign fishing, and requires that the Council develop an MCP only if a PIAFA allows fishing. The existing definition of a Pacific Insular Area does not include Hawai‘i, unlike the territories and PRIA, and thus, there is no purpose of completing an MCP for Hawai‘i. In addition, H.R. 4690 would insert language that would state that MCP projects, such as demonstration projects and coastal improvement projects, can only occur outside of state waters. Therefore, the proposed legislation would not allow any coastal improvement projects, which represent the majority of the projects in the MCPs, and the advisory groups should look at that provision for its consequences. Many of the current practices in the Western Pacific Region align with the existing provisions and best practices within the region’s granting, including providing for a panel to advise on grants such as the Saltonstall-Kennedy. NMFS could implement these practices for any of the grants processed by pools with a panel. The legislation does include provisions that increase protections under the MSA, such as EFH. The Western Pacific Region needs EFH protections despite the mixed views of the Council on the value of EFH consultations, which are in place to protect the region’s fisheries. Tosatto reiterated that focused attention from the Council’s advisory groups on these issues is important.

Gourley said the legislation appears to make the simple SFF process more complicated, and that the proposed legislation introduces some subtle changes that appear to take away some power from the RFMCs.

Muña-Brecht said she has concerns regarding some of the sections in the proposed legislation, and she intends to do a more thorough review. Muña-Brecht said she disagrees with the changes to EFH that require the agencies to minimize and mitigate EFH impacts rather than advising agencies to avoid these effects, considering recent concerns regarding the recent coral critical habitat action.

Dueñas said the GFCA is drafting a letter in response to H.R. 4690, and he hopes that the bill does not pass. Dueñas said that he wished the legislation would provide appropriate funding sources, as many of the proposed mandates are unfunded and fishing communities would suffer as a result. The word “depletion” is worrisome because Dueñas believes the Western Pacific Region is among the most successful of the eight regional councils. There is one species of concern, the armorhead, which Russian fleets harvested in the past, and the Council banned bottom trawls since then. Dueñas said that there are no fisheries in the region that are at risk for depletion by the small island communities, and the word “rebuild” would be more appropriate than “deplete.” Dueñas said NMFS maintaining the green sea turtle on their endangered species list for more than 40 years is insulting and represents a failure of the federal government to help a protected species recover after so long. The proposed requirement for the governors to explain how their nominees are qualified for Council appointments should be part of executive privilege, and the community the SFF serves should control the SFF through the Council process. Dueñas said he is concerned because the GFCA had an opportunity to participate in a shark depredation study more than a decade ago, but the federal review committee stated that the GFCA is not a fishing organization. Dueñas said that people from distant lands judge the region’s programs for island communities, even though people from Washington D.C. or Florida do not know what is happening in the Pacific Islands. The outside review of the SFF is draconian and the legislation should not include these types of reviews.

Gourley said it is important for Council members to participate in the reauthorization process, reiterating that the proposed legislation has many items of which the Council needs to be aware and provide comments.

Simonds thanked Tosatto for reminding Council members of important sections of the legislation. Simonds said she asked Rauch if the Council could discuss the proposed legislation with PIFSC and PIRO, and Rauch said to speak to Tosatto. Simonds asked Tosatto to bring any other missed items to the Council's attention as he continues to review the bill. Simonds said that she does not want Council staff to become federal employees and that she is against the lobbying provisions aimed at the Council's efforts on marine monuments in the region. The Council should be able to communicate to the Administration what works and what does not, as the Council is an executive agency of the Department of Commerce.

## **B. Standardized Bycatch Reporting Methodology and Fishery Ecosystem Plan Amendments for Updating Consistency (Final Action)**

Asuka Ishizaki, Council staff, presented the overview for Council final action on necessary amendments to the FEPs for compliance with 2017 guidance on standardized bycatch reporting methodology (SBRM). The 2017 guidance requires that each FEP must identify the required procedure(s) that constitute SBRM for each fishery, explain how the SBRM meets the purpose defined in the rule and provide guidance to NMFS on how to adjust SBRM implementation if needed, based on a fishery-specific, four-criteria analysis. At the June 2021 meeting, the Council received a consistency review on its FEPs, which concluded the FEPs identify SBRM and need no new data collection methods to meet consistency. However, the review identified some necessary updates to the SBRM tables in the FEPs to explicitly identify the methods for each fishery, to remove ecosystem component species (ECS) and to include explanation of how the SBRM meets the purpose defined in the rule. Since the previous Council meeting, Council staff worked with PIRO to develop a draft omnibus amendment to the FEPs to update and include description to achieve consistency. The FEPs identify the primary fishery data collection methodologies as the SBRM, including creel surveys in the territories, commercial marine licenses (CMLs) and the Hawai'i Marine Recreational Fishing Survey (HMRFS) in Hawai'i, federal logbooks and the federal observer program. The Council, NMFS and local resource management agencies previously updated these data collection methodologies to ensure they collect bycatch data in the 1990s when the Congress amended the MSA.

In the American Samoa Archipelago FEP, the creel survey is the SBRM for the only relevant remaining fishery, bottomfish, and the associated updates are removing ECS fisheries and adding an explanation of how the creel surveys are consistent with the guidance, which includes adding language to address potential adjustments to the SBRM. In the Mariana Archipelago FEP, the bottomfish fisheries in Guam and the CNMI are the only two relevant remaining fisheries. The SBRM for both Guam and CNMI bottomfish are the creel survey and federal logbooks, and the associated updates are removing ECS fisheries, adding the shore-based creel survey to the CNMI SBRM, and adding an explanation on how the SBRM meets the purpose of the rule. The Hawai'i Archipelago FEP includes the bottomfish, crustacean and precious coral fisheries. For Hawai'i bottomfish, the SBRM are Hawai'i Division of Aquatic Resource's (DAR) CML catch reports, HMRFS and federal logbooks. For Hawai'i crustaceans, the SBRM are DAR CML catch reports and HMRFS. For precious corals, the SBRM are DAR CML catch reports and federal logbooks. The proposed updates to the Hawai'i Archipelago FEP

are to remove ECS fisheries and add an explanation on how the SBRM meets the purpose of the rule. For the PRIA FEP, there are four relevant fisheries that all generally identify the federal logbook and DAR CML catch reports where applicable, though there are no current fisheries operating in the PRIA. The proposed update is adding an explanation ensuring the SBRM is consistent with the new rule. Lastly, for the Pacific Pelagic FEP, the American Samoa and Hawai'i longline fisheries have federal logbooks and federal observers identified as SBRM and the creel survey may be removed from the American Samoa longline fishery's SBRM. For pelagic small-boat fisheries in Hawai'i and the territories, SBRM are the DAR CML catch reports, HMRFS and creel surveys. For pelagic small-boat fisheries in the PRIA, federal logbooks and DAR CML catch reports are SBRM in addition to the USFWS Midway Sport Fishing Log. The proposed updates for SBRM in the Pacific Pelagic FEP include updating the SBRM table, removing creel surveys for the American Samoa longline fishery, identifying the Western Pacific longline fishing logbook for the Western Pacific general longline fishery, removing fisheries that the Council does not authorize under the FEPs (i.e., U.S. albacore and purse seine fisheries) and adding an explanation of how the SBRM meets the purpose. There are no environmental impacts associated with the implementation of the omnibus amendment due to the administrative nature of the action and because no new data collection methodologies will be implemented.

Dueñas said he does not know of any fish except for sharks that would be considered bycatch. He noted that in Guam, there are still issues with local and federal law regarding the landing and selling of sharks that managers need to resolve with the fishers, but bycatch does not exist in the Mariana Archipelago, as fishers retain even undesirable fish.

Onaga said that the SBRM rule identifies the minimum requirements, but the Council may do more. Additionally, the explanations must meet the requirements set forth.

Gourley asked if the current draft amendment meets the requirements.

Onaga said that the determination of whether the amendment meets the requirements has not been made because GCPI has not yet reviewed the final draft.

Gourley asked if the Council could move forward with the draft omnibus amendment for considering final action and staff could work on fleshing out any other issues with GCPI and PIRO following final action.

Onaga confirmed that the Council can take final action at this meeting.

### **C. Regional Research Priorities and Plans**

Marlowe Sabater, Council staff, presented the updates to the Council's MSRA Five-Year Research Priorities. The Council, in conjunction with its SSC, is required to develop this research priority document under MSA section 302(h)(7) and to submit to the Secretary of Commerce and its regional science center for their consideration when they develop their priorities and budget. The 2021 update includes streamlining all existing research priority documents, including cooperative research and MSEs with the four thematic areas of the MSRA five-year priority document (i.e., pelagic fisheries, island fisheries, protected species and human communities). Each thematic area includes various priorities and associated projects. For pelagic fisheries, priorities and projects include developing indicators for nontarget pelagic species,

determining impacts to fisheries from spatial closures, implementing electronic technologies and exploring shark depredation. For island fisheries, projects are more focused on data collection because of the data-limited nature of the fisheries and include monitoring ECS, identifying metrics to define reference points, improving the ACL specification process and improving information to support stock assessments. For protected species, priorities include improving the information base for managing protected species interactions and minimizing fishery impacts on protected species, and developing associated mitigation measures. For human communities, priorities focus on the socioeconomic characterization of regional fisheries, markets and communities, integrating social, ecological and biophysical research efforts to inform EBFM, and understanding the roles of indigenous and cultural fishing. Cooperative research priorities are focused on the pelagic fisheries, island fisheries and protected species thematic areas, although most priorities focus on Hawai‘i. MSE priorities focus on evaluating spatial management, catch limits, bag limits and gear restrictions, evaluating management strategies for nearshore finfish, evaluating spatial management effects on catch and effort and assessing the effects of spatial management measures on leatherback turtles.

Dueñas said he is excited that human communities will have increased consideration, as the national standard addressing communities tends to be ignored throughout Council actions. Dueñas said he hopes that PIFSC will consistently take into account the socioeconomic aspect of fisheries impacts down to the level of fishing communities and individual fishermen to better understand those impacts.

#### **D. Fishery Data Collection and Research Committee Strategic Plan**

Sabater presented an update of the Fishery Data Collection and Research Committee (FDCRC) Strategic Plan. The existing strategic plan for 2014-2019 provides direction for improving data collection and coordinating research in the Western Pacific Region to support fisheries science and management. Sabater reviewed the five goals from the 2014-2019 plan, and provided an overview of tasks completed to date. To initiate the plan update for 2022-2026, the Council conducted a series of local agency consultations in April 2021 to determine what tasks fisheries managers completed from the old strategic plan and identify emerging needs and priorities for fishery data collection. The FDCRC removed one of the goals that has been completed, retained four remaining goals and assigned new tasks under each of the existing objectives. Some examples of tasks in the new strategic plan include further supporting the development of mandatory licensing and reporting regulations in the territories, revising the creel survey design, supporting database migration and data consistency for ER and holding a workshop on data expansion and to enhance understanding of the estimation, among others. The FDCRC approved the updates to the strategic plan, and the Council was asked to consider endorsing the updated plan.

Gourley asked what is holding the FDCRC back from accomplishing its goals.

Sabater said there is not just one item holding the FDCRC back. The Council led the majority of the work for the old strategic plan, in addition to work done by the territorial management agencies, but lack of manpower limits the agencies. The Council also takes the lead with the support of PIFSC for some of the tasks associated with databases and system updates. Everyone needs to move together to accomplish the FDCRC tasks.

Dueñas said the region’s three major components of data collection programs (Catchit Logit, commercial landing data and the creel survey program) should be better incorporated, along with the work of the PIFSC life history program. Dueñas said he did not want to hear more about long-term studies on Hawai’i species when the territories are under attack with an overfishing status. There are no fisheries in American Samoa that are a detriment to their fish stocks. Dueñas pointed out that the strategic plan uses an acronym that spells “FEAR,” and suggested it be replaced with “FREE (FoxPro replacement elimination exercise)” to convey the fishermen being free from the tyranny of fishing regulations. Dueñas said he supports work on data collection but also recommended the creation of kiosks with a camera and scale to take a picture of a fish and determine the size and species of the fish. Dueñas said PIFSC is spending a lot of money, and that money could be used to get real data by putting kiosks at every marina instead of asking old fishers who are not computer-savvy to self-report data on a small electronic device.

Sabater said that Gourley helped to develop a proposal to have a centralized data collection system for the Saltonstall-Kennedy Grant competition, but the proposal was not funded. The proposal was for a kiosk-based system to collect all samples prior to preparing the fish and giving them to vendors such that the system would be a control point for data collection. The system could also provide fishers advance payment for their catch.

Gourley said that discussions on the idea for a kiosk-based system is continuing. He said that he has implemented different procedures to acquire fish for their biosampling program. The program is getting entire catches from fishers and delivers the catch to the fish dealers packed and iced after collecting the data. The CNMI Biosampling Program also purchases the fish for life history sampling and developed protocol to remove the biosamples without destroying the fish that prevents it from being sold. The Council could develop a clearing-house solution with more time and planning.

Dueñas said that Guam started a new biosampling program since the previous program with PIFSC ended after more than a decade, but noted that the program described by Gourley is an artificial pricing program. The catch contributed to the biosampling program is documented, and he expressed concern that those catches are applied toward the ACL even though those fish are not entering the normal route of feeding the people of the island. A markup of retail value or wholesale value of a fish by a private company is disheartening. Dueñas said he hopes that the fishing community can go back to their old system where the new companies can assist fishers in the biosampling program as PIFSC did in the past. Dueñas said true science is not an interest of anyone at PIFSC.

Gourley said the issue of biosampling data collection deserves more conversation in an informal setting.

Soliai thanked Sabater for the work on the strategic plan, and said all parties need to collaborate to implement the tasks.

Ramsey commended Council staff for their collaboration with the University of Hawai’i and the Fishery 101 capacity-building efforts.

Gourley asked if an assessment on the quality of the data in the territories would be premature at this time.



Sabater said that PIFSC is in the process of reviewing the creel survey programs, including an analysis of the existing data.

#### **E. Scientific and Statistical Committee Three-Year Plan**

Mark Fitchett, Council staff, presented an overview of the SSC Three-Year Research Plan. There are several major areas included in the plan, such as limit specifications, stock assessment development, science and research priorities for advancing fisheries management, science for fisheries management incorporating climate change, science workshops to change the management regime, protected species, socioeconomics and the level of coordination between organizations. Limit specifications are a routine task of the SSC as a part of its MSA 302(g) obligation. Stock assessment development includes taking a more proactive role in the review of assessments for management advice. Science and research priorities for advancing fisheries management refers to providing direction on priorities for research through existing processes. Science for fisheries management incorporating climate change stems from a mandate by NMFS headquarters and includes identifying climate change resilience and adaptation for regional fisheries. For science workshops to change the management regime, the SSC will continue leading a series of workshops regarding regional and national science priorities. Protected species focuses mostly on the longline fisheries interacting with FKWs, sea turtles and seabirds. Socioeconomics refers to enhancing the understanding of fishing communities, the participation and data collection resilience as well as adaptation of future stocks. The level of coordination between organizations includes interagency coordination. The plan was endorsed by the SSC at their September meeting, and the Council was asked to consider approving the SSC work plan.

Dueñas said he wishes the fishing communities to be fully engaged in many activities that were addressed in the work plan so that the community is informed. He endorsed the SSC's recommendation regarding the work plan.

#### **F. Review of Council Aquaculture Management and Programmatic Environmental Impact Statement Update**

DeMello presented an update to the Council's aquaculture management following the release of the draft PEIS in June 2021. The Council's history with aquaculture management includes adopting an aquaculture policy at its 137th meeting, updating the policy in 2009, holding public meetings on aquaculture permitting and reporting, taking initial action at its 147th meeting and taking final action at its 148th meeting. Since then, the Council participated in a review of the aquaculture action as a PEIS was under development, and in 2018, the Council selected alternative 2 as its preliminary preferred option for a revised initial action at its 172nd meeting. The Council's preliminary preferred option was an open program that would amend the FEPs to require an aquaculture permit that is transferable to qualified applicants and limit aquaculture to MUS and native species with a permit duration of up to 20 years. NMFS recently published the draft aquaculture PEIS, on which the public submitted many comments, both in support and in opposition to the action, addressing topics ranging from legal aspects to fisheries and protected species. Council staff is working with PIRO to address the comments so that NMFS can publish the final rule in the near future. The draft PEIS has slight changes to its alternatives from what the Council initially recommended. Alternative 2 is now the more limited alternative that allows for a permit duration of only 10 years, research permits for three years and limits systems to currently used or known systems and limits capacity. Alternative 3 is the

expanded management alternative that would allow for the same basic management program under alternative 2 but allows for a permit duration of up to 20 years and research permits for 10 years. The Council will consider final action at a future Council meeting, with timing dependent on the publication of the draft PEIS, which may occur as early as December 2021.

Gourley asked if it would be premature for the Council to develop an aquaculture management program prior to the completion of the final PEIS.

Tosatto said the development of the alternatives and the selection of a preferred alternative at the draft stage are a part of the ongoing National Environmental Policy Act analysis process. After NMFS finalizes the analysis, the Council will have a thorough analysis to use to make a recommendation to NMFS, which the agency can use to make a decision. The outcome is a record of decision of whether NMFS decides to implement the Council's recommendation or to disapprove it.

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

Amy Vandehey, Council staff, presented an overview of the communication and outreach activities completed by the Council since June 2021. The updates included a new Council member training workshop at the end of August, the publication of the summer issue of *Pacific Islands Fishery News* and the publication of articles in the August and September issues of *Hawaii Fishing News*. Vandehey also described a new Council initiative to increase its presence on social media platforms using a program called Social Pilot. Other regional initiatives included providing outreach at fishing tournaments, such as the Perez Sportfish Foundation Fishing Derby on Guam and the 37th Annual Saipan International Fishing Tournament in the CNMI, and interviews on the Hawai'i Go Fish radio show with Mike Buck.

Muña-Brecht said Guam recent held several other fishing competitions, and DAWR staff have been present at each fishing competition to provide assistance collecting data.

Dueñas thanked Vandehey for the new Council member training workshop, noting that it was better than the NMFS training sessions that he has participated in the past.

Sword and Ramsey also thanked Vandehey for the new Council member training.

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

### **1. Advisory Panel**

Clay Tam, AP chair, presented the AP report and recommendations.

*Regarding proposed MSA changes*, the Guam AP was concerned that they are data poor and that any of the increase in mandates would have an even bigger impact on the data-poor territorial fisheries.

*Regarding proposed MSA changes*, the CNMI AP recommended the Council encourage the SFF to be continued to be managed by the Council as the Council process ensures the ability for the fishing community to participate.

*Regarding proposed MSA changes*, the American Samoa AP endorsed the need for the SFF to remain under the purview of the Council, as required by the MSA. The AP was concerned that the SFF, under Rep. Huffman's bill, would be controlled by political bureaucrats rather than fishery experts.

*Regarding proposed MSA changes*, the Hawai'i AP recommended the Council continue to communicate the need to allow fishers in the region to export billfish as the stocks are healthy. Further, the AP recommended the Council ensure that its customary exchange definition is included in the definition of subsistence fishing under any MSA reauthorization and that any changes to MSA are also reflected on international fishing that is having a larger impact on fisheries in the Pacific than domestic U.S. fisheries.

*Regarding research priorities*, the Guam AP recommended the Council ensure that bottomfish is included in the priorities.

## **2. Fishing Industry Advisory Committee**

Michael Goto, FIAC chair, presented the FIAC report and recommendations.

*Regarding cooperative research priorities*, the FIAC recommended the Council include FKW avoidance and deterrence in the Hawai'i longline fishery as a priority.

*Regarding the MSA proposed amendments*, the FIAC recommended the Council request the Administration determine the costs that will be incurred to implement many of the new provisions requiring new research and studies. In addition, the analysis should include costs to support associated reviews and outreach that will be needed to accompany public review and, in turn, implementation of regulations by the NMFS and the Council. The FIAC further noted opposition to removing the Council from the SFF, converting Council staff status to federal employees and prohibiting the Council from advising the Administration on what works and what does not work in completing the mission of the MSA.

## **3. Non-Commercial Fishing Advisory Committee**

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

*Regarding research priorities*, the NCFAC recommended the Council include Hawai'i in the shark depredation research priorities.

Sensui said that shark depredation is happening throughout the region, based on fishermen accounts, but there is a lack of data regarding the species, abundance and rates of incidences.

*Regarding MSA reauthorization legislation*, the NCFAC recommended the Council request the definition of customary and traditional, as included in the definition of subsistence fishing, not be limited to only indigenous fishing.

Sensui said that there have been questions about the definition of terms such as cultural traditional subsistence and sustenance, especially when it comes to noncommercial access to monument areas where the traditions of sharing the harvest may not be allowed.

*Regarding noncommercial fishery issues*, the NCFAC recommended the Council support a study of user conflicts at harbors, boat ramps and marinas and its impacts to the fishing community.

Sensui said that the concern is with the use of limited resources, with reports of boat ramps and parking spaces being used by tour operations, leaving boat fishermen in Kona, Maui and O'ahu without the ability to launch their vessels and park their trailers. Ramp availability is also an issue in the CNMI, where two of the three boat launch ramps in Saipan are reported closed or about to be closed for renovations, and the available ramp is in location that makes it more costly for fishermen to get to their fishing grounds.

#### **4. Fishery Data Collection and Research Committee**

Soliai, FDCRC chair, presented the FDCRC report and recommendations.

*Regarding the updated FDCRC Strategic Plan 2022-2026*, the FDCRC:

1. Approved the new tasks and strategies in the plan updates and recommends the Council direct staff to finalize the plan;
2. Recommended the Council direct staff to work with the FDCRC agency leaders for their signatures as an expression of commitment and support;
3. Recommended the Council send a letter to University of Hawai'i following up on the effort that was initiated through the Pacific Fisheries Research Program to establish a fisheries program.

*Regarding the mandatory license and reporting regulation*, the FDCRC recommended the Council request the territory fishery management agencies to continue to push for the development of the regulations, address the regulatory gaps and fully implement the existing regulations to increase the effectiveness of the electronic self-reporting and other data collection systems.

*Regarding the Catchit Logit Transition Plan*, the FDCRC approved the Transition Plan and recommended the Council direct staff to coordinate with the PIFSC and the territorial fishery management agencies on the transition activities.

#### **5. Scientific and Statistical Committee**

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

*Regarding MSRA Five-Year Research Priorities*, the SSC endorsed the MSRA Five-Year Research Priorities, noting the SSC also added a research priority on evaluating limit reference points for pelagic management unit species (PMUS) in the Pacific Pelagic FEP.

*Regarding the SSC Three-Year Plan*, the SSC endorsed the SSC Three-Year Plan (for Council approval).

## **I. Public Comment**

Dueñas provided public comment as the president of the GFCA regarding the MSA reauthorization bill. He said that he is concerned about the use of the word “lobbying.” The territories are small island areas and the territories’ representatives are nonvoting delegates to Congress. Dueñas said it was not clear if it would be considered lobbying every time he speaks to a representative at a local event such as a funeral or a wedding. Dueñas is concerned because the Council process follows National Standard 8 in involving native communities. He also expressed concern about the consideration of Council staff as federal employees because the federal government has different regulations for those under their employment.

## **J. Council Discussion and Action**

*Regarding research priorities and plans, the Council* **approved the SSC Three-Year Plan with the addition of the evaluation of limit reference points for internationally managed and highly productive PMUS and directed staff to transmit the plan to the Office of Science and Technology.**

**The Council approved the updated MSRA Five-Year Research Priorities with the addition of the following priorities:**

- a. Include Hawai‘i and American Samoa in the shark depredation research priority;**
- b. Evaluate reference points for PMUS under the pelagic fishery section; and**
- c. Include FKW avoidance and deterrence in the Hawai‘i longline fishery as high priority for cooperative research.**

**Further, the Council directed staff to transmit the priority document to the Secretary of Commerce and PIFSC.**

**The Council approved the FDCRC Strategic Plan for 2022 to 2026 and directed staff to work with FDCRC agency leaders for their signature as an expression of commitment and support.**

**The Council approved the FDCRC Catchit Logit Transition Plan and directed staff to work with the fishing communities, territorial agencies and PIFSC on the implementation of the transition tasks.**

Muña-Brecht said she supports the FDCRC recommendation but wanted to reiterate that it would help to know which activities under the objectives the Council assigns to which agencies.

Sabater said that Council staff will work with the territorial management agencies to seek concurrence on the commitment and support for the strategic plan.

Simonds said that all of the territorial management agencies have to agree, so Sabater will be in touch with the agencies regarding changes.

Dueñas said he understands that the Council no longer funds the individual working on the Catchit Logit project and suggested that the Council use Sport Fish Restoration Fund money to fund the individual. Dueñas said that before all of the management agencies reach agreements,

there should be community outreach so fishers better understand the caveats to items such as mandatory licensing. Dueñas said the Guam AP reiterated that fishers may not comply in the future, which would make it more difficult for everyone to participate in the management process.

Sword said that the Council should include Hawai‘i and American Samoa in the shark depredation research priority, as American Samoa has shark depredation problems as much as anywhere else. Sword asked if there is any way to use the Catchit Logit app to track shark depredation, noting that it is difficult to record a catch and release report with the number of sharks and lures lost.

Rice and Sword agreed to the language changes suggested by Dueñas and Sword.

Moved by Rice; seconded by Sword.

Motion passed.

*Regarding fishery capacity in the Western Pacific based on the FDCRC Strategic Plan, the Council directed staff to send a letter to the University of Hawai‘i following up on the effort that was initiated through the Pacific Fisheries Research Program to establish a graduate degree program in coastal and marine resources.*

Dueñas said he hopes this effort succeeds so the Council can expand it into Guam’s bottomfish fishery and other fisheries of concern, noting that he had always endorsed the Pacific Fisheries Research Program.

Moved by Dueñas; seconded by Sword.

Motion passed.

*Regarding FEP consistency with SBRM guidance, the Council recommended the following FEP amendments:*

- a. **Update the SBRM tables in the FEPs as follows:**
  - i. **American Samoa Archipelago FEP and Hawai‘i FEP: remove fisheries that target ECS species;**
  - ii. **Mariana Archipelago FEP: add shore-based creel survey to the CNMI bottomfish SBRM and remove fisheries that target ECS species; and**
  - iii. **Pacific Pelagic FEP: remove creel survey from the SBRM for the American Samoa longline fishery, identify Western Pacific longline fishing logbook as SBRM for the Western Pacific general longline fishery, and remove U.S. albacore and purse seine fisheries from the SBRM table.**
- b. **For all FEPs, add an explanation of how the SBRM meets the purpose of collecting, recording and reporting bycatch, and including language to address potential adjustments to the identified SBRMs.**

**The Council directed staff to work with PIRO to finalize and transmit the omnibus amendment prior to the February 2022 deadline for consistency.**

Dueñas said while the recommendation is a good one, he would like the Council staff to draft the recommendations in more layman terms.

Tosatto said that he will abstain because this is a final action that will come to him for final decision-making.

Moved by Dueñas; seconded by Sword.

Motion passed with Tosatto abstaining.

**Regarding territory data collection, the Council requested the territory fishery management agencies to continue the development of the mandatory license and reporting regulations, address the regulatory gaps, and fully implement the existing regulations to increase the effectiveness of the electronic self-reporting and other data collection systems.**

Dueñas said he likes the recommendation but is concerned that it only represents a tool in the toolbox. The Council needs to have the cumulative information from the creel survey, commercial data collection and biosampling to make the recommendation legitimate to the community.

Moved by Dueñas; seconded by Sword.

Motion passed.

**Regarding MSA legislation, the Council directed staff to work with the Executive Committee of the Council to collect comments on the legislation from members and provide a response to requests for Council comments. Unless otherwise directed by the Council, the Council authorizes the executive director and the chair to review the draft response, coordinate with the NOAA Office of General Counsel to ensure consistency with lobbying regulations, and verify that it is consistent with the comments from the Council members.**

Tosatto said that he will abstain because he will not be participating in commenting on the MSA legislation as a Council member. NMFS has been asked for technical drafting assistance on the bill, and he will not be participating in the Council's comments so as not to confuse his role as a member of the agency.

Moved by Gourley; seconded by Sword.

Motion passed with Tosatto abstaining.

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

There was no public comment on nonagenda items.

## **IX. Mariana Archipelago**

### **A. Guam**

#### **1. Isla Informe**

Amani reported the Greg D. Perez International Fishing Tournament was held Aug. 22, 2021, to honor the 52nd anniversary of the world record 1,153-pound Pacific blue marlin caught by Perez who held the record for 13 years. The event, hosted by Perez' son and daughter, offered

\$50,000 to the first fisherman to break the record, though none did this year, with the heaviest marlin caught at 413 pounds. ShutUp and Fish Guam also hosted a pelagic derby Aug. 28, 2021, with approximately 30 boats participating. The Council supported both pelagic events with staff as weighmaster, Council-branded material and banners. A spearfishing competition was held Aug. 7, 2021, when a marlin was caught for the first time in competition using a speargun in Guam. The DAWR hosted a six-to-12-year-old kids' shore derby Aug. 28, 2021, and had a good turnout. No fishing events were held during 2020 due to the pandemic and are just starting to return. Three spearfishing teams from Guam joined the World Freshwater Spearfishing Championships held in Arkansas July 21-23, 2021, which was the third time Guam participated. The 4th Merizo Underwater Cleanup was held June 26, 2021, organized by a young couple, one of which was Leilani Sablan, a Council scholarship recipient.

Dueñas reported that more than a dozen imported vessels from FSM were supposedly provided by the Japanese government to help FSM's economy. The vessels can be purchased for \$5,000 with an engine and trailer, which Dueñas knew because he was offered to buy one. There are three issues on the table for negotiations with COFA regarding the entry of these migrants. The first is employment or self-employment using the vessels. Second is medical assistance, and third is education. The United States pays several million dollars to the FSM annually for the U.S. purse seiners, which there are now 13 vessels. The migrants come to the U.S. territories to fish, heavily impacting small marine resources. Most eventually move to Hawai'i but the fishing impact burden is left upon the local fishermen.

A SCUBA spearfishing bill was passed in March 2020 that showed the impacts by the migrants using SCUBA tanks. Two died while fishing with SCUBA. Dueñas asked for licensing SCUBA spearfishing in Guam but was ignored. While local fishermen no longer use SCUBA to spearfish, the FSM migrants are known to continue. Dueñas hopes the federal government gives Guam the \$1 million given annually to FSM from the South Pacific Tuna Treaty so boats can be purchased for local fishermen. He equated this fishery with the Vietnamese fishery that bloomed in the southern United States. The Vietnamese were refugees seeking freedom and asylum, whereas the FSM people, it is a path forward and a detriment to the local community. Twelve FSM vessels go fishing daily in the morning and return in the evening, then they go night-dive fishing.

The FADs are a detriment to a small fishing community. Dueñas acknowledged that Muña-Brecht is working on the issue. The FAD program in Guam is approximately 25 years old with no room for improvement, additional FADs or deployment, and serves as a maintenance program for the 15 existing FADs. Dueñas acknowledged former DAWR staff Andrew Torres and Gerry Davis for putting out the original FADs. He said the program should be expanded. The NOAA wave buoy deployed to study wave movement located near Ritidian is small yet effective as a FAD, and Dueñas suggested that DOAG consider these types of buoys to be placed nearshore since most of the boats in Guam are small and average approximately 20 feet in length. He said Shallow Water Mooring Buoys can be put back in place and that there is so much talk about protecting corals and EFH, but the programs get slid from under those who would do the work. He hopes the Guam DOAG leadership can see the change and direction toward true habitat protection, not the verbiage coming out of Washington, D.C. who will never fund habitat protection.



There was a \$100 million foreign fishing industry in Guam over the last 30-40 years, and Dueñas had worked with that industry to keep mahimahi and wahoo out of the Guam market because it would compete with local fishermen. Only one company refused to work with the GFCA. The last foreign fishing fleet out of Okinawa moved out of Guam in December 2020. Their departure is detrimental to Guam because now approximately 98% of the fish consumed in Guam is imported frozen or gassed. The community should be more engaged in the sustainable fishing discussion.

The Shark Prohibition Act of 2000 and 2010 had a detrimental impact. The most responsible group of fishermen was from Taiwan. It landed the shark with the carcass but had difficulty dealing with the criteria set forth in two shark legislations by the U.S. Congress. Dueñas said shark finning continues but Guam did its part by passing a law banning shark finning. Conservation measures are impacting the local community. In the center of tuna schools are an average of 30 to 50 sharks. When the purse seiners come, set their nets and harvest 50 metric tons (mt) of tuna, they are obligated to release sharks alive. It is hard to kill a shark when it is hooked to retrieve lures. The issue of killing sharks is never going to be resolved because they are tough creatures. There is also the conflict between local and federal laws. Federal law says fishermen can land sharks following the criteria set by Congress, but local law does not allow fishermen to land the shark with fins attached. That has to be mitigated. Cultural and islander fishermen do not like to waste anything and are afraid law enforcement will confiscate everything because they have sharks on board. In Guam everything is eaten.

As the Council's vice chair for Guam, and as president of the GFCA for the last 20-25 years, Dueñas expressed disappointment with the biosampling program, which he had been pushing to do more conservation. But Guam's livelihood and 4,000-year-old tradition is often scoffed at. Fishing is always about feeding the community. Roughly 2% of the fish consumed in Guam are caught locally. Guam had approximately 70,000 people in 300 villages pre-Spanish-contact. There were no cows, chicken or pigs to consume, so what Guam had to eat was in the ocean and what can be grown. When the Spanish came, they found robust people. It is about understanding the people being managed because the fish is not being managed. It is the people being managed. Biosampling is very important and should be expanded, not contracted. Dueñas also expressed disappointment in PIFSC for its insensitivity to the needs of Pacific Islanders. The agency has people studying the same subject matter for 20-30 years. But when it comes to the Pacific Islanders, it pushes the idea that the fishery is the same as the one in Hawai'i. When it was found that fish in Guam grow twice as fast as the same species in the Great Barrier Reef, there was thought there is nothing to worry about. Onaga on Guam reproduce at two pounds. He did the life history and biosampling program on Guam for many years.

Dueñas reported the GFCA's new facility is being supported by Governor Leon Guerrero, but with DOAG having Freely Associated States (FAS) and fishing regulations, and the way the Guam legislature is going, there will be no need for a facility. He is concerned that the Council needs to get back on track with all these issues, such as EFH and all that is going to be a detriment to a small-island community. He referenced a video where a congressman said Guam will tip over with the military buildup. In that same video, a U.S. Navy admiral said Guam was selected for the buildup because it owns Guam. Our lives and every detrimental aspect of how regulations are passed and how we cannot review things because it came out of Washington, D.C. defeats the purpose of the MSA.

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

Muña-Brecht presented the Guam DOAG/DAWR report, starting with the creel survey data for January 2021 through June 2021. Shore-based creel surveys were not conducted in the first few weeks of the year due to COVID-19 so the surveys were converted to participation surveys. Full creel surveys resumed from the third week of January, and 50 of 52 scheduled surveys were conducted. The top shore-based species harvested species were juvenile goatfish, convict tang, scribbled rabbitfish, blue trevally, blue surgeonfish and blackspot emperor. The fishing method used most was talaya, followed by gillnets. Due to the pandemic, only two of eight scheduled boat-based surveys were conducted in January, reducing the number of boat-based surveys between January and June from 48 to 42. The number of participation surveys increased from two to eight for January, or 18 total for the month. The boat-based survey scheduling returned to the normal eight boat-based surveys and two participation surveys per month from February. Skipjack tuna made up 79% of all trolling landings and 72% of all boat-based landings, followed by yellowfin tuna. Six of the top seven species landed and surveyed from boat-based surveys include only one nonpelagic species, which was onaga. Trolling made up 90% of the landings, 70% of all trips, 71% of all boat-based fishing hours and 68% of all persons participating in the fishery.

A meeting was recently held with the lieutenant governor, the Department of Public Works (DPW), the Guam Economic Development Authority (GEDA) and the village mayors of Talofofo and Inarahan, to discuss the potential siting for the proposed east-side boat ramp. There was also a meeting with an engineering company contracted by GEDA to conduct a feasibility study and prepare a design. The GEDA contractor's design was going to result in approximately \$1.5 million to \$1.3 million, with additional pavilions added for members of the community enjoy. DPW's issuance of a request for quotations is pending. The lieutenant governor's office has committed to funding the building of the boat ramp. An initial \$40,000 given to GEDA by DAWR to assist with soil boring testing is no longer needed, so the funds will be used to conduct community outreach where the design will be presented and input gathered. This process will begin in the next few months and as soon as the visual images are ready for presentation.

On the Agat Marina Dock B replacement, the memorandum of understanding was signed by the attorney general, the Port Authority of Guam (PAG) and the governor. USFWS issued a Notice to Proceed to PAG to begin construction. It will cost a little more than the \$500,000. A Notice to Proceed was also issued to the PAG to procure contractors to work on the Harbor of Refuge project worth more than \$700,000 to repair shackles, chains, buoys and 35 moorings.

An Invitation for Bid was issued for the Merizo Pier and Ramp project costing around \$150,000 to replace wooden planks with fiberglass composite material, replace ladders and lights, conduct a structural assessment of the pier's foundation and any other needed repairs. An engineering assessment of the foundation's structure is needed to determine if it needs to be replaced. There is also a request to replace worn out sections of the ramp. DAWR has been conducting regular maintenance at the Agaña, Agat and Merizo ramps to remove accumulated algae.

Conservation officers made arrests between April and September all within the marine preserves. Special permits were issued for seasonal fish each month for schools of atulai, i'e, ti'ao and mañahak that come into the Achang and Piti Marine Preserves.

Discussions were held regarding commercial fishing license draft regulations with updates now being reviewed. Conversations were also held with the legislative oversight chair who is willing to introduce the legislation. A last once-over is now being done with the AP and the fishing community before sharing the outcome with the Council for final input.

Processing of the first Coronavirus Aid, Relief and Economic Security (CARES) Act funding has been completed, with 466 applications received out of 785 who registered. Staff did extensive fisher outreach at different fishing sites, including the Agaña and Agat marinas, on the radio and direct calls to fishers. The entire \$988,883 was awarded, of which \$467,436.84 went to subsistence fishers, \$209,916.18 to 12 commercial fishers and \$8,400 to 12 subsistence fishers with sales. The remaining balance of \$303,049.98 will be divided equally among all 466 applicants. This allocation resulted from consultations with the Pacific States Marine Fisheries Commission. The application deadline for CARES Act II was Aug. 30, 2021. To date, 667 completed applications have been received. Outreach to all fishers who had registered was done primarily through direct contacts, as well as through social media and local media. In the second allotment, \$783,715.24 was awarded, of which \$362,244.64 went to Tier 1 Commercial fishermen, \$40,500 to 27 subsistence fishers with sales and \$380,970.00 to 634 subsistence fishers. This resulted in all funds allocated and awarded to all fishers who applied. There were no funds set aside for indirect costs for staff or for any other purpose than to provide relief to fishers.

Regarding Guam's first FMP, Muña-Brecht noted the name should be changing to the Ecosystem Management Plan. A plan group meeting was held Aug. 11, 2021, with representatives from different segments of the community. Six subgroups were created representing education, law enforcement, socioeconomic and community subgroups to collect data to develop the plan. The community subgroup is comprised of local fishers. These subgroups presented their findings during the second meeting, reported information collected and provided recommendations on the final management plan. The next step will be to consolidate all the recommendations into a draft plan. NOAA is providing technical assistance with a cluster analysis of fisheries, life history and biosampling data. It will also assist with communications and consolidation of information for the attorney general. More subgroup meetings will be scheduled leading up to the next group meeting in November. The Bureau of Statistics and Plans, through a grant, is helping to identify funding to hire a contractor to write up the final plan.

Purchase orders are on hand to deploy two FAD buoys before the next fiscal year. The purchase orders provide for additional deployments if more buoys are procured. DAWR is working with DPW to replace anchors and were able to construct and replace 10 anchors during August. A purchase order was issued to a vendor to deploy the FADs that have been offline for approximately a decade and a half, and DAWR is making progress in replacing them. For the Shallow Water Mooring Buoys, DAWR is still waiting for Requests for Quotations to identify a vendor to deploy and replace 15 SWMBs. All components needed for the replacements are on hand. Once a vendor has been selected, the procurement will be processed through the Guam General Service Agency.

Trash and marine debris were collected from fishing platforms at Ylig, Togcha 1 and Togcha 2 locations. Debris included Tupperware, fishing hooks and monofilament fishing line. A purchase order was issued to repair the platforms, including incorporating nonskid additives to the marine-grade paint applied to railings and rod holders.

Grant funding is available to install solar-powered lighting on top of the Hagatña Fishing Platform. A biological assessment was conducted and submitted to USFWS for review before the lights are installed. A contractor has been procured to conduct maintenance repairs to the platform. Railings were repainted and broken rods were replaced. A purchase order was modified to include installing a gate to allow fisher access to the water by a contractor, and work is currently in progress.

Quotes from vendors submitted to the Guam General Service Agency to install eight Fishermen's Code of Conduct signs had been processed using the Sports Fish Restoration Fund. Four signs will be installed at the fishing platforms and four will serve as replacements should the installed signs be stolen, damaged or degraded over time. Muña-Brecht thanked the Council for the support in the development of the Fisherman's Code of Conduct.

DAWR received a grant to study fibropapillomatosis in green sea turtles. Muña-Brecht said there is a need to know to what degree of severity of infections is in the Piti Bomb Holes, noting that only turtles in this area have been found with the tumors. The second focus of the grant is to assess and determine if there are other areas around Guam where the tumor may be present.

Ten cultural signs have been cleaned, and area maintenance done. Work on procurement to replace many of the signs is ongoing. This is being done in collaboration with the Bureau of Statistics and Plans. Local artists carved visually pleasing signage incorporating a safety and marine preserve information for visitors. The signs were created in the shape of fish or crabs.

Dueñas said he was disappointed with the CARES Act, believing that it could be a template with an arrangement between the Council and NMFS where fishermen can get assistance should there be typhoons and other disasters. The numbers do not match between the island areas. The report by Muña-Brecht show six fishermen will get more than \$300,000, while others with receipts who sell fish are only going to receive \$900. All others will receive \$1,100. No fisherman makes \$60,000 a year. Fishermen have said they had provided all required documents, but have not received their money. Dueñas was concerned with the fishermen registry and did not know Guam had a law that required fishermen to register. With the fishing community, it has always been a promotional thing and said he has an issue with the federal government and the MSA because fisheries are in a constant state of development.

Muña-Brecht said there were only six commercial fishers who applied for the second CARES Act funding. They were the fishers who provided all their receipts, including gross receipts, tax information, business license information and income tax information, to verify the required 35% loss, which was set by the Department of Commerce and NOAA. The first CARES Act funding still has not been fully paid, but that is not due to any DAWR issues, and the Pacific States Marine Fisheries Commission is processing all applications from Alaska to California, Honolulu and all the territories. The commission's website noted that not all payments have been issued, but anticipate all to be done by the end of September to meet the congressionally

mandated deadline. Outreach was done to target as many fishers as possible, which increased the number of fishers who responded between the first and second funding by 200. The fishing registration with DAWR is not a statute or a legal requirement but an attempt to collect fisher information and the number of fishers in Guam, because that information has never been collected before. It was a surprise to many that there are between 500 to 700 people who registered as fishers.

Rice asked what the cost is to deploy FADs in Guam.

Muña-Brecht said in prior years it was around \$20,000 per FAD because only one vendor replies to the RFP.

Rice said it sounded a little expensive.

Muña-Brecht agreed.

Sword said he envies Guam's fishing platforms and access to fishermen who do not live near the water, but can enjoy them. He asked what a platform may cost. One American Samoa AP recommendation was to put a platform at Pala Lagoon near the airport, but no one can get there because there are no walkways or platforms.

Muña-Brecht said she will provide the cost of platform information later.

Sakoda asked if the process to get a permit and have a platform installed was difficult.

Muña-Brecht said because DAWR used the Sports Fish Restoration Fund, the fund managers are responsible for the acquisition of any federal permits and processing them through local agencies.

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

### **1. Arongol Falú**

Gourley provided the island report for the CNMI, noting that there no significant changes since the previous Council report. Regarding COVID-19, there has not been any community infections reported. The vaccination rate is at 81.5% and the Delta variant is present. Infected individuals are being caught at the airport and treated locally. They are being transported to Pacific Islands Club, a quarantine site close to the airport. He also reported that the fishing activities have not changed since the previous report, noting that the demand for fresh fish is limited to residents due to the tourism sector still being affected by the pandemic. This means that the local markets can be flooded with inventory during days with ideal fishing conditions.

The economy is stable, but is being supported by federal funds, Federal Emergency Management Agency Disaster Relief Funds and other similar funding sources. This means that certain sectors are doing very well, such as the engineering, construction and other similar sectors. Under the CNMI's tourism bubble concept, there will be 600 Korean tourists planning on visiting Saipan this month. Tourists will all be staying in one hotel and other restrictions, such

as five-day testing and restricted movements, will be placed. This will be a start to revitalizing the local economy, as long as the community infection level stays at zero.

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

Tenorio provided the CNMI DLNR Division of Fish and Wildlife (DFW) report covering fisheries activities for the months of July through September. Staff capacity for the fishery-dependent data collection program improved due to the recruitment of staff, with plans of recruiting more professional staff members. There has also been a continued collaborative effort with the CNMI fishing organizations, such as the Saipan Fishermen's Association, Tasi To Table Organization and Isla Fishing Association that mainly assisted with the derbies. New staff is being trained on sampling protocols and fish identification for the data section. Other program improvements include the encouragement of new fish vendors that enter into the market to participate in the commercial purchase systems.

The surveys for the shore-based creel program have been reinstated for the midnight to 6 a.m. timeframe. Between July and August, 37 interviews were conducted, of which 26 were hook and line, 10 were cast-net and one was spearfishing. The boat-based creel program data between July and August had 35 interviews, of which 15 were trolling, 17 were bottomfish, one was hook-and-line fishing and two were spearfishing.

Regarding market performance, Tenorio reported that the Commercial Purchase Data System has been collecting from participating vendors, hotels and restaurants up to October. New vendors are being encouraged to participate in the program. For the period of July through August, an estimated 1,096.3 pounds of bottomfish, 2,456.7 pounds of reef fish and 12,916.22 pounds of pelagic fish were sold.

Regarding the Mandatory Catch Recording and Reporting Program, meetings were held to review the draft Mandatory Data Reporting Implementation Plan. Data and fishery staffs are working to finalize certain sections of the plans, such as the outreach and the data collection procedures. The acting data manager has been tasked with issuing the commercial ID cards and meetings have been held with Council staff, as well as program managers and agency heads to discuss the transfer of the Catchit Logit app to DFW.

Enforcement activities involve patrols and dockside vessel inspections at the launching ramps around Saipan, which are being performed regularly as part of the DFW Enforcement Program. Shoreline patrol and inspections are being conducted by enforcement personnel, with outreach with fishermen and boaters also being performed during these patrols. Information is collected on catch, hours spent fishing and areas fished, and information on local and federal regulations are shared with the fishers.

Regarding fisheries development activities, the DFW Life History Program has processed approximately 600 *Scarus rubroviolaceus* gonads and approximately 200 *Cheilinus trilobatus* gonads for histology. Prepared samples will be read and scored by the life history biologist. The necessary upgrades to the lab have been made, such as insulation of the fume hood to allow for safer processing of samples and the use of chemicals.

Three fishing events were permitted at the Smiling Cove Marina for the Boating Access Program. The regular marina ramp maintenance operations are being performed at all CNMI boating access sites. Matching funds have been identified for the Tinian Marina Dock Replacement Project by the Boating Access Program managers. The correspondence with the Public Assistance Project representative and the Council consultant continues on how to proceed with the Tinian Marina Replacement Project. The following three projects were scheduled for September for the Rota West Harbor Marina: railing refurbishment, signage installation and walkway repairs.

### **C. Shark Depredation in the Mariana Archipelago**

Carl Meyer, University of Hawai‘i, provided a report of the shark depredation project conducted in the Mariana Archipelago. Shark depredation is a chronic problem in fisheries in many locations, including the Mariana Archipelago. Sharks will opportunistically feed on hooked fish and this causes economic losses for the fishers and it also results in hidden mortality that is not accounted for in stock assessment models. This problem is hard to resolve due to the natural behavior of the sharks. The first step in resolving this issue is to identify the shark species that are in the different fisheries. This task is challenging because the depredation occurs without a clear view of the shark. Even if the shark is spotted, identification can be confusing due to the close resemblance of different shark species. One of the tools for identifying different shark species is called DNA bar coding and it identifies the species through DNA samples collected from the bite wound on the fish. The DNA is amplified and sequenced at a laboratory to produce a definitive DNA bar code.

In 2020, a group traveled to Guam and Saipan to participate in a few Council workshops where local fishers, scientists and others were recruited and trained in the collection of predation event samples. The group was able to successfully collect 29 samples from depredation events from Guam and Saipan. However, due to COVID-19, the project was disrupted.

Local coordinators collected the samples and shipped them to Hawai‘i for laboratory analysis. Using the DNA bar coding approach, the culprit species were identified, with 26 of the 29 bottomfishing depredation events identified with a 90% accuracy rate. The results indicated that the identified species were of the reef-associated and shelf-associated shark assemblages for the region, which includes silvertip, grey reef, silky, reef and tiger sharks.

Cameras were also utilized to get a clear view of what is happening during a depredation event. Swab kits were easy to use, reliable and can be applied at any fishery with minimal training. The species identified are ones that show a degree of residency or site attachment that could explain the shark depredation becoming worse over time. The sharks with residency or site attachment to a particular area might start associating boat motor sound with a meal and the sharks will start congregating in advance.

The next step is to move toward mitigating and reducing the overall shark depredation events. This will require more sampling and further data analysis. There are plans to develop and build capacity for the CNMI and Guam for the tagging and tracking studies of the shark species. This is to target the specific species and collect data on feeding patterns, activities within the year, cluster sizes in fishing grounds to predict the depredation probability in advance. In order to make these devices, a better understanding of each species is important.

Rice asked if silvertip sharks occur in Hawai'i.

Meyer said silvertip sharks do not occur in Hawai'i, but they are a common species in the Mariana Archipelago. The samples collected from this round were exclusively from bottomfishing. The types of habitats are the natural habitats of silvertip, gray reef and silky sharks. Oceanic whitetips are primarily pelagic species so they would be problematic in fisheries targeting pelagic species. The tools are developed so that the identification of the specific species can be accurate. Of the 29 samples collected, none were whitetips.

Gourley said that Tony Flores who works for the biosampling program in Saipan purchased an electromagnetic device to attach to a fishing line, but it did not work in deterring sharks. One of the reasons is likely because the bottomfishing gear has eight or nine hooks that covers an 8-10 foot area, whereas the shark repellent devices lose effectiveness with distance. Placing a deterrent between each hook would be expensive, considering that the device costs \$50 each, and the devices could be lost if a shark breaks the line.

Meyer said that the most important factors for the deterrents are efficacy and cost. One of the issues that have risen with the devices are that the marketing is starting to overtake the science behind it. The price is not always cost-friendly, which results in it becoming less affordable for the general public. The deterrents have to be perfectly engineered for rigorous science, and there should be concurrent engineering to make the end price point accessible for fishermen. He said that there is a theoretical grounding for the deterrents because sharks have an electro-receptive system that is sensitive. Other fish species do not have this receptive system so there is something that could be exploited with the shark's sensory physiology.

Muña-Brecht asked if there is any data analysis being conducted with the data collected from the fishermen who participated in the shark depredation meeting in early 2020 in Guam when sample collection kits were distributed.

Meyer said yes, there was a small group that followed through on the sample collection from the kits that were issued during that meeting. The kits that were used were then returned to Hawai'i for analysis. Although the sample size was small and the project was cut short due to the pandemic, it helped provide the team with a better understanding of what was going on with the shark depredation events.

Dueñas asked if there are plans to expand the study, noting the need for conclusive information on whether shark depredation is occurring in pelagic fisheries on the FADs. He said that he is happy to learn that the bottomfish fishery is not dealing with a shark species of concern, and conclusive information is needed to make sure the pelagic fisheries are also not dealing with those shark species.

Meyer said he is planning to expand into pelagic fisheries. The Pacific Islands Ocean Observing System (PacIOOS) is providing basic funding to start the process of capacity-building, and a proposal has been submitted to the Saltonstall-Kennedy Grant Program in the hopes of funding for the expansion of the existing science work and would specifically recruit local fishes to help with the shark tagging, tracking and sampling. It will also financially incentivize the participants for being part of the science program. Meyer said after seeing the footage of depredation events in Guam, the main culprit that is attacking the catches in pelagic waters and the shelf area look to be silky sharks. This means that silky sharks are depredating



both bottomfish and pelagic catches. The expansion of the program will help the efforts in preventing these depredation events.

Sword asked about the depths and temperature of the bottomfish depredation events and if those play a factor in the events.

Meyer said those elements have not yet been quantified, but based on studies from other parts of the world, depredation events are worse in warmer water. Looking at the environment during different seasons and geographically from pole to equator, there is a correlation between temperature and depredation events. He said he is also interested in doing a granular analysis as well to see if the moon phases have a role to play. There is a possibility that the conclusion could be that none of these play a role in the depredation events and that sharks are active when the fishing is good. However, the goal is to approach this issue with a “no-stone-left-turned” type mentality. This leads to looking at other factors such as time of day, time of tide and particular water temperature to help fishermen be more informed when planning their fishing trips so that they can keep more of their catches.

Sword asked if there is any information on reducing the chances of an attack based on the fishing methods used.

Meyer said the cameras used during the tests will provide further insight into how fishing methods for gear rigging could be modified to make depredation more difficult. The problem is that the positioning of the shark during a depredation event is hard to identify. The fishers from Guam and Saipan that helped the team for this study were sent out to conduct business as usual and collected samples to be analyzed. It can be theorized that as the fishers repeatedly fish in the same location, over time the sharks will start to make a connection between boat engine sound and an easy meal.

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

### **1. Advisory Panel**

Richard Farrell, CNMI AP vice chair, presented the AP report and recommendations.

*Regarding Guam fisheries issues*, the Guam AP requested the Council assist the AP in identifying a military liaison for the fishing community to talk about coordinating efforts between fishers, tournaments and military activities, especially during local fishing tournaments. Further, the AP requested the Council work with the military to issue a map of the sea and land area, highlighted where the coordinates are for the trainings beyond the notice to mariners issued by the U.S. Navy.

*Regarding CNMI fishery issues*, the CNMI AP recommended the Council request CNMI DLNR to provide for moorings at Pagan, Anatahan and Sarigan for fishermen to avoid damaging the ecosystem.

*Regarding CNMI fishery issues*, the CNMI AP recommended the Council to request CNMI DLNR to review the marine sanctuary areas to allow for fishing during derbies in those areas.

*Regarding CNMI fishery issues, the CNMI AP recommended the Council provide assistance to the CNMI government on developing FAD systems that are appropriate for CNMI's weather conditions.*

## **2. Fishing Industry Advisory Committee**

Goto, FIAC chair, presented the FIAC report and recommendation.

*Regarding military training exercises and activities, the FIAC recommends the Council direct staff to send a letter to the Department of Defense (DOD) noting fisher impacts from the increased military exercises and associated offshore area closures on the Pacific Islands fisheries and other user groups.*

## **3. Non-Commercial Fishing Advisory Committee**

There were no NCFAC recommendations regarding the Mariana Archipelago.

## **4. Scientific and Statistical Committee**

There were no SSC recommendations regarding the Mariana Archipelago.

## **E. Public Comment**

There was no public comment.

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

*Regarding Mariana Archipelago fisheries, the Council requested the DOD provide a liaison to the Council to discuss fishery-related impacts from increased military exercises, offshore area closures and coordinating with the community during fishing tournaments. Further, the Council requests the DOD work with the community to issue a map of the sea and land area that is used for training to go beyond the Notice to Mariners. Further, the Council requests the Guam DOAG assist the Council in connecting with the proper liaison.*

**The Council requested the CNMI DLNR provide moorings at Pagan, Anatahan and Sarigan for fishermen to avoid damaging the ecosystem in the Northern Islands.**

**The Council directed staff to work with the AP on determining and addressing FAD issues in the Mariana Archipelago.**

*[The above three recommendations were originally moved and seconded by Dueñas and Sword, but withdrawn following discussion. A modified version of the recommendations was moved by Dunham and seconded by Sword.]*

Dueñas made the original motion and offered an amendment. He said that one of the recommendations regarding the firing ranges was to establish a FAD system outside the firing range outside so that fishermen know where the FAD is located. A lot of fishermen do not have high-accuracy GPS units and positioning the FADs one mile outside the boundary would be a

good idea to save fishermen from hardship. Dueñas also recommended that NMFS and the Council consult with the U.S. DOD Office of Economic Adjustment, which provides compensation for financial offsets on federal military issues. He said that these are economic issues that need to be addressed and financed by that office as it impacts the local fisheries even though it is mostly a subsistence fishery that greatly impacts the community and families. He also suggested including Sikes Act as part of the recommendation with further discussion.

Tosatto made a point of order that Dueñas has made a new motion rather than an amendment to the motion, which would require a start over by closing out the current motion without action or vote on this action and then making a new motion. He said that adding on the additional recommendations to the existing motion would be improper and sought advice from GCPI.

Soliai asked if the maker could withdraw the motion.

Dueñas withdrew his motion and said that the issues can be brought up for discussion purposes, but he noted the issues were relevant to the motion because it is an ask to the military.

Sword agreed to withdraw the motion.

Muña-Brecht said the government of Guam has an office called the Military Liaison Office. There is a person assigned to a specific DOD liaison, and their position is specific to addressing community-related issues. She suggested including language in the first recommendation so that the Guam DOAG can help connect the Council to the proper person of contact.

Soliai requested the modified motion to be read for the record.

Moved by Dunham; seconded by Sword.  
Motion passed.

*Regarding fishery impacts due to COFA in Guam, the Council **directed staff to request appropriate federal and local government agencies to investigate and assess the following issues:***

- a. Origins of vessels from Freely Associated States (FAS) and their intent and purpose in Guam;**
- b. Whether personnel on board FAS-owned vessels in Guam are in compliance with federal laws and the COFA; and**
- c. The feasibility of a U.S. citizen or permanent resident fishing license requirement in waters within the U.S. EEZ around Guam.**

*[The original motion included item “d. Guam to receive 5% of fees paid under the South Pacific Tuna Treaty for fishery enhancement and/or development of programs,” which was removed during discussion.]*

Dueñas said the issue of fishing licenses on Guam and the fishery regulations only applying to U.S. citizens and green card holders must be addressed. There is a need for clarification on this issue.

Tosatto said he will be abstaining from this recommendation for a number of reasons. On A and B, there has been adequate past consideration for the issues with FSM citizens residing on Guam and conducting fishing, and the result was there were no avenues to pursue. C raises one of the issues, that if this is an activity that this Council considers as an action under the Mariana Archipelago FEP, it can find a purpose and the Council should pursue that. Such an action would have to be compliant with all applicable laws. D is problematic, because the fees paid under the South Pacific Tuna Treaty for access is provided by the industry. The Economic Assistance Payment is for a variety of purposes.

Holstead asked that for the Council's clarification on item B on the Council anticipates conducting the investigation on the compliance with federal law, whether it is pertaining to border patrol or investigating whether they are commercial vessel operators. He also sought clarification on whether the vessels in question are recreational or commercial vessels.

Simonds asked Dueñas if item D should be kept, as the Council already voted on a similar recommendation on the previous day.

Dueñas said yes, and noted that the U.S. State Department could consider a PIAFA with the island groups in terms of serving the wealth of this South Pacific Tuna Treaty. The enforcement checks on specific nationality groups are disheartening, with local fishermen being boarded by USCG at the end of their fishing day when their vessels are fully equipped, compared to the FSM vessels with only a cellular phone acting as a running light on their chest. The fish needs to be protected for U.S. citizens.

Simonds said it is not the responsibility of the U.S. State Department to consider a PIAFA. If a governor wants to have a PIAFA, the governor will need to initiate the PIAFA with the U.S. State Department and the rest this group. If there is interest, the governor of Guam should write to the U.S. State Department. Simonds suggested removing D since a similar recommendation was already made and staff will be working on the issue. In terms of item B, Simonds said that a separate meeting should be held following the Council meeting.

Dueñas and Sword agreed to removing item D from the motion.

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

*Regarding shark depredation in the Mariana Archipelago, the Council recommended NMFS support funding for the second phase of the shark depredation project, expand further to pelagic fisheries and develop deterrence measures based on the information from the genetics study.*

Moved by Dueñas; seconded Sword.  
Motion passed.

## **X. Protected Species**

### **A. Hawai'i Longline Fishery Seabird Mitigation Measures**

## **1. Results of the Tori Line Experimental Fishing Permit Study in the Hawai'i deep-set longline fishery**

Carnes and Gilman, Council contractors, presented on the results of a tori line study in the Hawai'i deep-set longline fishery that was conducted under an EFP. The study built on an earlier field trial conducted in 2020 that showed that tori lines, when used in conjunction with blue-dyed bait, was an effective seabird mitigation measure. For the current study, the EFP exempted vessels to fish without blue-dyed bait and strategic offal discards when using tori lines. The same tori line design used in the 2020 study was used in the current study, and three vessels completed 87 experimental sets.

Prior to the study, fishermen in the Hawai'i longline fishery had the perception that tori lines may tangle with fishing gear or the vessel's propeller, or that tori lines would not work if the seabirds are hungry. The tori lines used in the studies were designed to address many of those fishermen's concerns, and only one tangle was experienced in the two field trials. Feedback from the crew was overwhelmingly positive, and crew indicated that the tori lines were easy to deploy and were preferred over blue-dyed bait. Some feedback on further improvements included using double tori lines, a stronger attachment point, and longer lines to eliminate the need for weighted branch lines.

Data were collected using an EM camera system. Still photos taken from the camera systems showed that seabirds tended to land relatively close to the stern of the vessel when tori lines were not used, whereas when the tori line was used, seabirds less frequently landed on the surface, and those that landed tended to be further back from the stern. EM provided for efficient data collection compared to on-deck monitoring, with the review of a six to seven-hour setting process only taking approximately two hours to review once the vessel returns to port with the footage. The study collected data on seabird attempts and contacts, and those behaviors are different enough that automation may be possible in the future.

The results of the study showed that the attempts, contacts and captures were 1.5 times, 4 times and 14 times less likely, respectively, in sets using a tori line compared with the sets that were using thawed blue-dyed bait. A seabird attempt was counted when the EM analyst saw a bird plunge underwater or completely submerge, but not contact the baited hook, while a seabird contact was counted when a bird grasped the baited hook in its beak. Captures were based on records during gear haulback. Less than 1% of the 646 observed albatross attempts or contacts were more than 50 meters astern, indicating that the 50-meter long aerial section is appropriate for the seabird species that interact with the Hawai'i deep-set longline fishery. Approximately 27% of interactions occurred within 10 meters of the vessel stern. The study also found that albatross interactions during tori line sets occurred significantly further astern compared to sets that were using blue-dyed bait, which reduces capture risk.

The study showed that a simple tori line design that meets the minimum requirements for tuna RFMOs was more effective at reducing seabird interactions than thawed blue-dyed bait in the Hawai'i deep-set longline fishery. From past research, side-setting is also known to be significantly more effective than blue-dyed bait. The studies conducted in the deep-set fishery, as well as those conducted in other fisheries, show that tori lines are relatively inexpensive, practical and safe, although occasional tangles may occur, and there will be some initial costs to install a tori pole. As with many bycatch mitigation measures, tori line efficacy is affected by

crew behavior and the ability to maintain the line over the area where baited hooks are accessible to birds. Compliance monitoring would depend on either observers or EM systems.

Dueñas said that the Council has always been at the forefront of bycatch mitigation measures, noting that the Council started technology transfer efforts approximately 20 years ago.

Rice asked what type of poles is used to attach the tori lines.

Carnes said that the poles were custom made for the project using marine-grade stainless steel, welded or secured to an existing infrastructure to the boat and adjusted to the final height of 5 meters above the water surface.

Rice asked if anyone had suggested using green stick poles, which are strong and a little flexible.

Carnes said that the project team did consider it, but did not use it in the trials because they were too flexible. For safety purposes, the team selected a rigid pole with the use of a weak link between the pole and the tori line as a safety measure in the event the tori line becomes tangled and creates tension.

Tosatto said that the line used in the study was a much lighter line than monofilament, and a flexible tori pole may also affect how the tori line behaves behind the vessel. He said that a requirement would need to match the line used in the study to achieve the effect shown in the study.

Carnes said that the project used a Dyneema macron line as the aerial portion, and a material called blue steel for the drag section. He said that NMFS could publish minimum standards that provide recommendations on the material to standardize the tori line across the fishery.

Gilman said that the drag section would need to produce enough drag to maintain the 50-meter aerial section, and the aerial section should be visible to the seabirds so they do not fly into it.

Ishizaki said that the Council reviewed the preliminary minimum standards at the June meeting, and endorsed the direction that the regulatory requirements should be basic to provide standards for line length, streamer spacing to provide for flexibility and provide additional guidance and recommendations for design details.

## **2. Options for Revising Seabird Mitigation Measures in the Hawai'i Deep-Set Longline Fishery (initial action)**

Ishizaki presented the options paper for revising seabird mitigation measures in the Hawai'i deep-set longline fishery. The Council has been addressing seabird interaction issues since an increase in black-footed albatross interactions were observed in 2015, after which the Council conducted two workshops. The 2018 workshop reviewed seabird mitigation measures and identified high priority research areas including tori lines as a potential candidate for replacement with blue-dyed bait. In 2019, a cooperative research project was initiated to develop a tori line design suitable for the deep-set fishery, with the first field trial conducted in 2020. The

second field trial was conducted under the EFP in 2021, as reported under the previous agenda item. The Council at the December 2020 meeting considered a preliminary options paper and directed staff to initiate development of a regulatory amendment evaluating options for allowing the use of tori lines in lieu of blue-dyed bait, as well as removing the strategic offal discharge requirement. At this meeting, the Council was presented with a revised options paper informed by the latest study for consideration of initial action.

The purpose of the action is to modify the mitigation measures in the deep-set fishery to reflect the results of the recent cooperative research and the best available scientific information, and to improve overall operational practicality and mitigation efficacy of the required measure. The scope of the action does not include the shallow-set longline fishery. Ishizaki provided a brief overview of tori lines, blue-dyed bait and strategic offal discards, which are the three main measures considered for modifications under the action.

The options presented were: 1) no action; 2) allow the use of tori lines as a third option to the existing measures; 3) replace blue-dyed bait with tori line; and 4) modify strategic offal discard requirement. Current regulations require that deep-set longline vessels, when fishing north of 23°N are required to either side-set, or stern-set using blue-dyed bait, with approximately 82% of the deep-set vessels using the blue-dye option. Under option 2, a stern-setting vessel would have the option of choosing between blue-dyed bait and tori lines, providing more flexibility, but the less effective blue-dyed bait could continue to be used in the fishery. While many fishermen would be expected to switch from blue-dyed bait to tori lines, the extent to which fishermen may continue to use blue-dye is unknown. Under option 3, deep-set vessels would have the option to use side-setting, or use a tori line if stern-setting, which is expected to have a greater reduction in mitigating seabird interactions than under option 2. Under option 4, two sub-options were considered, either to remove the requirement for strategic offal discards, or to modify it. Ishizaki explained that the measure was implemented to distract birds away from the baited hooks, but there is evidence suggesting that this practice may increase seabird capture risk. In the absence of a regulatory requirement, there is little to no offal generated during the setting operations when seabird interaction risk is high, whereas most of the hauling operations when offal is generated occurs at night when seabird foraging activity is low. The strategic offal discard requirement also creates practicality issues as well as burden for the observer program and compliance monitoring.

Ishizaki provided a potential timeline for the action, noting that the earliest timing for implementation would be in the summer of 2022, if the Council considers initial action at this meeting and final action at the December 2021 meeting.

Dueñas said that he likes the idea of being flexible in how the tori line rules are set up. He said that there was an International Fishers Forum at which these seabird mitigation measure concepts were presented to mitigate interactions in all fisheries. He asked if there has been any effort to study the impact of the PMNM being extended out to 200 miles, with seabirds going hungry because they were used to eating offal off of fishing vessels. He also asked if the interactions are also occurring with the vessels fishing closer to the equator, why there is not a stronger correlation with interactions in the shallow-set and deep-set fishery if the problem is with the offal discharge, whether there are parts of the Hawai'i longline fishery that are not affected, and how seabirds may affect the American Samoa longline fishery.

Ishizaki said that when the PMNM expansion was proposed, proponents suggested that the closure would help birds and prevent seabird interactions, but there has not been a decrease in albatross interactions in the Hawai'i longline fishery since the expansion. She was not sure whether there are studies looking at whether the closures affected the seabird's ability to forage, but noted that albatross species forage much farther outside of the 200 miles so there may not be an impact. Regarding Dueñas's question about interactions closer to the equator, Ishizaki said that interactions tend to be more frequent farther north into the Northern Hemisphere, which is why the deep-set fishery is required to use mitigation measures north of 23°N. Regarding the correlation between shallow-set and deep-set fishery, Ishizaki said that the shallow-set fishery has not seen as much of an increase because night setting tends to be effective. Seabird interactions are also rare in the American Samoa longline fishery.

Ramsey asked whether it is likely that most captains would eventually use tori lines and move away from blue-dyed bait voluntarily if the more flexible option 2 was selected, or whether a minority may continue using blue-dyed bait.

Ishizaki said that it is yet to be seen, but noted that it would depend on the implementation process. Outreach to distribute tori lines and poles at no cost to vessels would encourage and incentivize the transition to tori lines, even if vessels have a choice to choose. For Alaska fisheries, NMFS and other organizations continue to make tori line available to fishermen at no cost, which has been a successful approach to adoption and for fishermen to carry backup lines in the event of a tori line breakage. Based on the experience from the field trials, having someone talk with and train fishermen on the proper use of tori lines will be a key effort in the rollout process.

Rice asked if Dang had any industry perspectives.

Dang said that he was experiencing internet connection issues.

Tosatto said that regarding strategic offal discards, he asked that Council staff point out the differences between removing the requirement and replacing it with nothing as if it is not a management issue at all. He said it would be a different decision for him when considering to approve, disapprove, or partially approve the regulation change if the change is to replace it with a better treatment of offal because he considers it to be a management issue. He thought it is known to be a management issue, or else it would not have been in the regulations in the first place. His comments were to make sure that the Council is working its way through the issue considering that this is a management concern, and it needs to be appropriately addressed in the Council's recommendation to address that management issue. He encouraged a thorough review of the offal issue between the initial and final actions.

Rice asked if it would work if the rules were change so that it is an option to release the offal at night on the opposite side as part of the regulations.

Tosatto said that he did not want to be predecisional about whether any change may be approvable. Strategic offal discard is currently not required for side-setting, but it is required for stern-setting if birds are present, which is difficult to monitor and enforce. The management issue is with the timing of when to strategically discard, and whether during hauling or setting, or alternatively the best time to discard may be at night. He reiterated that those are the management issues that need to be through when this issue comes back for Council final action,



and that a simple removal and not treating it as a management issue may create a problem for NMFS. He noted that some minimal requirements such as making sure hooks are not remaining in the discarded parts, or discarding it at night may be some options.

Rice said that option 3 would be best because of the results of the experiment, but it may take some time for the fleet to catch up to the vessels that have already tried the tori line, so there needs to be coordination with the industry to see how fast the boats can switch over from blue-dyed bait to tori lines, and if all boats want to switch.

## **B. Scientific and Statistical Committee Working Group Issues Paper on Alternative Approaches to Reduce Impacts to False Killer Whales**

Lynch, SSC chair, presented the SSC working group paper that reviewed FKW take avoidance and minimization measures under the MMPA. A preliminary report of this effort was presented at the June 2021 meeting. The working group, comprised of Lynch, Milani Chaloupka, Craig Severance and David Itano, was appointed to take a deep dive into measures that had been recommended by the False Killer Whale Take Reduction Team (FKWTRT) under the MMPA. The SSC recognized over the years a lack of progress exploring alternative measures, reviewing critically the science on the impacts of the longline fishery on FKW populations, and considering methods to avoid impacts on FKWs. The working group developed a paper, and the SSC has adopted it and recommended it for Council adoption.

Recognizing the low overall mortality rate of FKWs in the Hawai'i longline fishery, the SSC recommended that the avoidance measures should be linked to that low mortality rate. The second recommendation recognizes the lack of scientific information on post-release mortality of FKWs caught in fishing gear, and information on sublethal effects and indirect effects should be collected using satellite tags and other available technology to help inform impacts assessments. The working group and many of the SSC members believe there are alternative assessment methods to the potential biological removal (PBR) metric to assess the fishery impacts, and the SSC recommended the use of a population consequences of disturbance (PCoD) conceptual framework and development of a population dynamic-based models. Lynch noted that the PBR is a static concept that the science may have outpaced, and that PCoD is an example of a method that could be used to further assess the true impacts on the population. The SSC also recommended greater involvement by the SSC in the FKWTRT process, recognizing that the team has been lacking in scientific rigor, and that the inclusion of one or more SSC members would be appropriate. The SSC additionally recommended that the Council and NMFS should adopt a conformance-based monitoring of FKW captures and that any anomalies should be included in various reports such as the annual Stock Assessment and Fishery Evaluation report. Lastly, the SSC recommended that the Council and NMFS undertake a study to assess the economic impacts of FKW regulatory measures on the longline fishery, and that this study should be updated over time so that the cumulative impacts can be assessed for regulatory measures so that economic impacts are taken into consideration as required under the MSA. Lynch noted that there are some discussions of moving the paper into a scientific publication.

Rice said that he is pleased to see the recommendations, and noted that many of the issues identified are those that he has raised over time.

Dueñas said that the FKW distinct population segment (DPS) has always been an issue that has baffled him in terms of the science and basic biology. His understanding is that the population assessment is based on observations, and said that he is glad that the SSC is looking at tagging and other issues to determine the size and range of the species. He said that these species become species of concern even if there is no stock assessment, and he expressed concern that management actions may be determined by interpretation and that these approaches make it more difficult for the Hawai‘i longline fishery to fish even if there are no mortalities.

Tosatto said that the insular DPS that is listed under the ESA is not subject of the efforts of the FKWTRT under the MMPA, and it is the separate pelagic stock that is the focus of the FKWTRT. He also said that there are animals that are dying from interactions, or estimated to be serious injuries from the nature of the interactions, and that the Council under the MSA has a charge to reduce bycatch of all species that are bycaught and reduce interactions with protected species, which is where there is an overlap with the mandates of the ESA and MMPA. He cautioned that the SSC should focus on efforts that meet the Council’s broad charge to reduce bycatch and appropriately support the Council’s role as one of the many members of the MMPA-constituted FKWTRT, which has regulations that control the activities in the Hawai‘i longline fishery. He thought that some of the issues that the SSC is focusing on are on target, whereas a couple may not necessarily be relevant to the MSA, such as PBR and other issues that enter into the MMPA management construct. Under the MMPA, NMFS has guidelines for the statutorily required stock assessments, is required to constitute TRTs, and has its own scientific advisor in the form of the Pacific Scientific Review Group. He said he appreciates the SSC’s general charge toward reducing FKW interactions, and that the outcomes need to be focused. Issues that enter into the MMPA need to be brought through the right construct, through the FKWTRT or Pacific Scientific Review Group.

Rice said that it is important to have an SSC member as a member or an alternate to the Council’s seat on the FKWTRT so they understand where the science is coming from and what needs to be done.

Dueñas said that he is concerned about impacts on marine mammals and protected species, and that he does not dismiss the need to do something proactive. However, he emphasized that as a human being he understands life and the livelihood of the region’s fisheries is currently at a difficult stage and that a balance in the circle must be maintained.

Rice said that Dueñas’s comments are in line with the SSC’s recommendations about economic impacts, noting the need to look at how the economic structure is affected by MMPA regulations and how the system is set up.

### **C. Green Turtle Management**

[This item was taken up under the Hawai‘i section on Day 3 after agenda item 12.E.]

DeMello presented an overview of the history of honu management. Honu is part of the culture for the people of Hawai‘i, and had a variety of uses for diet, medicine, handicrafts and tools. The use of honu evolved into a directed harvest through a commercial fishery, which in part drove the need for managing the population. In 1974, the State of Hawai‘i prohibited commercial use and implemented a permit system for home consumption until the ESA-listing as a threatened species in 1978 superseded the state management. The Council has been involved in

the potential for delisting and cultural take of green turtles since the ESA-listing, with more recent discussions focusing on the delisting starting in 2000, a Fishers Forum held on the future of honu management in 2011, and the APs continuing to recommend the Council seek delisting or alternative avenues for allowing cultural take of green sea turtles not just in Hawai‘i but region-wide.

The Association of Hawaiian Civics Club petitioned NMFS to classify the Hawai‘i population of green sea turtles as a DPS and to delist the DPS. As a result of that petition, NMFS in 2016 published a final rule to designate 11 DPSs of green sea turtles, and listed the Hawai‘i DPS as threatened and some others as endangered. The Hawai‘i DPS remains threatened due to climate change concerns, although the population has been increasing at approximately 5% annually.

The Council continues to hear from fishermen and the fishing community about their interest for cultural take, as well as concerns that the kupuna who have the knowledge are passing on. With multiple generations passed since the last legal take, there is a need to pass on the cultural knowledge, traditional ecological knowledge and generational knowledge because there is now a cultural disconnect. With the AP continuing to bring the cultural take question from the community, the next steps for the Council is to consider what process is available to seek honu management to allow cultural take, consider what science is available and what else the Council can do to help the fishing community on this issue.

Gourley said that the CNMI has been trying to get cultural take for many years, and noted that the CNMI would not be allowed to consider cultural take at this time because the relevant DPS is listed as endangered. He said that the CNMI would be supportive of Hawai‘i pursuing cultural take so that the Mariana Archipelago may follow suit after building up its turtle population.

Muña-Brecht said that Guam has also had the same ask for cultural take, and fully supports Hawai‘i’s efforts. She said that something needs to be done to better account for the increase in Guam’s green sea turtle population and allow cultural take, noting that fishermen have reported increasing populations and large numbers of turtles were spotted in the water at one time during an aerial survey conducted in 2019.

Dueñas said that it is disturbing that when it comes to cultural respect and value of turtles in Hawai‘i, there is an attempt to keep raising the bar and changing the goal post, even though the delisting petition was justified. He said that things are done differently on Guam with the small juveniles harvested, compared to the rest of the FSM that harvest adults, noting that there are a lot of small turtle shells from when harvest was legal used as décor in older people’s homes in Guam. He said that the U.S. government has failed the Pacific Island communities and continue to make the communities indignant, noting that the turtle population in the Mariana Archipelago had to be uplisted to endangered despite the government protecting it for more than 40 years. He said that in his experience as a fisherman being on the water at least once a week, he sees turtles and tiger sharks where he normally had not seen them. As long as the indigenous people continue to be chastised and put down, he said he will fight for the indigenous people to survive as a people. He is supportive of any action to delist the green turtles because 95% of their habitat is out of human reach. It is the cultural value of the turtle that is being lost, not the catching of the turtle itself. The turtle has a place in Guam’s culture, which is in the kitchen.

Turtle is not served on the dining table or on the fiesta table, but is served in the kitchen and the people of importance are invited to that kitchen. The process by which regulations are placed on honest, hard-working fishermen is eroding the respect within their individual culture for the value of the animals in the ecosystem that the people have respected for 4,000 years.

Soliai said he echoes Dueñas's comments.

Sword thanked staff for the report, noting that the overpopulation of honu is an issue, and additional studies are needed to better control the population. He said that in American Samoa, the bats have been protected under a moratorium since around 2000 and there are not too many of them eating the papayas. He agrees with some changes being made to allow the indigenous communities to enjoy the honu again and at least control the population.

Sakoda said he thinks it is important to continue exploring cultural take permits. He had the privilege of talking story with one of the aunts in Haena, who spoke about her childhood days when it was remote with no access to hospitals, and her grandfather having turtle oil. She applied the oil when she had a bad burn on her face, and there is no sign of it left today. Sakoda said that these important cultural uses such as medicinal use and food are being lost, and it is important that those cultural practices are maintained and rediscovered.

Tosatto said he wanted to make sure that the Council's expectations are set properly. He said the staff's report is acceptable as it is historic in its nature, but it is not a fishery resource that is under the purview of the Council. The role of this Council must be measured and smartly executed, and there are boundaries for this Council and its staff's participation in other things that might go on. Cultural take is a limited opportunity that may be available for a threatened species, but the turtle is also the subject of an international agreement that the United States is a party to, and there are serious issues to overcome to consider take. The ESA Section 4(d) provision's permitting structure that has been followed for other threatened species is only considered when it is in the best interest of conservation of the species. Considering the environmental factors around Hawai'i, including the disappearing islands in FFS, makes it a hard case to see how additional take would benefit conservation. He said that NMFS, through his boss, has committed to exploring what might be possible, what avenue and process may be followed and what information may be needed to make this decision.

Ramsey said that any management change would take some time, but starting the documentation process cannot wait. The kupuna need to be interviewed to document their stories, and he recommended that important process to start.

#### **D. Endangered Species Act Consultations for the Hawai'i Deep-set Longline Fishery, American Samoa Longline Fishery and Bottomfish Fisheries**

Diana Kramer, PIRO PRD, provided a brief update on the ESA consultations. Kramer presented the anticipated completion dates for the biological opinions as follows: Hawai'i deep-set longline fishery, January 2022; U.S. Pacific purse seine fishery, September 2021; American Samoa longline fishery, October 2021; and bottomfish fisheries, October 2021.

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

Kramer presented on other ESA and MMPA updates. She provided an overview of the ESA-listed coral recovery activities, including the completion of a report from the virtual coral recovery workshop convened in May 2021, and additional expert input solicitation through working group meetings starting in August 2021. The draft recovery plan will go out for public review when it is completed.

NMFS is working to address public comments received on the draft coral critical habitat proposed rule. NMFS held two public hearings and received approximately 80 public comments, which included comments from the territories regarding the maps, coral presence/absence information and economic and other impacts. NMFS is evaluating all of the comments and working directly with the territories as appropriate to address their concerns.

NMFS is developing a Coral Assessment and Mitigation Framework, otherwise known as the Coral Tool, which is designed to support federal agencies and their applicants with assessing effects of permitted activities on coral and related habitats in U.S. waters consistent with regulatory reviews such as EFH and ESA. The Coral Tool estimates amount and type of compensatory mitigation required to offset residual impacts on coral and benthic habitats in U.S. waters of the Pacific Ocean, consistent with the regulatory reviews. NMFS is developing the tool to help satisfy requirements of a number of statutes including the MSA, and to provide federal agency applicants with a reasonable expectation that they have addressed and satisfied any concerns that would arise in NMFS' review of their projects that affect coral and related habitats. The Coral Tool is anticipated to be ready in early 2022.

NMFS is also conducting a status review for the shortfin mako shark in response to a listing petition under the ESA, and is expecting to publish the final recovery plan for the insular FKW DPS in the fall of 2021.

Kramer also provided an update on the number of FKW interactions in the Hawai'i longline fishery so far in 2021, noting that there have been 12 total interactions to date, which is the second highest observed in a year, of which 11 were serious injuries and one was a mortality. Of the 12, three were inside the U.S. EEZ. She noted that one of the interactions resulted in the hook straightening. The fieldwork for the ongoing weak hook study was completed and the FKWTRT will be discussing the draft report at the end of October. Kramer also reported on the publication of the final Environmental Impact Statement for enhancing protections for Hawaiian spinner dolphins. The document identified a preferred alternative to adopt regulations to prohibit swimming with and approaching within 50 yards of the dolphins, and NMFS is also considering establishing time-area closures in certain bays on the Islands of Hawai'i and Maui.

Gourley said that the CNMI and Guam rejected NMFS's no effects determination for the federal consistency determination for the coral critical habitat, and he had heard from CNMI's contact that they were told that NMFS was likely going to ignore the territory's rejection and was going to move on after providing additional information. Gourley expressed the concern and disappointment that there is no need to have a federal consistency determination if NMFS is going to override what is necessary under the law.

Kramer said that NMFS is directly working with the territories and has recently held calls to talk more about these issues as well as working with the territory coral experts to review the information on the distribution and other concerns regarding coral habitats, as well as working

with the territories to review the draft economic impacts analysis to ensure the best information available is being used.

Muña-Brecht said that she participated in the same meeting as Gourley and heard the same that the Guam's rejection was also being dismissed, but noted that Guam's Coastal Zone Management Program had a meeting with NMFS last week about the negative determination. She said that Guam's fisheries, coral reef program staff and the coral reef coordinator have meetings with NMFS Oct. 1, 6 and 7, 2021, to discuss populations and other issues of data that were identified as concerns in the public comments. She agrees that a sufficient explanation is necessary about why the determination process for the territories is being dismissed.

Dueñas also expressed concerns over the righteous determination being sent to the territories as gracious benefactors, who live many thousands of miles away but are so concerned about the coral reefs, bumphead parrotfish and humphead wrass in Guam. He asked why the 135-day deadline for ESA consultations for the region's fisheries continues to be ignored, and expressed his displeasure that there are efforts to change how the Council makes its decision when NMFS cannot do its own job.

Tosatto said complex consultations take time, and the Council has requested NMFS numerous times to pause the consultations to await further information from PIFSC. He said that NMFS is working very quickly to bring all of the fishery consultations to closure, as was indicated by the timeline presented by Kramer, and a couple of them are in the final review stages that NMFS hopes to get out for Council review soon during the next month. He said NMFS is also working to make sure the consultations are done better across the country so that they can proceed quickly and complete them in a timely way. He said that regarding the federal consistency determination for the coral critical habitat, NMFS will provide an explanation to the territories why their consistency determination was incorrect.

Dueñas said that he is questioning the timeline on the ESA consultations. On the Guam government determination issue, he expressed concern that there are two federal agencies that are part of the discussion for the determination that are anti-fishing.

Sword asked for clarification as to why there are approach regulations on spinner dolphins, which are not on the ESA list.

Tosatto said that the spinner dolphin rule is under the MMPA rather than the ESA, and NMFS is obligated to look at measures that are necessary to prevent and protect marine mammals.

Soliai echoed comments from Gourley and Muña-Brecht regarding the coral critical habitat designation, and said that the process continues to be very troublesome. He asked if the purse seine, American Samoa longline and bottomfish consultations are on track to be completed under the timeline presented.

Tosatto said that he has signed the purse seine biological opinion Sept. 15, 2021, but the document is undergoing formatting to make it compliant for online distribution and hopes to have that completed by the end of the week so it can be made publicly available. He said there is a review draft in his PRD chief's hands for the bottomfish consultation, and the review comments are expected go back to staff for revisions prior to review by GCPI, so that the

Council can be provided with an opportunity to review the draft. Similarly, a review draft for the American Samoa longline fishery is in the PRD chief's hands, after which it will go back to staff to finalize prior to GCPI review so that the draft can also be made available to the Council and members of the American Samoa longline industry for a review opportunity. Those draft review opportunities will produce comments that would need to be addressed before the biological opinions are finalized.

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

### **1. Advisory Panel**

Tam, AP chair, presented the AP report and recommendations.

*Regarding seabird mitigation measures*, the Hawai'i AP supported replacing blue-dyed bait with tori lines (option 3) and recommended the Council consider a sufficient transition period to allow blue dye supplies to be exhausted and ensure unnecessary costs are not incurred by the industry. The AP noted that offal discard would not be an issue in the absence of a regulatory requirement based on the fishery's standard practice of setting during the day and hauling at night but deferred recommending a suboption at this time. Further, the AP recommended that monitoring of seabird interactions continue to determine whether additional adjustments may be needed in the future.

### **2. Fishing Industry Advisory Committee**

Goto, FIAC chair, presented the AP report and recommendations.

*Regarding seabird mitigation in the Hawai'i deep-set longline fishery*, the FIAC recommended the Council support the initial action to allow the use of tori lines in lieu of blue-dyed bait and supported the removal of requirements for offal discard.

*Regarding FKWs*, the FIAC requests an update from PIFSC regarding FKW acoustic study and review of FKWTRT research priorities.

### **3. Non-Commercial Fishing Advisory Committee**

There were no NCFAC recommendations regarding protected species.

### **4. Scientific and Statistical Committee**

Hospital presented the SSC report and recommendations.

*Regarding the results of the tori line EFP study in the Hawai'i deep-set longline fishery*, the SSC endorsed the study's finding that tori lines are far more effective than blue-dyed fish bait for seabird bycatch mitigation.

*Regarding the options for revising seabird mitigation measures in the Hawai'i deep-set longline fishery*, the SSC reiterated the findings of the tori line EFP study in the Hawai'i deep-set longline fishery. The study was well executed and clearly showed that tori lines are more effective than blue-dyed bait for seabird bycatch mitigation. The SSC therefore

recommended option 3—replace blue-dyed bait with tori line in the required measures for the Hawai‘i deep-set longline fishery.

The SSC discussed the modifications to the strategic offal discard requirement. The SSC recommended option 4a—remove the requirement for strategic offal discards.

Additionally, the SSC recommended the Council consider either an option for an additional regulation for not discharging fish waste immediately before and during setting, or incorporate best practices training to the currently required annual protected species training workshop.

The SSC noted that the deep-set longline fleet sets their gear during the day, and hauls and processes their catch (and discards offal) during night-time hours. In the rare instance that hauling extends past sunrise, there is time between the end of processing catch and deploying the next set such that offal discard would be completed well before the start of the next setting operation. In the absence of a requirement to strategically discard offal during setting operations (as currently required), the fleet’s operational characteristics would preclude the scenario of fish waste being present when risks of seabirds interactions are highest.

*Regarding the SSC working group issues paper on alternative approaches to reduce impacts to FKWs, the SSC endorsed the working group issue paper and adopted the recommendations as follows:*

1. Develop take reduction measures that recognize the already-low mortality rate of FKW caught in fishing gear.
2. Conduct a post-release study on FKWs using satellite tags or other technology to assess mortality rates and sublethal effects. Develop cost-effective methods to determine robust estimates of sublethal effects attributable to capture and release from pelagic longline.
3. Implement a PCoD, comprised of a four-level sequence ranging from observed changes in individual behaviour (level 1) to population-level effects such as impaired reproductive, survival or population growth rates (level 4). PCoD review of the FKW populations is important to derive a robust form of risk assessment. However, it is equally as important to regularly know the long-term status of each FKW population exposed to the Hawai‘i-based pelagic longline fishery. PCoD is a simple, robust and effective means to monitor and report on protected species bycatch in the Hawai‘i-based pelagic longline fisheries.
4. Develop a population dynamic-based model to assess the applicability of PBR for bycatch management. Use the results of such modelling to inform selection of appropriate take reduction measures for the U.S.-based pelagic longline fishery.
5. Make use of the SSC process provided in the MSA to help inform measures considered by the FKWTRT and other parties in formulating a take reduction plan. Subject SSC recommendations and work products to independent scientific peer review in published literature to confirm the validity of such recommendations and work products.
6. The Council and NMFS should adopt conformance-based monitoring of FKW captures in the Hawai‘i-based pelagic longline fisheries and report the



conformance and any anomalies in the annual Stock Assessment and Fishery Evaluation Report.

The Council should undertake a study to assess the economic impacts of FKW regulatory measures on Hawai'i-based pelagic longline fisheries and report the results of such studies to NMFS. This study should be updated over time to assess the cumulative impacts of such regulatory measures on commercial fisheries.

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

Eric Kingma, HLA, provided the industry's position on the seabird measures. HLA was part of the project team and supportive of the tori line research, and was pleased to see the effectiveness of the tori lines. Tori lines are an industry standard around the world, so it is not necessarily new ground in fisheries. Blue-dyed bait is fairly cheap at approximately \$30-40 per can, but it is messy, hard to work with, not practical and not that effective. Industry therefore supports identifying a more effective mitigation measure if it is practicable, easy-to-use and not that costly. HLA submitted a grant proposal to National Fish and Wildlife Foundation to supply approximately 100 tori line systems so that some funding support can be provided to equip the fleet. HLA supports option 3 to require tori lines and eliminate blue-dyed bait, and requests that some flexibility in the regulations for a rare event of tori pole breaking at sea. If a vessel is 1,000 miles north of Hawai'i, spent thousands of dollars to get to those grounds and to have a tori pole break without any other option, that trip could be cancelled or that vessel would have to transit to south of 20°N. He suggested that in those very rare instances, that an alternative location on the vessel could be used to deploy the tori line. He said that the tori line itself would not be a problem, as a vessel could easily carry another tori line, but it may be more difficult to replace a tori pole at sea. Regarding offal discharge, HLA supports option 4a, and believes it is not necessary to add additional regulations to prohibit discard as proper practices can be disseminated through the protected species workshop or through the industry's crew training initiative. HLA also supports the SSC's FKW paper and the recommendations therein.

Rice asked what other part of the vessel could be used if a tori pole breaks.

Kingma said the industry has not yet fully identified because every vessel is configured a little differently, but some point above the wheelhouse, on a mast, or a rigged pole they may have could be used. He said HLA would provide more feedback on potential suitable locations as the regulations are developed.

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

*Regarding seabird mitigation measures in the Hawai'i deep-set longline fishery, the Council recommended as preliminary preferred alternatives:*

- a. Option 3, replacing blue-dyed bait with tori line; and**
- b. Option 4a, removing strategic offal discard from the regulatory requirement, with the addition to include best practices training on offal management as part of the required annual protected species workshop.**

**The Council directed staff to consider a contingency that would allow vessels to continue fishing if a tori pole breaks during a trip under option 3.**

**The Council directed staff to work with the action team to develop the necessary documentation including draft regulations for consideration of final action at the December 2021 meeting.**

Dueñas wondered if there was any interest from the industry to keep the blue-dyed bait in place, noting that the main concern is for everyone to be on board with the tori lines replacing blue-dyed bait. He said he is in favor of an option that would prevent fishermen from cancelling their trip if something happens accidentally.

Sakoda said that he understood Tosatto's earlier comments to mean that strategic offal discard should still be regulated, and suggested alternative language for modifying the strategic offal discard requirement as part of the regulations.

Tosatto said that Sakoda's suggested language is not reflected in the recommendation, which would remove the regulatory requirement and replace it with nothing other than best practices training. He said that the Council staff and the action team would need to provide the justification that ending the management of offal is the best option and approvable. Regarding the recommendation on the contingency, Tosatto said he was not sure if it is in the Council's best interest to plan to allow noncompliance, which creates a problem at this early stage in his view, and said he would have to see the justification for allowing noncompliance.

Ramsey said that fishermen should be given enough time to make the switch from blue-dyed bait to tori lines if that becomes a requirement, recognizing the Hawai'i AP's recommendation.

Soliai asked if a timeline should be added to the recommendation.

Rice said that the current recommendation is for getting the Council on the right path for the analysis document.

*Moved by Rice; seconded by Sword.*

*Motion passed.*

**Regarding FKWs, the Council endorsed the SSC issues paper and directs staff to send a letter to NMFS transmitting the paper and the recommendations therein for consideration in improving the management of FKW interactions in the Hawai'i deep-set longline fishery.**

**The Council directed staff to continue to work with SSC members to further develop the issues paper for submission to peer-review publications as appropriate.**

**The Council directed staff to send a letter to NMFS nominating an SSC member to be designated as an alternate member of the Council seat on the FKWTRT.**

**The Council requested PIRO and PIFSC to provide a presentation at the next FIAC, SSC and Council meetings on the FKW acoustic study and a review of the FKWTRT research priorities.**

Dueñas said that he especially endorses the recommendation to have an SSC member designated to the FKWTRT seat, but noted he has some concerns for the word “alternate” member.

Moved by Dueñas; seconded by Rice.

Motion passed.

## **XI. American Samoa Archipelago**

### **A. Motu Lipoti**

Sword provided the updates on island fisheries in the Territory of American Samoa. Starkist Samoa Co. has brought over 150 workers from neighboring Samoa under the governor’s guest worker program to fill shortage of workers who are staying home because of federal funding such as stimulus checks and food stamp benefits. The guest worker program allows for Samoa citizens to enter the territory and work for the canneries to alleviate the labor shortage. StarKist has been importing loins to fill in the production.

The dock and slipway have resumed operation for vessels under 80 tons. *Lady Naomi*, that ferries between neighboring Samoa and American Samoa has been drydocked and repaired on the slipway. The slipway was designed to service up to 3,000-ton vessels, but due to the current 80-ton limit, purse seiners have had limited opportunities for repairs. Thirteen purse seiners have moved to the Eastern Pacific to fish until January, causing a huge drop in revenue for the American Samoa Government (ASG). Sword said there discussions by the shipyard board to use the shipyard to build a processing plant for the longline fleet to export products. This has made it even more difficult for purse seiners to return to the territory to fish. The territory had 48 purse seiners fishing in territorial waters 10 years ago, but the number has decrease to 13.

Only two alias have been fishing in the last quarter and have reported decent catches. Small vessels have been reporting small catches of masimasi (mahimahi), marlin, rainbow runners and wahoo. Approximately 10 small boats engage in trolling, occasional selling their catches. In Manu’a, three alias have been fishing regularly in the past quarter, mostly engaging in bottomfishing. Twelve fishermen in Manu’a were trained to use the Catchit Logit app, but due to poor internet service on the islands, not many fishermen have the opportunity to report electronically.

The project for the building of four super alias for the territory has been awarded out to an off-island company. American Samoa Department of Commerce anticipates the four alias to be completed by summer 2022, with the training of fishermen and vessel operators to happen around the same time.

Local stores and street-side vendors continue to sell fresh fish supplied by a dozen spearfishermen. Bad weather conditions have hampered fishing for all fishermen in the territory. Boat ramps and floating dock repairs continue to be a priority for local fishermen. One new boat ramp in Pago Pago needs modifications and repairs, and the floating docks at Malaloa Dock have needed repairs since the 2009 tsunami.

Soliai added that the canneries still remain at 30% production due to low employee turnout. In 2020, the cannery had an average of 2,400 employees, and now that number has

dropped to 1,600 employees. The upcoming minimum wage, effective at the end of September, will be challenging for the canneries.

Soliai also reported that the court case between five alia owners and ASG has been finalized. The court concluded that ASG is liable to the alia owners for damage to their alia. The court decision was for damages sustained during alia repairs by the marine slipway and dry dock facility owned by ASG.

Soliai reported that no funding for CARES Act has been received by local fishermen yet. He said that DMWR has received an overwhelming number of applicants but many did not meet the requirements. The Commission will be sending out payments before the end of September.

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

Domingo Ochavillo reported on DMWR activities since the last Council meeting. The shore-based subsistence landed approximately 2,500 pounds from April to June 2021. Top fishing gears/method were gleaning, rod and reel, spear (snorkel) and thrownet. Turban snails, octopus, amberjack, titan triggerfish, fringelip mullet and lined surgeonfish were the most caught species for these fisheries. Boat-based bottomfish fishery landed 924 pounds of fish during the same period. Top species included *Lutjanus gibbus*, *L. rubrioperculatus*, *L. kasmira*, *Aprion virescens*, *Pristipomoides multidentis* and *L. bohar*. Spearfishing fishery landed 1,250 pounds from April to June. Redlip parrotfish (280 pounds), bluespine surgeonfish (230 pounds), redtail parrotfish (210 pounds), orangespine unicornfish (156 pounds) and spiny lobster (119 pounds) were the mostly caught species by spear. Nearshore pelagic species were mostly caught during trolling or mixed bottom fishing and trolling trips. Forty-five hundred pounds of fish were landed by trolling and 630 pounds of fish were landed from mixed bottomfish and trolling fishing trips. Skipjack tuna and yellowfin tuna were the most-caught species by trolling. Mixed bottomfish and trolling caught mostly dogtooth tuna and yellowfin tuna.

Ten boats participating in the Manu'a Fishing Tournament hosted by DMWR landed 400 pounds of pelagic fish July 14-15, 2021. Data collected by DMWR staff showed that the top species were barracuda, wahoo, skipjack, yellowfin, sailfish and dogtooth tuna. Sixty-three pounds of bottomfish were also caught during the tournament.

The Coral Reef Monitoring Program is working on using data to develop a framework for managing coral reefs. The framework projects the various benthos cover as well as the factors that drive that benthos cover. For example northeast Tutuila has high macroalgae and turf, which is due to a lot of high degree weeks, which may be connected to climate change driving higher ocean temperature that lead to coral deaths and increased macroalgae and turf. This program can be used to inform management decisions for American Samoa.

DMWR is currently working on finalizing a manuscript looking at the impact of climate on octopus gleaning in the territory. Nearshore fisheries will be the most-affected fishery by climate change in American Samoa. Data showed that as sea level increases, octopus catches also increase. High wave energy would decrease the catch of octopus, whereas seas surface temperature does not have a significant impact. American Smoa can expect to see similar results for other nearshore species.

The Sportfish Life History Program looks at genetic connectivity of coral reef species in the Samoa archipelago. Though American Samoa and Western Samoa have separate fisheries regulations, the archipelago is considered as one geological structure. Part of the project looks at the DNA of alogo (bluelined surgeonfish), and highly caught species in both Samoas. The alogo has a planctonic phase of approximately two months, potentially allowing the larvae to disperse between the two island nations. Pectoral fin samples have been sent to a lab in Australia for microsatellite genetic analysis. Results showed that the alogo populations in Samoa have DNA similarities with populations in American Samoa. Therefore, there should be some coordination of fisheries management efforts in the archipelago. Microsatellite analysis for other species, such as malau and parrotfish, are underway. Bottomfish species should be considered for this study in the future.

The Giant Clam Recovery Plan addresses the declining numbers of faisua (giant clams) and aims to increase the numbers to support a giant clam fisheries. The objective for this project is to create protected areas, develop stock enhancement, enforce catch and size regulations, conduct biological research and conduct a stock and habitat assessment for giant clams. DMWR was able to secure Sea Grant funding for biological research on giant clams in the territory.

Valentine Vaeoso, NOAA Coral Reef Management Fellow, reported on the Coral Reef Restoration project by Coral Reef Advisory Group agencies. Reefs in American Samoa have shown resilience to global and local stressors, but there is still a need to protect and restore coral reefs. Coral restoration is relatively new in the territory and initial efforts are being carried out in the village of Aua. A key aspect of this project is community engagement. Community members are involved in management discussions and field work. The pilot study in Aua will be used to develop the territorial plan on coral restoration. Other priority sites in American Samoa include the villages of Leone and Faga'alu.

Ochavillo reported that DMWR is working with PIRO to put together the Coral Reef FMP for the territory. This plan is to engage diverse users, strengthen partnerships, uphold ecosystem-based management, promote good governance and sustainable management, and recognize the importance of cultural practice and science in management decisions.

DMWR started tracking data on fish received by the cannery from 2018 to 2020. The cannery received approximately 70,000 to 80,000 mt of skipjack each year, and approximately 25,000 to 30,000 mt of albacore. Other species received by the canneries are yellowfin, bigeye and wahoo.

The Enforcement Division boarded 18 foreign and seven domestic vessels, and inspected nine fish bait containers in the last quarter. Staff has also assisted with six repatriation flights.

## **C. American Samoa Bottomfish**

### **1. Bottomfish Management Unit Species Rebuilding Plan (Final Action)**

Sabater presented on the American Samoa Bottomfish Rebuilding Plan. He reviewed the timeline of the stock assessment and the BMUS rebuilding plan since 2018, and presented the four alternatives for Council consideration. The interim catch limit currently in place will expire in November 2021.

The first option is the status quo of retaining the interim measure catch limit level of 13,000 pounds, with a post-season accountability measure (AM) and no in-season AM. The second option is an ACL of 1,500 pounds with an in-season AM. The third option is a moratorium on bottomfish fishing in federal waters. The fourth option is an ACL of 5,000 pounds with an in-season AM. The minimum time of rebuilding for all alternatives is eight years, and target time of rebuilding varies between eight and 32 years. Alternatives 1, 2, 3 and 4 have a 4-6%, 15%, 0% and 27% probability of overfishing, respectively. The AM included in the final action is the in-season tracking of catch using creel surveys. This requires a timely transcription of the data by DMWR. If there is enough data that allows an expansion within the year, the Council will request that PIFSC do the data expansion and compare that with the higher catch limit.

Soliai said that it was during a 2019 Council meeting that made it clear that the American Samoa bottomfish stocks were considered overfished. The argument still remains that poor data collection has resulted in this designation. None of the alternatives presented are ideal, and he hoped that the Council does not make any mistakes that will inconvenience the main stakeholders, fishermen and the seafood community.

Sword echoed Soliai's concerns and that having the right data is important.

Rice asked if the 13,000-pound limit without closing the zero to three nautical miles would keep the fishermen going or if that would still be burdensome for the fishermen.

Sword said that any of the alternatives will be burdensome to the fishermen because they include the three miles.

Rice said that whether it is burdensome is dependent on whether American Samoa agrees to close the territorial waters, where approximately 85% of bottomfish fishing occurs.

Soliai said that the territory has not made a decision on whether to close territorial waters.

Amani said that after each Council meeting, territories get more restrictions, and that these restrictions are only a result of bad data assessment, not poor stocks.

Muña-Brecht recognizes that Guam and American Samoa are data-deficient. The number of fishers in both territories does not account for the amount of fish depletion that the data expresses. She said that their federal consistency response to the bottomfish assessment requested that the territory be exempt from the ACL. Even though the Council has to take final action, the issues still remain and much still needs to be done.

Dueñas asked if there have been a biological study on the reproduction rate to make the determination on the timeline of the rebuilding plan. He said that more on-the-ground studies need to be done to monitor actual catches, noting that there is no life history information to inform the determination of rebuilding probability. He suggested monitoring fishing activity at the boat ramps. He recalled that former Council member Frank McCoy bought a vessel to go bottomfishing in American Samoa, but he abandoned the project because there is no market to sell the fish. With the rebuilding timeline, Dueñas said that American Samoa will be dealing with this issue for the next 20 years, and by that time, there may not be any fishermen left.

Dunham provided a statement for the record on his experience as an alia fisherman and described the importance of bottomfish to the Samoan culture. He said that Samoans have relied on bottomfish to tautua (serve) their families and communities. Many small boat fishermen have left the fishing industry due to increasing number of regulations. Fishermen provide fish to support local businesses and economy. Dunham suggested that NMFS consider an exemption for underserved indigenous people of American Samoa. Fishing is how fishermen keep in touch with fa'asamoa (the Samoan way). Fishing is part of the identity of Samoans, and is a God-given right to provide for families and communities.

Sakoda asked if ASG has plans to implement complementary management measures in territorial waters.

Soliai said that the current administration will be reviewing that option.

Sakoda said that alternative 1, 2 and 4 have in-season AMs that will be an incentive for misreporting or underreporting to avoid consequences of exceeding the ACLs. Perhaps a moratorium in the federal waters, but leaving territorial waters open may be conducive for getting accurate data.

Tosatto said that the data used is the best available science that produces the result that the stocks are overfished so action is needed. He also reminded that Council that alternative 1 accurately describes the status quo and that interim catch level expires in November 2021, so there is urgency of action. He also said that alternative 1 would be an unacceptable choice because of the rebuilding timeline is 32 years.

Soliai said that the data used was not best available information since the territories were able to dispute some of the findings. When it comes to best scientific information available, all stakeholders need to be consulted.

## **2. Territorial Bottomfish Fishery Management Plan**

Sean Felise provided an update on the American Samoa Territorial Bottomfish FMP and Economic Development Plan. The bottomfish fishery mostly occurs within three nautical miles from shore (territorial waters). The species that are to be managed are priority species that are the most commonly caught by fishermen. Current measures are catch limits and closed areas, which are MPAs and no-take areas. DMWR held consultation meetings in Tutuila and Manu'a to provide information to fishermen about the bottomfish species resource, trends and spatial distribution. There were a lot of good exchanges at these consultations meetings, and people in some places such as Fitiuta were not as aware as people in Tutuila about BMUS and the distinction between federal and territorial waters. The key points from the consultation meeting were that the mority of fishermen wanted to keep the same BMUS list and were concerned about the stock status.

Management plan objectives include improving data collection, improving data quality and raising catch limits. Regulations suggested by fishermen include fishing liscensing, bag limits, size limits, limited entry and complete closures of areas for fishing grounds. Manu'a fishermen were interested in whether the territorial waters can be extended beyond three nautical miles.

Gourley asked if it would be beneficial for American Samoa to look at individual bottomfish fishing trips and determine how much time is spent traveling to fishing grounds and avoiding sharks to determine how much time is actually spent fishing on a particular trip.

Soliai said that DMWR is looking to capture different parameters that contribute to the data and incorporate them into the management plans.

Rice added that the Hawai'i CML is written to include all of those parameters.

### **3. Bottomfish Community Development Program Request**

Felise reported on the progress of the Community Development Plan (CDP) request. This is a provision in the MSA that authorizes the Council and NMFS to establish a Western Pacific CDP for any fishery under their authority. The program provides Western Pacific communities access to fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation in, possibly due to economic, regulatory or other barriers. The plan will preserve and protect cultural fishing practices, support customary and ceremonial fish distribution and provide a framework for culturally informed management of the fishery. The affected community will propose economic options with low catch limits.

The CDP will include boat modernization, boat parts and repairs, repairing ramps, floating docks, developing a fish market in Manu'a, fuel subsidy, FADs, artificial reefs, tax exemption and compensation when the federal waters close.

Dueñas commended Soliai and his staff for the work on the management plans. He said Guam has 150 species as part of the bottomfish complex, and while American Samoa is engaging fishing community in the development of their plans, he believes Guam is disengaged.

Dunham asked if the three nautical miles designated as territorial waters is measured from the shoreline or the reef, noting that many fishermen have fished Taputapu for many years, and it is located 12 miles offshore.

Felise said that the three nautical mile starts from the high water mark.

Sword said that unlike neighboring Samoa, American Samoa waters can reach down to 50 feet only 200 yards from the high water mark, so 90% of fishers fish within the three-mile territorial waters. Most fishers will fish for bait and then use them to fish for big fish, both of which can be caught in territorial waters.

Tosatto clarified that the three-nautical-mile territorial waters are measured from the U.S. baseline, which is described on nautical charts as the mean low water mark and not the high water mark. He said that Rose Atoll does not have any territorial waters around it when preserved by President Ford in 1972, which is an issue to be reconciled with American Samoa.

Sakoda said that for the Hawai'i CML, fishermen are instructed to report actual time of fishing and not include travel time, which helps to get a good idea of catch per unit effort (CPUE), and noted that it is a matter of educating the fishermen on how to report.

### **4. Bottomfish Stock Assessment Improvement Process**



Carvalho, PIFSC, presented on a new strategic plan for the 2023 American Samoa Bottomfish Stock Assessment. The first formal stock assessment in 2007 used a Bayesian Surplus Production model that accounts for process and observation errors. The current assessment uses the Bayesian Surplus Production model with recommendations given up to the 2016 benchmark assessment. The next stock assessment for American Samoa to be reviewed under the Western Pacific Stock Assessment Review framework is in February 2023.

The NMFS process of stock assessment is divided into four parts. The first step is data collection, which relies on stakeholders. The improvement plan has been developed to match the agency's process as closely as possible. This step includes collaboration with regional partners and stakeholders to ensure that the stock assessment capabilities improve in accordance with regional mandates and regulations.

The first component of the improvement plan is to collect all fisheries data pertaining to the 11 BMUS in American Samoa. The complete analysis of these data will be first sent as a report to partners at DMWR to provide feedback and suggestions before being released. PIFSC looks at focusing on the types of surveys, data collected, areas, year sample sizes and interviews to put together this report. The second component of the improvement plan is to expand the scientific peer-review process of assessments and the information that goes into the assessment model. For the new stock assessment, NMFS set up a Center of Independent Experts review to evaluate the survey design and expansion algorithm of the shore-based and boat-based fishing surveys in American Samoa, Guam and the CNMI. This an example of efforts taken by NMFS to ensure the credibility of products used for territorial bottomfish stock assessments.

The PIFSC Human Dimensions Group helped develop a project to evaluate and improve engagement processes between stakeholders involved in stock assessments. Mia Iwane briefly described the efforts for gathering stakeholder perspectives to inform stock assessments and building a structure for the data workshops.

The third component of the improvement plan looks at exploring new methods. This focuses on technical discussion with a small group of experts on the initial modeling efforts, and the stock assessment structure. Marc Nadon described the three types of data (catch and CPUE, size and life history) from American Samoa and identified assessment models for stock assessment for each of those types of data.

The fourth component of the plan is to ensure high-quality science by independent peer review of the data, assessment models and results provided through the Western Pacific Stock Assessment Review process. The final component of the plan is to present the stock assessment report to fisheries managers during the SSC and Council meetings. Carvalho invited Council input on the five components in the improvement plan, and encouraged partners from American Samoa to start identifying representatives for the fishing community to participate in the data workshop.

Gourley said in terms of the assessment framework looking at size, catch, CPUE and life history, the CNMI has been collecting detailed data collection for CPUE, and said he would be happy to discuss further at a later time.

Amani said that all territories are struggling with the data and science. She said that until the islands can get a good understanding of these things, it would be good to hold off on the restrictions.

Dueñas suggested that commercial landings, creel surveys and Catchit Logit data be included in the data collection. With life history data, he said that number of species and kind of species vary between locations. He believes that the data used in the stock assessments are not being reviewed.

Soliai said that he is looking forward to the data workshop, and suggested that data collection review for American Samoa include data from SPC for Samoa as presented by Ochavillo during the DMWR report. The fishing effort in American Samoa is minimal on an archipelagic scale.

Simonds said however the Council votes on the BMUS rebuilding plan, the improvement plan needs to be implemented for all territories. She echoed Soliai's suggestion of including SPC data on Samoa's bottomfish landings data in the collection review.

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

### **1. Advisory Panel**

Diana Kitiona, Council staff, presented the AP recommendations.

*Regarding American Samoa bottomfish*, the American Samoa AP recommended the Council adopt alternative 4 for the American Samoa Bottomfish Rebuilding Plan.

The American Samoa AP recommended the Council support DMWR in the completion of its FMP and CDP, as well as include the AP for their fautuaga (advisement).

*Regarding American Samoa fishery issues*, the American Samoa AP recommended the Council work with the AP and DMWR to disseminate timely fisheries information to Manu'a fishing associations.

### **2. Fishing Industry Advisory Committee**

*Regarding the American Samoa BMUS Rebuilding Plan*, the FIAC recommended the Council select alternative 4 with an ACL of 5,000 pounds that will rebuild the BMUS stock within 10 years and allows the maximum level of catch accounting for cultural needs.

### **3. Non-Commercial Fishing Advisory Committee**

There were no NCFAC recommendations regarding American Samoa.

### **4. Scientific and Statistical Committee**

*Regarding American Samoa Bottomfish Stock Assessment Improvement Plan*, the SSC reiterated its recommendation that the next assessment should analyze shallow- and deep-water BMUS as separate stock complexes. The SSC also recommended that PIFSC further

investigate changes in fishing operations and fishing power (e.g., vessels, gear and technology) over the past few decades to inform the stock assessment.

The SSC recommended that it form a subcommittee to work with the PIFSC Stock Assessment Program in the development of the next benchmark stock assessment. SSC members Itano, Martell, Harley, Severance and Ochavillo expressed an interest in serving.

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

There were no public comments.

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

*Regarding the American Samoa Bottomfish Rebuilding Plan, the Council acknowledges the significant challenges that the bottomfish community faces with the potential implementation of the rebuilding plan measures. The situation of the bottomfishing fleet is dire and will further be aggravated by the expected fishery closure. These actions will also affect the local government's attempt to develop the fishery through federally funded alia boat building.*

**However, the Council has an obligation to rebuild the overfished stock and end overfishing immediately in compliance with the requirements of the MSA and the American Samoa Archipelago FEP. These actions will also affect the local government's attempt to develop the fishery through federally funded alia boat building.**

**Therefore, the Council selects alternative 3 that implements a moratorium on the commercial bottomfish fishery in federal waters. The bottomfish moratorium would rebuild the stock to  $B_{MSY}$  (biomass at maximum sustainable yield) in eight years ( $T_{target}$ ), assuming American Samoa implements complementary measures in territorial waters. The  $T_{min}$  and  $T_{max}$  are eight and 10 years, respectively. This alternative would most likely address overfishing and allow rebuilding of the stock complex in the shortest possible amount of time.**

**Further, the Council deems that the regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the MSA. In doing so, the Council directs Council staff to work with NMFS to complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, the Council authorizes the executive director and the Chair to review the draft regulations to verify that they are consistent with the Council action before submitting them, along with this determination, to the Secretary on behalf of the Council the executive director and the Chair are authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in their determination, the proposed regulations are not consistent with the Council action.**

Soliai said as the director of DMWR it is his responsibility to ensure there is a balance between conserving the resources and providing fishing opportunities for the people of American

Samoa. Fa‘a Samoa is a way of life that governs the decisions of its people, and the ocean is a source of food and a way of perpetuating Samoan culture. With disruption in the supply chain due to the COVID-19 pandemic, it is critical to have continued access to the ocean to provide food for communities and culture. DMWR is drafting the American Samoa Territorial Bottomfish FMP to manage fish stocks in territorial waters. Bottomfish fishermen and communities are involved in the development of the plan, and have shown strong interest in managing the stocks in line with Fa‘a Samoa. Federal partners were asked to meet their commitments to the territory and support improved data collection. PIFSC will work with DMWR and fishing communities to hold a series of in-person data workshops. PIFSC should include the Council’s SSC recommendations in their analysis for the next stock assessment. Soliai also said that according to SPC, neighboring Samoa harvested 5,000 mt of bottomfish one year. PIFSC should consider looking into stock assessments in Western Samoa and surrounding island nations as a reference as to what is a reasonable bottomfish biomass. Given the gravity and impact of this federal decision, Soliai requested that the Council defer the final action so he can consult with the American Samoa governor on the implications of the alternatives being considered.

Tosatto said that the characterization of alternative 3 presented does not match the characterization of alternative 3 in the document. Alternative 3 in the documents is a moratorium prohibiting BMUS from being possessed in federal waters, including noncommercial take, whereas the discussion on the floor was a commercial fishing closure in federal waters. He also reminded the Council that final action is time-sensitive, and that the MSA requires that the Council act within a time frame which will expire in February 2022.

Soliai acknowledged that time for final action is running out and asked that the Council defer action until an intersessional meeting in October so he can consult with the governor.

Dueñas withdrew his motion which was seconded by Sword.

Moved by Dueñas; seconded by Sword.  
Motion withdrawn.

*Regarding the American Samoa Bottomfish Rebuilding Plan, the Council **directed staff to organize an intersessional meeting for the week of Oct. 18, 2021, to allow for the American Samoa DMWR to consult with the governor of American Samoa on coordinated management of the bottomfish fishery in both territory and federal waters.***

Moved by Sword; seconded by Dueñas.  
Motion passed.

*Regarding the American Samoa Territorial Bottomfish FMP, the Council **requested the DMWR to develop conservation and management measures (CMMs) to ensure coordinated management between territorial and federal jurisdictions. Further, the Council requested that the plan include improvements in fishery data collection to enhance fishery science and management in the future.***

Moved by Sword; seconded by Dueñas.

Motion passed.

*Regarding the Bottomfish Stock Assessment Improvement Plan, the Council* **approved the SSC working group composed of David Itano, Steve Martell, Craig Severance and Domingo Ochavillo to work with the PIFSC Stock Assessment Program in the development of the next benchmark assessment**

**Requested the IFSC Stock Assessment Program consider the SSC's previous recommendation that the next assessment should analyze shallow- and deepwater BMUS as separate stock complexes. Further, the Council requests the PIFSC Stock Assessment Program investigate changes in fishing operations and fishing power (e.g., vessels, gear and technology) and explore the feasibility of including the fishery data from neighboring Samoa and surrounding island nations in the assessment.**

**Directed staff to coordinate with the DMWR and PIFSC Stock Assessment Program to identify participants from the American Samoa community that will participate in the data workshop. Further, the Council recommends that the workshop be held in person in American Samoa, to the extent practicable.**

**Requested PIFSC to increase their communication and engagement with the fishing communities in the territories to enhance the communities' understanding of fishery science and its implications on commercial and subsistence fishing.**

Tosatto reminded the Council that determinations on stock status need to be made consistent with the Council's designation of stocks and complexes. Status determinations are based on the Council framework for each FEP and it would not be useful to include neighboring Samoa's data if the stock as defined in the FEP does not include neighboring Samoa.

Dueñas said he is concerned about not being able to use other stock data. He notes that American Samoa does not have a highly commercialized bottom fishery whereas other islands around American Samoa have commercialized bottomfish fishery. Dueñas encourages the Council to reflect on comments regarding the model that is used for the stock assessments. He is disappointed that stock assessment models are changed without justification and is glad that SSC is involved to clarify some things.

Moved by Dueñas; seconded by Sword.

Motion passed.

*Regarding American Samoa fisheries, the Council* **directed staff to work with the AP and DMWR to determine the best methods for timely dissemination of fisheries information to the Manu'a fishing community.**

Moved by Sword; seconded by Dunham.

Motion passed.

## **XII. Pelagic and International Fisheries**

## **A. American Samoa Large Vessel Prohibited Area Monitoring**

Fitchett, Council staff, presented on the LVPA and impacts of the LVPA on small-boat fisheries as well as summary of actions the Council had taken. Fishery performance for the American Samoa longline fleet has declined since 2007. Informal meetings held in 2014 with American Samoa longline fishery participants led to a recommendation to reduce the LVPA to 24 miles from shore. In 2016, NMFS issued a final rule for the LVPA exemptions, which was followed by a lawsuit by the ASG. In March 2017, the U.S. District Court ruled in favor of the ASG on count that the Deeds of Cession constitute other applicable law with which the LVPA rule must be consistent, and that the LVPA exemption rule was arbitrary and capricious. NMFS subsequently removed the regulatory exemptions established under the 2016 LVPA final rule. In 2017, NMFS and the DOJ appealed to the U.S. Court of Appeals for the Ninth Circuit Court. In March 2018, PIFSC provided a draft cultural fishing research paper for Council review. The SSC found that PIFSC research provided sufficient framework to evaluate the cultural fishing impacts in American Samoa. The Council at the 173rd Meeting in June 2018 reiterated concerns that the LVPA provides an unnecessary burden, and the Council took action to provide a four-year exemption for vessels permitted under the American Samoa Longline Limited Entry permit to fish within the LVPA seaward of 12 miles around the Islands of Tutuila, Manu'a and the Swains, and two nautical miles around the identified offshore banks. The Council action would reduce the area within the U.S. EEZ around American Samoa closed to large vessels from 25.5 to 11.5%.

In September 2020, the Ninth Circuit Court of Appeals had reversed the District Court Decision in favor of NMFS. In February 2021, the ASG appealed to the Supreme Court of the United States for a writ of certiorari, which was denied June 21, 2021. NMFS subsequently published the original 2016 LVPA exemption as a final rule, which became effective July 6, 2021.

With respect to impacts on small-vessel fishery performance since the LVPA exemption was reinstated, there has been a decline in yellowfin tuna catch rates in small troll vessels but fishery performance for small vessels does not correspond to any trend with respect to longline fishing effort within the U.S. EEZ around American Samoa. There have only been two active alia small longline vessels since 2020.

Soliai said that the Council is familiar with the LVPA history as everyone has been through it over the last several years.

## **B. Investigating the Impact of Imports on the Hawai'i Fish Market**

Jonathan Sweeney, PIFSC, presented a conceptual frame for investigating the impact of imports on the Hawai'i market. The Hawai'i market in 2021 had an extreme shortage of foreign-sourced pelagic fish product and locally sourced product was dominant, which offers an analytical opportunity to separately identify impacts associated with domestic and import supply shocks. There are two forms of suppliers—the Hawai'i suppliers and the import suppliers. The quantity of interest is an estimation of impacts, which is the price that Hawai'i suppliers receive in the Hawai'i fish market.

Sweeney described a Bayesian demand model, which will be used to estimate the import sensitivity relative to four focal species: bigeye tuna, yellowfin tuna, swordfish and mahimahi.

The second approach will use a deep-learning neural network and “training” it to market data, which will complement the Bayesian demand model in disentangling the market complexity. The aim is to disentangle the effects of pricing from different regions or countries that impact pricing in Hawai‘i and identify what drivers can quantify the import sensitivities for the four focal species and what species are most sensitive to imports coming into the Hawai‘i market. The second output will be to access market linkages between the Hawai‘i fish market and other U.S. domestic fish markets. Sweeney and his team will be updating the Hawai‘i Market Demand app (previously shared with the Council) in collaboration with industry. This tool will allow users to simulate prices under different import condition, and this would allow for predictions of market price given different levels of imports and different levels of Hawai‘i supply of fish.

The strategic relevance of these research efforts is in identifying the domestic fishery dynamics in an international context, recognizing that global markets are connecting fishers and consumers around the world, which may also affect the consumers in Hawai‘i. The importance of this type of work is to better anticipate and be able to respond to shocks in interruption. These shocks could be related to domestic or foreign issues, production or demand. Sweeney aims to present preliminary results at the March 2022 meeting and have a report ready for review in August 2022.

Gourley said he was surprised about the price of tuna of around \$20 per pound as it was shown in Sweeney’s slides, and asked if the retailers are able to sell out tuna at that price, or if they would lose product because the sale is not strong at that price.

Rice said yes and that this is normal.

Muña-Brecht said this was an exciting study and she looks forward to the resulting data.

Dueñas said 98% of fish in Guam is imported frozen. Globally there is a supply problem. The market has always been the A grade for Japan, C grade for gassed tuna and D grade, which is for cannery. Because of the controls put in by different countries on their catch and limits, Hawai‘i and Japan are producing local fresh fish for their markets, which is where the higher prices of tuna are seen. Hawai‘i produces a higher grade tuna than in the Mariana Archipelago, and the common 15 to 20-pound tuna in the Mariana Archipelago will never yield the quality of Hawai‘i.

Sakoda asked if this analysis is taking into account some of the foreign demand for Hawai‘i seafood, like Hawai‘i exports to Japan or foreign countries.

Sweeney said they are not accounting for exports, and while he is starting to look into the issue of exports, they are not really a focus.

Sword asked if there was a rule in Hawai‘i to note Hawaiian-caught fish versus imported fish.

Rice said no, but letting the consumers know helps with pricing.

### **C. Review of Impacts to the Hawai‘i Longline Fishery from the Papahānaumokuākea Marine National Monument Expansion**

Fitchett presented on a compendium of studies estimating impacts of the PMNM Expansion and the PRIA, including analyses of two recently published peer-reviewed papers and a series of rebuttals. Scientifically, these analyses make assertions regarding an impact relative to a “control” which is independent of treatment groups on which impacts are based. Defining these control groups are important in drawing inferences on whether these impacts are significant.

Chan (2020) used a measure of aggregate commercial catch rate and revenue to determine there were deleterious impacts to the Hawai‘i-based fishery after the expansion. Following the 2016 PMNM and PRIA expansions, this study looked exclusively at groups of longline vessels that had activity inside the monument prior to the expansion compared to vessels that had little to no activity in the expansion areas prior to the monument expansions. Chan (2020) estimated that CPUE was decreased by 7%, revenue per trip had decreased by approximately 9%, and value of that loss was approximately \$3.5 million. The longline fishers are still in the process of becoming more efficient in finding areas of comparable productivity, meaning that these vessels that did have activity inside the monument moved elsewhere and perhaps there was a learning curve of some sort. The treatment group, after the management intervention in 2016 (when they no longer fished inside the monument), did not necessarily redistribute around those vessels that had no history of fishing inside the monument area. Chan (2020) considered all PMUS so these results were looking at impacts not only of target species, but also other incidental marketable species.

Lynham et al. (2020) concluded that “monument expansions had little, if any, negative impacts on the fishing industry, corroborating ecological models that have predicted minimal impacts from closing large parts of the Pacific Ocean to fishing.” This study recognized that there could be some negative impacts on catch rates for species other than bigeye and yellowfin tuna, which were the only two species that this study focused on. Lynham et al. (2020) attempted to reinforce the notion that large and remote protected areas may actually benefit the global fishing industry. The analyses looked at two sets of difference-in-differences regressions, finding increases in CPUE for both yellowfin and bigeye tuna, and found that those results were nonsignificant in the control groups, which were the American Samoa and shallow-set longline fleets. The American Samoa longline fleet’s principal species is albacore and the shallow-set longline fishery’s principal species is swordfish. Both of those fisheries catch yellowfin and bigeye tuna but have different targeting with the shallow-set fishery fishing during the nighttime and the American Samoa longline fishery may have operational differences by targeting albacore compared to those Hawai‘i-based deep-set longline vessels. Lynham et al. (2020) looked at the entire deep-set longline fleet as the treatment group.

The two studies had different control groups and treatments. Chan (2020) looked at deep-set vessels with no history of fishing in the expansion areas a control, while Lynham et al. (2020) looked at different fisheries. Chan (2020) expanded to revenue per trip for those vessels that fished within the monument area. Lynham et al. (2020) inferred revenue by catch per trip for all vessels. Chan’s study may be a more holistic approach compared to Lynham as the latter only considered yellowfin and bigeye tunas, which are principal target species for the Hawai‘i deep-set longline fishery, but not for Hawai‘i shallow-set or American Samoa longline fishery.

Fitchett summarized SSC remarks on the two studies and rebuttals by Sweeney (2021) and Lynham (2021). Sweeney (2021) presented analysis that suggests that aggregate commercial catch rate is a more robust measure of CPUE and revenue per unit effort for the Hawai‘i deep-set



longline fishery than the one provided by Lynham et al. (2020), and that factors beyond monument expansion have a large influence on CPUE and revenue per unit effort trends. Sweeney (2021) was critical of looking at yellowfin and bigeye tuna pooled together to infer economic impact, noting there are other species of interest and that bigeye and yellowfin dockside values are very different. SSC members were also concerned with Lynham's approach, noting that by looking at a combination in trends may make the study a self-fulfilling prophecy to reach a desired outcome. Lynham (2021) responded to Sweeney (2021), justifying that the yellowfin and bigeye tuna proxy is sufficient since those species constitute 80-90% of revenue over time, but did not address issues regarding species-specific revenue or revenue on price-per-pound for the products that may have been fished inside and outside the monument area.

Based on the 2020 bigeye tuna and yellowfin tuna stock assessment diagnostic models, increases in biomass of yellowfin and bigeye tuna accessible to longline fisheries also correspond to catch rate increases of the two combined species. This may indicate that catch trends in Lynham et al. (2020) are due to factors extrinsic to the PMNM or PRIA expansions. Identifying proper controls for analyzing impacts is needed, and external sources of information could be useful, such as biomass estimates from stock assessments.

The PMNM expansion may have impacts on reducing catch of certain species of concern. However, a more comprehensive evaluation is needed given policy developments such as the EO by the Biden Administration on setting aside 30% of lands and waters for the purpose of conservation by 2030 ("30x30") and the United Nations negotiations on a Convention for Conservation Biodiversity Beyond National Jurisdiction.

Gourley said that he appreciated the information provided and said that there is a need to look broadly on the impacts of the monuments on fishing, beyond the idea that large closures are needed for adequate management. Gourley noted that Lynham's study was paid for by Pew based on the acknowledgements of the paper making reference to the Conservation Strategy Fund, which supported the article with a grant from the Pew Charitable Trust and the Pew Bertarelli Ocean Legacy.

Rice asked if there was consideration on the use of fuel because the boats have to use more fuel when they have to fish further away in different areas.

Fitchett said the studies looked at distance traveled, but revenue for each trip accounting for fuel cost was not used.

Rice said that Lynham et al. (2020) appeared to have based the analytical approach to give a result they wanted.

Fitchett noted that the SSC and Sweeney (2021) also suggested that.

Rice said that all species need to be considered.

Muña-Brecht said she was interested in the aspects of permanent versus dynamism, and asked if climate change or rising temperatures was a factor that was considered.

Fitchett said that the El Niño Southern Oscillation Index was used by Lynham et al. (2020) to explain possible variance and evaluate whether environmental impacts had an effect on

catch rates. But this was looking retrospectively and there is a need to determine if tropical tuna resources are expected to change into the future.

Fitchett made reference to a paper by Bell et al. (2021), which looked into the impacts of the distributions of tropical tunas within the EEZs of countries such as Kiribati, as well as the Small Island Developing States and the U.S. Participating Territories, but that analysis did not extend north enough into the Hawai‘i area to consider changes and availability projected through time from climate change based on levels of sea surface temperature change. Fitchett said Phoebe Woodworth-Jefcoats at PIFSC may be a good source of information.

Muña-Brecht asked what impact nearshore closures may have.

Fitchett said the SSC recommended investigating all static closures in the region.

Dueñas noted the lack of a baseline against which to compare the area-based closures, but appreciated the Chan (2020) paper’s attempt. Dueñas said the other report is not science-driven. Dueñas said the U.S. closed areas can be seen by satellite imagery because of the lack of fishing activity in these areas. Dueñas said it would behoove the United States to be honest about the advantages of these closure areas and the advantages to foreign countries that fish around the U.S. closed areas.

Sword said the Pew sponsorship is concerning and the analyses want to show that things are working well in the monuments, but there is no way of knowing this. The situation is not good for U.S. fisheries. In the old days, the fishermen were the eyes and the ears for the government.

Soliai found the results asserting no negative impacts were disconcerting.

## **D. International Fisheries**

### **1. Inter-American Tropical Tuna Commission Science Advisory Committee**

Andre Boustany, Monterey Bay Aquarium and Duke University, presented on the Inter-American Tropical Tuna Commission (IATTC) Science Advisory Committee meetings, which were held in May and June 2021. Stock assessment results from yellowfin and bigeye tuna were presented. Yellowfin tuna are not overfished and not experiencing overfishing. However, the stock status on bigeye tuna is averaged over model assumptions that demonstrate a bimodal pattern, which may be indicative of a “regime shift” in the fishery or ecosystem, but there are likely different realities on the actual status of bigeye tuna that combining outputs do not characterize accurately. There is a need to have a mechanism to control the number of floating object sets to reduce juvenile bigeye tuna catch in purse seine fisheries, either by controlling the number of floating object sets, or by controlling the catch of juvenile bigeye tuna in these floating object sets. The IATTC Science Advisory Committee preferred a harvest strategy of increasing the duration of a temporal closure on purse seine fishing, which is easy to enforcement but is a broad-scale measure that affects all fisheries. As a result, a recommendation to reduce FAD sets was made.

The IATTC was not able to agree to a new measure. There was some movement toward individual vessel limits, which would target vessels that habitually or have a tendency to catch more juvenile bigeye than they should. This approach focuses on vessels that are causing the greatest impact but is more complicated for enforcement due to the difficulty in identifying juvenile yellowfin versus juvenile bigeye tuna. The accounting for individual vessel limits would have to be done at the cannery and accountability would be taken the following year.

The U.S. delegation also wants to see movement toward MSEs for tropical and temperate tunas and continued progress for rebuilding of Pacific bluefin tuna. The U.S. delegation also supported prohibition of wire leaders in longline gear and identification of best practices for release of silky sharks, using the U.S. fishery in Hawai'i as a leader. The U.S. delegation continues to support increases in at-sea monitoring.

Rice asked if someone has looked at the increase in the size and the amount of bluefin tuna that have come through around California in the last five years.

Boustany said there are likely two factors driving the increase, which is the decreased mortality in the Western Pacific following catch restrictions, and restrictions in the Eastern Pacific that reduced impacts by Mexican fisheries that primarily caught two and three-year-old fish. These are noted and used in the stock assessment.

Sword asked the price per pound of Pacific bluefin tuna.

Boustany said prices are as low as \$3 a pound in San Diego for whole fish. Ranch-raised fish from Mexico are much more valuable.

Dueñas asked if vessels are required to recover FADs during closed seasons, noting that net depth had impacts on the catch of young bigeye based on his past experience. Dueñas asked if there are concerns about billfish within the IATTC, noting striped marlin issues and extreme high catch rates of striped marlin in the east.

Boustany said net depth has been addressed in the past in the context of what is causing some boats to catch more juvenile bigeye tuna. It is likely a combination of factors such as net fish, fishing area and time. The benefit of individual vessel limits is that it eliminates the need for regulations on those other factors that may be causing some boats to catch more juveniles, because the fishermen can control the catch themselves. Boustany said he was not sure about recovering FADs during a closure. Billfish are a concern within the IATTC, but the eastern Pacific striped marlin issue is not as big of an issue.

Dueñas asked if the farm-raised bluefin is still an expanding program, or if there are now measures to control it.

Boustany said he did not know how much it has expanded recently, but noted the program recently went through a period of expansions, but there is likely less impetus for expansions now with the catch under greater control.

## **2. Report of the 2021 International Science Committee for Tuna and Tuna-Like Species in the North Pacific Plenary**

Seki presented the report of the International Science Committee for Tuna and Tuna-Like Species in the North Pacific (ISC) Plenary meeting held virtually July 11-15, 2021. A new stock assessment for blue marlin was presented in addition to progress on a MSE of North Pacific albacore and an indicator analysis for North Pacific shortfin mako sharks.

Seki summarized the blue marlin stock assessment, highlighting the differences of the two models, and noting that the biological reference points, spawning stock biomass and fishing mortality were averaged between the two models. The assessment showed that the female spawning stock biomass was estimated at approximately 24,241 mt in 2019, approximately 17% above the spawning stock biomass at maximum sustainable yield (MSY). Fishing maturity was approximately 0.13 for the period of 2016 to 2019, which is approximately 40% below fishing mortality at MSY. The assessment indicated that blue marlin is not overfished, and not experiencing overfishing relative to MSY reference points.

The ISC also provided updated conservation and management advice regarding bluefin tuna and striped marlin. A new benchmark striped marlin stock assessment will be expected in 2022. In response to requests from the Northern Committee, several long-term and short-term recruitment scenarios for striped marlin were evaluated. The ISC concluded that the short-term recruitment model was the most appropriate model for conducting stochastic stock projections for Western and Central North Pacific striped marlin because the time trend in the recruitment is not captured by the long-term recruitment scenario.

An indicator analysis was conducted for North Pacific shortfin mako shark based on trends in catches and abundance indices supplemented by size frequency data because of the long period between benchmark stock assessments. The ISC Plenary endorsed the conclusion that there were no obvious signs of shifts in abundance or fishery dynamics and that a change in the date for the next benchmark stock assessment of shortfin mako shark in 2024 was not warranted.

Seki reported that status and conservation advice for albacore, blue sharks and bluefin tuna remain unchanged. The 2021 work plan includes advancing biological sampling of billfish and shark species, reviewing the ISC Operations Manual to improve accountability and transparency and continued implementation of enhancements to the database. He also reported on election results, noting that Carvalho was elected chair of the Statistics Working Group, and Michael Kinney, PIFSC, was reelected as vice chair to the Shark Working Group. The next ISC Plenary, if in-person, will be hosted by the U.S. in Kona, Hawai'i, July 12-18, 2022.

Gourley asked if blue sharks were landed or were bycatch.

Seki said he was not sure, but said they were likely bycatch. He will follow-up with his staff.

Dueñas said he had a problem with the striped marlin concern and apparently it is still on the radar. He said his understanding is that the stock assessment is still reliant on a Taiwan study. He asked if anything has been done to investigate patterns between the Eastern Pacific and the Western and Central Pacific. Dueñas asked if ISC was going to do life history in the region and develop a growth model for billfish, noting that these are important given a new stock assessment anticipated in 2022. Dueñas said that 80% of their catch was blue shark in the experimental longline fishing conducted off Guam, and noted the lack of good information on the species. Dueñas also noted the importance of looking into the impact of closures inside 200

miles from shore on striped marlin catch rates. CPUE for striped marlin would be expected to go down because fishermen are fishing in places where there are no striped marlin as they try to maximize their profit.

Seki said the striped marlin stock assessment uses more than just Taiwan data. The challenge with these species is the multi-nation impact on the stock. Regarding life history, Seki said that ISC countries, principally Japan, Taiwan and the United States, entered into an agreement to jointly conduct biological and life history sampling, recognizing that often one country will have biased samples. The intent of the work plan for advancing the biological sampling for billfish and sharks is to get a better representation of all of the stocks.

### **3. Outcomes of the 17th Western and Central Pacific Fisheries Commission Science Committee**

Fitchett presented on outcomes of the 17th Science Committee Meeting of the WCPFC (SC17). SC17 introduced a new stock assessment for South Pacific albacore, incorporating the entire South Pacific, with the IATTC. Also presented at SC17 was a Southwest Pacific blue shark assessment and a blue marlin stock assessment, which was covered in the previous presentation. SC17 also reviewed candidate reference points for elasmobranchs and billfish, specifically using Southwest Pacific striped marlin as the example. Fitchett provided an overview of catch trends and status of the WCPFC principle tuna species, which is summarized in an annual SC17 document.

Based on the South Pacific albacore stock assessment presented to the SC17, catches have increase overtime, with a record catch of South Pacific albacore in 2017. The stock is not overfished, nor experiencing overfishing. The stock assessment model incorporated new growth parameters and data from the IATTC throughout the entire South Pacific. Regional depletion in regions around American Samoa is of concern to the Council, given the poor performance of the American Samoa longline fishery. SC17 reiterated its recommendations in prior years for longline catch reductions because fishing performance of many Pacific Island nations are suffering, including American Samoa, and a target reference point is needed to improve fishery performance. Reductions in catch are needed for harvest strategies to maintain the Marine Stewardship Council certification for the American Samoa fleet, as well as for other fisheries that enjoy the Marine Stewardship Council labeling.

Dueñas asked if CPUE and size frequencies for the Hawai'i longline fishery have remained the same over time. He also recalled that the region where the Hawai'i fleet fishes is one of the healthiest regions for bigeye tuna, and wondered if that area was still healthy compared to 10 years ago.

### **4. Defining Purse Seine Vessels of American Samoa**

Fitchett provided an overview of the issues for defining purse seine vessels for American Samoa. The American Samoa longline vessels managed under the Pacific Pelagic FEP are defined by the unique permit and reporting structure, which allows WCPFC, under Articles 30 and 43, to recognize the American Samoa fleet as belonging to the territory. Article 30, which gives special privileges for Small Island Developing States allows American Samoa to be recognized as a separate fleet, but also enjoy its privileges. The U.S. purse seine fleet does not

have the privileges under Article 30, even those that are based in American Samoa, thus all purse seiners flagged by the United States are currently treated as distant water fleets by the WCPFC.

Disincentives for the American Samoa-based purse seiners to offload most their catch in Pago Pago includes FAD closures and issues with the zone-based effort limits under the Vessel Day Scheme, which is an issue of contention within the WCPFC. Small Island Developing States vessels can be exempt from FAD closures, which currently preclude American Samoa U.S.-flagged seiners. The La Niña event and other environmental impacts also push the fleet eastward, thus making offloading in American Samoa less tenable. American Samoa's economy is heavily reliant on revenues from offloading tunas for the StarKist cannery. The U.S. Government Accountability Office did note that the gross domestic product of American Samoa dropped almost 20% from 2007 to 2019, which followed the closure of one cannery. There is a need for these purse seine vessels to continue offloading in American Samoa with a level of frequency throughout the entire year. Purse seine vessels moved east in 2021 and are not coming back into the WCPFC Convention Area, which means that they likely will not be offloading their catch in Pago Pago.

The landings of U.S. boats under the South Pacific Tuna Treaty that offloaded in Pago Pago was on average under 40% for the last five years, which is a decline from approximately 76-78% for 2005-2008. Total U.S. offloads in all ports from 2005 to 2008 were just more than 73,000 mt and increased to 200,000 mt in the last five years. At the tropical tuna workshop in early September 2021, Soliai had mentioned that there is a need for distinction of American Samoa-based purse seine vessels to ensure that they continue fishing in the WCPFC Convention Area and offloading in Pago Pago to maintain the viability of that cannery.

Dueñas said he thought there would be a landings requirement for American Samoa-based boats to get the \$21 million treaty support. There should be some incentive for landing. Dueñas also said more USCG presence to ensure they are offloading in American Samoa would be appreciated. Dueñas also said he thinks the Council and NOAA should promote the "Buy American" idea further, noting the military requires all fish they consume come from U.S. products.

Sword said that 18-19 years ago there were 48 U.S. purse seiners, many of which supported American Samoa, but that has declined to approximately 13 active vessels. There is also one non-U.S. boat going to Pago Pago. Sword also noted the PRIA and less fishing opportunities in U.S. waters. Sword said the USCG presence would not be there without a shipyard. There is also concern with Chinese presence in the region, making the shipyard even more important. The U.S. flag registry is very important, as is the need for 3,000-ton purse seiners to have access to the shipyard.

Soliai said that 84% of employment from the private sector and 99% of exports is tied to the fishery. Losing more vessels to reflagging will be costly to the United States and American Samoa. Fishing in the EEZs of other countries and reflagging is much cheaper than maintaining the U.S. flag. He said that the majority of the WCPFC sees the fleet as a U.S. fleet rather than an American Samoa-based fleet, which is detrimental to American Samoa. Solia said there is a need to define the fishery, and consider recommending landing requirements of 50% or more as part of the definition.

## **5. Outcomes of the 2nd Tropical Tuna Workshop**

Fitchett presented the outcomes of the 2nd Tropical Tuna Workshop, held virtually Sept. 6-10, 2021. The United States worked to introduce a framework on region-based management, separating the tropical areas from temperate areas, which was rejected by several Pacific Island delegations as being “overly complicated” while they favored their zone (EEZ-based) management scheme. Pacific Island countries mostly favored maintaining the current management measure. The idea for a regional-tailored measure was based on WCPFC Science Committee advice, which noted the temperate regions, where the Hawai‘i fleet operates, are a “buffer” for the stock. The workshop participants did agree that catch can be increased while maintaining a sustainable fishery and considered monitoring and compliance issues to be included in a future measure. Management objectives of the new measure must sustain a healthy status of the stock and/or fisheries, which also means the viability of the fisheries and not carrying an unreasonably high risk of exceeding a limit reference point. Future analyses may review a schematic of catch and or effort scalars to be estimated and associated with a skipjack target reference point. The workshop chair is compiling a report with possible revisions to the existing tropical tuna measure, which is expected to be available at the end of September.

Dueñas said that there is a provision for purse seiners to retain all juvenile fish and wondered if WCPFC research has looked into the impact to the fish population by removing these juvenile fish that are not actually feasible to market.

## **6. Permanent Advisory Committee**

Fitchett provided a brief overview of upcoming issues for the Permanent Advisory Committee to Advise the U.S. Commissioners to the WCPFC (PAC), which will meet Oct. 13-15, 2021. Issues include improvement to a CMM and target reference point for South Pacific albacore, CMM for tropical tunas, striped marlin rebuilding plan with an expected 2022 stock assessment and a MSE for North Pacific albacore.

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

#### **1. Advisory Panel**

Ken Borja, Guam AP vice chair, presented the AP recommendations.

*Regarding the tuna quota transfer*, the Guam AP requested the Council assist Guam Council members in providing the governor of Guam a presentation on Guam’s fisheries and the options for the tuna quota and laying out other options.

#### **2. Fishing Industry Advisory Committee**

Goto, United Fishing Agency and FIAC chair, presented the FIAC recommendations.

*Regarding the effects of fresh and frozen seafood imports on the U.S. market*, the FIAC supported the PIFSC study on the effects of fresh and frozen seafood imports into the U.S. market on the ex-vessel price of Hawai‘i-landed fish and requested a presentation of the results to be made to the FIAC once the study is completed.

*Regarding the paper by Lynham, J., Nikolaev, A., Raynor, J. et al., “Impacts of the two largest marine protected areas on longline catch rates,” the FIAC recommended the Council direct staff to work with the PIFSC Socioeconomics Program and members of the SSC to provide a peer-reviewed response to Lynham et al. (2020).*

### **3. Non-Commercial Fishing Advisory Committee**

There were no recommendations from the NCFAC.

### **4. Scientific and Statistical Committee**

Hospital, PIFSC, presented the SSC recommendations.

*Regarding review of impacts of the PMNM expansion, the SSC recommended that the Council develop a working group to: (1) conduct a comprehensive evaluation of the potential impact of the PMNM Expansion on the Hawai‘i pelagic longline fishery, (2) determine whether the PMNM is achieving the stated management objectives, and (3) consider dynamic area-based management approaches as an alternative to static closure approaches such as the PMNM. The output of such a working group would be a policy-focused publication that has implications for the international Biodiversity Beyond National Jurisdictions and the U.S. “30x30” initiatives.*

*Regarding suitability of a depletion-based limit reference point versus MSY for highly productive pelagic stocks, the SSC recommended to the Council that the evaluation of alternative reference points for the PMUS be added as a pelagic research priority in the MSRA Five-Year Research Priorities.*

### **F. Public Comment**

There were no public comments.

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

*Regarding impact of imports on the Hawai‘i fish market, the Council, **requested NMFS PIFSC present the results and visualization tools from its economics analyses on supply of foreign products, local demand and market price of fishery products in Hawai‘i to the Council and its advisory groups at its March 2022 Council meeting.***

*Moved by Sword; seconded by Dueñas.*

*Motion passed.*

*Regarding impacts to the Hawai‘i longline fishery from the PMNM expansion, the Council, **directed staff to convene an SSC working group to: (1) conduct a comprehensive evaluation of the potential impact of the PMNM expansion on the Hawai‘i pelagic longline fishery, (2) determine whether the PMNM is achieving the stated management objectives, and (3) consider dynamic area-based management approaches as an alternative to static closure approaches such as the PMNM. The output of such a working group would be a policy-focused publication that has***



**implications for the United Nations Biodiversity Beyond National Jurisdictions negotiations and the U.S. “30 x 30” initiatives.**

*Moved by Dueñas; seconded by Sword.*

*Motion passed.*

**Regarding WCPFC billfish stocks, the Council, requested PIFSC provide an update on progress of improved life history inputs used in stock assessments of billfish species at the December 2021 Council meeting.**

*Moved by Dueñas; seconded by Sword*

*Motion passed.*

**Regarding defining purse seine vessels of American Samoa, the Council requested American Samoa DMWR to develop a permitting and reporting program for U.S.-flagged purse seine vessels, identifying them as “American Samoa vessels” and enjoying privileges under Article 30 of the WCPFC. Those vessels should have offloaded 50% or more of their catch in American Samoa (Pago Pago) over the previous three-year period from (2018-2020). This distinction may be maintained if these vessels offload 50% of their landings in American Samoa every three years from the first year of application.**

**The Council directed staff to send a letter to the American Samoa governor, given the value of the purse seine fishery to the economic viability of the territory, to continue to allocate space at the shipyard for purse seine net support services, and to make purse seine repairs the priority by working with relevant federal agencies to repair the shipyard so it may handle 3,000-ton vessels.**

Dueñas said that the three-year permitting and reporting cycle in the recommendation is very generous.

*Moved by Dueñas; seconded by Sword.*

*Motion passed.*

**Regarding CMM for tropical tunas, the Council directed staff to send letters to the Department of Commerce and Department of State regarding a need for enhanced cooperation with particular WCPFC members with the goals to increase the U.S. longline bigeye catch limit and recognize American Samoa purse seine vessels within the WCPFC.**

**The Council directed staff to send a letter to the Department of the Interior to urge them to advance U.S. cooperation with the FAS.**

*Moved by Sword; seconded by Dueñas.*

*Motion passed.*

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

## **A. Moku Pepa**

Rice reported that the summer had been very productive for the charter and noncommercial fleets. The charter fleet was able to participate in all the tournaments this year as opposed to last year, which was affected by COVID-19. After the summer, the normal slow time for the charter fishery became extra slow because the governor told tourists not to come to Hawai‘i in September. Rice said he lost 11 charter days in September and other charter boats had the same issue. The charter fleet hopes to pick up in the winter, barring any restrictions in the state.

Fishing has been slower than usual because of the La Niña weather pattern this year with cooler waters. The small-boat commercial fishers had a good run in Hilo, while Kona was a little slower. The Hawai‘i DAR “Talk Story Program” went well and he hoped this program would continue. He also reported on a tournament out of North Carolina that had 223 participating boats, prize money of \$5.6 million, \$1 million worth of fuel used and \$2.2 million in hotel and restaurant expenditures in three days. He noted that with support and improved facilities in Hawai‘i, these types of tournaments could provide at least that much in spending to the state.

Ramsey reported that ‘oama, or juvenile goatfish, typically appear in large schools nearshore during the summer months, but they have been largely absent or only occasionally appearing in small spots to the dismay of a lot of family fishers. Sightings have started to increase so there is still hope for a late ‘oama season, but unlikely. In contrast, halalu, or juvenile akule, seem to be appearing in abundance in schools in areas where ‘oama typically were in the past. Large schools of papio, or jack, which often feed on ‘oama, are still inshore. Drone fishing from shore seems to be growing in popularity, but based on social media and personal conversations with boaters, spearfishers and other shore fishers, there also seems to be a growing concern about the gear that can be potentially cut off or left in the ocean by drone fishing.

Ramsey said that it is exciting to see a lot of “COVID-born” fishers, or those that took up fishing due to COVID-19 because they had additional free time and want to increase the amount of seafood that they are eating. Unfortunately, the stock of local fishing supplies in the tackle shops still have not reached pre-COVID-19 levels, which is a challenge. There was an initial drop in tourism due to COVID-19, but Hawai‘i is on its way to recovery with visitors starting to return. Although their economic input to the state is welcomed, tourism also provides additional challenges because visitor presence along shorelines, boat areas and harbors create some conflicts due to parking spaces and shoreline access areas being taken up by visitors, resulting in fishermen having trouble accessing the ocean. He also agreed that the Holoholo Fisher Talk Story Sessions held by DAR to reach out to the fishing community and gather input has been a great initiative.

Sakoda thanked the Council members for the positive feedback on the Holoholo Fisher Talk Story Sessions and said that DAR plans to continue with those.

## **B. Department of Land and Natural Resources/ Division of Aquatic Resources Report (Legislation, Enforcement, Bottomfish Management including Bottomfish Restricted Fishing Areas)**

Bryan Ishida, Hawai‘i DAR aquatic biologist, presented the DLNR DAR report for the period of May through July 2021. The deep-seven bottomfish fishery, as of the end of July,

reported that 311 CML holders made 1,941 trips and caught 151,735 pounds of mixed deep-seven species. In a typical year, approximately 50% of the catch is opakapaka, but the species was only approximately 35% of the catch in the 2021 season so far, which can be explained by a decrease in effort during the 2021 season. The main underlying cause of this decrease is that the fishery is on the backside of a peak in commercial fishing participation effort in all fisheries that happened around 2010 and 2011. Since that peak, there have been progressively fewer people fishing and fewer trips being made, and the data on hours fished mirrors the catch. Another reason for the effort decrease is the effects of COVID-19 in 2020 and 2021, both in terms of fishermen being able or comfortable getting out on their boats and the effects from the market inaccessibility. Lastly, reports of challenging fishing conditions, including shark depredation, means fewer trips by frustrated fishermen.

The Kona crab season was closed during this reporting period, so the data remains the same from the last period, with 14 CML holders making 41 trips and landing 2,853 pounds of Kona crab to date in 2021. The season opened Sept. 1, 2021, and an update on this fishery will be provided in the next Island Report when data are available. In the 2021 uku season, 148 CML holders made 542 trips and caught 32,654 pounds as of the end of July. Compared to 2020, there was more of a bump in the late April to late May season, which is typical of this fishery as commercial fishers start to target uku more heavily along Penguin Bank.

CMLs at the end of July were at 2,036 licenses issued or renewed for a total revenue of \$202,340. These 2021 numbers are below average, but above what was reported in 2020. Between May and July 2021, eight research permits, eight special ocean use permits, eight native Hawaiian practices permits, four conservation and management permits and one education permit were valid to enter the PMNM in the NWHI. During the reporting period, 13 research, special ocean use, and native Hawaiian practices permits were also granted, which is high due to being the busy time of the year when groups try to get to the NWHI during favorable weather conditions, and also due to some easing in COVID-19 restrictions. The permit reviewing team is currently reviewing fewer than five permits for the next open period, late summer and fall 2021. Fewer permits during this period are typical, as weather turns bad.

There was no activity for FADs in May and June, but eight FADs were reported missing in July. The Environmental Protection Agency also began consultations with the state regarding Vessel Incidental Discharge Act Standard of Performance Oct. 26, 2020, with topics covering ballast water best management practices, biofouling, in-water cleaning and state petitions. On Aug. 27, 2021, Hawai'i amended its administrative rules to increase the nonresident CML fee from \$100 to \$250, which will take effect Oct. 1, 2021. DAR has sent letters notifying nonresident CML holders about this fee increase. DAR is also in the process of drafting administrative rules to implement a commercial marine vessel license and a nonresident recreational marine license. DAR also plans to establish a commercial marine dealer license, raise fees for other specialized licenses and move to a fixed license year that begins July 1 and ends on June 30. The agency will seek input from stakeholders on these proposed rules in coming months.

The application period for round 2 CARES Act funds is currently open to all eligible fishery participants. Applications were first made available Aug. 16, 2021, and the deadline to submit applications is September 30. DAR has been providing information to fishers, helping

them through the process and reminded anyone who is interested in making a claim or knows somebody who is interested in making a claim to submit their applications as soon as possible.

Ishida also provided an update on the reporting of fishing activity in the Bottomfish Restricted Fishing Areas (BRFAs) open to the MHI deep-seven fishery. In January 2019, the State of Hawai‘i Board of Land and Natural Resources voted to open four of the 12 BRFAs with a stipulation that commercial fishers would be required to report their catch and effort while fishing inside the BRFAs. The opened BRFAs were C, J, F and L. Outreach was performed through public announcements and fishers were contacted directly and the necessary changes were made to the online and effort reporting to allow for the BRFA area to be noted. The four BRFAs were open for fishing July 1, 2019. Catch effort in each of the open BRFAs show that fewer people were reporting inside the BRFAs than outside the areas. The relatively small sample sizes and large variability, combined with one highliner fishing solely in the BRFA has made it difficult to assess the data. The initial outreach with fishermen clarifying how to report was strong, but fishermen can choose not to report because reporting is based on an honor system. This has led to concerns regarding data accuracy and making comparisons of before and after opening difficult. Intentional nonreporting or lack of reporting has occurred because some people did not report out of frustration with management, or did not know they should report.

Tenorio asked for additional explanation on the variability of CPUE and what additional factors might be causing it.

Ishida said it depends on the individual and on conditions. Depredation is one factor as some individuals have high depredation while others have low depredation. The ability to handle rough weather and the type of vessel are other factors.

Rice said that May to July is when a lot of bottomfish fishers switch over to ‘ahi fishing and this could add to the variability. The data would reflect the loss of the highliners and he said that he knows of three highliners in Kona who usually bottomfish switch over to ‘ahi fishing throughout that time.

Ishida agreed and said that some of that effort is suspected to have moved over to the ‘ahi fishery.

Dueñas commended the State of Hawai‘i for opening the BRFAs as it had always been a contentious issue for the small-boat operators. He also thanked DAR for its outreach in working with the fishing community, which should make them more receptive to regulations.

### **C. Specifying Annual Catch Limits for the Main Hawaiian Islands Uku Fishery (Final Action)**

Sabater presented on the final action for the MHI uku ACL for 2022 to 2025. In June 2020, the SSC received the benchmark stock assessment on the uku fishery that deemed the stock as not overfished and not experiencing overfishing. At the June 2020 Council meeting, the Council directed staff to convene the P\* and Social, Economic, Ecological and Management Uncertainty (SEEM) Working Groups. For the scientific uncertainty, the P\* Working Group quantified a 7% reduction from the 50% risk of overfishing. The SEEM Working Group quantified another 7% reduction from the scientific uncertainty, resulting in a maximum level of risk that the Council can take to manage this fishery at 36%. The Council also directed staff to

explore the splitting of the ACL between the commercial and noncommercial sectors because the stock assessment included noncommercial data from the HMRFS as one of the data inputs that would allow tracking of catch between the two sectors.

At its September 2020 meeting, the Council identified a preliminarily preferred alternative using the results of the P\* and SEEM Working Groups to set the ACL at 41% risk of overfishing, which corresponded to 295,419 pounds, and further setting an annual catch target (ACT) of 291,010 pounds or a 36% risk of overfishing for fishing years 2022 to 2025. The Council also directed staff to convene the action team to develop the AM and the regulatory amendment.

In June 2021, the Council received the analysis on the feasibility of managing the fishery separately for the commercial and a noncommercial sectors. The Council recommended a combined tracking of the commercial and the noncommercial catch as a single unit, using an in-season AM to track the catch relative to the ACT, and closing the fishery when the target is projected to be reached. The Council also requested PIFSC to develop a MSE and a methodology to project the catch relative to that ACT since the data is coming from two different data streams.

Sabater presented the proposed alternatives for final action including: alternative 1, no action, meaning the Council would not specify an ACL; alternative 2, status quo, or the current ACL set for the commercial sector at 127,205 pounds with an in-season and post-season adjustment; alternative 3 would set the ACL level at 41% risk of overfishing and use a post-season AM; alternative 4 would set the ACL level at 41% risk of overfishing and apply an in-season tracking of catch relative to the ACL as well as a post-season adjustment; alternative 5, the preliminarily preferred alternative, would set the ACL at 41% risk of overfishing with an ACT at 36% risk, with both in-season and post-season AMs; and alternative 6 would set the ACL at 41% risk, with an ACT at 21% risk of overfishing with in-season and post-season AM. Sabater provided an impact analysis and expected fishery outcomes for each alternative as well as each alternative's advantages and disadvantages for the Council's consideration.

Rice asked if the increase in uku landings in 2012 corresponded to the year that the deep-seven fishery was closed.

Sabater said that that whenever the deep-seven fishery closes, uku is a preferred replacement, but the bump in 2012 may be attributed to the noncommercial estimate and variability in the data.

Dueñas said that AMs appear to be the only thing left in the management tackle box and that he would expect that the fishery is going to stay below the annual average. He was not concerned about exceeding any limit that the Council might set based on the report provided.

Sakoda said that the State of Hawai'i supports alternative 5. The state does not support a closure of the noncommercial uku fishery in state waters if the ACT or ACL is reached, but is considering rules to close the commercial fishery in state waters, which will help to potentially reduce overages once those targets are reached. The state is also considering a noncommercial bag limit, similar to the deep-seven that might help to temper some of the variability in the noncommercial catch. However, state measures would not take effect for another couple of years because of the rulemaking process, but it is the intent of the state to do so.

Gourley said that he also supports alternative 5 and commended the cooperation between the Council and the state.

#### **D. Essential Fish Habitat Model for the Main Hawaiian Islands Uku**

Erik Franklin, University of Hawai‘i, presented preliminary results of a model-based uku EFH for the MHI. The existing definition of uku EFH is broken down by life stages for fishes. In general, EFH for uku consists of the entire water column from zero to 240 meters, and from shore out to the limit of the EEZ. Depending on the life stage, uku is either near the bottom or off the bottom in the water column. This project is looking at additional approaches to improve these definitions to get a better idea of where uku EFH may occur.

Federal definitions for EFH include levels tied to the level of available information about a particular species and its habitat use. Level 1 is when the least amount of information is known, or presence or absence level in a particular habitat. Level 2 is about how many of those fish may be found in that particular habitat. Level 3 includes life history processes such as growth or reproduction rate, survivorship or mortality level associated with certain habitats. Level 4 is the highest level that includes fishery production and integrates all of these components to provide an understanding of the whole life cycle of these fishes associated with a particular habitat type. The Western Pacific is data-limited for many of its managed species, including uku, and this project is starting at level 1 with hopes to move to the next levels.

Species distribution model (SDM) is a broad category of modeling that has been used for terrestrial and marine species around the world. The SDMs take observations of the target organism and relate them to environmental covariates. Modeling approaches are then used to understand the chances that a fish would use a habitat that has not been surveyed. The models predict occurrence or abundance of these target organisms. This project uses SDMs to design model-based approaches for delineating EFH for uku and identify habitat and environmental factors that influence where they are found.

Of the two primary data collection or observation surveys, shallow surveys includes 20 to 30-meter depths and include visual diver surveys that include NOAA stationary point counts determining uku presence, number and size. Deeper surveys are limited by diver depths and rely on baited stereo video camera arrays, such as BotCam, Modular Optical Underwater Survey System, or Baited Remote Underwater Video Station run by PIFSC and associated with the University of Hawai‘i. These surveys allow scientists to get a maximum number of fish in a frame at any time during the survey and collect fish lengths. Static environmental observations, including bathymetry, slope, rugosity and bottom type are also collected. Dynamic variables that change through time like wave energy, temperature, salinity and current flow are also used in the model. All of this information is compiled in a Geographic Information System and entered into the SDM.

The model includes almost 1,700 samples from shallow surveys and 1,500 samples from deeper surveys. These samples are being used to develop a shallow EFH model and a deep EFH model to avoid inherent biases and create presence/absence outputs of combined juvenile and adult uku. Preliminary runs of the model results are good, not excellent, but also not fair or poor. This is because uku are fairly generalist in their habitat use as they are predators that move around and are not tightly associated with any particular habitat type. The shallow model shows

that a variable bottom cover is not a strong predictor for where uku is in shallow habitat, meaning they utilize many different habitats. In the deep model, results are showing that depth is a strong predictor. The probability of encountering uku from 50 to 150 meters is high, but cuts off at 150 meters. Results are showing that uku are in deeper habitats and in hard-bottom areas more so than in the shallows.

The results also show good correspondence between Ni'ihau, Ka'ena Point on O'ahu, Penguin Bank and the Kahala Coast between the models, as well as correspondence with the commercial catch regions. The good correspondence is refreshing because if there is good habitat, fishing is going to occur there. Franklin said the team is working to discern what areas are important through the output of habitat suitability and probability of occurrence. The model outputs will be used to create maps and project those results to areas that are unsurveyed to get an understanding of the probability that uku would be in that area. Results could be used to revise depth ranges and EFH upon completion.

Gourley said that the maps are clear and useful for the fishing community. However, EFH is a regulatory issue, and thus most of the use is going to be along the coastline where there are U.S. Army Corps of Engineers (USACE) permits dealing with projects for harbors, dredging and piers. He said that EFH needs to be revisited to identify areas that are not EFH as the current definition makes it seem as if EFH is everywhere and becomes punitive when trying to carry out a project in the ocean. EFH should be confined to nearshore where projects are being conducted. This project is a good start and working with NMFS on revising the definitions will be helpful.

Franklin said that this particular species has a broad depth range compared to shallow coral reef-associated fish. He also said that there are deep-sea cable issues that may require knowledge of habitats. These models encompass the shore and can be coarse, but can be cleaned up in an area of importance. He pointed out that a key result from this model is that a lot of the nearshore environments do not pop up as EFH.

Gourley was concerned with the way NMFS is interpreting and enforcing EFH in the Western Pacific Region.

Tosatto said that EFH is first and foremost considered by the Council and that EFH was recommended by the Council and implemented by NMFS. The current effort is to refine EFH definitions, which is an obligation of the Council. This project could be helpful to look at the adult and sub-adult uses of habitat to guide refinement of EFH and will be a meaningful contribution to refining uku EFH. He said that the problem in the Western Pacific Region is not NMFS and rather the USACE in the Pacific Ocean Division who has refused to agree with NMFS interpretation of the statute. He said he was not interested in non-EFH, but rather in refining definitions of EFH and Habitat Areas of Particular Concern.

Gourley said that it would be nice to have policy guidance from the Council for NMFS as the Council established the definitions. He said that work in three feet of water for a revetment in Saipan requires EFH consultation for onaga, a deep-water species, because its EFH is defined from shoreline. He asked NMFS for written guidance for determining EFH.

Tosatto said the MSA puts the provisions for EFH in place and that NMFS has implemented guidance in regulations. The Council defined EFH from shoreline for most of its species based on the information it had at the time. NMFS must enter into a consultation when

areas that are defined as EFH are affected by federal action agencies and there are a number of outcomes of those consultations that are largely leading to conservation recommendations that are looking after the Council's interest. Not seeing an onaga is an irrelevant question when looking at all life cycles of the species and whether that habitat is essential or not. It does not matter if a fish was surveyed there or not, it is a matter of whether or not that habitat is essential for that fish. The model presented discovered that presence is helpful and it is what is defined as habitat which NMFS has to act upon.

Gourley asked for copies of all EFH policy guidance documents from NMFS.

Tosatto said that they are all publicly available on the national website.

Simonds said that the guidance is national and that is what NMFS follows. This issue could be brought up at a CCC meeting and have NMFS review the guidance with the Councils.

Tosatto said that there are several councils with serious disagreements with the USACE, which are harming EFH that they have designated. This Council seems to have the opposite, which wants to allow the USACE to harm their EFH.

Gourley said that is a harsh statement.

Simonds said that this Council is different.

Dueñas said that the proper term should be potential fish habitat rather than lumped as EFH because it is unclear as to what the science is all about. He was worried about the information for fishermen and that education is a progressive discovery of ignorance. As fishermen are educated, they will be smarter and catch more fish. He recommended using data from the NWHI to see if anything can be correlated.

Sakoda said that he is hopeful that this will help to clarify EFH and asked if fishing impacts or human impacts affect the presence/absence survey data that goes into the models.

Franklin said that there is probably some impact. Building models in pristine areas like the NWHI and comparing the outputs to areas like the MHI where fishing occurs is a good way to compare whether or not the habitat variables that are coming out as important in your models stand up in the absence of fishing. This model is based on observations and presence so an area that is heavily fished might have a reduced chance of being observed there and that could be a potential outcome of this model.

## **E. Northwestern Hawaiian Islands Proposed National Marine Sanctuary Update**

Maria Carnevale, Council staff, presented on a proposed designation of a national marine sanctuary in the NWHI and the Council's role in the process. She provided a history of the spatial area landscape for the area including designations as a national wildlife refuge, protected species zone, state wildlife refuge, coral reef ecosystem reserve, state marine refuge and marine national monuments. The current effort, directed by Senator Brian Schatz in an appropriations committee report, is to add a national marine sanctuary.



The National Marine Sanctuaries Act Section 304(a)(5) states that the Secretary of Commerce shall provide the appropriate RFMC with the opportunity to draft regulations for fishing within the EEZ as the Council may deem necessary to implement the proposed designation. Carnevale noted that the Council participated in this process in 2005 and that the process includes how fisheries and sanctuaries come together and share information. The Council's work gets evaluated against the draft goals and objectives for the sanctuary to determine if those fishing regulations are accepted.

The Council has met with NOAA to share in the planning efforts and timelines as well as meeting with other management partners to discuss potential fishery regulations. It is anticipated that the formal start of the 304(a)(5) process will begin in the fall ahead of the December Council meeting. NOAA will provide Council staff with the draft goals and objectives and NOAA will publish the NOI in the Federal Register. The NOI process will run in parallel to the Council's work at that stage and will come together down the line. As part of preplanning and preparing, Council staff is assessing the landscape to clarify and support a common understanding on a starting point. Council staff is analyzing across the different frameworks and identifying the different fishing opportunities and their respective definitions to help support these discussions. Preferences for NOAA draft sanctuary goals and objectives were discussed in both the AP and the FIAC meetings and were presented for Council consideration to submit to NOAA. The preference for goals and objectives include maximizing fishing opportunities, allowing resources harvested for the purpose of food and cultural connection to be taken outside the boundaries, affirming MSA to be the primary authority for fisheries, minimizing any additional burdens to fishers, prioritizing fisheries research and boundaries that would support these policy objectives.

Gourley asked if ONMS has a say in whether fishing is allowed in a sanctuary and if fishing is allowed, what objectives it has to meet.

Carnevale said that in discussions with ONMS, the package on whether fishing is allowed or what objectives it has to meet will be provided by December. The Council will have 120 days to respond and the Council can determine whether regulations are not necessary or if the Council will prepare draft regulations or decline to make a determination.

Dueñas said that providing socioeconomic possibilities for Native Hawaiians could be discussed as previously, a son of one of the NWHI fishermen cried and pleaded with the Council to allow him to take over his father's boat and continue to fish in the area. Taking away five-eighths of the fishery from the Native Hawaiians with no benefit to them as a people is a long overdue needed correction. He also said that there is a need to use science to understand what is going on in the area and that indigenous rights should always be considered. In Hawai'i, they use aloha this and aloha that but when it comes to the indigenous people, they have become the indignant people of the Pacific. This whole exercise should include them for perpetuation not preservation. Sanctuaries should be a place that is rehabilitated where an ugly place is made pretty again rather than taking a pretty place and locking it up where only rich people can appreciate it. This whole exercise ignores the one fundamental group for the Hawaiian Islands which is the people and taking away their property and their home.

Sword agreed with Dueñas and said American Samoa could fit in as well. He said he did not know what the catch is with the process as he did not understand why this would be added onto the existing regulations.

Eric Roberts, deputy superintendent for the PMNM, provided an update on the process to designate Papahānaumokuākea as a national marine sanctuary. He provided a recap of what was reviewed at the June 2021 Council meeting and the current restrictions and regulated activities within the original boundary and monument expanded area, as well as the benefits ONMS has identified as part of the sanctuary designation. The next steps include the initiation of public scoping and the consultation process with the Council. The updated timeline includes two phases that make up the preplanning and prescoping activities. Public scoping activities are anticipated to begin later this fall and ONMS is working on publishing a public NOI. The environmental process will start in late October or early November, at the same time that ONMS plans to initiate the National Marine Sanctuaries Act 304(a)(5) process to allow adequate time for Council discussion.

Following the release of the NOI, ONMS anticipates holding a series of virtual public meetings in November and December, which would coincide with the public comment period in both English and Hawaiian language. After public meetings and the overall public comment period ends, ONMS will spend several months compiling and analyzing those comments. In terms of potential actions, the Council will have the opportunity to provide comments during the scheduled public comment period, as well as the draft fishing regulations within 120 days of the 304(a)(5) initiation. Within that 120-day period, the Council will be requested to provide a response, which will come in through the following options: the Council could determine that regulations are not necessary; the Council could determine that fishing regulations are necessary and prepare those draft regulations; or the Council could decline to make a determination with respect to the need for regulations.

Gourley asked if NOAA rejects the Council's fishing regulations, is there a way for the Council to reconsider.

Roberts said that the evaluation is based on the goals and objectives that are presented in the 304(a)(5) package, as well as any of the existing proclamations and EOs. NOAA makes the final decision between the NMFS and ONMS line offices and it is unknown if there is action beyond that.

Onaga said there is a congressional determination once everything is resolved; however there are limitations on what can be done because of existing laws such as the proclamations. Those are being pursued with discussions between the Council and ONMS.

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

### **1. Advisory Panel**

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

*Regarding the MHI uku fishery*, the Hawai'i AP recommended the Council consider alternative 5 with a combined commercial and noncommercial ACL at 41% risk of overfishing at 295,419 pounds and set an ACT at 36% risk of overfishing at 291,010 pounds with in-season and post-season AMs.

Kuali‘i said that one of the major AP discussions was that the uku fishery should be managed as a whole for both commercial and noncommercial sectors. The AP expressed serious concerns regarding the variability and reliability of the HMRFS data for management use.

*Regarding the MHI bottomfish*, the Hawai‘i AP recommended the Council request PIFSC present a summary of the data gathered by the Bottomfish Fishery-Independent Survey (BFISH) Project to the AP and provide to the state for its evaluation of the BRFA reopening.

*Regarding the proposed NWHI National Marine Sanctuary*, the Hawai‘i AP endorsed the preferences for fishing goals and objectives presented by staff and recommended the Council communicate these preferences to the ONMS in order to provide for fishing, access and cultural connections to the NWHI.

*Regarding honu*, the Hawai‘i AP recommended that the Council continue to pursue a cultural take and management of the green sea turtles and research the subsistence use of turtles through interviews of historical participants in the fishery.

*Regarding CNMI fishery issues*, the CNMI AP recommends the Council continue to pursue an opportunity for the CNMI to harvest green sea turtles.

Kuali‘i said that the AP also strongly felt there was a need to pursue a cultural take of green sea turtles, or honu. Some members had experienced take prior to its listing and there is a need to return that cultural connection.

## **2. Fishing Industry Advisory Committee**

Zach Yamada, Council staff, presented the Hawai‘i recommendations from the FIAC for FIAC Chair Goto.

*Regarding the MHI uku ACL*, the FIAC recommended that the Council select alternative 5 setting the ACT for the commercial and noncommercial fisheries at 36% risk of overfishing with an associated annual catch of 291,010 pounds with an in-season and post-season AMs.

*Regarding the proposed NWHI National Marine Sanctuary*, the FIAC recommended the Council send a letter to NOAA supporting the policies presented be incorporated into the draft NOAA goals and objectives of the proposed NWHI National Marine Sanctuary.

## **3. Non-Commercial Fishing Advisory Committee**

Sensui, NCFAC chair, presented the report and recommendations.

*Regarding the proposed NWHI National Marine Sanctuary*, the NCFAC supported the preferences for the sanctuary goals and objectives as presented and encouraged the Council to provide these preferences to ONMS.

Sensui noted that there was not much information about what exactly the intent would be or the regulations that would be established in addition to existing regulations for that area. It is

not known if the boundaries would be the same as the expanded monument or if it would be within only the boundaries of the original monument. The NCFAC noted that fishermen from Kaua‘i would be most affected by any positive or negative changes since they are the closest to the southeastern boundary of the monument, where the definition of sustenance, subsistence, culture and tradition come into play. If fishermen are eventually allowed access, what would the limitations be, would they be able to continue the time-honored traditions of sharing their catch beyond the monument’s borders. Something that needs to be noted is the scale of what is being discussed regarding the PMNM. The nearest area is almost 100 miles from Kaua‘i, so getting there and beyond is a serious challenge for even the most well-equipped noncommercial fishermen. He noted that this is a matter of principle since what is established there could take place in other areas currently frequented by fishermen from all other areas of the Western Pacific that is within the Council’s jurisdiction. The NCFAC also supports minimizing additional burdens to fishers, and establishing monument boundaries that support the Council’s policy objectives and firmly believes MSA principles should be the guidance for fishery management.

*Regarding the MHI uku fishery*, the NCFAC recommended the Council select alternative 5, which would specify a combined commercial and non-commercial ACL at 41% risk of overfishing at 295,419 pounds and set an ACT at 36% risk of overfishing at 291,010 pounds with in-season and post-season AMs.

Sensui said that the NCFAC discussed the five different fishery management options, and noted that the good news is that the resource is neither overfished and overfishing is not happening.

#### **4. Scientific and Statistical Committee**

Hospital presented the SSC report and recommendations.

*Regarding BRFA*s, the SSC reiterated its previous recommendation to eliminate all BRFAs, given the change in stock status since their establishment and because their management utility has been superseded by ACLs.

The SSC recommended the Hawai‘i DAR continue to improve fishery-dependent data collection to better fisher engagement in order to effectively manage the bottomfish fishery.

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

There were no public comments.

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

*Regarding the MHI uku ACL specification*, the Council recommended as final action:

- a. Specifying an ACL at 41% risk of overfishing with a corresponding total catch of 295,419 pounds and setting an ACT at 36% risk of overfishing with a corresponding total catch of 291,010 pounds for the commercial and noncommercial fisheries in fishing years 2022 to 2025.**
- b. Implement an in-season AM that would track the catch relative to the ACT and close federal waters once the ACT is projected to be reached. Catches from both federal and state waters would be counted toward the ACT.**

- c. **Implement a post-season AM where the recent three-year average total catch is compared to the ACT and ACL. If the average catch exceeds the ACT but below the ACL, the overage adjustment will not be applied. If the average catch exceeds the ACT and ACL, the ACL and ACT will be reduced by the amount of the overage.**

**Further, the Council directed staff to finalize and transmit the regulation package for Secretarial review and implementation, as appropriate.**

**The Council deems that the regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the MSA. In doing so, the Council directs Council staff to work with NMFS to complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, the Council authorizes the executive director and the chair to review the draft regulations to verify that they are consistent with the Council action before submitting them, along with this determination, to the Secretary on behalf of the Council. The executive director and the chair are authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in their determination, the proposed regulations are not consistent with the Council action.**

Tosatto said that he will be abstaining from the vote because this is a final action that will come to him for final decision later, and noted that his abstention does not indicate support or non-support.

*Moved by Sword; seconded by Rice.*

*Motion passed with Tosatto abstaining.*

**Regarding MHI bottomfish, the Council requested PIFSC present a summary of the data gathered by the BFISH Project to the AP and provide DAR the BFISH information for its evaluation of the BRFA opening.**

**The Council recommended the Hawai'i DAR continue to improve fishery-dependent data collection through better fisher engagement in order to effectively manage the bottomfish fishery.**

*Moved by Rice; seconded by Sword.*

*Motion passed.*

**Regarding EFH, the Council recommended that the chair recommend at the October CCC meeting that NMFS work with the Council to review the EFH guidance in terms of how that guidance requiring the Council to identify and describe EFH has been applied in the Western Pacific Region.**

Dueñas said he supported this recommendation, noting that in the future, the Council will have to nail down what EFH means and how it should not be applied across the board for every discussion for fishery habitat.

Tosatto said that it would not be appropriate for the CCC to ask a national council to review a regional guidance. He said that he is following the statute, the regulations and the policy and said he would vote no.

Moved by Rice; seconded by Dueñas.  
Motion passed with Tosatto opposing.

*Regarding the proposed NWHI sanctuary designation process, the Council **directed staff to send NOAA ONMS and NMFS the Council's preferred policies for the goals and objectives of the proposed NWHI National Marine Sanctuary.***

Tosatto asked staff to be focused as it is clear that some Council members and some of the Council advisors remain unclear as to the 304(a)(5) framework, and the boundaries already in place regarding that path forward, including some uncertainty on whether resources would be able to be removed. That is a condition of the EO. Therefore, no, never. There are some answers and the Council staff needs to make sure it is focused that when it is developing these preferred policies for goals and objectives, it clearly understands what boundaries it is operating under. The discussions between sanctuary, NMFS and Council staffs have been reasonably straightforward and clear on several of these issues. With that caution, he will be supportive. It will be helpful for the Council to communicate on these issues, and begin to take this process forward.

Simonds thanked Tosatto and reiterated that Council staff has sent a request to GCPI, which includes the MSA counsel and the sanctuary counsel, asking them what could be changed, or not changed. A response is expected that will provide Council staff exactly what the boundaries are, and from that staff will work going forward.

Moved by Rice; seconded by Sword.  
Motion passed.

*Regarding honu, the Council **directed staff to continue working with NMFS to determine the feasibility of a cultural take of green sea turtles for Hawai'i.***

**The Council directed staff to document the history and tradition of green sea turtle harvest in Hawai'i to include in future management, including a video capturing interviews of community members that previously held subsistence permits for honu, and/or otherwise hold strong familial cultural connections with the harvest and use of honu.**

Sakoda asked that this be done in collaboration with the Hawai'i DLNR.

Simonds agreed to collaborate.

Tosatto said that there might be a different opinion that the Council received from GCPI on a different question on whether this work is directly supportive of a petition to NMFS. This would not be within the Council's grant and therefore could not be conducted by staff. The Council has sought guidance from GCPI on activities that it might pursue and was unsure how this question was framed. This is research that would directly support a petition and, therefore, cannot be conducted by the Council staff using grant resources. Since the Council staff only has

one source of funding through the grant, this activity cannot be conducted by Council staff. That is not saying it is not necessary, helpful to the process or meaningful to the process. Nonetheless, the point is this cannot be conducted by Council staff with his understanding of the limitations on the Council and their inability to do work to support a petition.

Simonds said the Council will discuss the document with GCPI but the Council did develop, but never finished, a management plan for the honu. The only species that the Council is not allowed to develop a management plan for are seabirds and marine mammals. The Council can develop a FMP for seaweed or corals and, if needed, for sea turtles as well. She understood Tosatto's point and would discuss it with GCPI.

Dueñas said that he was confused by Tosatto's comments as he did not see any direction in the recommendation to Council staff to support a petition for the honu. The recommendation includes fact-gathering by staff so the Council is not in violation of anything. It includes tradition, documentation and cultural uses and that has been done for bottomfish in the past.

Soliai noted that these are just recommendations that will be reviewed by GCPI.

Tosatto said he will be voting no on the second recommendation.

Moved by Dueñas; seconded by Sword.  
Motion passed with Tosatto opposing.

#### **XIV. Administrative Matters**

##### **A. Financial Reports**

Simonds referred members to the financial and administrative reports in their briefing materials.

##### **B. Administrative Reports**

This item was covered in the prior agenda item.

##### **C. Council Family Changes**

Mark Mitsuyasu reviewed changes to the American Samoa, Guam and Hawai'i APs; NCFAC; and Hawai'i, Guam, and CNMI Regional Ecosystem Advisory Committees. Dueñas was removed from the FIAC as he is a current Council member. Simonds proposed appointing Dang as the Council's commissioner to the WCPFC, replacing former Council member Goto. Ramsey was also recommended to replace former Council member Ed Watamura as the Council's representative to PacIOOS.

##### **D. Meetings and Workshops**

Simonds referred Council members to the list of meetings and requested members to notify the Council of any changes to the sessions for the month of December.

##### **E. Standing Committee Report**

Soliai said the Standing Committee met earlier in the week and the report is included in the Council briefing materials.

**F. Public Comment**

There were no public comments.

**G. Council Discussion and Action**

*Regarding Council family changes, the Council made the following changes:*

- **Removed Manny Dueñas from the FIAC.**
- **Removed Will Sword from the American Samoa AP.**
- **Removed Cody Schrader from the Hawai'i AP.**
- **Appointed Nate Ilaoa as a member of the American Samoa AP.**
- **Appointed Michael Dueñas to the Guam AP as an alternate.**
- **Appointed Audrey Toves to the Non-Commercial Fishery Advisory Committee.**
- **Appointed Dr. Kaipō Perez III and Dr. Sean Hanser (U.S. Navy staff) to the Hawai'i Regional Ecosystem Advisory Committee.**
- **Appointed AJ Reyes and Kevin Lino (U.S. Navy staff) to the Guam Regional Ecosystem Advisory Committee.**
- **Appointed AJ Reyes (U.S. Navy staff) to the CNMI Regional Ecosystem Advisory Committee.**

Moved by Dueñas; seconded by Dunham.

Motion passed.

*Regarding Council representation on other organizations, the Council directed staff to send a letter to the U.S. State Department and Department of Commerce recommending Roger Dang, Hawai'i Council member, be appointed to serve as a U.S. commissioner on the WCPFC.*

**The Council designated Matt Ramsey as its representative on the PacIOOS governing advisory body.**

Tosatto said that the letter recommending a new commissioner also needs to be sent to the Department of Commerce.

The motion was modified by general consent.

Moved by Dunham; seconded by Rice.

Motion passed.

*Regarding operations, finances, personnel and policies, the Council endorsed the 187th Council meeting financial and administrative reports as provided by staff.*

Moved by Sword; seconded by Dunham.

Motion passed.



*Regarding the appointment of Kelly Kryc as NOAA deputy assistant secretary for International Fisheries, the Council* **directed staff to send a letter of congratulations on her appointment and introduction to the Western Pacific Regional Fishery Management Council.**

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

**XV. Other Business**

There was no other business.

[Meeting adjourned.]