# Final Programmatic Environmental Impact Statement

## Toward an Ecosystem Approach for the Western Pacific Region: From Species-Based Fishery Management Plans to Place-Based Fishery Ecosystem Plans

## Appendices

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# Appendix A.

# List of Current and Proposed Management Unit Species (MUS) under Alternative 2D (Preferred Alternative)

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# Appendix A: List of Current and Proposed Management Unit Species (MUS) under Alternative 2D (Preferred Alternative)

**Table A-1: Current Bottomfish and Seamount Groundfish Fishery Management Plan (FMP) Management Unit Species (MUS)**

| Bottomfish FMP Management Unit Species (BMUS) | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| *Aphareus rutilans* | silver jaw jobfish | *Pristipomoides auricilla* | yellowtail snapper |
| *Aprion virescens* | gray jobfish | *Pristipomoides filamentosus* | pink snapper |
| *Caranx ignobilis* | giant trevally | *Pristipomoides flavipinnis* | yelloweye snapper |
| *Caranx lugubris* | black jack | *Pristipomoides seiboldii* | pink snapper |
| *Epinephelus fasciatus* | blacktip grouper | *Pristipomoides zonatus* | snapper |
| *Epinephelus quernus* | sea bass | *Pseudocaranx dentex* | thicklip trevally |
| *Etelis carbunculus* | red snapper | *Seriola dumerili* | amberjack |
| *Etelis coruscans* | longtail snapper | *Variola louti* | lunartail grouper |
| *Lethrinus amboinensis* | ambon emperor | *Beryx splendens* | alfonsin |
| *Lethrinus rubrioperculatus* | redgill emperor | *Hyperoglyphe japonica* | ratfish |
| *Lutjanus kasmira* | blue stripe snapper | *Pseudopentaceros richardsoni* | armorhead |

**Table A-2: Current Crustaceans Fishery Management Plan (FMP) Management Unit Species (MUS)**

| Crustaceans FMP Management Unit Species (CMUS) | |
|---|---|
| **Scientific Name** | **English Common Name** |
| *Panulirus marginatus* | spiny lobster |
| *Panulirus penicillatus* | spiny lobster |
| Family Scyllaridae | slipper lobster |
| *Ranina ranina* | kona crab |
| *Heterocarpus* spp. | deepwater shrimp |

**Table A-3: Current Precious Corals Fishery Management Plan (FMP) Management Unit Species (MUS)**

| Precious Corals FMP Management Unit Species (PC MUS) | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| *Corallium* spp. | Any coral of the genus *Corallium.* | *Calyptrophora* spp. | gold coral |
| *Corallium secundum* | pink coral (also known as red coral) | *Lepidisis olapa* | bamboo coral |
| *Corallium regale* | pink coral (also known as red coral) | *Acanella* spp. | black coral |
| *Corallium laauense* | pink coral (also known as red coral) | *Antipathes dichotoma* | black coral |
| *Gerardia* spp. | gold coral | *Antipathes grandis* | black coral |
| *Narella* spp. | gold coral | *Antipathes ulex* | black coral |

**Table A-4: Current Pelagics Fishery Management Plan (FMP) Management Unit Species (MUS)**

| Pelagics FMP Management Unit Species (PMUS) | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| *Coryphaena* spp. | mahimahi (dolphinfishes) | *Isurus oxyrinchus* | shortfin mako shark |
| *Acanthocybium solandri* | wahoo | *Isurus paucus* | longfin mako shark |
| *Makaira mazara; Makaira indica* | Indo-Pacific blue marlin, black marlin | *Lamna ditropis* | salmon shark |
| *Tetrapturus audax* | striped marlin | *Thunnus alalunga* | albacore |
| *Tetrapturus angustirostris* | shortbill spearfish | *Thunnus obesus* | bigeye tuna |
| *Xiphias gladius* | swordfish | *Thunnus albacares* | yellowfin tuna |
| *Istiophorus platypterus* | sailfish | *Thunnus thynnus* | northern bluefin tuna |
| *Alopias pelagicus* | pelagic thresher shark | *Katsuwonus pelamis* | skipjack tuna |

| Pelagics FMP Management Unit Species (PMUS) | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| *Alopias superciliousus* | bigeye thresher shark | *Euthynnus affinis* | kawakawa |
| *Alopias vulpinus* | common thresher shark | *Lampris* spp. | moonfish |
| *Carcharhinus falciformis* | silky shark | *Gempylidae* | oilfish family |
| *Carcharhinus longimanus* | oceanic whitetip shark | family Bramidae | pomfret |
| *Prionace glauca* | blue shark | *Auxis* spp., *Scomber* spp., *Allothunus* spp. | other tuna relatives |

**Table A-5: Current Coral Reef Ecosystems Fishery Management Plan (FMP) Management Unit Species (MUS) (Currently Harvested Coral Reef Taxa)**

| Coral Reef Ecosystems FMP Currently Harvested Coral Reef Taxa (CHCRT) MUS | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| Carcharhinidae Sphyrnidae | sharks | Scaridae | parrotfishes |
| Carangidae | jacks and scads | Pomacentridae | damselfishes |
| Serrandiae | groupers | Siganidae | rabbitfishes |
| Lutjanidae | snappers | Sphyraenidae | barracudas |
| Lethrinidae | emperors | Pomacanthidae | angelfishes |
| Acanthuridae | surgeonfishes | Cirrhitidae | hawkfishes |
| Balistidae | trigger fishes | Dasyatididae Myliobatidae Mobulidae | rays and skates |
| Holocentridae | solderfishes and squirrel-fishes | Ephippidae | batfishes |
| Kuhliidae | flagtails | Monodactylidae | monos |
| Kyphosidae | rudderfishes | Haemulidae | sweetlips |
| Labridae | wrasses | Echineididae | remoras |
| Mullidae | goatfishes | Malacanthidae | tilefishes |
| Mugilidae | mullets | Acanthoclinidae | spiny basslets |

| Coral Reef Ecosystems FMP Currently Harvested Coral Reef Taxa (CHCRT) MUS | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| Muraenidae<br>Chlopsidae<br>Congridae<br>Moringuidae<br>Ophichthidae | eels | Pseudochromidae | dottybacks |
| Polynemidae | threadfins | Apogonidae | cardinalfishes |
| Blenniidae | blennies | Scorpaenidae | scorpionfishes |
| Bothidae<br>Soleidae<br>Pleurnectidae | flounders and soles | Pinguipedidae | sandperches |
| Ostraciidae | trunkfishes | Caracanthidae | coral crouchers |
| Tetradontidae | puffer fishes and porcupine fishes | Antennariidae | frogfishes |
| Plesiopidae | prettyfins | Caesionidae | fusiliers |
| Tetrarogidae | wasp fishes | Grammistidae | soapfishes |

**Table A-6: Coral Reef Ecosystems Fishery Management Plan (FMP) Management Unit Species (MUS) (Potentially Harvested Coral Reef Taxa)**

| Coral Reef Ecosystems FMP Potentially Harvested Coral Reef Taxa (PHCRT) MUS | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| Syngnathidae | pipefishes and seahorses | Anomalopidae | flashlightfishes |
| Aulostomidae | trumpetfishes | Clupeidae | herrings |
| Fistulariidae | cornetfishes | Engraulidae | anchovies |
| Monocanthidae | filefishes | Gobiidae | gobies |
| Chaetodontidae | butterfly fishes | *Gymnosarda unicolor* | dog tooth tuna |
| Order: Stomatopoda<br>Order: Decapoda | **Reef-Associated Crustaceans:**<br>lobsters<br>shrimps/mantis<br>crabs | Holothuridae<br>Diadematidae | **Reef-Associated Echinoderms:**<br>sea cucumbers and sea urchins |

| Coral Reef Ecosystems FMP Potentially Harvested Coral Reef Taxa (PHCRT) MUS | | | | |
|---|---|---|---|---|
| **Scientific Name** | **English Common Name** | | **Scientific Name** | **English Common Name** |
| Octopodidae<br>Sepiidae<br>Loliginidae | **Reef-Associated Cephalopods:**<br>octopus<br>squids<br>cuttlefish | | Turbinidae<br>Trochidae<br>Strombidae<br>Cypraeidae | **Reef-Associated Gastropods:**<br>turban shells<br>top shells<br>sea snails<br>sea slugs<br>conchs<br>cowries |
| Ostreidae<br>Tridacnidae | **Reef-Associated Bivalves:**<br>oysters<br>clams | | Sabellidae<br>Annelids | **Reef-Associated Worms:**<br>segmented worms<br>flatworms<br>bristleworms<br>ribbonworms<br>feather duster worms |
| Class:<br>Cyanophyta<br>Class:<br>Chlorophyta<br>Class:<br>Rhodophyta<br>Class:<br>Phaeophyta | **Reef-Associated Algae:**<br>blue-green algae<br>green algae<br>red algae<br>brown algae | | Porifera | **Reef-Associated Sponges:** |
| Heliopora<br>Tubipora<br>Azooxanthellates<br>Fungiidae<br>Millepora | **All Reef-Associated Stony Corals and Live Rock:** | | Gorgonians<br>Actinaria<br>Zoanthinaria<br>Stylasteridae<br>Solanderidae | **Other Reef-Associated Stony Corals and Live Rock:** |
| Phylum:<br>Coelenterata<br>(Cnidaria) | **Reef-Associated Hydrozoans and Bryzoans:** | | Chordata | **Reef-Associated Tunicates:**<br>sea squirts |
| *Note:* All other Coral Reef Ecosystem MUS that are marine plants, invertebrates, or fishes that spend the majority of their nonpelagic (postsettlement) life history stages within waters less than or equal to 50 fathoms in total depth. | | | | |

**Table A-7: Alternative 2B (Preferred), American Samoa Archipelago Fishery Ecosystem Plan (FEP) Management Unit Species (MUS)**

| American Samoa FEP Bottomfish Management Unit Species (BMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Samoan Name** |
| *Aphareus rutilans* | red snapper/silvermouth | palu-gutusiliva |
| *Aprion virescens* | gray snapper/jobfish | asoama |
| *Caranx ignobilis* | giant trevally/jack | sapoanae |
| *Caranx lugubris* | black trevally/jack | tafauli |
| *Epinephelus fasciatus* | blacktip grouper | fausi |
| *Variola louti* | lunartail grouper | papa, velo |
| *Etelis carbunculus* | red snapper | palu malau |
| *Etelis coruscans* | red snapper | palu-loa |
| *Lethrinus amboinensis* | ambon emperor | filoa-gutumumu |
| *Lethrinus rubrioperculatus* | redgill emperor | filoa-paomumu |
| *Lutjanus kasmira* | blueline snapper | savane |
| *Pristipomoides auricilla* | yellowtail snapper | palu-i'usama |
| *Pristipomoides filamentosus* | pink snapper | palu-'ena'ena |
| *Pristipomoides flavipinnis* | yelloweye snapper | palu-sina |
| *Pristipomoides seiboldii* | pink snapper | palu |
| *Pristipomoides zonatus* | snapper | palu-ula, palu-sega |
| *Seriola dumerili* | amberjack | malauli |

| American Samoa FEP Crustacean Management Unit Species (CMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Samoan Name** |
| *Panulirus marginatus* | spiny lobster | ula |
| *Panulirus penicillatus* | spiny lobster | ula-sami |
| Family Scyllaridae | slipper lobster | papata |
| *Ranina ranina* | Kona crab | pa'a |
| *Heterocarpus* spp. | deep water shrimp | NA |

| American Samoa FEP Precious Coral Management Unit Species (PC MUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Samoan Name** |
| *Corallium secundum* | pink coral (also known as red coral) | amu piniki-mumu |
| *Corallium regale* | pink coral (also known as red coral) | amu piniki-mumu |
| *Corallium laauense* | pink coral (also known as red coral) | amu piniki-mumu |
| *Gerardia* spp. | gold coral | amu auro |
| *Narella* spp. | gold coral | amu auro |
| *Calyptrophora* spp. | gold coral | amu auro |
| *Lepidisis olapa* | bamboo coral | amu ofe |
| *Acanella* spp. | bamboo coral | amu ofe |
| *Antipathes dichotoma* | black coral | amu uliuli |
| *Antipathes grandis* | black coral | amu uliuli |
| *Antipathes ulex* | black coral | amu uliuli |

| American Samoa FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) (**= unknown) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Samoan Name** |
| Acanthuridae (Surgeonfishes) | *Acanthurus olivaceus* | orange-spot surgeonfish | afinamea |
| | *Acanthurus xanthopterus* | yellowfin surgeonfish | ** |
| | *Acanthurus triostegus* | convict tang | aanini |
| | *Acanthurus dussumieri* | eye-striped surgeonfish | ** |
| | *Acanthurus nigroris* | blue-lined surgeon | ponepone, gaitolama |
| | *Acanthurus lineatus* | blue-banded surgeonfish | alogo |
| | *Acanthurus nigricauda* | blackstreak surgeonfish | pone-i'usama |
| | *Acanthurus nigricans* | whitecheek surgeonfish | laulama |
| | *Acanthurus guttatus* | white-spotted surgeonfish | maogo |
| | *Acanthurus blochii* | ringtail surgeonfish | ** |
| | *Acanthurus nigrofuscus* | brown surgeonfish | ponepone |
| | *Acanthurus mata* | elongate surgeonfish | ** |
| | *Acanthurus pyroferus* | mimic surgeonfish | ** |
| | *Ctenochaetus strigosus* | yellow-eyed surgeonfish | pone |
| | *Ctenochaetus striatus* | striped bristletooth | pone, pala'ia, logoulia |
| | *Ctenochaetus binotatus* | twospot bristletooth | ** |
| | *Naso unicornus* | bluespine unicornfish | ume-isu |
| | *Naso lituratus* | orange spine unicornfish | ili'ilia, umelei |
| | *Naso hexacanthus* | black tongue unicornfish | ** |
| | *Naso vlamingii* | bignose unicornfish | ume-masimasi |
| | *Naso annulatus* | whitemargin unicornfish | ** |
| | *Naso brevirostris* | spotted unicornfish | ume-ulutao |
| | *Naso thynnoides* | barred unincornfish | ** |
| Balistidae (Triggerfishes) | *Balistoides viridescens* | titan triggerfish | sumu, sumu-laulau |
| | *Balistapus undulatus* | orange striped triggerfish | ** |
| | *Melichthys vidua* | pinktail triggerfish | sumu-'apa'apasina, sumu-si'umumu |
| | *Melichthys niger* | black triggerfish | sumu-uli |
| | *Pseudobalistes fuscus* | blue triggerfish | sumu-laulau |
| | *Rhinecanthus aculeatus* | picassofish | sumu-uo'uo, sumu-aloalo |
| | *Sufflamen fraenatum* | bridled triggerfish | sumu-gase'ele'ele |
| | *Selar crumenophthalmus* | bigeye scad | atule |
| | *Decapterus macarellus* | mackerel scad | atuleau, |

| American Samoa FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) (**= unknown) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Samoan Name** |
| | | | namuauli |
| Carcharhinidae (Sharks) | *Carcharhinus amblyrhynchos* | grey reef shark | malie-aloalo |
| | *Carcharhinus albimarginatus* | silvertip shark | aso |
| | *Carcharhinus galapagensis* | galapagos shark | malie |
| | *Carcharhinus melanopterus* | blacktip reef shark | apeape, malie-alamata |
| | *Triaenodon obesus* | whitetip reef shark | malu |
| Holocentridae (Soldierfish/Squir-relfish | *Myripristis berndti* | bigscale soldierfish | malau-ugatele, malau-va'ava'a |
| | *Myripristis adusta* | bronze soldierfish | malau-tui |
| | *Myripristis murdjan* | blotcheye soldierfish | ** |
| | *Myripristis amaena* | brick soldierfish | ** |
| | *Myripristis pralinia* | scarlet soldierfish | malau-mamo, malau-va'ava'a |
| | *Myripristis violacea* | violet soldierfish | malau-tuauli |
| | *Myripristis vittata* | whitetip soldierfish | ** |
| | *Myripristis chryseres* | yellowfin soldierfish | ** |
| | *Myripristis kuntee* | pearly soldierfish | malau-pu'u |
| | *Myripristis hexagona* | double tooth squirrelfish | ** |
| | *Sargocentron melanospilos* | blackspot squirrelfish | ** |
| | *Sargocentron microstoma* | file-lined squirrelfish | malau-tianiu |
| | *Sargocentron tiereoides* | pink squirrelfish | ** |
| Holocentridae (Soldierfish/ Squirrelfish) | *Sargocentron diadema* | crown squirrelfish | malau-tui, malau-talapu'u, malau-tusitusi, malau-pauli. |
| | *Sargocentron punctatissimum* | peppered squirrelfish | ** |
| | *Sargocentron tiere* | blue-lined squirrelfish | ** |
| | *Sargocentron spiniferum* | saber or long jaw squirrelfish | tamalu, mu-malau, malau-toa |
| | *Neoniphon* spp. | spotfin squirrelfish | ** |
| Kuhliidae (Flagtails) | *Kuhlia mugil* | barred flag-tail | safole, inato |
| | *Kyphosus biggibus* | rudderfish | nanue |
| Kyphosidae (Rudderfish) | *Kyphosus cinerascens* | rudderfish | nanue, mata-mutu, |

| American Samoa FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) (**= unknown) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Samoan Name** |
| | | | mutumutu |
| | *Kyphosus vaigienses* | rudderfish | nanue |
| Labridae (Wrasses) | *Cheilinus undulatus* | Napoleon wrasse | lalafi, tagafa, malakea |
| | *Cheilinus trilobatus* | triple-tail wrasse | lalafi-matamumu |
| | *Cheilinus chlorourus* | floral wrasse | lalafi-matapua'a |
| | *Cheilinus fasciatus* | harlequin tuskfish | lalafi-pulepule |
| | *Oxycheilinus diagrammus* | bandcheek wrasse | sugale |
| | *Oxycheilinus arenatus* | arenatus wrasse | sugale |
| | *Xyrichtys aneitensis* | whitepatch wrasse | sugale-tatanu |
| | *Cheilio inermis* | cigar wrasse | sugale-mo'o |
| | *Hemigymnus melapterus* | blackeye thicklip | sugale-laugutu, sugale-uli, sugale-aloa, sugale-lupe |
| | *Hemigymnus fasciatus* | barred thicklip | sugale-gutumafia |
| | *Halichoeres trimaculatus* | three-spot wrasse | lape, sugale-pagota |
| | *Halichoeres hortulanus* | checkerboard wrasse | sugale-a'au, sugale-pagota, ifigi |
| | *Halichoeres margaritaceus* | weedy surge wrasse | sugale-uluvela |
| | *Thalassoma purpureum* | surge wrasse | uloulo-gatala, patagaloa |
| | *Thalassoma quinquevittatum* | red ribbon wrasse | lape-moana |
| | *Thalassoma lutescens* | sunset wrasse | sugale-samasama |
| | *Novaculichthys taeniourus* | rockmover wrasse | sugale-la'o, sugale-taili, sugale-gasufi |
| Mullidae (Goatfishes) | *Mulloidichthys* spp. | yellow goatfish | i'asina, vete, afulu |
| | *Mulloidichthys vanicolensis* | yellowfin goatfish | vete |
| | *Mulloidichthys flaviolineatus* | yellowstripe goatfish | afolu, afulu |
| | *Parupeneus* spp. | banded goatfish | afoul, afulu |

| American Samoa FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) (**= unknown) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Samoan Name** |
| | *Parupeneus barberinus* | dash-dot goatfish | tusia, tulausaena, ta'uleia |
| | *Parupeneus bifasciatus* | doublebar goatfish | matulau-moana |
| | *Parupeneus heptacanthus* | redspot goatfish | moana-ula |
| | *Parupeneus cyclostomas* | yellowsaddle goatfish | i'asina, vete, afulu, moana |
| | *Parupeneus pleurostigma* | side-spot goatfish | matulau-ilamutu |
| | *Parupeneus multifaciatus* | multi-barred goatfish | i'asina, vete, afulu |
| Mugilidae (Mullets) | *Crenimugil crenilabis* | fringelip mullet | anae, aua, fuafua |
| | *Neomyxus leuciscus* | false mullet | moi, poi |
| Muraenidae (Moray eels) | *Gymnothorax flavimarginatus* | yellow margin moray eel | pusi |
| | *Gymnothorax javanicus* | giant moray eel | maoa'e |
| | *Gymnothorax undulatus* | undulated moray eel | pusi-pulepule |
| Octopodidae (Octopus) | *Octopus cyanea* | octopus | fe'e |
| | *Octopus ornatus* | octopus | fe'e |
| Polynemidae | *Polydactylus sexfilis* | threadfin | umiumia, i'ausi |
| Pricanthidae (Bigeye) | *Heteropriacanthus cruentatus* | glasseye | matapula |
| | *Priacanthus hamrur* | bigeye | matapula |
| Scaridae (Parrotfishes) | *Calotomus carolinus* | stareye parrotfish | fuga |
| | *Scarus* spp. | parrotfish | fuga, galo-uluto'i, fuga-valea, laea-mamanu |
| | *Hipposcarus longiceps* | pacific longnose parrotfish | ulapokea, laea-ulapokea |
| Scombridae | *Gymnosarda unicolor* | dogtooth tuna | tagi |
| Siganidae (Rabbitfish) | *Siganus aregenteus* | forktail rabbitfish | loloa, lo |
| Sphyraenidae (Barracuda) | *Sphyraena helleri* | Heller's barracuda | sapatu |
| | *Sphyraena barracuda* | great barracuda | saosao |
| Turbinidae (green snails | *Turbo* spp. | green snails | alili |

| American Samoa FEP Coral Reef Ecosytem Management Unit Species (CREMUS) (Potentially Harvested Coral Reef Taxa) (**= NA; ## = unspecified) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Samoan Name** |
| Labridae | Wrasses (those species not listed as Currently Harvested Coral Reef Taxa or CHCRT) | sugale, sugale-vaolo, sugale-a'a, lalafi, lape-a'au, la'ofia |
| Carcharhinidae Sphyrnidae | sharks (those species not listed as CHCRT) | malie, apoapo, moemoeao |
| Dasyatididae Myliobatidae | rays and skates | fai |
| Ephippidae | batfishes | pe'ape'a |
| Haemulidae | sweetlips | mutumutu, misimisi, ava'ava-moana |
| Echeneidae | remoras | talitaliuli |
| Malacanthidae | tilefishes | mo'o, mo'otai |
| Pseudochromidae | dottybacks | tiva |
| Plesiopidae | prettyfins | aneanea, tafuti |
| Caracanthidae | coral crouchers | tapua |
| Anomalopidae<br><br>Serrandiae | flashlightfishes<br>groupers (those species not listed as CHCRT or Bottomfish Management Unit Species or BMUS) | ##<br><br>gatala, ataata, vaolo, gatala-uli, gatala-sega, gatala-aleva, ateate, apoua, susami, gatala-sina, gatala-mumu |
| Carangidae | jacks and scads (those species not listed as CHCRT or BMUS) | lupo, lupota, mamalusi, ulua, sapoanae, taupapa, nato, filu, atuleau, malauli-apamoana, malauli-sinasama, malauli-matalapo'a, lai |
| Holocentridae | soldierfishes and squirrelfishes (those species not listed as CHCRT) | malau |
| Mullidae | goatfishes (those species not listed as CHCRT) | i'asina, vete, afulu, afoul, ulula'oa |
| Acanthuridae | surgeonfishes (those species not listed as CHCRT) | pone, palagi |
| Clupeidae | herrings | pelupelu, nefu |
| Engraulidae | anchovies | nefu, file |

| American Samoa FEP Coral Reef Ecosytem Management Unit Species (CREMUS) (Potentially Harvested Coral Reef Taxa) (**= NA; ## = unspecified) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Samoan Name** |
| Gobiidae | gobies | mano'o, mano'o-popo, mano'o-fugafuga, mano'o-apofusami, mano'o-a'au |
| Lutjanidae | snappers (those species not listed as CHCRT or BMUS) | mu, mu-taiva, tamala, malai, feloitega, mu-mafalaugutu, savane-ulusama, matala'oa |
| Balistidae | trigger fishes (those species not listed as CHCRT) | sumu, sumu-papa, sumu-taulau. |
| Siganidae | rabbitfishes (those species not listed as CHCRT) | lo |
| Kyphosidae | rudderfishes (those species not listed as CHCRT) | nanue, matamutu, mutumutu |
| Caesionidae | fusiliers | ulisega, atule-toto |
| Lethrinidae | emperors (those species not listed as CHCRT or BMUS) | filoa, mata'ele'ele, ulamalosi |
| Muraenidae<br>Chlopsidae<br>Congridae<br>Moringuidae<br>Ophichthidae | eels (those species not listed as CHCRT) | pusi, maoa'e, atapanoa, u'aulu, apeape, fafa, gatamea, pusi-solasulu |
| Apogonidae | cardinalfishes | fo, fo-tusiloloa, fo-si'umu, fo-loloa, fo-tala, fo-manifi, fo-aialo, fo-tuauli |
| Zanclidae spp. | moorish idols | pe'ape'a, laulaufau |
| Chaetodontidae | butterfly fishes | tifitifi, si'u, i'usamasama, tifitifi-segaula, laulafau-laumea, alosina |
| Pomacanthidae | angelfishes | tu'u'u, tu'u'u-sama, tu'u'u-lega, tu'u'u-ulavapua, tu'u'u-matamalu, tu'u'u-alomu, tu'u'u-uluvela, tu'u'u-atugauli, tu'u'u-tusiuli, tu'u'u-manini. |
| Pomacentridae | damselfishes | tu'u'u, mutu, mamo, tu'u'u-lumane |
| Scorpaenidae | scorpionfishes | i'atala, la'otele, nofu |
| Blenniidae | blennies | mano'o, mano'o-mo'o, mano'o-palea, mano'o-la'o |

| American Samoa FEP Coral Reef Ecosytem Management Unit Species (CREMUS) (Potentially Harvested Coral Reef Taxa) (**= NA; ## = unspecified) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Samoan Name** |
| Sphyraenidae | barracudas (those species not listed as CHCRT) | sapatu |
| Cirrhitidae | hawkfishes (those species not listed as CHCRT) | la'o, ulutu'i, lausiva |
| Antennariidae | frogfishes | la'otale, nofu |
| Syngnathidae | pipefishes and seahorses | ## |
| Pinguipedidae | sandperches | ta'oto |
| *Gymnosarda unicolor* | dog tooth tuna | tagi |
| *Aulostomus chinensis* | trumpetfish | taoto-ena, taoto-sama, 'au'aulauti, taotito |
| *Fistularia commersoni* | cornetfish | taotao, taoto-ama |
| Tetradontidae | puffer fishes and porcupine fishes | sue, sue-vaolo, sue-va'a, sue-lega, sue-mu, sue-uli, sue-lape, sue-afa, sue-sugale. |
| Bothidae<br>Soleidae | flounders and soles | ali |
| Ostraciidae | trunkfishes | moamoa |
| Echinoderms | sea cucumbers and sea urchins | fugafuga, tuitui, sava'e |
| Heliopora | blue corals | amu |
| Tubipora | organpipe corals | amu |
| Azooxanthellates | ahermatypic corals | ** |
| Fungiidae | mushroom corals | amu |
| | small and large coral polyps | amu |
| Millepora | fire corals | amu |
| | soft corals and gorgonians | amu |
| Actinaria | Anemones | lumane, matalelei |
| Zoanthinaria | soft zoanthid corals | ** |
| Mollusca | (those species not listed as CHCRT) | ## |
| Gastropoda | sea snails | sisi-sami |
| *Trochus* spp. | | aliao, alili |
| Opistobranches | sea slugs | sea |
| *Pinctada margaritifera* | black-lipped pearl oyster | ## |
| Tridacnidae | giant clam | faisua |
| Other Bivalves | other clams | pipi, asi, fatuaua, tio, pae, fole |

| American Samoa FEP Coral Reef Ecosytem Management Unit Species (CREMUS) (Potentially Harvested Coral Reef Taxa) (**= NA; ## = unspecified) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Samoan Name** |
| Crustaceans | lobsters, shrimps/mantis shrimps, true crabs and hermit crabs (those species not listed as CMUS) | ula, pa'a, kuku, papata |
| Tunicates | sea squirts | ## |
| Porifera | sponges | ## |
| Stylasteridae | lace corals | amu |
| Solanderidae | hydroid corals | amu |
| Annelids | segmented worms (those species not listed as CHCRT) | ## |
| Algae | seaweed | limu |
| Live rock | | ## |
| All other coral reef ecosystem management unit species that are marine plants, invertebrates, and fishes that are not listed in the preceding tables or are not bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral or seamount groundfish. | | |

Samoan names provided by Fini Aitaoto

**Table A-8: Alternative 2B (Preferred), Mariana Archipelago Fishery Ecosystem Plan (FEP) Management Unit Species (MUS)**

| Mariana Archipelago FEP Bottomfish Management Unit Species (BMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| *Aphareus rutilans* | red snapper/silvermouth | lehi/maroobw |
| *Aprion virescens* | gray snapper/jobfish | gogunafon/aiwe |
| *Caranx ignobilis* | giant trevally/jack | tarakitu/etam |
| *Caranx lugubris* | black trevally/jack | tarakiton attelong/orong |
| *Epinephelus fasciatus* | blacktip grouper | gadao/meteyil |
| *Variola louti* | lunartail grouper | bueli/bwele |
| *Etelis carbunculus* | red snapper | buninas agaga/ falaghal moroobw |
| *Etelis coruscans* | red snapper | buninas/taighulupegh |
| *Lethrinus rubrioperculatus* | redgill emperor | mafuti/atigh |
| *Lutjanus kasmira* | blueline snapper | funai/saas |

| Mariana Archipelago FEP Bottomfish Management Unit Species (BMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| *Pristipomoides auricilla* | yellowtail snapper | buninas/ falaghal-maroobw |
| *Pristipomoides filamentosus* | pink snapper | buninas/ falaghal-maroobw |
| *Pristipomoides flavipinnis* | yelloweye snapper | buninas/ falaghal-maroobw |
| *Pristipomoides seiboldii* | pink snapper | NA |
| *Pristipmoides zonatus* | snapper | buninas rayao amiriyu/ falaghal-maroobw |
| *Seriola dumerili* | amberjack | tarakiton tadong/ meseyugh |

| Mariana Archipelago FEP Crustacean Management Unit Species (CMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| *Panulirus marginatus* | spiny lobster | mahongang |
| *Panulirus penicillatus* | spiny lobster | mahongang |
| Family Scyllaridae | slipper lobster | pa'pangpang |
| *Ranina ranina* | Kona crab | NA |
| *Heterocarpus* spp. | deepwater shrimp | NA |

| Mariana Archipelago FEP Precious Corals Management Unit Species (PC MUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| *Corallium secundum* | pink coral (also known as red coral) | NA |
| *Corallium regale* | pink coral (also known as red coral) | NA |
| *Corallium laauense* | pink coral (also known as red coral) | NA |
| *Gerardia* spp. | gold coral | NA |
| *Narella* spp. | gold coral | NA |
| *Calyptrophora* spp. | gold coral | NA |

| Mariana Archipelago FEP Precious Corals Management Unit Species (PC MUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| *Lepidisis olapa* | bamboo coral | NA |
| *Acanella* spp. | bamboo coral | NA |
| *Antipathes dichotoma* | black coral | NA |
| *Antipathes grandis* | black coral | NA |
| *Antipathes ulex* | black coral | NA |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| Acanthuridae (Surgeonfishes) | *Acanthurus olivaceus* | orange-spot surgeonfish | NA |
| | *Acanthurus xanthopterus* | yellowfin surgeonfish | hugupao dangulo/ mowagh |
| | *Acanthurus triostegus* | convict tang | kichu/limell |
| | *Acanthurus leucopareius* | whitebar surgeonfish | NA |
| | *Acanthurus lineatus* | blue-banded surgeonfish | hiyok/filaang |
| | *Acanthurus nigricauda* | blackstreak surgeonfish | NA |
| | *Acanthurus nigricans* | whitecheek surgeonfish | NA |
| | *Acanthurus guttatus* | white-spotted surgeonfish | NA |
| | *Acanthurus blochii* | ringtail surgeonfish | NA |
| | *Acanthurus pyroferus* | mimic surgeonfish | NA |
| | *Zebrasoma flavescens* | Yellow tang | NA |
| | *Ctenochaetus striatus* | striped bristletooth | NA |
| | *Ctenochaetus binotatus* | twospot bristletooth | NA |
| | *Naso unicornus* | bluespine unicornfish | tataga/igh-falafal |
| | *Naso lituratus* | orangespine unicornfish | hangon/bwulaalay |
| | *Naso tuberosus* | humpnose unicornfish | NA |
| | *Naso hexacanthus* | black tongue unicornfish | NA |
| | *Naso vlamingii* | bignose unicornfish | NA |
| | *Naso annulatus* | whitemargin unicornfish | NA |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| | *Naso brevirostris* | spotted unicornfish | NA |
| | *Naso caesius* | gray unicornfish | NA |
| Balistidae (Triggerfishes) | *Balistoides viridescens* | titan triggerfish | NA |
| | *Balistoides conspicillum* | clown triggerfish | NA |
| | *Balistapus undulatus* | orange striped triggerfish | NA |
| | *Melichthys vidua* | pinktail triggerfish | NA |
| | *Melichthys niger* | black triggerfish | NA |
| Carangidae (Jacks) | *Selar crumenophthalmus* | bigeye scad | atulai/peti |
| | *Decapterus macarellus* | mackerel scad | NA |
| Carcharhinidae (Sharks) | *Carcharhinus amblyrhynchos* | grey reef shark | NA |
| | *Carcharhinus albimarginatus* | silvertip shark | NA |
| | *Carcharhinus galapagensis* | Galapagos shark | NA |
| | *Carcharhinus melanopterus* | blacktip reef shark | NA |
| | *Triaenodon obesus* | whitetip reef shark | NA |
| Holocentridae (Solderfish/ Squirrelfish | *Myripristis berndti* | bigscale soldierfish | saksak/mweel |
| | *Myripristis adusta* | bronze soldierfish | sagamelon |
| | *Myripristis murdjan* | blotcheye soldierfish | sagamelon |
| | *Myripristis amaena* | brick soldierfish | sagamelon |
| | *Myripristis pralinia* | scarlet soldierfish | sagamelon |
| | *Myripristis violacea* | violet soldierfish | sagamelon |
| | *Myripristis vittata* | whitetip soldierfish | sagamelon |
| | *Myripristis chryseres* | yellowfin soldierfish | sagamelon |
| | *Myripristis kuntee* | pearly soldierfish | sagamelon |
| | *Sargocentron caudimaculatum* | tailspot squirrelfish | sagamelon |
| | *Sargocentron diadema* | crown squirrelfish | chalak |
| | *Sargocentron tiere* | blue-lined squirrelfish | sagsag/leet |
| | *Sargocentron spiniferum* | saber or long jaw squirrelfish | sisiok |
| | *Neoniphon* spp. | spotfin squirrelfish | sagsag/Leet |
| Kuhliidae (Flagtails) | *Kuhlia mugil* | barred flag-tail | NA |
| Kyphosidae | *Kyphosus biggibus* | rudderfish | guili |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| (Rudderfish) | *Kyphosus cinerascens* | rudderfish | guili/schpwul |
| | *Kyphosus vaigienses* | rudderfish | guilen puengi/reel |
| Labridae (Wrasses) | *Cheilinus chlorourus* | floral wrasse | NA |
| | *Cheilinus undulatus* | Napoleon wrasse | tangison/maam |
| | *Cheilinus trilobatus* | triple-tail wrasse | lalacha mamate/ porou |
| | *Cheilinus fasciatus* | harlequin tuskfish or red-breasted wrasse | NA |
| | *Oxycheilinus unifasciatus* | ring-tailed wrasse | NA |
| | *Xyrichtys pavo* | razor wrasse | NA |
| | *Xyrichtys aneitensis* | whitepatch wrasse | NA |
| | *Cheilio inermis* | cigar wrasse | NA |
| | *Hemigymnus melapterus* | blackeye thicklip | NA |
| | *Hemigymnus fasciatus* | barred thicklip | NA |
| | *Halichoeres trimaculatus* | three-spot wrasse | NA |
| | *Thalassoma purpureum* | surge wrasse | NA |
| | *Hologynmosus doliatus* | longface wrasse | NA |
| Mullidae (Goatfishes) | *Mulloidichthys* spp. | yellow goatfish | NA |
| | *Mulloidichthys vanicolensis* | yellowfin goatfish | satmoneti/wichigh |
| | *Mulloidichthys flavolineatus* | yellowstripe goatfish | ti‘ao (juv.) satmoneti (adult) |
| | *Parupeneus spp.* | banded goatfish | NA |
| | *Parupeneus barberinus* | dash-dot goatfish | satmonetiyo/failighi |
| | *Parupeneus bifasciatus* | doublebar goatfish | satmoneti acho/ sungoongo |
| | *Parupeneus ciliatus* | white-lined goatfish | ti‘ao (juv.) satmoneti (adult) |
| | *Parupeneus cyclostomas* | yellowsaddle goatfish | ti‘ao (juv.) satmoneti (adult) |
| | *Parupeneus pleurostigma* | side-spot goatfish | ti‘ao (juv.) satmoneti (adult) |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| | *Parupeneus multifaciatus* | multi-barred goatfish | ti‘ao (juv.) satmoneti (adult) |
| | *Upeneus arge* | band-tail goatfish | NA |
| Mugilidae (Mullets) | *Mugil cephalus* | striped mullet | aguas (juv.) laiguan (adult) |
| | *Moolgarda engeli* | Engel’s mullet | aguas (juv.) laiguan (adult) |
| | *Crenimugil crenilabis* | fringelip mullet | aguas (juv.) laiguan (adult) |
| Muraenidae (Moray eels) | *Gymnothorax flavimarginatus* | yellowmargin moray eel | NA |
| | *Gymnothorax javanicus* | giant moray eel | NA |
| | *Gymnothorax undulatus* | undulated moray eel | NA |
| Octopodidae (Octopus) | *Octopus cyanea* | octopus | gamsun |
| | *Octopus ornatus* | octopus | gamsun |
| Polynemidae | *Polydactylus sexfilis* | threadfin | NA |
| Pricanthidae (Bigeye) | *Heteropriacanthus cruentatus* | glasseye | NA |
| | *Priacanthus hamrur* | bigeye | NA |
| Scaridae (Parrotfishes) | *Bolbometopon muricatum* | humphead parrotfish | atuhong/roow |
| | *Scarus* spp. | parrotfish | palakse/laggua |
| | *Hipposcarus longiceps* | Pacific longnose parrotfish | gualafi/oscha |
| | *Calotomus carolinus* | stareye parrotfish | palaksin chaguan |
| Scombridae | *Gymnosarda unicolor* | dogtooth tuna | white tuna/ayul |
| Siganidae (Rabbitfish) | *Siganus aregentus* | forktail rabbitfish | hiting/manahok/llegh |
| | *Siganus guttatus* | golden rabbitfish | hiting |
| | *Siganus punctatissimus* | gold-spot rabbitfish | hiting galagu |
| | *Siganus spinus* | scribbled rabbitfish | hiting/sesyon/palawa |
| | *Siganus vermiculatus* | vermiculate rabbitfish | hiting |
| Sphyraenidae (Barracuda) | *Sphyraena helleri* | Heller’s barracuda | NA |
| | *Sphyraena barracuda* | great barracuda | NA |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| Turbinidae (turban /green snails | *Turbo* spp. | green snails turban shells | aliling pulan/aliling tulompu |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Potentially Harvested Coral Reef Taxa) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| Labridae | wrasses - (those species not listed as Currently Harvested Coral Reef Taxa (CHCRT) | |
| Carcharhinidae Sphyrnidae | sharks | |
| Dasyatididae Myliobatidae | rays and skates | |
| Serrandiae | groupers (those species not listed as CHCRT or Bottomfish Management Unit Species (BMUS) | |
| Carangidae | jacks and scads (those species not listed as CHCRT or BMUS) | |
| Holocentridae | solderfishes and squirrelfishes (those species not listed as CHCRT) | |
| Mullidae | goatfishes (those species not listed as CHCRT) | |
| Acanthuridae | surgeonfishes (those species not listed as CHCRT) | |
| Ephippidae | batfishes | |
| Monodactylidae | monos | |
| Haemulidae | sweetlips | NA |
| Echeneidae | remoras | NA |
| Malacanthidae | tilefishes | NA |
| Lethrinidae | emperors (those species not listed as CHCRT) | |
| Pseudochromidae | dottybacks | |
| Plesiopidae | prettyfins | |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Potentially Harvested Coral Reef Taxa) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| Muraenidae<br>Chlopsidae<br>Congridae<br>Ophichthidae | eels<br>(those species not listed as CHCRT) | NA |
| Apogonidae | cardinalfishes | NA |
| Zanclidae | moorish Idols | NA |
| *Aulostomus chinensis* | trumpetfish | NA |
| *Fistularia commersoni* | cornetfish | NA |
| Chaetodontidae | butterfly fishes | NA |
| Pomacanthidae | angelfishes | NA |
| Pomacentridae | damselfishes | NA |
| Scorpaenidae | scorpionfishes | NA |
| Caracanthidae | coral crouchers | NA |
| Anomalopidae | flashlightfishes | NA |
| Clupeidae | herrings | NA |
| Engraulidae | anchovies | NA |
| Gobiidae | gobies | NA |
| Blenniidae | blennies | NA |
| Sphyraenidae | barracudas<br>(those species not listed as CHCRT) | NA |
| Lutjanidae | snappers<br>(those species not listed as CHCRT or BMUS) | NA |
| Balistidae | trigger fishes<br>(those species not listed as CHCRT) | NA |
| Siganidae | rabbitfishes<br>(those species not listed as CHCRT) | NA |
| Pinguipedidae | sandperches | NA |
| *Gymnosarda unicolor* | dog tooth tuna | NA |
| Kyphosidae | rudderfishes<br>(those species not listed as CHCRT) | NA |
| Bothidae<br>Soleidae | flounders and Soles | NA |
| Ostraciidae | trunkfishes | NA |
| Caesionidae | fusiliers | NA |
| Cirrhitidae | hawkfishes | NA |
| Antennariidae | frogfishes | NA |
| Syngnathidae | pipefishes and seahorses | NA |
| Tetradontidae | puffer fishes and porcupine fishes | NA |
| Heliopora | blue corals | NA |
| Tubipora | Organpipe corals | NA |
| Azooxanthellates | ahermatypic corals | NA |

| Mariana Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Potentially Harvested Coral Reef Taxa) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Chamorro/Carolinian Name** |
| Echinoderms | sea cucumbers and sea urchins | NA |
| Mollusca | (those species not listed as CHCRT) | NA |
| Gastropoda | sea snails | NA |
| *Trochus* spp. | | NA |
| Opistobranches | sea slugs | NA |
| *Pinctada margaritifera* | black-lipped pearl oyster | NA |
| Tridacnidae | giant clam | NA |
| Other Bivalves | other clams | NA |
| Fungiidae | mushroom corals | NA |
| | small and large coral polyps | NA |
| Millepora | fire corals | NA |
| | soft corals and gorgonians | NA |
| Actinaria | anemones | NA |
| Zoanthinaria | soft zoanthid corals | NA |
| Hydrozoans and Bryzoans | | NA |
| Tunicates | sea squirts | NA |
| Porifera | sponges | NA |
| Cephalopods | | NA |
| Crustaceans | lobsters, shrimps/mantis shrimps, true crabs and hermit crabs (Those species not listed as CMUS) | NA |
| Stylasteridae | lace corals | NA |
| Solanderidae | hydroid corals | NA |
| Algae | aeaweed | NA |
| Annelids | segmented worms | NA |
| Live rock | | NA |
| All other coral reef ecosystem management unit species that are marine plants, invertebrates, and fishes that are not listed in the preceding tables or are not bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral or seamount groundfish. | | |

**Table A-9: Alternative 2B (Preferred), Hawaii Archipelago Fishery Ecosystem Plan (FEP) Bottomfish Management Unit Species (BMUS)**

| Hawaii Archipelago FEP Bottomfish Management Unit Species (BMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local or Hawaiian Name** |
| *Aphareus rutilans* | silver jaw jobfish | lehi |

| Hawaii Archipelago FEP Bottomfish Management Unit Species (BMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local or Hawaiian Name** |
| *Aprion virescens* | gray jobfish | uku |
| *Caranx ignobilis* | giant trevally | white papio/ulua au kea |
| *Caranx lugubris* | black jack | ulua la'uli |
| *Epinephelus quernus* | sea bass | hāpu‘upu‘u |
| *Etelis carbunculus* | red snapper | ehu |
| *Etelis coruscans* | longtail snapper | onaga or ‘ula‘ula koa‘e |
| *Lutjanus kasmira* | blue stripe snapper | ta‘ape |
| *Pristipomoides auricilla* | yellowtail snapper | kalekale |
| *Pristipomoides filamentosus* | pink snapper | ‘ōpakapaka |
| *Pristipomoides seiboldii* | pink snapper | kalekale |
| *Pristipomoides zonatus* | snapper | gindai |
| *Pseudocaranx dentex* | thicklip trevally | pig ulua, butaguchi |
| *Seriola dumerili* | amberjack | kahala |
| *Beryx splendens* | alfonsin | NA |
| *Pseudopentaceros richardsoni* | armorhead | NA |

| Hawaii Archipelago FEP Crustacean Management Unit Species (CMUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local Name** |
| *Panulirus marginatus* | spiny lobster | ula |
| *Panulirus penicillatus* | spiny lobster | ula |
| Family Scyllaridae | slipper lobster | ula papapa |
| *Ranina ranina* | Kona crab | papa'i kua loa |
| *Heterocarpus* spp. | deepwater shrimp | NA |

| Hawaii Archipelago FEP Precious Corals Management Unit Species (PC MUS) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local Name** |
| *Corallium secundum* | pink coral (also called red coral) | NA |
| *Corallium regale* | pink coral (also called red coral) | NA |
| *Corallium laauense* | pink coral (also called red coral) | NA |
| *Gerardia* spp. | gold coral | NA |
| *Narella* spp. | gold coral | NA |
| *Lepidisis olapa* | bamboo coral | NA |
| *Antipathes dichotoma* | black coral | NA |
| *Antipathes grandis* | black coral | NA |
| *Antipathes ulex* | black coral | NA |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Reef Taxa or CHRT) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Local Name** |
| Acanthuridae (Surgeonfishes) | *Acanthurus olivaceus* | orange-spot surgeonfish | na‘ena‘e |
| | *Acanthurus xanthopterus* | yellowfin surgeonfish | pualu |
| | *Acanthurus triostegus* | convict tang | manini |
| | *Acanthurus dussumieri* | eye-striped surgeonfish | palani |
| | *Acanthurus nigroris* | blue-lined surgeon | maiko |
| | *Acanthurus leucopareius* | whitebar surgeonfish | maiko or maikoiko |
| | *Acanthurus nigricans* | whitecheek surgeonfish | NA |
| | *Acanthurus guttatus* | white-spotted surgeonfish | ‘api |
| | *Acanthurus blochii* | ringtail surgeonfish | pualu |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Reef Taxa or CHRT) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Local Name** |
| | *Acanthurus nigrofuscus* | brown surgeonfish | mai‘i‘i |
| | *Ctenochaetus strigosus* | yellow-eyed surgeonfish | kole |
| | *Ctenochaetus striatus* | striped bristletooth | NA |
| | *Naso unicornus* | bluespine unicornfish | kala |
| | *Naso lituratus* | orangespine unicornfish | kalalei or umaumalei |
| | *Naso hexacanthus* | black tongue unicornfish | kala holo |
| | *Naso annulatus* | white margin unicornfish | kala |
| | *Naso brevirostris* | spotted unicornfish | kala lolo |
| | *Naso caesius* | gray unicornfish | NA |
| | *Zebrasoma flavescens* | yellow tang | lau‘ipala |
| Balistidae (Triggerfish) | *Melichthys vidua* | pinktail triggerfish | humuhumu hi‘ukole |
| | *Melichthys niger* | black triggerfish | humuhumu ‘ele‘ele |
| | *Rhinecanthus aculeatus* | picassofish | humuhumu nukunuku apua‘a |
| | *Sufflamen fraenatum* | bridled triggerfish | NA |
| Carangidae (Jacks) | *Selar crumenophthalmus* | bigeye scad | akule or hahalu |
| | *Decapterus macarellus* | mackerel scad | ‘opelu or ‘opelu mama |
| Carcharhinidae (Sharks) | *Carcharhinus amblyrhynchos* | grey reef shark | manō |
| | *Carcharhinus galapagensis* | Galapagos shark | manō |
| | *Carcharhinus melanopterus* | blacktip reef shark | manō |
| | *Triaenodon obesus* | whitetip reef shark | manō lalakea |
| Holocentridae (Solderfish/ Squirrelfish | *Myripristis berndti* | bigscale soldierfish | menpachi or ‘u‘u |
| | *Myripristis amaena* | brick soldierfish | menpachi or ‘u‘u |
| | *Myripristis chryseres* | yellowfin soldierfish | menpachi or ‘u‘u |
| | *Myripristis kuntee* | pearly soldierfish | menpachi or ‘u‘u |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Reef Taxa or CHRT) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Local Name** |
| | *Sargocentron microstoma* | file-lined squirrelfish | ‘ala‘ihi |
| | *Sargocentron diadema* | crown squirrelfish | ‘ala‘ihi |
| | *Sargocentron punctatissimum* | peppered squirrelfish | ‘ala‘ihi |
| | *Sargocentron tiere* | blue-lined squirrelfish | ‘ala‘ihi |
| | *Sargocentron xantherythrum* | hawaiian squirrelfish | ‘ala‘ihi |
| | *Sargocentron spiniferum* | saber or long jaw squirrelfish | ‘ala‘ihi |
| | *Neoniphon spp.* | spotfin squirrelfish | ‘ala‘ihi |
| Kuhliidae (Flagtails) | *Kuhlia sandvicensis* | Hawaiian flag-tail | ‘aholehole |
| Kyphosidae (Rudderfish) | *Kyphosus biggibus* | rudderfish | nenue |
| | *Kyphosus cinerascens* | rudderfish | nenue |
| | *Kyphosus vaigiensis* | rudderfish | nenue |
| Labridae (Wrasses) | *Bodianus bilunulatus* | saddleback hogfish | ‘a‘awa |
| | *Oxycheilinus unifasciatus* | ring-tailed wrasse | po‘ou |
| | *Xyrichtys pavo* | razor wrasse | laenihi or nabeta |
| | *Cheilio inermis* | cigar wrasse | kupoupou |
| | *Thalassoma purpureum* | surge wrasse | ho‘u |
| | *Thalassoma quinquevittatum* | red ribbon wrasse | NA |
| | *Thalassoma lutescens* | sunset wrasse | NA |
| | *Novaculichthys taeniourus* | rockmover wrasse | NA |
| Mullidae (Goatfishes) | *Mulloidichthys* spp. | yellow goatfish | weke |
| | *Mulloidichthys pfleugeri* | orange goatfish | weke nono |
| | *Mulloidichthys vanicolensis* | yellowfin goatfish | weke‘ula |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Reef Taxa or CHRT) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Local Name** |
| | *Mulloidichthys flavolineatus* | yellowstripe goatfish | weke‘a or weke a‘a |
| | *Parupeneus* spp. | banded goatfish | kumu or moano |
| | *Parupeneus bifasciatus* | doublebar goatfish | munu |
| | *Parupeneus cyclostomas* | yellowsaddle goatfish | moano kea or moano kale |
| | *Parupeneus pleurostigma* | side-spot goatfish | malu |
| | *Parupeneus multifaciatus* | multi-barred goatfish | moano |
| | *Upeneus arge* | band-tail goatfish | weke pueo |
| Mugilidae (Mullets) | *Mugil cephalus* | stripped mullet | ‘ama‘ama |
| | *Neomyxus leuciscus* | false mullet | uouoa |
| Muraenidae (Moray eels) | *Gymnothorax flavimarginatus* | yellow margin moray eel | puhi paka |
| | *Gymnothorax javanicus* | giant moray eel | puhi |
| | *Gymnothorax undulatus* | undulated moray eel | puhi laumilo |
| Muraenidae | *Enchelycore pardalis* | dragon eel | puhi |
| Octopodidae (Octopus) | *Octopus cyanea* | octopus | he‘e mauli or tako |
| | *Octopus ornatus* | octopus | he‘e or tako |
| Polynemidae | *Polydactylus sexfilis* | threadfin | moi |
| Priacanthidae (Big-eyes) | *Heteropriacanthus cruentatus* | glasseye | ‘aweoweo |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Reef Taxa or CHRT) | | | |
|---|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** | **Local Name** |
| | *Priacanthus hamrur* | bigeye | ‘aweoweo |
| Scaridae (Parrotfish) | *Scarus* spp. | parrotfish | uhu or palukaluka |
| | *Calotomus carolinus* | stareye parrotfish | panuhunuhu |
| Sphyraenidae (Barracuda) | *Sphyraena helleri* | Heller’s barracuda | kawele‘a or kaku |
| | *Sphyraena barracuda* | great barracuda | kaku |
| Turbinidae | *Turbo* spp. | green snails turban shells | NA |
| Zanclidae | *Zanclus cornutus* | moorish idol | kihikihi |
| Chaetodontidae | *Chaetodon auriga* | butterflyfish | kikakapu |
| | *Chaetodon lunula* | raccoon butterflyfish | kikakapu |
| | *Chaetodon ephippium* | saddleback butterflyfish | kikakapu |
| Sabellidae | | featherduster worm | NA |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Potentially Harvested Reef Taxa) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local Name** |
| Labridae | wrasses (those species not listed as Currently Harvested Coral Reef Taxa or CHCRT) | Hinalea |
| Carcharhinidae Sphyrnidae | sharks (those species not listed as CHCRT) | Manō |
| Dasyatididae Myliobatidae | rays and skates | Hihimanu |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Potentially Harvested Reef Taxa) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local Name** |
| Serrandiae | groupers, seabass<br>(those species not listed as CHCRT or Bottomfish Management Unit Species or BMUS) | roi, hapu'upu'u |
| Malacanthidae | tilefishes | NA |
| Carangidae | jacks and scads<br>(those species not listed as CHCRT or in BMUS) | dobe, kagami, pa‘opa‘o, papa, omaka, ulua, |
| Holocentridae | solderfishes and squirrelfishes<br>(those species not listed as CHCRT) | ‘u‘u |
| Mullidae | goatfishes<br>(those species not listed as CHCRT) | weke, moano, kumu |
| Acanthuridae | surgeonfishes<br>(those species not listed as CHCRT) | na'ena'e, maikoiko |
| Echeneidae | remoras | NA |
| Muraenidae<br>Congridae<br>Ophichthidae | eels<br>(those species not listed as CHCRT) | Puhi |
| Apogonidae | cardinalfishes | ‘upapalu |
| Clupeidae | herrings | NA |
| Engraulidae | anchovies | Nehu |
| Caracanthidae | coral crouchers | NA |
| Gobiidae | gobies | ‘o‘opu |
| Lutjanidae | snappers<br>(those species not listed as CHCRT or in BMUS) | to'au |
| *Aulostomus chinensis* | trumpetfish | nunu |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Potentially Harvested Reef Taxa) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local Name** |
| *Fistularia commersoni* | cornetfish | nunu peke |
| Zanclidae | moorish idols | kihikihi |
| Chaetodontidae | butterflyfishes | kikakapu |
| Pomacanthidae | angelfishes | NA |
| Pomacentridae | damselfishes | mamo |
| Scorpaenidae | scorpionfishes, lionfishes | nohu, okoze |
| Blenniidae | blennies | pa o’o |
| Sphyraenidae | barracudas (those species not listed as CHCRT) | kaku |
| Pinguipedidae | sandperches | NA |
| Bothidae Soleidae Pleurnectidae | flounders and soles | paki‘i |
| Ostraciidae | trunkfishes | makukana |
| Balistidae | trigger fishes (those species not listed as CHCRT) | humu humu |
| Kyphosidae | rudderfishes (those species not listed as CHCRT) | nenue |
| Cirrhitidae | hawkfishes (those species not listed as CHCRT) | po‘opa‘a |
| Tetradontidae | puffer fishes and porcupine fishes | ‘o‘opu hue or fugu |
| Antennariidae | frogfishes | NA |
| Syngnathidae | pipefishes and seahorses | NA |
| Echinoderms | sea cucumbers and sea urchins | namako, lole, wana |

| Hawaii Archipelago FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Potentially Harvested Reef Taxa) | | |
|---|---|---|
| **Scientific Name** | **English Common Name** | **Local Name** |
| Mollusca | (those species not listed as CHCRT) | NA |
| Azooxanthellates | ahermatypic corals | ko‘a |
| Fungiidae | mushroom corals | ko‘a |
| | small and large coral polyps | ko‘a |
| | soft corals and gorgonians | NA |
| Actinaria | anemones | NA |
| Zoanthinaria | soft zoanthid corals | NA |
| Solanderidae | hydroid corals | NA |
| Stylasteridae | lace corals | ko‘a |
| Crustaceans | lobsters, shrimps, mantis shrimps, true crabs and hermit crabs (those species not listed as CMUS) | ula, a‘ama, mo‘ala, ‘alakuma |
| Hydrozoans and Bryzoans | | NA |
| *Pinctada margaritifera* | Black-lipped pearl oyster | NA |
| Other Bivalves | other clams | NA |
| Tunicates | sea squirts | NA |
| Porifera | sponges | NA |
| Cephalopods | octopi | tako, he‘e |
| Gastropoda | sea snails | NA |
| Opistobranches | sea slugs | NA |
| Algae | seaweed | limu |
| Live rock | | NA |
| Annelids | segmented worms (those species not listed as CHCRT) | NA |
| All other coral reef ecosystem management unit species that are marine plants, invertebrates, and fishes that are not listed in the preceding tables or are not bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral or seamount groundfish. | | |

**Table A-10: Alternative 2B (Preferred), Pacific Remote Island Areas (PRIA) Fishery Ecosystem Plan (FEP) Management Unit Species (MUS)**

| PRIA FEP Bottomfish Management Unit Species (BMUS) | |
|---|---|
| **Scientific Name** | **English Common Name** |
| *Aphareus rutilans* | silver jaw jobfish |
| *Caranx ignobilis* | giant trevally |
| *Caranx lugubris* | black jack |
| *Epinephelus fasciatus* | blacktip grouper |
| *Epinephelus quernus* | sea bass |
| *Etelis carbunculus* | red snapper |
| *Etelis coruscans* | longtail snapper |
| *Lethrinus rubrioperculatus* | redgill emperor |
| *Pristipomoides auricilla* | yellowtail snapper |
| *Pristipomoides filamentosus* | pink snapper |
| *Pristipomoides seiboldii* | pink snapper |
| *Variola louti* | lunartail grouper |

| PRIA FEP Crustacean Management Unit Species (CMUS) | |
|---|---|
| **Scientific Name** | **English Common Name** |
| *Panulirus penicillatus* | spiny lobster |
| Family Scyllaridae | slipper lobster |
| *Ranina ranina* | Kona crab |
| *Heterocarpus* spp. | deepwater shrimp |

| PRIA FEP Precious Corals Management Unit Species (PC MUS) | |
|---|---|
| **Scientific Name** | **English Common Name** |
| *Corallium secundum* | pink coral (also called red coral) |
| *Corallium regale* | pink coral (also called red coral) |
| *Corallium laauense* | pink coral (also called red coral) |
| *Gerardia* spp. | gold coral |
| *Narella* spp. | gold coral |
| *Lepidisis olapa* | bamboo coral |
| *Antipathes dichotoma* | black coral |
| *Antipathes grandis* | black coral |
| *Antipathes ulex* | black coral |

| PRIA FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa or CHCRT) | | |
|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** |
| Acanthuridae (Surgeonfishes) | *Acanthurus olivaceus* | orange-spot surgeonfish |
| | *Acanthurus xanthopterus* | yellowfin surgeonfish |
| | *Acanthurus triostegus* | convict tang |
| | *Acanthurus dussumieri* | eye-striped surgeonfish |
| | *Acanthurus nigroris* | blue-lined surgeon |
| | *Acanthurus leucopareius* | whitebar surgeonfish |
| | *Acanthurus lineatus* | blue-banded surgeonfish |
| | *Acanthurus nigricauda* | blackstreak surgeonfish |
| | *Acanthurus nigricans* | whitecheek surgeonfish |
| | *Acanthurus guttatus* | white-spotted surgeonfish |

| PRIA FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa or CHCRT) | | |
|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** |
| | *Acanthurus blochii* | ringtail surgeonfish |
| | *Acanthurus nigrofuscus* | brown surgeonfish |
| | *Ctenochaetus strigosus* | yellow-eyed surgeonfish |
| | *Ctenochaetus striatus* | striped bristletooth |
| | *Ctenochaetus binotatus* | twospot bristletooth |
| | *Zebrasoma flavescens* | yellow tang |
| | *Naso unicornus* | bluespine unicornfish |
| | *Naso lituratus* | orangespine unicornfish |
| | *Naso hexacanthus* | black tongue unicornfish |
| | *Naso vlamingii* | bignose unicornfish |
| | *Naso annulatus* | white margin unicornfish |
| | *Naso brevirostris* | spotted unicornfish |
| Labridae (Wrasses) | *Cheilinus undulatus* | Napoleon wrasse |
| | *Cheilinus trilobatus* | triple-tail wrasse |
| | *Cheilinus chlorourus* | floral wrasse |
| | *Oxycheilinus unifasciatus* | ring-tailed wrasse |
| | *Oxycheilinus diagrammus* | bandcheek wrasse |
| | *Hemigymnus fasciatus* | barred thicklip |
| | *Halichoeres trimaculatus* | three-spot wrasse |
| | *Thalassoma quinquevittatum* | red ribbon wrasse |
| | *Thalassoma lutescens* | sunset wrasse |
| Mullidae (Goatfishes) | *Mulloidichthys* spp. | yellow goatfish |
| | *Mulloidichthys pfleugeri* | orange goatfish |
| | *Mulloidichthys flavolineatus* | yellow stripe goatfish |
| | *Parupeneus* spp. | banded goatfish |
| | *Parupeneus barberinus* | dash-dot goatfish |
| | *Parupeneus cyclostomas* | yellowsaddle goatfish |

| PRIA FEP Coral Reef Ecosystem Management Unit Species (CREMUS) (Currently Harvested Coral Reef Taxa or CHCRT) | | |
|---|---|---|
| **Family Name** | **Scientific Name** | **English Common Name** |
| | *Parupeneus multifaciatus* | multi-barred goatfish |
| | *Upeneus arge* | band-tail goatfish |
| Mugilidae (Mullets) | *Crenimugil crenilabis* | fringelip mullet |
| | *Moolgarda engeli* | Engel's mullet |
| | *Neomyxus leuciscus* | false mullet |
| Muraenidae (Moray eels) | *Gymnothorax flavimarginatus* | yellow margin moray eel |
| | *Gymnothorax javanicus* | giant moray eel |
| | *Gymnothorax undulatus* | undulated moray eel |
| Octopodidae | *Octopus cyanea* | octopus |
| | *Octopus ornatus* | octopus |
| Pricanthidae (Bigeye) | *Heteropriacanthus cruentatus* | glasseye |
| Scaridae (Parrotfishes) | *Bolbometopon muricatum* | humphead parrotfish |
| | *Scarus* spp. | parrotfish |
| | *Hipposcarus longiceps* | pacific longnose parrotfish |
| | *Calotomus carolinus* | stareye parrotfish |
| Scombridae | *Gymnosarda unicolor* | dogtooth tuna |
| Sphyraenidae (Barracuda) | *Sphyraena barracuda* | great barracuda |

| PRIA FEP Coral Reef Ecosystem MUS (CREMUS) (Potentially Harvested Coral Reef Taxa) | |
|---|---|
| **Scientific Name** (Family) | **English Common Name** |
| Labridae | wrasses (those species not listed as Currently Harvested Coral Reef Taxa or CHCRT) |
| Carcharhinidae<br>Sphyrnidae | sharks<br>(those species not listed as CHCRT) |
| Myliobatidae<br>Mobulidae | rays and skates |

| PRIA FEP Coral Reef Ecosystem MUS (CREMUS)<br>(Potentially Harvested Coral Reef Taxa) | |
|---|---|
| **Scientific Name**<br>(Family) | **English Common Name** |
| Serrandiae | groupers<br>(those species not listed as CHCRT or as Bottomfish Management Unit Species or BMUS) |
| Carangidae | jacks and scads<br>(those species not listed as CHCRT or as BMUS) |
| Holocentridae | solderfishes and squirrelfishes<br>(those species not listed as CHCRT) |
| Mullidae | goatfishes<br>(those species not listed as CHCRT) |
| Ephippidae | batfishes |
| Haemulidae | sweetlips |
| Echeneidae | remoras |
| Malacanthidae | tilefishes |
| Pseudochromidae | dottybacks |
| Plesiopidae | prettyfins |
| Acanthuridae | surgeonfishes<br>(those species not listed as CHCRT) |
| Lethrinidae | emperors (those species not listed as CHCRT or as BMUS) |
| Clupeidae | Herrings |
| Gobiidae | Gobies |
| Lutjanidae | snappers<br>(those species not listed as CHCRT or as BMUS) |
| Balistidae | trigger fishes<br>(those species not listed as CHCRT) |

| PRIA FEP Coral Reef Ecosystem MUS (CREMUS)<br>(Potentially Harvested Coral Reef Taxa) | |
|---|---|
| **Scientific Name**<br>(Family) | **English Common Name** |
| Siganidae | rabbitfishes<br>(those species not listed as CHCRT) |
| Muraenidae<br>Chlopsidae<br>Congridae<br>Ophichthidae | eels<br>(those species not listed as CHCRT) |
| Apogonidae | cardinalfishes |
| Zanclidae | moorish idols |
| Chaetodontidae | butterfly fishes |
| Pomacanthidae | angelfishes |
| Pomacentridae | damselfishes |
| Scorpaenidae | scorpionfishes |
| Blenniidae | blennies |
| Sphyraenidae | barracudas<br>(those species not listed as CHCRT) |
| Pinguipedidae | sandperches |
| Kyphosidae | rudderfishes<br>(those species not listed as CHCRT) |
| Caesionidae | fusiliers |
| Cirrhitidae | hawkfishes<br>(those species not listed as CHCRT) |
| Antennariidae | frogfishes |
| Syngnathidae | pipefishes and seahorses |
| Bothidae | flounders and soles |
| Ostraciidae | trunkfishes |
| Tetradontidae | puffer fishes and porcupine fishes |
| *Aulostomus chinensis* | trumpetfish |
| *Fistularia commersoni* | cornetfish |

| PRIA FEP Coral Reef Ecosystem MUS (CREMUS)<br>(Potentially Harvested Coral Reef Taxa) | |
|---|---|
| **Scientific Name**<br>(Family) | **English Common Name** |
| Heliopora | blue corals |
| Tubipora | organpipe corals |
| Azooxanthellates | ahermatypic corals |
| Fungiidae | mushroom corals |
| | small and large coral polyps |
| Millepora | fire corals |
| | soft corals and gorgonians |
| Actinaria | anemones |
| Zoanthinaria | soft zoanthid corals |
| Hydrozoans and Bryzoans | |
| Tunicates | sea squirts |
| Echinoderms | sea cucumbers and sea urchins |
| Mollusca | (those species not listed as CHCRT) |
| Gastropoda | sea snails |
| *Trochus* spp. | top shells, turban shell |
| Opistobranches | sea slugs |
| *Pinctada margaritifera* | black-lipped pearl oyster |
| Tridacnidae | giant clam |
| Other Bivalves | other clams |
| Cephalopods | |
| Crustaceans | lobsters, shrimps/mantis shrimps, true crabs and hermit crabs (those not listed as CMUS) |
| Porifera | sponges |
| Stylasteridae | lace corals |
| Solanderidae | hydroid corals |
| Annelids | segmented worms |
| Algae | seaweed |

| PRIA FEP Coral Reef Ecosystem MUS (CREMUS) (Potentially Harvested Coral Reef Taxa) | |
|---|---|
| **Scientific Name** (Family) | **English Common Name** |
| Live rock | |
| All other coral reef ecosystem management unit species that are marine plants, invertebrates, and fishes that are not listed in the preceding tables or are not bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral or seamount groundfish. | |

**Table-11: Alternative 2B (Preferred), Pacific Pelagics Fishery Ecosystem Plan (FEP) Management Unit Species (MUS)**

| Pacific Pelagic FEP Pelagic Management Unit Species (PMUS) | | | |
|---|---|---|---|
| **Scientific Name** | **English Common Name** | **Scientific Name** | **English Common Name** |
| *Coryphaena* spp. | mahimahi (dolphinfishes) | *Isurus oxyrinchus* | shortfin mako shark |
| *Acanthocybium solandri* | wahoo | *Isurus paucus* | longfin mako shark |
| *Makaira mazara: M. indica* | Indo-Pacific blue marlin, black marlin | *Lamna ditropis* | salmon shark |
| *Tetrapturus audax* | striped marlin | *Thunnus alalunga* | albacore |
| *Tetrapturs angustirostris* | shortbill spearfish | *Thunnus obesus* | bigeye tuna |
| *Xiphias gladius* | swordfish | *Thunnus albacares* | yellowfin tuna |
| *Istiophorus platypterus* | sailfish | *Thunnus thynnus* | northern bluefin tuna |
| *Alopias pelagicus* | pelagic thresher shark | *Katsuwonus pelamis* | skipjack tuna |
| *Alopias superciliousus* | bigeye thresher shark | *Euthynnus affinis* | kawakawa |
| *Alopias vulpinus* | common thresher shark | *Lampris* spp. | moonfish |
| *Carcharhinus falciformis* | silky shark | Gempylidae | oilfish family |
| *Carcharhinus longimanus* | oceanic whitetip shark | Bramidae | pomfret family |
| *Prionace glauca* | blue shark | *Auxis* spp., *Scomber* spp., *Allothunus* spp. | other tuna relatives |

# Appendix B.

## Summary Conclusions and Recommendations from the Ecosystem Science and Management Planning Workshop April 2005

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# APPENDIX B - Summary Conclusions and Recommendations from the Ecosystem Science and Management Planning Workshop

**Development of Ecosystem-based Approaches to Marine Resource Management in the Western Pacific Region**

**Convened by the Western Pacific Regional Fishery Management Council**
**April 18-22, 2005**

Much has been said and written in recent years about the need for application of ecosystem principles to the management of U.S. fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). While the topic of ecosystem principles has received increased attention recently in both the U.S. Commission on Ocean Policy and the Pew Ocean Commission, it has been the subject of discussions for several years previously. For example, the National Environmental Policy Act (NEPA) could be considered a legal embodiment of the need to consider how federal actions would affect the environmental resources (hence ecosystem-based principles) in which they were carried out.

The Western Pacific Regional Fishery Management Council, one of eight regional fishery management councils, is moving progressively to apply ecosystem principles in its fishery management plans. Recognizing that the Council has limited experience and tools for this work, and further recognizing broad, multi-Council interest in this arena, the Council has embarked on a series of workshops to exchange information and learn from outside experiences in resource management based on or integrating ecosystem principles into the planning and management process. This workshop was held April 18-22, 2005, at Council offices in Honolulu, Hawaii. The theme of this workshop was the science and data needs to support the application of ecosystem principles into planning and management. Experts from throughout the nation and the Pacific were invited to make presentations and engage in discussions about their work, experiences, and views on these topics. This report presents the results of the workshop.

## Introduction

Fishery management over the past decade has been moving away from developing single-species- and stock-policies, and towards considering fishery impacts on aquatic ecosystems more holistically. This shift was evident in the 1996 reauthorization of the US Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which incorporated many elements of the Ecosystem Approach to Management (EAM). This included a requirement for Fishery Management Plans (FMPs) to incorporate considerations of essential fish habitat, which was defined as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.” FMPs are required to “describe and identify essential fish habitat for the fishery, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.” The 1996 Magnuson-Stevens Act also contained a new National Standard (NS9) for by-catch, which was defined as “fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards.” Conservation and management

measures in FMPs were required to "minimize by-catch and to the extent by-catch cannot be avoided, minimize the mortality of such by-catch."

Moreover, the 1996 reauthorization of Magnuson-Stevens Act also included the establishment of an Ecosystem Principles Advisory Panel to expand the application of ecosystem principles in fishery conservation and management activities. Following the directives of Magnuson-Stevens Act, this Panel completed a report to Congress in 1999, entitled Ecosystem-Based Fishery Management. Further, the 2003 Pew Ocean Commission and the 2004 U.S. Commission on Ocean Policy both advised NOAA Fisheries to adopt ecosystem approaches to management. From the foregoing it was clear that the next reauthorization of the Magnuson-Stevens Act would likely include a requirement for the Regional Fishery Management Councils (RFMCs) to prepare Fishery Ecosystem Plans (FEPs). Recognizing this momentum towards FEPs, the Western Pacific Council convened a workshop in April 2005 to begin the preparations for moving from FMPs to FEPs.

The Workshop was held in Honolulu, April 18-22, 2005, at the Council offices. The three basic themes for the Workshop were Data, Models, and Indicators, recognizing that a later workshop would address social and economic policy and human organization issues.

**Objective, tasks and approach**

The Western Pacific Regional Fishery Management Council is moving incrementally to apply ecosystem principles in its fishery management plans. Recognizing its limited experience and tools in ecosystem-based management approaches, the Council embarked on a series of three workshops to exchange information and learn from outside expertise. The present report summarizes the first workshop, held April 18-22, 2005, on the **topic** of the science and data needs to support ecosystem-based management approaches. The present conclusions and recommendations attempts to summarize the main points and issues presented in this report.

The **objective** of the Workshop was to identify science requirements to support Ecosystem-Based Approaches (EBA) for marine resource management in the Western Pacific Region. The **tasks** assigned to the Workshop were:

1. Review state-of-the-art ecosystem models applied to marine resource management and their application in governance systems;
2. Identify management requirements in the Western Pacific Region;
3. Identify the best suite of quantitative ecosystem indicators and associated tradeoffs to support management requirements in the Western Pacific Region;
4. Within the confines of existing mandates (e.g., Magnuson-Stevens Act, National Marine Sanctuaries Act), identify the most effective short-term application of EBA to marine resource management that can be implemented based on current data (and in this context, address whether the precautionary approach has a role);
5. Identify new data or models that would be required to advance EBA to marine resource management in the Western Pacific Region; and
6. Identify changes in policy or science administration that would be required to more effectively implement EBA to marine resource management.

The approach taken in the present workshop was to separate the general topic into three themes: data, models and indicators. The workshop utilized a combination approach of alternating plenary presentations/discussions lead by an invited expert panel with breakout working groups (by theme) reporting back to plenary for further discussion.

Principally, the foundation of ecosystem-based fishery management is the application of conservative and precautionary approaches for the major targeted stocks or fisheries in a designated region. However, added to this base are considerations of the impacts of fisheries on non-target species, effects of fishing on habitats supporting production and ecosystem functions, predator-prey dynamics, and relationships between the biota and the environment. It is this second added component that differentiates ecosystem-based management approaches from the more traditional, fisheries management approaches generally focused on maximizing yield or value from targeted stocks on a more or less single-species or targeted multi-species group basis (e.g., Hawaiian bottomfish). Given the complexity of marine ecosystems, relationships between species, as well as between species and their environment are likely complex and complicated, and often little understood or difficult to untangle. The resultant high levels of uncertainty place a premium on conservative and precautionary approaches to exploitation in an ecosystem-based management setting.

A problem managers have encountered in implementing an ecosystem-based approach to management is the lack of a ‘road map’ on how to integrate the various components of an ecosystem approach into a clear operational governance system. In an integrated approach, the governance system examines a suite of information to develop management measures which achieve various strategic goals. This requires taking into account numerous perspectives and desired outcomes from a variety of stakeholders, including those representing non-extractive interests and ecosystem services. An integrated approach must also rely on a comprehensive ecosystem observing system to collect data at various spatial and temporal scales, and a management decision support system to synthesize the information and develop status indicators for individual ecosystem components, forecast status and trends, and evaluate the biological, social and economical effects of policy choices.

The literature on ecosystem-based approaches suggests that there are eight broad categories of operational objectives that should be considered in developing fishery ecosystem plans:

1) Conserving and managing the species;
2) Minimizing by-catch;
3) Managing tradeoffs;
4) Account for feedback effects;
5) Establish appropriate ecosystem boundaries;
6) Maintain ecosystem productivity and balance ecosystem structure;
7) Account for climate variability; and
8) Use adaptive approaches to management.

**Key points**

During the discussions and plenary sessions several key points were raised repeatedly, and are summarized here:

1) Management/policy issues need to be clearly and precisely stated prior to data collection or modeling/analyses being initiated;
2) Model or analysis choice must be driven firstly by management/policy issues, and secondly by available or obtainable data;
3) Adaptive management experiments, involving deliberate spatial comparisons of policy options (such as, e.g., MPAs) are of crucial importance for developing and implementing ecosystem-based management approaches;
4) Models cannot and should not determine the management decision, which, by its very nature, is choice driven and influenced by tradeoffs. Models are only intellectual devices to help scientists and managers think about problems and possible solutions;
5) Some data collection efforts, while labeled as ecosystem-based, may not be appropriately scaled (in terms of spatio-temporal sampling) or may not target useful variables or parameters for ecosystem-based fisheries management. Such research and monitoring efforts need to be better targeted and focused towards clearly identified management/policy issues, if the data collections are funded for and based on ecosystem-based management needs;
6) New or different data may need to be collected, depending on clearly identified management/policy issues, and the associated analysis/modeling needs. Such data activities should include data 'mining' and data recovery from old and/or unusual sources (e.g., research theses, unpublished grey literature, old print and electronic media etc.); and
7) Concerted efforts are required to reduce or overcome agency specific disagreements (e.g., jurisdictional boundaries) and miscommunication in an integrative approach to move towards system management as a centralized objective. It may be prudent to examine approaches taken and lessons learned elsewhere, e.g., the Australian experiences with managing the Great Barrier Reef Marine Park and World Heritage Area, with its joint state-federal jurisdiction and management agreement.

**Recommendations**

Several **recommendations** can be extracted from the discussions and working group outcomes as presented in this report:

1) Clearly define and articulate management/policy issues and questions along lines of urgency and identified needs;
2) Assign a centralized resource entity with sufficient seniority and appropriate financial and human resources to establish and maintain a centralized data reference and contact point (the "who, what, where and how" of data);
3) Review and evaluate all currently available data and data collection schemes (biological, social, economic etc.), and initiate and maintain data 'mining' and recovery activities;
4) Undertake initial assessments and analyses of available data, based on key management/policy issues identified by management and stakeholders. This is primarily

aimed at identifying strengths and weaknesses of current data and data collection programs, and pointing out obvious data gaps;

5) Identify and initiate adaptive management experiments at ecosystem scale;
6) Ensure that data collection and models/analyses for ecosystem-based management are coordinated with and driven by clearly identified management needs and issues;
7) Encourage keeping all models/analyses at the most 'simple' level possible, i.e., avoid temptation to build large, exceedingly complex models;
8) Ensure adequate support and resources for clearly identified ecosystem-scale monitoring, research and modeling/analytical investigations; and
9) Evaluate a suite of indicators (both existing fishery-based, as well as new and emerging ecosystem-based) in an evolving and adaptive process.

Overall, it was consistently emphasized that clear management objectives need to be outlined and policy issues identified before appropriate and suitable models/analyses and indicators can be proposed or developed, which in turn will be influenced by currently available data, and will determine future data needs. Thus, a key recommendation was that specific management issues are identified and clearly delineated, and potentially available management and policy tools and options clarified prior to analytical options and data needs being decided and implemented.

Simultaneously, a key recommendation was that a comprehensive data availability inventory needs to be undertaken, incorporating all quantitative and qualitative information available (ideally combining scientific as well as socio-economic data). This data inventory should be centralized, freely available and comprehensive. As examples of first steps in this direction one can consider WPacFIN's activities with respect to parts of fishery-dependent data, and the UH's Pelagic Fisheries Research Program's 'atlas' activities for documenting available information and oceanographic models. This endeavor should be a permanent feature for the entire Western Pacific region's ecosystem-based approach to science and management, and be lead by a dedicated and appropriately resourced data inventory entity of significant seniority (a centralized 'resource contact' responsible for the "who owns it, what exists, where is it, how can it be used" of data), and who facilitates utilization of the wide array of existing and likely future data. This inventory should include all data types, including qualitative information sources. In the initial phase, this data inventory entity should facilitate the establishment of a *Data Needs Working Group* for research in ecosystem-based approaches for fisheries management. Subsequently, potential useful models or analytical approaches can be outlined driven by management and policy issues and needs, but reflective of currently available data. Thereafter, additional future data needs can be identified. It should be noted that much of the data currently available were not initially collected under ecosystem-based management considerations or tied to any specific management issue of objective, and hence the utility of the information for such an application has not been determined for all data. These aspects should be considered as part of any data inventory initiative.

With regards to data needs, the utility of data 'mining' and data recovery from unusual sources and old media was also raised as an issue of concern. Substantial resources have been invested in the past to collect a wide range of data, both quantitative and qualitative in the scientific as well as socio-economic fields. Yet, much of these data were only utilized for a narrow (e.g., graduate research thesis), or at the time important aspect, and only exist in grey literature with limited

print runs, or on old media. It has been shown that recovering such 'old' data can make significant contributions to science, and be of renewed interest as historic baselines for current and future ecosystem-based science and management[1]. Thus a recommendation was that data recovery and 'mining' activities should form an integral part of the data inventory activities. As an added incentive for such data activities are the opportunities to establish historic baselines of knowledge that are essential for ecosystem-based approaches, e.g., the reconstruction of likely historic fisheries catches in the Western Pacific region[2].

It was strongly suggested that existing data should be evaluated and assessed in detail first. By preliminary examining the presently existing fisheries dynamic, survey and other datasets in a collective and integrated manner, one might be able to determine if patterns exist that could be explained by several different models or hypotheses. This may provide a useful starting position for future data and model considerations. This endeavor should be undertaken in close collaboration with experienced management entities, and ideally with feedback from or coordination with experienced fishing entities to enable accounting for fishing and oceanographic history and knowledge. Furthermore, ecosystem-based management will place increasing demands on spatio-temporal data and information, both with respect to ecosystem components and functions, as well as resources use. Thus, VMS will increasingly become a central requirement for all extractive users in the context of ecosystem-based management approaches. Therefore, Council, NOAA and other responsible agencies should endeavor to use available VMS data for research efforts, and expand use of VMS for coverage of all fishing fleets. This may require concerted efforts in stakeholder engagement and buy-in, and possible adjustments in legal instruments. Such data provide unique and invaluable spatio-temporal information not obtainable otherwise (as it reflects fleet activities), especially if combined with vessel specific catch and effort information. These data will be essential for modelers to better understand spatial effort dynamics and why fishers make the decisions they do. Thus, a recommendation was that comprehensive, but preliminary meta-data-examinations and analyses of all available data (including VMS) should be undertaken as an initial step.

The use and utility of MPAs and spatial fishing/exploitation experiments was identified as a key recommendation lending itself to adaptive management within ecosystem-based fisheries management. The crucial importance of adaptive management experiments, involving deliberate large-scale and long-term spatial comparisons of policy options, was repeatedly emphasized as fundamental to ecosystem-based management. Of utility are only MPAs large enough to have ecological integrity at an ecosystem and archipelagic scale. Hawaii was cited as one case: this would also require experiments in institutional arrangements for management in both the NWHI and MHI, including governance, stakeholder buy-in and participation, and governance associated enforcement and monitoring prior to and during establishment and management of MPAs. It was

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[1] Zeller, D., Froese, R. and Pauly, D. (2005) On losing and recovering fisheries and marine science data. *Marine Policy* 29: 69-73.

[2] Zeller, D., Booth, S. and Pauly, D. (2005) Reconstruction of coral reef- and bottom-fisheries catches for U.S. flag island areas in the Western Pacific, 1950 to 2002. Report to the Western Pacific Regional Fishery Management Council, Honolulu, 110 p. Zeller, D., Booth, S., Craig, P. and Pauly, D. (2006) Reconstruction of coral reef fisheries catches in American Samoa, 1950-2002. *Coral Reefs* 25: 144-152.

deemed prudent at all levels of management and science to incorporate the long-term time horizon (decadal and longer) into the planning, governance, monitoring and enforcement aspects, and ensure stakeholder understanding of the potentially long ecosystem time scales. Of key importance however, is that adaptive management experiments are undertaken at the appropriate spatial and temporal scales, and are comprehensively executed.

In terms of ecosystem modeling, the close interplay with policy and management options was identified as very important. A clear need was outlined to develop clear goals and constraints on the issues and questions to be addressed by models, to avoid arriving at a situation where models are called for to do everything. A model can generate a set of predictions of what might happen under different circumstances; it might expose uncertainties that should cause a responsible manager to think carefully about the management choices he/she has to make. Thus, management actions and research efforts need to be coordinated to better understand ecosystem dynamics. There is also a need to foster participatory decision-making, as more public concerns are raised about ecosystem protection. Thus, a recommendation was to ensure that all data collection and modeling or analytical efforts under the topic of ecosystem-based management are closely coordinated with, and driven by management needs and policy issues. A further recommendation was that models and analyses should be kept as simple as possible to permit clear and unambiguous addressing of 'what if' questions as part of the learning process, which is crucial in understanding whether a model is working and how it is responding to change.

There was also a recommendation to ensure adequate support for ecosystem monitoring, research and modeling is available and being sourced. This needs to extend beyond the focus on extractive resources, to include an emphasis on ecosystem goods and services, and appropriate metrics for accounting for non-consumptive ecosystem services. These non-extractive goods and services will increasingly be deemed of equal importance (and 'value') with the market-based goods that are being produced by these ecosystems.

With regards to the last recommendation on indicators, one of the larger challenges in ecosystem-based approaches to fisheries management is how to link high level principles such as maintaining healthy and productive ecosystem to informative performance indicators. Unfortunately, aside from basic fishery performance indicators (e.g., related to fishery mortality rates and population sizes), there are no established criteria for determining proper reference levels at the ecosystem level. Additionally, quantifying the relative improvement of societal benefit (including non-market and indirect values) for a given management measure is a critical missing element for many reference points.

It is important to recognize that most individual indicators would not be holistic ecosystem indicators *per se*, but would capture elements or selected properties of the ecosystem. It may be necessary to prioritize indicators, which likely will be subjective based on perceived management issues, but may over time identify effective indicators.

There seems to be no single suite of quantitative ecosystem indicators to support fishery management requirements in the Western Pacific Region. The number and variety of indicators available, and the amount of information on each, make it difficult to select any single suite of indicators that fit all species and fisheries.

On the other hand, it may be useful to develop an ecosystem indicator framework analogous to the Leading Economic Indicators that provide a guide to the condition of the U.S. economy. It may be possible to select (or 'evolve' or experimentally develop) a combination of indicators that, over time, would provide a tool to understand species/ecological relationships, and to support predictions of future status and conditions under given management decisions.

Proposed potentially useful indicators for ecosystem-based considerations (using the Pressure, State and Response approach) include information about status and trends of:

- Habitat ('quantity' and 'quality');
- Keystone/functional species dominants;
- Sentinel species;
- Protected species;
- Assemblage structure;
- Biodiversity;
- Pathogens;
- Harmful events (e.g., severe pollution events); and
- Fishery-based data (catches, species, size, catch per effort, mortality).

Thus, the final recommendation of the present workshop was to incorporate and evaluate a suite of indicators (possibly along the Pressure, State and Response groupings suggested in the workshop) in an evolving and adaptive process with input and review from experts in each region and region-wide. Initially, this suite will be based heavily on existing fishery-, habitat- and protected species-indicators, but the suite should be re-considered, amended and re-evaluated at every opportunity in line with management needs/issues and subsequent assessment/modeling requirements. Furthermore, the experiences of the North Pacific Regional Fishery Management Council should be more closely examined for potential applicability to the local situation.

**Additional comments**

Several additional points were raised by the participants, and marked for attention by management agencies during this workshop, and are worthwhile noting:

The National Research Council (1999) Sustainable Fisheries Report put forward criteria for guidance in ecosystem-based fisheries management, with several points clearly identified that should form the guiding principles for the regions move towards ecosystem-based management:

- Adopt conservative harvest levels;
- Adopt a precautionary approach with respect to uncertainty;
- Reduce excess capacity and assign 'rights' in fisheries;
- Establish MPAs as a buffer against uncertainty and management failure;
- Include by-catch and discards in catch accounting for all sectors;
- Institute scientific and stakeholder reviews in transparent decision processes;

- Conduct targeted research on structure and function in ecosystems; and
- Incorporate ecosystem-based goals in management decisions.

Also, managers have to ensure the establishment and maintenance of the main prerequisites for ecosystem-based fisheries management:

- Effective control over all fisheries by the management system;
- Ability to enforce regulations;
- Ability to monitor all harvest, including by-catch;
- Ability to control fishing capacity and effort; and
- Ability to establish incentives that match the goals.

Furthermore, for scientists to develop models, undertake analyses and derive indicators useful to ecosystem-based management, managers need to:

- Provide clear management objectives - management should listen to available scientific advice, including careful consideration of uncertainties associated with the advice; consider the full range of ecosystem-stakeholder values and opinions; and attempt to seek consensus. Ultimately, however, management has to make clear decisions as to what the chosen objectives are;
- Remove institutional barriers to encourage effective collaboration in research and management;
- Develop better policies and legislation if currently inadequate; and
- Obtain/provide funding for the expanded research base likely needed to support ecosystem-based management.

As a further suggestion for management agencies responsible for the Western Pacific region, it has been suggested that there have been workshops with fishers in most if not all of the U.S. territories, looking at coral reef fisheries management. For the most part, it is the fishing community itself which is not happy with the way coral reef resources are currently managed, given the general decrease in resources observed over the last few years and decades. Furthermore, as far as potential complexity of ecosystem-scale impacts are concerned, experience from the Caribbean should be considered, where herbivores and other species have been overfished, resulting in a de-pauperate herbivorous community that subsequently has been affected by side effects such as disease. While the disease may not have been clearly attributable to direct human impacts, the effects of the disease were deemed closely related to indirect human impact due to the fishing related reduction in community structure. So it behooves managers to take precautionary measures to ensure both functional and structural integrity of ecosystems by maintaining biodiversity and habitats, as well as target and non-target stocks at conservatively high levels.

In order to engage in ecosystem-based fisheries management, fisheries stakeholders should recognize the inherent and often deep uncertainty associated with natural systems and the affiliated science; should insist that all management and exploitation be conservative and precautionary in nature; and should accept that the burden of proof rests with fisheries. This is a

task that management agencies are well placed to actively engage in, facilitate and lead. In principle, stakeholders need to expect that fisheries will change under ecosystem-based fisheries management, specifically:

- Fisheries will be managed for stock abundance not scarcity or productivity, i.e., lower harvest rates from higher biomass;
- Less fishing capacity and employment;
- Higher incomes and use of technology;
- Practices with high habitat impacts replaced with alternative techniques or shut down;
- Greater use of spatially explicit management measures; and
- Restrictions on fisheries to accomplish other goals, e.g., biodiversity protection, ecotourism, recreational use.

In summary, as management in the Western Pacific region moves towards ecosystem-based fisheries management, six general points should be considered as main policy advice consistent with global scientific and management consensus:

1. Industry and management should endeavor to be pro-active in changing the burden of proof regarding impacts of fishing, by taking an active participatory role in research and monitoring, and resource conservation and sustainability;
2. Apply precautionary principle as default;
3. Purchase ‘insurance’, e.g., adequately sized MPAs and spatial management options;
4. Learn from management experience in other areas and by applying ‘adaptive management’ approaches;
5. Use incentives to achieve goals; and
6. Promote fairness and equity within overall ecosystem-based management objectives.

In closing, it is prudent to realize that a ‘healthy’ ecosystem (being aware of the anthropomorphic danger in using this word) is good for ‘healthy’ fisheries. Hence, one could argue that implementing ecosystem-based fisheries management could lead to improved fisheries management of ‘healthy’, productive and sustainable fisheries.

# Appendix C.

## Summary Discussion of the Ecosystem Social Science Workshop, January 2006

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# APPENDIX C - Summary Discussion of the Ecosystem Social Science Workshop

**Convened by the Western Pacific Regional Fishery Management Council**

**January 17-20, 2006**

## Introduction

In 1998, the United States Congress authorized NOAA Fisheries to establish an Ecosystem Principles Advisory Panel (EPAP) to examine ways in which ecosystem principles might be applied to the management of our domestic marine fisheries. The Panel subsequently determined that such principles would best be applied by gradually replacing existing Fishery Management Plans (FMPs) used by the nation's regional fishery management councils with plans that incorporate useful information about the ecosystems within which domestic fisheries occur. These would be called Fishery Ecosystem Plans (FEPs), and would involve a management approach that is "adaptive, specified geographically, takes into account ecosystem knowledge and uncertainties, considers multiple external influences, and strives to balance diverse social objectives" (NOAA 2004).

The Western Pacific Regional Fishery Management Council (WPRFMC; the Council) subsequently incorporated ecosystem principles in the nation's first ever ecosystem-based fishery management plan— a plan for managing coral reef ecosystems, first implemented in 2001. The Council has since drafted place-based FEPs to further the ecosystem-based approach across the region. A Draft Programmatic Environmental Impact Statement has also been completed (National Marine Fisheries Service 2005a).

In keeping with EPAP recommendations, the Council has undertaken an incremental and collaborative approach to implementing FEPs across the region. One element of this approach is the series of three workshops being conducted by the Council to aid in the transition from FMPs to FEPs and to enhance application of ecosystem-based management principles over the long-term. The workshops are facilitating informed discussion and expertise regarding the ecosystem approach and its effective application in the Western Pacific.

The following pages report on the Ecosystem Social Science Workshop held by the Council in January of 2006. The first workshop, held in April 2005, addressed biophysical dimensions of ecosystem-based management. The social science workshop described herein addressed human dimensions of ecosystem-based approaches to resource management. A final workshop will be designed to synthesize the full range of biophysical and human considerations in an examination of regional ecosystem policy and governance. This will be held sometime late in 2006 or early 2007.

The social science workshop was organized and conducted through the collaborative efforts of Dr. Michael Orbach of the Duke Marine Lab, Nicholas School of the Environment and Earth Sciences; and Impact Assessment, Inc. (IAI).

**Workshop Goal**

The overarching goal of the workshop was to facilitate informed discussion of social science requirements for effectively supporting ecosystem-based approaches to marine resource management in the Western Pacific region and its sub-regions.

**Workshop Objectives**

1) Convene nationally-recognized social scientists and regional experts to review social science applications relevant to ecosystem-based marine resource management;

2) Review resource management requirements and pertinent issues in the Western Pacific and its sub-regions;

3) Identify the best suite of ecosystem indicators related to the Human and Institutional Ecology of marine ecosystems in the Western Pacific and its sub-regions;

4) In the short term, and within the parameters of existing mandates (Magnuson-Stevens Fishery Conservation and Management Act, National Marine Sanctuaries Act), identify the most effective ecosystem-based approaches to marine resource management that incorporate the human dimension and that can be implemented based on current data;

5) Explore what new social and policy science data or models would be needed to advance ecosystem-based approaches to marine resource management in the Western Pacific region and its sub-regions;

6) Explore changes in policy or social and policy science administration that would be needed to more effectively implement ecosystem-based approaches to marine resource management in the Western Pacific region and its sub-regions.

**Summary Discussion**

The social science workshop addressed the human dimensions of ecosystem-based approaches to fishery resource management. The workshop emphasized the three major components of marine systems – the biophysical, the human constituent, and the institutional. A wide range of perspectives were presented on related topics and issues, including the following:

- Marine fisheries, fisheries management, and related human and biophysical factors in the Western Pacific,

- The need for and utility of social science in the context of ecosystem-based management in this region and elsewhere,

- Institutional constraints and opportunities for incorporating social science into ecosystem-based management,

- Relevant information needs, useful types of data, and data collection methods,
- Ecosystem-relevant human behavior and resource modeling,
- Indicators for assessing regulatory effects and the performance of management strategies, and
- Scope and scale of social science applications to ecosystem-based management.

Workshop presentations and discussions were both general and specific in scope, and regional experts were on hand to help ground the discussions with their own perspectives on the realities of island life in the Pacific, and on the various fishery management challenges and solutions that have been encountered and applied in the region.

**Summary Points of Particular Relevance to Council FEP Objectives**

An extensive assortment of valuable insights, lessons, and pertinent background information about ecosystems, ecosystem social science, and the context of fisheries in the Western Pacific may be derived from the workshop and from these proceedings. Interested persons may consult the body of this report for such information. But some areas of discussion are particularly relevant to the information needs and objectives of the Council as it moves toward full adoption of its Fishery Ecosystem Plans. These lend themselves to summarization and are provided here as a means for bringing the long prior discussion to a conclusion.

- Definitions and parameters vary and continue to evolve, but there is general consensus that the ecosystem approach to fisheries management is novel in its attention to whole marine systems including relationships among the biophysical, human, and institutional components that comprise those systems.
- Human beings, groups, and institutions are critically important elements of marine ecosystems, and given their place in the trophic hierarchy, human behaviors, beliefs and values should be given primary consideration.
- The Council's approach to ecosystem-based management to date involves adaptive management and emphasis on indigenous forms of resource management; both may be particularly amenable in the Pacific islands context.
- Indigenous Pacific islanders draw on lengthy histories and ever-evolving knowledge and traditions of interaction with ocean ecosystems and with each other to successfully use that environment. Persons arriving here during more recent centuries also draw upon traditional and experiential knowledge. Both groups may provide valid information and perspectives on viable models for planning and administration of ecosystem-based management in the region.

- The nascent paradigm shift to ecosystem-based management may potentially lead to further institutional complexity in this unique region of multiple jurisdictions. Given the size of the region, extensive diversity in socio-demographic and socio-political context, and the increasing influence of international decisions regarding migratory species, an incremental and adaptive approach may be the best way to proceed.

- The Council has developed ten objectives for its Fishery Ecosystem Plans. Given the scope of the objectives and potential challenges associated with meeting them, setting priorities and formulating specific management measures may prove most useful for effectively meeting Council goals. Those measures ideally will be formulated based on the many potential contributions of the applied social sciences.

- Each archipelago in the region is distinct in terms of socio-cultural, socioeconomic, and demographic conditions; mode and culture of governance; environmental conditions; and types and extent of fishing and other pursuits and uses of marine resources. This variation may be effectively addressed for purposes of meeting FEP objectives through appropriate application of social science methods and analysis, including those methods that facilitate public participation in resource management decision-making processes.

- An array of data collection methods and analytical techniques has been developed to aid in understanding and communicating both the effects of human activities on biophysical systems and the effects of changing biophysical conditions on resource user groups.

- Selection of social science methods and analytical techniques should be closely tailored to the information needs and objectives at hand, and to particular environmental and societal aspects of each archipelago.

- Valid social and economic indicators are particularly useful for assessing and monitoring direct and indirect human-environmental interactions, and as a basis for adjusting resource use policy under the new mode of management. Indicators should articulate with a wide range of climatic, macro-economic, socio-demographic, regulatory, and community-related factors. In this case, such indicators will need to be developed based on: (a) their potential utility for meeting Council objectives, (b) extant data and the social and biophysical contexts in question, and (c) relevant indicators literature.

- A social science approach to ecosystem-based management in the region should be developed to enhance Council efforts to meet its FEP objectives and to administer the new form of management over the long term. The approach would include a series of related elements, as follow:

    - A venue or venues for choosing high priority FEP objectives, specific management measures for meeting those objectives, and valid social and economic indicators;

    - Design of research to meet prioritized objectives and related information needs;

- Implementation of a research strategy to gather and analyze requisite information, and an indicators-based archipelagic monitoring system through which to gauge and analytically parse social change potentially associated with Council actions; and

- Implementation of a liaison and performance and evaluation program to ensure the validity and effectiveness of the social science approach to ecosystem-based management in the region.

➢ Social science cannot be equated with community development *per se*, but application of social science may further understanding of community context, local receptivity to or need for development programs, and the potential or actual social and economic costs and benefits of such programs. Social science may therefore be used to help identify ways in which communities and individuals may participate in the abundance of positive ocean opportunities available throughout the Western Pacific region.

➢ Given that a number of fisheries or fisheries-relevant social science research and monitoring programs have been undertaken in the United States and abroad in recent years, the Council FEP social science approach would ideally articulate with these, both drawing upon and contributing to the base of knowledge regarding human interaction with the marine environment and the many related aspects of human behavior discussed during the course of the workshop.

**Concluding Discussion**

Based on the input of national and regional experts convened for the WPRFMC Ecosystem Social Science Workshop, we have presented valid social science approaches to ecosystem-based management. These may be of potential utility to the Council as it moves toward full adoption of its FEPs across the region. The workshop and report have enabled development of background information necessary for initiating refinement of such approaches for real-time application in the Western Pacific. Further work with fisheries managers, compilation and review of archival data, and field reconnaissance will enable full inventory of relevant existing information, identification of salient and ongoing management issues and related information needs, and development of detailed research agendas and designs for specific island areas.

As for biophysical approaches to ecosystem-based management, viable social science approaches must enable understanding of whole systems and relationships between their respective components, including those of user and interest groups, seafood distributors and consumers, and even fisheries researchers and managers and the institutions within which they operate. In the spirit of holistic ecosystem principles and concepts, social science approaches must and can also bear ermpirically-grounded information of predictive utility for management of biophysical components of marine systems.

There is much human and environmental variability within and across the island groups that comprise the vast Western Pacific region. Social science approaches must address such variation and translate findings in a manner that is optimally useful for resource managers seeking to make

fair and equitable decisions in an increasingly complex and contested socio-political environment. Regional variation notwithstanding, pursuit and consumption of seafood and related cultural processes are constant and critically important aspects of life throughout the archipelagos. As such, there is vital need for understanding and longitudinal monitoring of the full range of factors that may impinge on these activities and processes, including the potential effects of conservation interests and ecosystem-based management.

Ecosystem concepts and principles were developed and applied in adaptive fashion in this region long ago. Indeed, learned ways of efficient interaction with marine and terrestrial ecosystems led to the proliferation of island societies throughout Oceania. Initial periods of trial and error gradually led to the ordering of society in a manner that in certain places and times enabled equilibrium between available marine resources and the demands of human groups depending on them for purposes of survival. By virtue of attention to and accumulation of knowledge regarding the natural world that surrounded them, and through various mechanisms of social control, Pacific islanders were ultimately successful in overcoming various ecological challenges, including those initiated by their ancestors.

The context has changed dramatically over the millennia, and many of the challenges we now face are global in scale. Yet it may be that knowledge of connections within and across island societies and ecosystems, and proven means for managing the activities of those who use and depend on marine resources for so many reasons, remain the most viable points of departure for addressing marine resource challenges in the Pacific in the decades to come.

# Appendix D.

## Relevant Laws and Executive Orders

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# Appendix D: Relevant Laws and Executive Orders.

## Magnuson–Stevens Fishery Conservation and Management Act

The Magnuson–Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) is the primary law governing fisheries resources and fishing activities in Federal waters. Originally enacted as the Fishery Conservation and Management Act in 1976, it has been amended frequently since 1976; most recently in 1996, by the Sustainable Fisheries Act. The primary goals at the time of enactment of the MSA were the conservation and management of U.S. fishery resources, the development of United States domestic fisheries, and the phasing out of foreign fishing activities within the U.S. EEZ.

## National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 is the foundation of modern American environmental protection in the United States and its commonwealths, territories, and possessions. NEPA requires that Federal agency decision makers, in carrying out their duties, use all practicable means to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans. NEPA provides a mandate and a framework for Federal agencies to consider all reasonably foreseeable environmental effects of their proposed actions and to involve and inform the public in the decision-making process. NEPA compliance for fisheries management actions is further guided by regulations issued by the Council on Environmental Quality and those issued by the Department of Commerce's National Oceanic and Atmospheric Administration Administrative Order 216-6, Implementing the National Environmental Policy Act.

## Endangered Species Act

The Endangered Species Act (ESA) provides broad protection for species of fish, wildlife, and plants that are listed as threatened or endangered in the United States or elsewhere. Provisions are made for listing species, as well as for recovery plans and the designation of critical habitat for listed species. The ESA outlines procedures for Federal agencies to follow when taking actions that may jeopardize listed species, and contains exceptions and exemptions. Criminal and civil penalties are provided for violations of the ESA.

## Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) prohibits, with certain exceptions, the take of marine mammals in U.S. and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. The MMPA gives the Secretary authority and duties for all cetaceans (whales, dolphins, and porpoises) and pinnipeds (seals and sea lions, except walruses). The MMPA requires the NMFS to prepare and periodically review stock assessments of marine mammal stocks.

**Administrative Procedure Act**

The Administrative Procedure Act (APA) requires Federal agencies to give the public prior notice of rule making and an opportunity to comment on proposed rules. General notice of proposed rule making must be published in the *Federal Register*, unless persons subject to the rule have actual notice of the rule. Proposed rules published in the *Federal Register* must include reference to the legal authority under which the rule is proposed and explain the nature of the proposal including what action is proposed, why, what are its intended effects, and any relevant regulatory history that provides the public with a well-informed basis for understanding and commenting on the proposal.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires Federal agencies to assess the impacts of their proposed regulations on small entities and to seek ways to minimize economic effects on small entities that would be disproportionately or unnecessarily adversely affected. The most recent amendments to the RFA were enacted on March 29, 1996, with the Contract with America Advancement Act of 1996 (Public Law 104-121). Title II of that law, the Small Business Regulatory Enforcement Fairness Act (SBREFA), amended the RFA to require Federal agencies to determine whether a proposed regulatory action would have a significant economic impact on a substantial number of small entities. For a Federal agency, the most significant effect of SBREFA is that it made compliance with the RFA judicially reviewable.

**Freedom of Information Act**

The original Freedom of Information Act (FOIA) allowed the public to obtain government information, provided that the information is not protected by one of the nine specific FOIA exemptions, and required that an agency respond to a FOIA request within specified time limits. Exempted information includes the following: classified secret matter of national defense or foreign policy, internal personnel rules and practices, information specifically exempted by other statutes, trade secrets and commercial and financial information, privileged interagency or intra-agency memoranda or letters, personal information affecting an individual's privacy, and investigatory records for law enforcement purposes.

In 1996, the Electronic FOIA (E-FOIA) amendments changed FOIA by (among other things) extending the time limit that agencies had to respond to FOIA requests and requiring agencies to make reports available to the public by computer telecommunications or other electronic means, including listing their major information systems and a guide for obtaining information and establishing an electronic reading room that includes agency policies, staff manuals, and an index of records released under FOIA requests. NMFS compliance with FOIA is also guided by NOAA Administrative Order 205-14.

**Information Quality Act**

The Information Quality Act (IQA), sometimes referred to as the Data Quality Act, was enacted in December 2000 as Section 515 of the Treasury and General Government Appropriations Act

for Fiscal Year 2001. The act required the Office of Management and Budget (OMB) to issue guidance to federal agencies designed to ensure the “quality, objectivity, utility, and integrity” of information disseminated to the public. It also required agencies to issue their own information quality guidelines and to establish administrative mechanisms that allow affected persons to seek correction of information maintained and disseminated by the agencies that does not comply with the OMB guidance.

**Coastal Zone Management Act**

The Coastal Zone Management Act (CZMA) is designed to encourage and assist states in developing coastal management programs, to coordinate state activities, and to safeguard regional and national interests in the coastal zone. Section 307(c) of the CZMA requires that any Federal activity affecting the land or water uses or natural resources of a state’s coastal zone be consistent to the maximum extent possible with the enforceable policies of the affected state’s approved coastal management program.

**Paperwork Reduction Act**

The Paperwork Reduction Act (PRA) of 1995 requires that agencies obtain Office of Management and Budget approval before requesting most types of information from the public. "Information collections" include forms, interviews, recordkeeping requirements, and vessel and gear marking, to name a few categories.

**Executive Order 12898: Environmental Justice**

Executive Order 12898, issued in 1994, requires that Federal agencies incorporate environmental justice into their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

**Executive Order 13132: Federalism**

President Bill Clinton signed Executive Order 13132 to ensure that the principles of federalism are carried out according to the vision of the framers of the Constitution. Among the pertinent provisions of the order are the guiding fundamental principles of federalism, policymaking criteria, special requirements for preemption, special requirements for legislative proposals and increasing flexibility for state and local waivers. Federalism is based on the belief that issues not national in scope should be addressed by the level of government closest to the people.

**Executive Order 12630: Taking**

Each year federal agencies issue numerous proposed or final rules or take other regulatory actions that may potentially affect the use of private property. Some of these actions may result in the property owner being owed just compensation under the Fifth Amendment. In 1988 the President issued Executive Order 12630 on property rights to ensure that government actions affecting the use of private property are undertaken on a well-reasoned basis with due regard for

the potential financial impacts imposed on the government.

**Executive Order 13158: Marine Protected Areas**

Executive Order 13158 directs the Departments of Commerce and the Interior, and other federal agencies, to strengthen and expand a national system of Marine Protected Areas (MPAs) by working closely with state, territorial, local, tribal, and other stakeholders. Areas protected include coral reefs, kelp forests, shipwrecks, and those frequented by whales and other marine life. It covers oceans, coastal areas, and the Great Lakes.

# Appendix E.

## Public Comments on the Revised Draft Programmatic Environmental Impact Statement, "Toward an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans," March 30, 2007

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# Dipåttamenton Agrikottura

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May 29, 2007

William Robinson
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Dear Mr. Robinson:

Our agency's Fisheries Section reviewed the Draft Programmatic Environmental Impact Statement "Toward an Ecosystem Approach for the Western Pacific Region: From Species-Based Fishery Management Plans to Place-Based Fishery Ecosystem Plans. Although Agriculture has no objection to the Preferred Alternatives for the Components of Federal action related to fishery management on Guam, our comments are as follows:

1. Council jurisdiction of Guam does not begin until three (3) miles from Guam shores, while the Council's jurisdiction begins at the shoreline of the Northern Mariana Islands. Data comparison, analysis, and results may not be comparable using the existing data collecting methodology.

2. Page 4-53 correctly states that community involvement in the reduction of exogenous factors (e.g. improperly placed marine preserves) is a goal to achieve. However, the wording of this comment appears uninformed and needs clarification since the selection of Guam's marine preserves involved input from fishery experts (longtime shore-based fishermen), data analysis from years of creel data, is a response from decreasing fishery CPUE, was presented at three (3) public hearings, and has garnered more support from local fishermen than what the draft documents seems to imply. It is important to know that Agriculture

implemented these five marine preserves as a response from local experts (e.g. longtime fishermen). In addition, these marine preserves fall outside the jurisdiction of the Council and should be deleted from this document.

3. Related to comment #2 is the effect of land-based impacts on coral reef degradation. However, the Department of Agriculture has no authority to regulate these activities (e.g. sedimentation from fires and runoff, clearing activities authorized by other agencies, pollutants entering the marine environment by storm drainage pipes, non-fishing activities, fishing pressure, etc.). The success of an ecosystem-based approach must not merely identify these effects as they are well-documented. These effects must have plans in place to eliminate their impacts if an ecosystem-based plan has any chance of success.

4. One significant challenge for Guam's data collection efforts is ensuring that enough data is collected in order to give an accurate picture of Guam's fisheries. However, since data collected from fishermen and establishments are strictly voluntary, fishermen and commercial dealers have opted to withhold fishery data, despite the number of fishermen that represent Guam on various levels of the Council family. A strong effort to go beyond "encouraging" these representatives to increase fishermen and fish vendor participation should be done. An example is a letter from one of Guam's members to the 16 member Council of his intent to no longer provide Agriculture with data necessary to evaluate Guam's local fishery. This response appears to be clearly contradictory to this ecosystem-based approach, which is dependent on "Best Available Data."

5. Agriculture is constrained by providing adequate law enforcement of its fishery laws. It has become necessary to explore options to work towards acquiring Federal funds for limited funding for law enforcement of fishing activity. An ecosystem-based management plan may be of no use if law enforcement is inadequate. Since Guam is currently in a state of fiscal austerity, a creative source of funding acquired from federal sources is necessary.

Thank you for the opportunity to comment.

Sincerely,

Paul C. Bassler

**PAUL C. BASSLER**

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June 22, 2007

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**RE: Draft Programmatic Environmental Impact Statement**

Dear Mr. Robinson,

Thank you for your generously offered extension of time to allow the Commonwealth of the Northern Mariana Islands ("CNMI") to submit supplemental comments for your consideration. These comments seek to clarify a fundamental defect in the jurisdictional analysis within the Draft Programmatic Environmental Impact Statement ("Draft EIS") concerning the extent of the CNMI's authority to regulate the fisheries occurring within its surrounding waters. During the review of the Draft EIS it was discovered that similar errors in jurisdictional analysis are pervasive throughout Western Pacific Regional Fishery Management Council ("WESPAC") documents. The CNMI sincerely hopes that these comments will assist WESPAC and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service ("NOAA-NMFS") in the correction of this most egregious error.

The environmental analysis is built on the faulty premise that the CNMI possesses no jurisdictional authority over the marine resources within the waters extending from its shoreline to reaches of the EEZ. As the Draft EIS states:

> The Territory of American Samoa, the Territory of Guam, and the State of Hawaii manage all marine resources and regulated fisheries within waters 0 to 3 miles from their shorelines. In the CNMI the submerged lands and marine resources from the shoreline to 200 miles have been determined to be under the jurisdiction of the Federal government. Draft EIS, p. 1-16.

In the absence of a citation to authority, the CNMI must assume that NOAA-NMFS and WESPAC have mistakenly linked ownership of submerged lands with authority to regulate marine resources. In so doing, NOAA-NMFS have made two errors by not recognizing that: 1) Magnuson -Stevens Fishery Conservation and Management Act ("Magnuson Act") jurisdictional boundaries are not based on Submerged Lands Act delineations; and 2) the CNMI presently

retains qualified rights to its submerged lands that are near to equal those of the other U.S. Pacific jurisdictions.

State Authority to Regulate Fisheries Under Magnuson Act

The Magnuson Act recognizes three jurisdictional boundaries for coastal states, each of which are set by internationally recognized law of the sea delineations; to wit: a state retains exclusive jurisdiction to regulate fisheries within its boundaries, 16 U.S.C. § 1856(a)(1); a state is delegated jurisdiction and authority over fisheries within "any pocket of water that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone," 16 U.S.C. § 1856(a)(2)(A); and, a coastal state may regulate the fishing activities of its domestically registered vessels outside the state boundaries, when in compliance with the Federal fishing regulations and management plans for that area. 16 U.S.C. § 1856(a)(3).

Regarding the innermost jurisdictional boundary, U.S. law and the international law of the sea recognize a coastal state's exclusive dominion over the waters landward of the state's coastline. Art. 5 § 1, First Convention on the Territorial Sea and Contiguous Zone ("UNCLOS I"), *entered into force* September 10, 1964, 15 U.S.T. 1606, 1964 WL 70232; *see also, U.S. v. Louisiana,* 363 U.S. 1, 66-67, 80 S.Ct. 961, 997-998 (1960). The coastline of the CNMI includes all waters, submerged lands, and natural resources to a depth of at least 10 fathoms and includes certain coastal features. *See attached,* CNMI Attorney General's Opinion 07-01. With few exceptions, all coral reefs supporting the subsistence fishery in the CNMI are located within the CNMI's coastline and are under the CNMI's exclusive jurisdiction.

**Comment 1:** All jurisdictional references within the Draft EIS to "shoreline" must be removed, since federal-state jurisdictional boundaries for all seaward natural resource management are set by a state's "coastline." 16 U.S.C. § 1856(a)(1) (fishery management); 43 U.S.C. § 1311(a) (property and mineral management); 48 U.S.C. § 1705(a) (property and mineral management); *See also, United States v. California,* 322 U.S. 19, 30-31, 67 S.Ct. 1658, 1664 (1947)(discussing *Pollard's Lessee v. Hagan,* 44 U.S. 212, 1845 WL 6003 (1845)).

**Comment 2:** The Draft EIS must describe the near shore waters surrounding the CNMI that are under the exclusive jurisdiction and authority of the CNMI. *See attached* CNMI Attorney General's Opinion 07-01 for descriptions of CNMI near shore waters.

In regards to the territorial sea surrounding the CNMI, for the purposes of fisheries management Congress delegated to the states jurisdiction and authority over the width of the territorial sea claimed by the United States pursuant to UNCLOS I. 16 U.S.C. § 1856(a)(2)(A). The United States has claimed a twelve-mile territorial sea under its UNCLOS I authority. Proclamation 5928 (December 27, 1988) 57 Fed Reg 777. Therefore, the CNMI and other U.S. coastal jurisdictions have a territorial sea for the purposes of fisheries management that is twelve miles wide, commencing from the coastline of the state.

The extra-territorial jurisdiction provisions found in the Magnuson Act are not the first instances of Congress' grant of jurisdiction beyond a state's inland or even territorial waters. As the U.S. Supreme Court describes, with many historic examples, in *United States v. Alaska*: "This limited circumscription of the traditional freedom of fishing on the high seas is based, in part, on a recognition of the special interest that a coastal state has in the preservation of the living resources in the high seas adjacent to its territorial sea." 422 U.S. 184, 199, 95 S.Ct. 2240, 2251 (1975).

Without proper citations to authority or explanations in the Draft EIS, the CNMI is left to guess why NOAA-NMFS and WESPAC completely removed the CNMI's congressionally delegated jurisdiction and reduced the other Pacific areas to a three-mile marginal sea. The CNMI assumes that NOAA-NMFS and WESPAC have confused the congressional authorization for states to develop domestic fisheries in a twelve mile marginal belt with Congress' restriction of federal authority to permit foreign fishing vessels from fishing within a coastal state's territorial boundary. *Compare,* 16 U.S.C. § 1856(a)(2)(A) and 16 U.S.C. 1802(11) (the term "exclusive economic zone" is only used in relation to foreign fishing provisions). Under the Magnuson Act, there is an overlap of regulatory authority from three to twelve miles – the coastal state does not have independent jurisdiction beyond twelve miles and the federal government may not permit foreign fishing nearer than three miles from a coastline.

**Comment 3:** All jurisdictional references to federal authority over CNMI waters within twelve-mile of the CNMI coastline must be removed. The Draft EIS should reflect Congresses delegation of jurisdiction and authority over a twelve mile territorial sea surrounding the CNMI.

**Comment 4:** All jurisdictional references to federal authority over Hawaiian, America Samoan, and Guam waters beyond three miles should be changed to reflect the direct Congressional delegation of authority over the twelve-mile territorial sea surrounding each of these jurisdictions.

The Draft EIS consistently states that the waters within the United States exclusive economic zone (12 to 200 miles pursuant to Proclamation 5030 (March 10, 1983) 48 Fed. Reg. 10605) surrounding the CNMI are federal waters since the CNMI has no jurisdiction over the submerged lands underlying these waters. The Magnuson Act authorizes states to regulate fisheries outside of the state boundary (12 miles) upon the state's development of laws and regulations that are consistent with the Act, its regulations, and any applicable fishery management plan. 16 U.S.C. § 1856(3). Magnuson Act delegation of jurisdiction to manage fisheries is not premised in any manner upon a coastal state securing title or mineral rights to underlying submerged lands.

**Comment 5:** Since Magnuson Act jurisdiction is not premised on a coastal state's secured mineral or property rights all references to the status of the CNMI's rights over its submerged lands are immaterial and must be removed.

Without citation to authority or an explanation of its reasoning, the CNMI is again left to guess why NOAA-NMFS and WESPAS declare throughout the Draft EIS that all CNMI submerged

lands and natural resources from the shoreline to 200 miles have been determined to be under the jurisdiction of the federal government. We assume that the writer of the Draft EIS has unwittingly relied on the logical fallacy of *non sequitur.*[1] The *N.M.I. v. United States.* submerged lands decisions held that Congress did not grant the CNMI sovereign and exclusive right to all adjacent submerged lands to the limit of the U.S. exclusive economic zone. *N.M.I. v United States*, 399 F.3d 1057, 1066 (9th Cir. 2005), *cert denied*, 126 S.Ct. 1566 (2006). However, the inverse of that conclusion – that the federal government has sovereign and exclusive rights over all CNMI waters from the shoreline to 200 miles – cannot be found in the decisions and is not true.

The Ninth Circuit Court of Appeals decision on the matter is attached to these comments. The CNMI sincerely hopes that NOAA-NMFS and the WESPAC members read this decision. Of particular importance is the Court's polite rebuke of the trial judge's discussions of coastal features (this may be the source of the "shoreline" confusion) where the Court stated: "We express no opinion as to the specific contours of the boundaries of the interior waters and we do not read the district court's opinion as doing so, either." *N.M.I. v. U.S.* at 399 F.3d 1057, 1067 (ftnt. 12).

It should also be noted that the CNMI, Guam, and American Samoa presently share identical mineral and property rights to the submerged lands beyond three-miles – since the Outer Continental Shelf Lands Act, which grants coastal states mineral rights to exclusive economic zone submerged lands, only applies to the "States of the Union." 43 U.S.C. § 1331(a); *See also*, 48 U.S.C. § 1706(d) (Territorial Submerged Lands Act conveys no rights over lands beyond three-mile limit). Additionally, the CNMI retains concurrent jurisdiction over the three-mile marginal belt, which is the equivalent authority as that held by Guam and American Samoa. *Compare,* 48 U.S.C. § 1704 and *United States v. California*, 322 U.S. 19, 36, 67 S.Ct. 1658, 1667 (1947). Furthermore, as the Ninth Circuit Court of Appeals clearly states: "The CNMI is entitled[2] to the same interest in the seaward submerged lands as that of the states when they submitted to the sovereignty of the United States." *N.M.I. v United States*, 399 F.3d 1057, 1065-66.

The CNMI maintains its irrevocable executory interest to its three-mile marginal sea during this period when it is negotiating amendments to the federal Territorial Submerged Lands Act. The CNMI's proposed amendments would grant territories and insular possessions the same rights to submerged lands and resources as those that are presently enjoyed by the 50 states.

**Comment 6:** References to CNMI submerged lands should be removed from the Draft EIS not only because they are jurisdictionally irrelevant (*See*, Comment 5 and associated text), but also because these references to CNMI submerged lands are patently incorrect.

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In the review of the Draft EIS, it was noted that a number of fishery management plans and other related documents restrict or remove the CNMI's jurisdiction to regulate its subsistence and

[1] non sequitur (n) "a conclusion that does not follow from the argument"; Lat. "it does not follow" Black's Law Dictionary, 6th Ed. (1991)
[2] entitled (adj) "qualified for by right according to law" Black's Law Dictionary, 6th Ed. (1991)

commercial fisheries. It appears from this cursory review that this removal of jurisdiction has been underway for several years. This is an intolerable affront to CNMI's sovereignty and the principles of federalism.

The CNMI is not only concerned with NOAA-NMFS and WESPAC's incursion into the CNMI's spatial jurisdiction, the current proposal envisions WESPAC involvement in changes to the structure and processes of coastal resource management plans. Draft EIS, p. vi. In fact, the proposal recognizes "There is potential for jurisdictional disputes." *Id.* Since NOAA-NMFS and WESPAC are presently claiming jurisdiction and control over all CNMI waters – including internal CNMI waters up to the CNMI shoreline – it is absolutely essential that NOAA-NMFS and WESPAC fully disclose what modifications are being contemplated for the CNMI coastal resources management program and regulations.

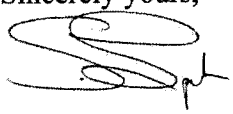
**Comment 7:** The CNMI requests that NOAA-NMFS and WESPAC fully consider the CNMI's comments and documentation of legal authorities and include full discussions of these fundamental jurisdictional issues in a Second Draft EIS.

**Comment 8**: The CNMI requests that NOAA-NMFS and WESPAC comply with their duties under Executive Order 13132, 64 Fed.Reg. 43255, to recognize and fully discuss the federalism issues and the potential and actual jurisdictional conflicts that arise from this proposed action.

While remaining cognizant of the benefits associated with place-based ecosystem management, the CNMI's first order of business is to repair the breach of sovereignty which has apparently been taking place over the last few years. Under the Magnuson Act's properly apportioned jurisdictional authorities, the CNMI could support the Draft EIS' Alternative 1D, and jurisdictional errors in the current fishery management plans could be corrected during the conversion to fishery ecosystem plans. However, if NOAA-NMFS and WESPAC continue to diminish the CNMI's authority over its natural resources, the CNMI must oppose any management plan or program that excludes the CNMI from the jurisdiction and authority conferred by the Magnuson Act.

Thank you again for allowing the CNMI to submit these supplemental comments. If you have any questions, or require and additional supporting documents or clarifications, please forward inquiries to sean.lynch@saipan.com.

Sincerely yours,



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# ATTORNEY GENERAL'S OPINION NO: 07-01

## In Re: The CNMI's Rights Over its Submerged Lands

**QUESTION PRESENTED:** What rights are retained by the Commonwealth of the Northern Mariana Islands ("CNMI" or "Commonwealth") over its abutting oceanic submerged lands after the adverse federal court decisions in *Northern Mariana Islands v. United States of America*, No. Civ.A. 99-0028, 2003 WL 22997235 (D.N.Mar.I. Aug. 7, 2003), *aff'd*, 399 F.3d 1057 (9th Cir. 2005), *cert denied*, 126 S.Ct. 1566 (2006)?

**SHORT ANSWER:** The CNMI has unimpeded jurisdiction over its internal waters and underlying submerged lands. The CNMI maintains traditional police powers in the three-mile wide territorial sea. The CNMI is entitled to additional rights in its territorial sea and exclusive economic zone, though the specific extent of those rights must be clarified by, and vested though, an act of Congress.

### BACKGROUND:

The CNMI Department of Lands and Natural Resource's Division of Fish and Wildlife ("DFW") requested a legal opinion explaining the basis of its jurisdiction to enforce CNMI laws regulating fishing practices and equipment within the Commonwealth's near shore waters. DFW's jurisdiction has been repeatedly questioned after the adverse decision in the CNMI's federal lawsuit challenging the United States' claim of rights to the CNMI's abutting submerged lands. (*Northern Mariana Islands v. United States of America*, No. Civ.A. 99-0028, 2003 WL 22997235 (D.N.Mar.I. Aug. 7, 2003), *aff'd*, 399 F.3d 1057 (9th Cir. 2005), *cert denied*, 126 S.Ct. 1566 (2006)).

The answer to whether a government needs title to property in order to regulate the fish or wildlife passing over it was best summarized by Oliver Wendell Holmes, the revered chief justice of the U.S. Supreme Court, when he stated: "To put the claim of the State [to exclusive regulation of wildlife] upon title is to lean upon a slender reed." *Missouri v. Holland*, 252 U.S. 416, 434, 40 S.Ct. 382, 384 (1920). Though property ownership does not provide the basis for authority to regulate fish and wildlife, the persistent question as to the extent of the Commonwealth's rights over its oceanic submerged lands remains. This opinion fully explains the Commonwealth's present rights to its submerged lands.

## ANALYSIS:

On March 20, 2006 the U.S. Supreme Court issued its order denying the Commonwealth's request for review of the Ninth Circuit Court of Appeals' decision regarding the submerged lands surrounding the Northern Mariana Islands. *Northern Mariana Islands v. United States*, __ U.S. __, 126 S.Ct. 1566 (2006). As a result of that order, the Commonwealth could no longer claim absolute ownership of all adjacent submerged lands extending offshore to a 200-mile limit. The Supreme Court order – which makes the Ninth Circuit decision on the matter the final word – did not extinguish the Commonwealth's rights over the submerged lands as is often reported; rather, it finalized the Ninth Circuit's clarification of the respective interests of the Commonwealth and the United States in the contested submerged lands.

Relying on the precedence of the 'paramountcy cases', the Ninth Circuit decision affirmed the district court's conclusion that the federal government has a paramount interest in the control of the nation's territorial seas in the interests of defense and national security. *Northern Mariana Islands v. United States*, 399 F.3d 1057, 1061-62 (9th Cir. 2005) (hereinafter "*N.M.I. v. U.S.*"). The Ninth Circuit decision explains at length that the Commonwealth maintains rights to its adjacent submerged lands, which diminish – while the national rights increase – as the land in question moves further into the open sea. *Id.* Thus, while the Commonwealth maintains qualified rights to its submerged lands, its claim to sovereignty over these lands through the Commonwealth Submerged Lands Act and Marine Sovereignty Act was declared preempted by federal law. *Id.* at 1066.

The CNMI submerged lands litigation provided the irrefutable conclusion that the Commonwealth does not have exclusive and absolute right to all submerged lands extending out 200 miles. Since the extent of the Commonwealth's rights over its abutting submerged lands must be determined by an act of Congress, *N.M.I. v. U.S.*, at 1066, the Commonwealth's rights at this time cannot be stated with absolute precision. There is, however, well-settled federal law in regards to the allocation of rights to submerged lands that will guide the negotiations and final determination of the Commonwealth's rights.

The degree of a coastal state's authority over its submerged lands is apportioned in relation to three geographic zones: 1) those lands nearest the shore, or "internal submerged lands"; 2) the belt of submerged lands beyond the internal submerged lands and extending outward three miles, underlying the "territorial seas"; and, 3) those submerged lands beyond the three mile belt and extending to the reaches of the United States exclusive economic zone, occupying the area referred to as "the high seas". *United States v. Louisiana,* 394 U.S. 11, 22, 89 S.Ct. 773, 781 (1969). The Commonwealth's interests within these three geographic zones are discussed below.

### 1) Internal Submerged Lands

The greatest source of confusion regarding the Commonwealth's rights over its near shore submerged lands is rooted in the distinction between the 'shoreline' and the 'coastline'. While the term 'shoreline' denotes the low-water mark along the mainland, the term 'coastline' denotes the line of the outermost boundary of coastal features. *U.S. v.*

*Louisiana,* 363 U.S. 1, 66-67, 80 S.Ct. 961, 997-998 (1960). Recognized coastal features, which are part of a coastal states 'coastline,' include: bays and harbors, *U.S. v. Louisiana*, 105 S.Ct. 1074, 470 U.S. 93 (1985); channels and sounds, *U.S. v. Maine*, 105 S.Ct. 992, 469 U.S. 504 (1985); and fringing islands. *U.S. v. California*, 381 U.S. 139, 85 S.Ct. 1401 (1965). The paramountcy doctrine does not apply to the submerged lands underlying these coastal features, thus, the coastal state exercises complete dominion over these near shore submerged lands. *United States v. California*, 322 U.S. 19, 30-31, 67 S.Ct. 1658, 1664 (1947)(discussing *Pollard's Lessee v. Hagan*, 44 U.S. 212, 1845 WL 6003 (1845)). Therefore, all waters landward of the Commonwealth coastline are internal waters, and all submerged lands underlying those waters are held exclusively by the Commonwealth government in trust for the people of the Commonwealth.

The Ninth Circuit decision acknowledges that the paramountcy doctrine does not apply to the Commonwealth's internal submerged lands, *N.M.I. v. U.S.*, at 1062, and thus the internal submerged lands are not affected by the submerged lands decisions. While the district court opinion discusses features of internal waters in dictum,[1] the Ninth Circuit decision affirmatively states: "We express no opinion as to the specific contours of the boundaries of these waters and we do not read the district court's opinion as doing so, either." *N.M.I. v. U.S.* at 1067 (ftnt. 12). With the common understanding that near shore waters are held exclusively by the Commonwealth government, we shall turn our attention to determining more precise contours of the internal submerged lands underlying these waters.

The term 'internal submerged lands' is not defined in either the Submerged Lands Act, 43 U.S.C § 1301, *et seq.*, or the Territorial Submerged Lands Act, 48 U.S.C. § 1704, *et seq.,* though both Acts recognize that the rights of the United States begin seaward of inland waters. 43 U.S.C § 1301(c) and 48 U.S.C. § 1705(a) ("coastline" definition). The United States Supreme Court, in *United States v. California*, 381 U.S. 139, 85 S.Ct. 1401 (1965), established a standard for determining the location of the state owned inland submerged lands when it ruled that:

> "Congress, in passing the [Submerged Lands] Act, left the responsibility for defining inland waters to this Court. ... It is our opinion that we best fill our responsibility of giving content to the words which Congress employed by adopting the best and most workable definitions available. The Convention on the Territorial Sea and the Contiguous Zone, approved by the Senate and ratified by the President, provides such definitions. We adopt them for purposes of the Submerged Lands Act. This establishes a single coastline for both the administration of the Submerged Lands Act and the conduct of our future international relations."
> 381 U.S. at 164-165, 85 S.Ct. at 1415-1416.

In this case, the Supreme Court was referring to what is now known as the First United

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[1] *Northern Mariana Islands v. United States of America*, No. Civ.A. 99-0028, 2003 WL 22997235 (D.N.Mar.I. Aug. 7, 2003), at *19 and *20.

Nations Convention on the Territorial Sea and Contiguous Zone. UNCLOS I, *entered into force* September 10, 1964, 15 U.S.T. 1606, 1964 WL 70232 (hereinafter, "UNCLOS I" or "the Convention"). Since the ratification of UNCLOS I, there have been two additional international conventions regarding the law of the sea, culminating most recently in the 1994 treaty commonly referred to as the Law of the Sea Treaty[2] (hereinafter "UNCLOS III" or "the Law of the Sea"). While the later treaty refined the definitions in regards to the coastlines of island states, UNCLOS I is the unequivocal law of the land for establishing the boundaries of the United States coastline and internal submerged lands. *U.S. v. California,* 381 U.S. at 165, 85 S.Ct. at 1416.

The conceptual theme underlying the UNCLOS I definitions, and the court cases analyzing these definitions, is whether the free and direct travel of an internationally bound vessel could be impeded or restricted by a natural feature of a certain water body. If the answer to that query is 'yes', it is highly probable that the vessel has entered the 'internal water' of a coastal state.[3] While it would be an insurmountable task to provide

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[2] The 1982 United States Convention on the Law of the Sea ("UNCLOS III" or "the Law of the Sea"), entered into force for all signing nations on November 16, 1994. UNCLOS III was approved by President Clinton and formally delivered to the U.S. Senate for advice and consent to ratify on October 7, 1994. S. TREATY DOC. NO. 103-39. Aside from provisions in Part XI of UNCLOS III, which were amended in 1994 upon the insistence of the United States, every successive administration since President Reagan has supported ratification of the Law of the Sea. *Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention (Senate Treaty Document 103-3: Senate Executive Report 108-10)* 108th Cong. (March 23, 2004)(Testimony of John F. Turner, Asst. Sec. of State, before Senate Environment and Public Works Committee). The Senate, however, has yet to act on this treaty proposal.

Within months of the conclusion of 1982 Convention on the Law of the Sea, President Reagan proclaimed United States sovereign rights and jurisdiction over the 200 mile exclusive economic zone bordering all U.S. waters, including those contiguous to the Commonwealth of the Northern Mariana Islands, in accordance with UNCLOS III. Proclamation No. 5030, 22 I.L.M. 461, 465 (March 10, 1983). The Presidential Proclamation was preceded by a policy statement wherein it is stated: "[T]he United States is prepared to accept and act in accordance with international law as reflected in the results of the Law of the Sea Convention." United States Ocean Policy, 22 I.L.M. 461, 462 (March 10, 1983).

Since UNCLOS III directly addresses the method of determining internal waters in island states, and since the United States has shown a consistent history of support for these definitions, the provisions of UNCLOS III are utilized for this analysis. Unlike the terms of UNCLOS I, however, the definitional terms of UNCLOS III are not controlling and should only be read as secondary authority.

[3] Caution must be given that United States Coast Guard maps and other aids to navigation were not designed to demarcate the boundaries of coastal state jurisdiction and, thus, can not be used as prima facie evidence of the delineation of inland waters. *U.S. v. Louisiana*, 394 U.S. 11, 35, 89 S.Ct. 773, 778 (1969) (*quoting,* 18 Fed.Reg. 7893 (1953)("The establishment of descriptive lines of demarcation is solely for purposes connected with navigation and shipping. ... These lines are not for the purpose of defining Federal or State boundaries ...")).

an exact description of the contours of the Commonwealth internal waters within this Opinion, broad categories of internal waters that are commonly found within the Commonwealth - with examples – are described below:

a) Fringing Reefs, Lagoons, and other Shallows

The vast majority of the Commonwealth coastline consists of coral reef complexes. As a general rule, all 'low tide elevations' – those reefs, shoals, and rocks that are uncovered at low tide – and all waters landward of the low tide elevations are included in a State's internal waters. *United States v. Louisiana*, 394 U.S. 11, 47, 89 S.Ct. 773, 793 (1969). This rule comes directly from Article 11 of the Convention:

> "A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea." UNCLOS I, Art. 11 ¶ 1.

Under this rule, it is clear that large protected waters of the Commonwealth, such as the Saipan Lagoon, and the miles of coastline protected by visible coral reefs are all internal waters. This outcome conforms to the conceptual framework of the Convention – what we may call a mariner's rule of thumb – as a vessel traveling internationally would have to avoid all low tide elevations to continue unimpeded. Therefore, the submerged lands underlying these waters are exclusively held by the Commonwealth. *United States v. California*, 322 U.S. 19, 30, 67 S.Ct. 1658, 1664 (1947) (State exercises complete dominion over internal waters).

According to the mariner's rule of thumb, coastlines should also be avoided where coral reefs remain below the surface at low tide yet the shallow waters still pose a risk to travel. There is some support in the law that coastal waters that are too shallow for navigation, but 'navigable waters' in the legal sense, may also be included in a State's inventory of internal waters. In *United States v. California*, the Supreme Court cited Louisiana's Chandler and Brenton Sounds as examples of six to twelve foot deep waters that were found to be internal waters partly on the basis that they were too shallow to be readily navigable. 381 U.S. at 171, 85 S.Ct. at 1419. The latest revisions to the Law of the Sea, which are only secondary authority for this question, recognize that all waters landward of fringing reefs are internal waters of island states. UNCLOS III, Art. 6. Additional authority for the inclusion of all closely associated fringing reefs in the inventory of internal waters can be found in the analysis of a coastal state's historic bays, which is discussed below.

Therefore, there is absolute unquestionable authority that all waters and underlying submerged lands extending landward from the outer low tide mark of any exposed reef, shoal, or rock is included in the Commonwealth's inventory of internal submerged lands. UNCLOS III provides persuasive authority that all closely associated fringing reefs

should be included in the Commonwealth's inventory of internal waters. The historic bay discussion, found below, provides solid primary authority for the recognition of the Commonwealth's shallow fringing reefs as internal waters.

b) Juridical Bays and Historic Bays

The Convention recognizes two types of coastal indentations that may be recognized as 'internal waters' of a coastal state: juridical bays and historic bays. Juridical bays are cul-de-sac type indentations in a coastline that, when meeting specific criteria, are automatically included in a coastal state's inventory of internal waters. Historic bays, as the name implies, are those that have been recognized over time as belonging to the coastal state.

To be recognized as a juridical bay, the Convention requires that the outline of the bay must be shaped like a semi-circle. The semi-circle test, in full, is:

> "[A] bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation."
> UNCLOS I, Art. 7 ¶ 2.

Saipan's Laulau Bay and Rota's Sasanhaya Bay are examples of semi-circle shaped bays. If a line were drawn across the natural entrance point of either bay, the resulting shape of the water body would be a semi-circle. As such, both bays would be recognized under the Convention as juridical bays and internal water waters of the Commonwealth. When that is the case, the Convention instructs:

> "If the distance between the low-water marks of the natural entrance points of a bay does not exceed twenty-four miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters."
> UNCLOS I, Art. 7 ¶ 4.

Therefore, the semi-circle shaped bays in the Commonwealth, such as Saipan's Laulau Bay and Rota's Sasanhaya Bay, are unquestionably internal waters and fall within the exclusive dominion of the Commonwealth government.

The Convention also recognizes certain bodies of waters, referred to as 'historic bays,' that are so closely associated with a particular coastline that they must be included in a coastal state's internal waters. UNCLOS I, Art. 7, ¶ 6. A 'historic bay' may be any shape and the term can be used interchangeably with 'historic inland waters.' *United States v. Louisiana ("Alabama & Mississippi Boundary Case")* 470 U.S. 93, 102, 105 S.Ct. 1074, 1080 (1985). Being that all waters located landward of low-tide elevations – those reefs,

shoals, and rocks exposed at low tide – are 'inland waters' according to the Convention, UNCLOS I, Art. 11, ¶ 1, the following discussion regarding historic bays pertain only to those waters overlying near-shore shallow reefs seaward of low-tide elevations. Examples of these shallow reefs include the lengths of coastline on the northwest side of Tinian, which have no exposed reef even at low tide, and the abundant coral complexes located seaward of the reef flat at Saipan's Obyan Beach.

Although the off-shore extent of historic internal waters may extend beyond waters ten fathoms (sixty feet) deep, this opinion limits its analysis to waters up to ten fathoms[4] as these waters are unquestionably historic internal waters, as set forth below. Because the Mariana Archipelago is bordered on both sides by a trough, without any continental shelf, depths of ten fathoms are normally reached within no more than one-quarter mile (1320 feet) from any low-tide elevation or exposed shoreline. The recognition of these shallow coastal waters as historic internal waters also fits within the overall framework of the Convention – the mariner's rule of thumb – since internationally bound vessels could not pass unaided within one-quarter mile of any Mariana Island shore without risk of running aground on an unseen shallow.

While the term 'historic bay' is not defined by the Convention, the Supreme Court has stated that a historic bay is a body of water "over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations." *United States v. California*, 381 U.S. 139, 172, 85 S.Ct. 1401, 1419 (1965). The CNMI formally asserted dominion over its internal waters through the Marine Sovereignty Act of 1980, 2 C.M.C. § 1101, *et seq.*, by claiming all waters that "surround each island or group of islands, including any reef system, lagoon, or bay." 2 C.M.C. § 1122. The Commonwealth's assertion of dominion over its internal waters is not challenged by the international community.

Recognizing that an international standard is being used for the resolution of domestic disputes, the Supreme Court has clarified that "actions of local governments, if not repudiated by or inimical to the interests of the national sovereign, are assertions of dominion as against other nations." *United States v. Louisiana ("Louisiana Boundary Case"),* 394 U.S. 11, at 76, n. 103, 89 S.Ct. 773, 809 (1969). Aside from the Marine Sovereignty Act, the Commonwealth government has repeatedly asserted dominion over its coastal waters to protect a primary food source for its people. The Fair Fishing Act most clearly evidences the Commonwealth's assertion of exclusive control over all coastal waters to the depth of at least ten fathoms. 2 C.M.C. § 5631, *et seq.* By prohibiting all non-traditional fishing methods in coastal waters, *Id.*, fishing grounds are limited to waters that may be reached without the use artificial breathing assistance – approximately ten fathoms – and harvests are limited to what can be collected using traditional skills. This restriction not only provides food for families, it allows the citizens of the Commonwealth to oversee and act as stewards of their resources. *Id.*

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[4] There are arguments for and against the inclusion of waters at depths greater than ten fathoms in the Commonwealth's inventory of internal waters. However, this opinion limits its discussions to this depth since ten fathoms nears the limits that a person can spearfish using traditional methods (unassisted by artificial breathing devices). Therefore, historic usage of waters to ten fathoms is unquestionable.

(Commission Comment, § 2). The asserted dominion over the near-shore waters is clear, unchallenged, and does not harm national interests; therefore, the Commonwealth has made a clear showing of historic title to its near-shore waters to a depth of ten fathoms.

In the *Alabama & Mississippi Boundary Case,* the Supreme Court stated that a coastal state's claim to a historic bay can be fortified by a showing of the usage of the near shore waters over time. *United States v. Louisiana,* 470 U.S. 93, 106, 105 S.Ct. 1074, 1082 (1985). The near shore coastal waters of the Commonwealth, to the depths of ten fathoms, have been utilized for centuries. These waters not only provide a primary source of food protein and supply items for local commerce and trade, the waters are also inextricably linked to the historical and cultural identity of the people of the Northern Marianas. The traditional recognition that the near shore water to a depth of at least ten fathoms is so closely linked to the geographic configuration, economic interests, and community cohesiveness that it is vitally important to the Commonwealth. As such, these near shore waters cannot be severed from the island geography and confirms that the Commonwealth has valid claim to historic title of near-shore waters to the depth of ten fathoms.

Therefore, the Commonwealth maintains title over all permanently submerged lands to a depth of ten fathoms (sixty feet), as historic bays, through the continual use and assertion of dominion over the submerged lands and overlying waters and resources.

c) Protected Harbors

Each of the Commonwealth harbors is located landward of exposed coral reefs and within waters that are less than ten fathoms deep; therefore they are already included within the Commonwealth's inventory of exclusively held internal waters. However, the Convention also provides a separate article for the inclusion of harbors as internal waters:

> "[T]he outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast."
> UNCLOS I, Article 8.

The Supreme Court has noted that the permanent structures protecting the harbor may be man made or naturally formed. *Louisiana Boundary Case,* 394 U.S. 11, 51, 89 S.Ct. 773, 796 (1969). In fact, it has been noted that this particular authorization for inclusion as an internal water was made without qualification. *United States v. California*, 381 U.S. 139, 175, 85 S.Ct. 1401, 1421(1965). Therefore, the marinas and harbors of the Commonwealth, to the extent of the outermost permanent feature of each, must be included in the Commonwealth's inventory of internal waters.

It must be noted that the Convention also addresses open roadsteads, such as the area where the pre-position ships anchor off the coast of Saipan. These areas are to be included in the territorial sea, UNCLOS I, Art. 9, and "[b]y implication, they are not to be considered inland waters." *United States v. California*, 381 U.S. at 175, 85 S.Ct. at 1421. Therefore, the area outside Saipan's Lagoon and other similarly situated deep-water open

anchorages may not be included in the Commonwealth's inventory of internal waters.

d) Inter-Island Channels

The Marine Sovereignty Act specifically claims as internal waters of the Commonwealth "[t]he waters between Tinian and Aguiguan and between Tinian and Saipan." 2 C.M.C. § 1122. In the *Alabama & Mississippi Boundary Case*, the Supreme Court explains at length the policy of the United States to enclose as inland waters all islands "that were so closely grouped that no entrance exceeded 10 geographic miles." 470 U.S. 93, 107, 105 S.Ct. 1074, 1082 (1985). Being that the United States has consistently maintained this adopted policy in domestic and international relations, it remains bound to this official position in regards to disputes over submerged lands. *Id.*, 470 U.S. at 110, 105 S.Ct. at 1084. Therefore, the waters between Tinian and Aguiguan and between Tinian and Saipan are included within the inventory of the Commonwealth's internal waters.

Wherefore, the inventory of the Commonwealth's internal waters – and underlying submerged lands – include: 1) all waters landward of any low-tide elevations, which specifically include the Saipan Lagoon and all waters between the shoreline and any reef outcropping exposed at low tide, UNCLOS I, Art. 11 ¶ 1; 2) all semi-circle shaped bays, which specifically include Laulau Bay and Sasanhaya Bay, UNCLOS I, Art. 7 ¶ 2; 3) all historic inland waters measured to a depth of ten fathoms (sixty feet), which includes all shallow waters seaward of low-tide elevations and exposed coastlines, UNCLOS I, Art. 7, ¶ 6; 4) all protected harbors measured to the outermost man-made or natural permanent feature, which specifically include Rota's East and West Harbors, Tinian Harbor, and Saipan's marina and port system, UNCLOS I, Article 8; and 5) both Saipan Channel and Tinian Channel. *Alabama & Mississippi Boundary Case*, 470 U.S. 93, 105 S.Ct. 1074 (1985). As internal waters, the Commonwealth exercises complete dominion over these waters and associated submerged lands for the benefit of its citizens. *United States v. California*, 322 U.S. 19, 67 S.Ct. 1658 (1947).

2) Territorial or Marginal Sea

International law recognizes that a nation may exercise sovereignty and jurisdiction over a territorial sea in order to forbid non-innocent passage of vessels near a nation's coastline[5]. UNCLOS I, Art. 16, ¶ 1; UNCLOS III, Art. 25, ¶ 1. The United States

[5] The law of the sea recognizes that nations may delineate coastlines by claiming coastal features and configurations or by declaring straight baselines and publishing them for recognition by the international community. UNCLOS I, Art. 4, ¶ 1; and UNCLOS III, Art. 7, ¶ 1. The Marine Sovereignty Act adopted a straight baseline method for the demarcation the Commonwealth coastline. 2 C.M.C. § 1123. Since national defense and security is the purpose of the establishment of a territorial sea, "the choice under the Convention to use the straight baseline method for determining inland waters claimed against other nations is one that rests with the Federal Government, and not with the individual States." *United States v. California*, 381 U.S. 139, 168, 85 S.Ct. 1401, 1417 (1965). The United States has consistently chosen to delineate its

formally claimed a three-mile wide marginal belt as its territorial sea in 1793. *United States v. California*, 322 U.S. 19, 32 at ftnt 16, 67 S.Ct. 1658, 1665 (1947). While the United States historically maintained dominion over its territorial sea, the states have always been authorized to exercise local police power functions within the marginal belt. *Id.*, 322 U.S. at 36, 67 S.Ct. at 1667.

Congress passed the Submerged Lands Act in 1953, which transferred title over all lands and natural resources underlying the territorial sea to the individual coastal states. 43 U.S.C. § 1311. Following the closing of the Third Convention on the Law of the Sea, the United States extended its territorial sea to twelve nautical miles beyond its coastline. Proclamation No. 5928, 3 C.F.R. 547 (1988), *reprinted in* 43 U.S.C.A. 1331. The subsequent expansion of United States territorial sea has had no effect on any state's rights over their individual claims to submerged lands. *United States v. Alaska*, 521 U.S. 1, 9-10, 117 S.Ct. 1888, 1894 (1997).

Congress has similarly transferred title to the three-mile marginal sea surrounding the territories of Guam, Virgin Islands, and American Samoa. 48 U.S.C. § 1705. Until such time as Congress acts to provide the Commonwealth with title to the land underlying its marginal sea, the Commonwealth's interest in these submerged lands will remain inferior to the federal rights. *N.M.I. v United States*, 399 F.3d 1057, 1065-66 (9th Cir. 2005).

Wherefore, in the absence of a Congressional act transferring title to these submerged lands, the Commonwealth: 1) retains its local police powers within the three-mile marginal belt surrounding each of its islands, *United States v. California*, 322 U.S. 19, 36, 67 S.Ct. 1658, 1667; and 2) holds an executory interest in the ownership of a three-mile marginal belt surrounding each of the Mariana Islands. *N.M.I. v United States*, 399 F.3d 1057, 1065-66 ("the CNMI is entitled to the same interest in the seaward submerged lands as that of the states when they submitted to the sovereignty of the United States").

3) High Seas

In 1953, Congress passed the Outer Continental Shelf Lands Act which declared ownership of "all submerged lands lying seaward and outside of [the territorial sea], and of which the subsoil and seabed appertain to the United States." 43 U.S.C. § 1331(a). After the closing of the Third Convention on the Law of the Sea, President Reagan proclaimed that United States' sovereign rights over these submerged lands extended 200 nautical miles beyond the coasts of the United States. Proclamation 5030 (March 10, 1983), 22 I.L.M. 461. President Reagan's exercise of sovereignty and jurisdiction included a claim to the submerged lands and waters within the exclusive economic zone surrounding the Northern Mariana Islands. *Id.* at 465.

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coastline by delineation around coastal features and configurations, rather than use the straight baseline method. *See e.g., Id.; Louisiana Boundary Case*, 394 U.S., at 72-73, 89 S.Ct., at 806-807; *Alabama & Mississippi Boundary Case*, 470 U.S. 93, 99, 105 S.Ct. 1074, 1078.

While the United States holds exclusive title over the submerged lands extending from its territorial seas to the reaches of its exclusive economic zones, the Outer Continental Shelf Lands Act declares that the civil and criminal laws of each adjacent State, which are not inconsistent with other Federal laws and regulations, are the laws of the United States' high seas. 43 U.S.C. § 1333(a)(2)(A). However, the provisions of the Outer Continental Shelf Lands Act do not apply to United States territories and insular possessions. 43 U.S.C. § 1301(g)("The term 'State' means any State of the Union.").

The Territorial Submerged Lands Act, 48 U.S.C. § 1704, *et seq.*, is completely silent in regard to the respective exclusive economic zones of Guam, the Virgin Islands, and American Samoa. Thus, these jurisdictions enjoy no rights over their respective exclusive economic zones.

As recognized in the Marine Sovereignty Act, the people of the Northern Mariana Islands have traditionally been a seafaring people and are dependant on the resources of the sea for their economic, social, and political survival and growth. 2 C.M.C. § 1111(a) and (b). In order to properly conserve, protect, and manage the resources located within the Commonwealth's adjacent exclusive economic zone – and maintain equal-footing with the various states of the union – the Commonwealth requires legal authority over the high seas located in its adjacent exclusive economic zone.

Wherefore, the Commonwealth presently retains no rights whatsoever in the exclusive economic zone surrounding the archipelago, which was claimed by the United States in 1983. Any act of Congress granting the Commonwealth title and exclusive regulatory authority over its territorial sea must also include provisions that recognize the concurrent civil and criminal jurisdiction of the Commonwealth over the exclusive economic zone.

## CONCLUSION

For all the foregoing reasons, it is the opinion of the Attorney General that the Commonwealth of the Northern Mariana Islands has exclusive authority over its internal waters, as described herein. The Commonwealth retains the authority to exercise its police powers within the three-mile wide territorial sea extending seaward from its internal waters. And, presently, the Commonwealth retains no authority over the exclusive economic zone surrounding the archipelago.

Dated: April ____, 2007

MATTHEW T. GREGORY

**H**
Briefs and Other Related Documents

United States Court of Appeals,Ninth Circuit.
Commonwealth of the **NORTHERN MARIANA** ISLANDS, Plaintiff-counter-claim-defendant-Appellant,
v.
UNITED STATES of America, Defendant-counter-claimant-Appellee.
**No. 03-16556.**

Argued and Submitted Nov. 2, 2004.
Filed Feb. 24, 2005.

**Background:** Commonwealth of the Northern Mariana Islands (CNMI) filed quiet title action against the United States, requesting declaratory and injunctive relief to establish the CNMI as the owner of the submerged lands off the CNMI's shores. The United States counterclaimed on the title dispute and further sought a judgment decreeing two laws passed by the CNMI legislature to be unenforceable assertions of the Commonwealth's ownership of the submerged lands. The United States District Court for the District of the Northern Mariana Islands, Alex R. Munson, Chief Judge, 2003 WL 22997235, entered summary judgment in favor of the United States, and the CNMI appealed.

3**Holding:** The Court of Appeals, Beezer, Circuit Judge, held that United States acquired paramount rights to submerged lands off the CNMI's shores as a function of sovereignty.

Affirmed.

West Headnotes

[1] **Navigable Waters 270 36(1)**

270 Navigable Waters
270II Lands Under Water
270k36 Ownership and Control in General
270k36(1) k. Ownership by State. Most Cited Cases
Paramountcy doctrine, which dictates that national government has paramount rights to submerged lands off the shores of states, is not limited merely to disputes between the national and state governments.

[2] **Navigable Waters 270 36(1)**

270 Navigable Waters
270II Lands Under Water
270k36 Ownership and Control in General
270k36(1) k. Ownership by State. Most Cited Cases

**Navigable Waters 270 36(3)**

270 Navigable Waters
270II Lands Under Water
270k36 Ownership and Control in General
270k36(3) k. Land Between High and Low Water Marks, Tide Lands, and Flats. Most Cited Cases
Paramountcy doctrine, which dictates that national government has paramount rights to submerged lands off the shores of states, does not apply to land under inland navigable waters such as rivers, harbors, and even tidelands down to the low water mark.

[3] **Navigable Waters 270 36(1)**

270 Navigable Waters
270II Lands Under Water
270k36 Ownership and Control in General
270k36(1) k. Ownership by State. Most Cited Cases
Through a covenant pursuant to which Commonwealth of the Northern Mariana Islands (CNMI) agreed to United States sovereignty and received protection and security and other benefits in return, United States acquired paramount rights to submerged lands off the CNMI's shores as a function of sovereignty; absent express indication to the contrary, the ownership of seaward submerged lands accompanied United States sovereignty under paramountcy doctrine.
West CodenotesPreempted2 N. Mar. I.Code § § 1201-12312 N. Mar. I.Code § § 1101-1143

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Appeal from the United States District Court for the District of the Northern Mariana Islands, Alex R. Munson, Chief District Judge, Presiding. D.C. No. CV-99-00028-ARM.

Before BEEZER, GRABER, and BYBEE, Circuit Judges.

BEEZER, Circuit Judge.
This appeal addresses ownership rights to the submerged lands off the shores of the Commonwealth of the Northern Mariana Islands [hereinafter "CNMI" or "Commonwealth"]. The CNMI filed this quiet title action against the United States, requesting declaratory and injunctive relief to establish the CNMI as the owner of the submerged lands underlying the "internal," "archipelagic," and "territorial" waters adjacent to the Commonwealth. The United States counterclaimed on the title dispute and further sought a judgment decreeing two laws passed by the CNMI legislature to be unenforceable assertions of the Commonwealth's ownership of the submerged lands.

The district court entered summary judgment in favor of the United States. The CNMI now appeals. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

I

The CNMI is a commonwealth government comprised of sixteen islands in the West Pacific. [FN1] Through a Covenant agreement with the United States, the CNMI is under the sovereignty of the United States but retains the "right of local self-government." Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America § § 101, 103, ***1059**Pub.L. No. 94-241, 90 Stat. 263 (1976), *reprinted in* 48 U.S.C. § 1801 note [hereinafter "Covenant"]. As in previous opinions, *see, e.g., United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 751-52 (9th Cir.1993), we briefly summarize below the history of the relationship between the United States and the people of the islands included in the Commonwealth in order to provide the legal background for this lawsuit.

FN1. The Northern Marianas are in the same geographic chain of islands as Guam (which is the "Southern" Mariana). Stanley K. Laughlin, Jr., *The Law of United States Territories and Affiliated Jurisdictions* § 21.1 (1995).

A

Following World War II, the United Nations established the "Trust Territory of the Pacific Islands" [hereinafter "TTPI"] over Micronesian islands in the Pacific. The United States "was not a sovereign over, but a trustee for the [TTPI]." *Wabol v. Villacrusis*, 958 F.2d 1450, 1458 (9th Cir.1992). The "paramount duty of the United States was to steward Micronesia to self government." *Temengil v. Trust Territory of the Pacific Islands*, 881 F.2d 647, 649 (9th Cir.1989) (discussing Trusteeship Agreement for the Former Japanese Mandated Islands, July 18, 1947, United States-United Nations, art. 6, 61 Stat. 3301, T.I.A.S. No. 1665). Inhabitants of the TTPI formed a Congress in 1965 to discuss the future political alignment of the islands. *See* Stanley K. Laughlin, Jr., *The Law of United States Territories and Affiliated Jurisdictions* § 22.3 (1995). Representatives from one sub-group of islands, the Northern Marianas, favored establishing closer ties with the United States than representatives from the other islands. Ultimately, a delegation from the Northern Marianas entered into independent negotiations with the United States. The Covenant formed out of those talks. In 1975, the Northern Mariana Islands legislature unanimously approved the Covenant and 78.8% of voters in the Northern Marianas ratified the agreement in a plebiscite vote. *See De Leon Guerrero*, 4 F.3d at 751. Congress enacted the Covenant into law in 1976. Pub.L. No. 94-241, 90 Stat. 263 (1976).

The Covenant's ten articles detail the political relationship between the United States and the CNMI. Of particular relevance here is Article I. In addition to guaranteeing the Commonwealth the right of local self-government under the sovereignty of the United States, *see* Covenant § § 101, 103, Article I provides that the Covenant, "together with those provisions of the Constitution, treaties, and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands." *Id.* § 102. Article I also establishes that the United States has "complete responsibility for and authority with respect to matters relating to foreign affairs and defense." *Id.* § 104.

Articles V, VIII and X of the Covenant also play central roles in this dispute. Pursuant to Article V, only certain provisions within the United States

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Constitution and other federal laws are applicable to the Commonwealth. *See id.* § § 501, 502. Article VIII addresses distribution of "Property" within the Northern Marianas. In relevant part, Section 801 specifies that:

All right, title, and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands.

Finally, Article X controls how and when the provisions of the Covenant come into force. *Id.* § 1003. Some provisions, including Section 801's transfer of property, became effective immediately upon the Covenant's approval. *See id.* § 1003(a). ***1060** Others, such as the right to local self-government, *id.* § 103, required the additional approval of the Covenant's Constitution, which occurred in 1978. *See id.* § 1003(b); *Temengil,* 881 F.2d at 650. The remainder became effective after the official termination of the trusteeship in 1986. *See Sagana v. Tenorio,* 384 F.3d 731, 733-34 (9th Cir.2004), *cert. denied,* --- U.S. ----, 125 S.Ct. 1313, --- L.Ed.2d ----, 73 U.S.L.W. 3355 (2005) (No. 04-774). Included in this last category are the provisions establishing United States sovereignty and authority over foreign affairs and defense of the Commonwealth. Covenant § § 101, 104.

B

The CNMI brought this action under the Quiet Title Act, 28 U.S.C. § 2409a, requesting a declaration that the Commonwealth holds title to, or for an order mandating that the United States quitclaim any interests in, the submerged lands "underlying the internal waters, archipelagic waters, and territorial waters adjacent to the Northern Mariana Islands." The CNMI further requested the court to enjoin the United States from claiming ownership of the submerged lands. The United States counterclaimed. After resolution of some procedural hurdles, [FN2] both parties filed for summary judgment. The district court granted the United States' motion, declaring that the "United States possesses paramount rights in and powers over the waters extending seaward of the ordinary low water mark of the Commonwealth Coast and the lands, minerals, and other things of value underlying such waters." [FN3] The court also declared that the CNMI's Marine Sovereignty Act of 1980, 2 N. Mar. I.Code § § 1101-1143 (1999), and Submerged Lands Act, 2 N. Mar. I.Code § § 1201-1231 (1999), were preempted by federal law. This appeal followed.

FN2. The CNMI filed two "largely identical" actions, one in 1997 and the present suit in 1999. The 1997 action did not comply with provisions of the Quiet Title Act applicable only to states; the present 1999 action did. In *Northern Mariana Islands v. United States,* 279 F.3d 1070, 1071 (9th Cir.2002), we held that because the CNMI must be treated as if it were a state for purposes of the Quiet Title Act, the CNMI qualified for the state exemption to the Act's time-bar provision.

FN3. The district court did "not address [the] aspect of the Commonwealth's complaint" involving submerged lands under "internal" waters because the United States did not contest ownership of these submerged lands. *Northern Mariana Islands v. United States,* 2003 WL 22997235, at *15 n. 16 (2003) (order granting United States' motion for summary judgment). We likewise limit our analysis to the submerged lands addressed by the district court's summary judgment.

II

We review de novo the district court's decision to grant or deny summary judgment. *Olsen v. Idaho State Bd. of Med.,* 363 F.3d 916, 922 (9th Cir.2004) (reviewing grant of summary judgment); *Lee v. Gregory,* 363 F.3d 931, 932 (9th Cir.2004) (reviewing an appealable denial of summary judgment). Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party, there are no genuine issues of material fact and the court determines that the district court correctly applied the substantive law. *Olsen,* 363 F.3d at 922. We may affirm on any ground supported by the record. *Id.*

The district court properly granted summary judgment to the United States on the basis of the federal paramountcy doctrine. This doctrine instructs that the United States, as a "function of national external sovereignty," acquires "paramount rights" over seaward submerged ***1061** lands. *United States v. California,* 332 U.S. 19, 34, 67 S.Ct. 1658,

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91 L.Ed. 1889 (1947). Because the United States did not expressly cede its paramount rights to the submerged lands at issue here, summary judgment in favor of the United States was proper.

A

We discussed the origins of the paramountcy doctrine in *Native Village of Eyak v. Trawler Diane Marie, Inc.*, 154 F.3d 1090, 1092-95 (9th Cir.1998) (*Eyak I* ). We briefly review that history here. The Supreme Court established the paramountcy doctrine through a series of cases between the federal government and shoreline states. In *California,* the Court held that the national government had paramount rights to submerged lands off the shores of states created from former United States territories. 332 U.S. at 38, 67 S.Ct. 1658. The Court based its decision on theories of national interest and defense, concluding that because the sea had customarily been within the realm of international law, the federal government had an overriding interest in maintaining authority over these areas that were subject to international dispute and settlement. *Id.* at 34-36, 67 S.Ct. 1658. As the Court explained a few years later in *United States v. Louisiana,* 339 U.S. 699, 704, 70 S.Ct. 914, 94 L.Ed. 1216 (1950):
The marginal sea is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must therefore be paramount in that area.

The Supreme Court has extended this doctrine to apply, presumably, to all coastal states. In *United States v. Texas,* 339 U.S. 707, 717-19, 70 S.Ct. 918, 94 L.Ed. 1221 (1950), the Court held on the basis of "equal footing" and national interest principles that even a state previously possessing both "*dominium* " (ownership) and "*imperium* " (governmental powers and sovereignty) over its marginal sea as an independent sovereign lost that authority upon entry into the Union. *See id.* at 719, 70 S.Ct. 918 ("[A]lthough *dominium* and *imperium* are normally separable and separate, this is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty.") (footnote omitted). A quarter-century later, the Court again invoked national interest principles to establish in *United States v. Maine,* 420 U.S. 515, 519, 95 S.Ct. 1155, 43 L.Ed.2d 363 (1975), that the federal government had paramount rights to submerged lands off the coasts of even Atlantic states that claimed to be successors in title to the original colonies. [FN4]

FN4. Connecticut was not a defendant in *Maine,* "apparently because that State borders on Long Island Sound, which is considered inland water rather than open sea." *Maine,* 420 U.S. at 517 n. 1, 95 S.Ct. 1155.

[1] Although the Supreme Court's paramountcy decisions all involved states as parties, "the paramountcy doctrine is *not* limited merely to disputes between the national and state governments." *Eyak I,* 154 F.3d at 1095. We held in *Eyak I* that a claim of exclusive aboriginal title to submerged lands was inconsistent with the paramountcy doctrine. [FN5] We reasoned that ***1062** "[a]ny claim of sovereign right or title over the ocean by any party other than the United States, including Indian tribes, is equally repugnant to the principles established in the paramountcy cases." *Id.*

FN5. We granted initial en banc hearing of the appeal in the subsequent litigation in *Eyak Native Village. Eyak Native Vill. v. Daley,* 364 F.3d 1057 (9th Cir.2004). The en banc panel vacated the district court's grant of summary judgment and remanded with instructions, while retaining jurisdiction over all future proceedings related to that litigation. *Eyak Native Vill. v. Daley,* 375 F.3d 1218 (9th Cir.2004) (en banc) (*Eyak II* ). The en banc proceedings left undisturbed this court's decision in *Eyak I.*

[2] The national interest principles that support the paramountcy doctrine do provide some limitation on its scope. The doctrine does not apply to land under "inland navigable waters such as rivers, harbors, and even tidelands down to the low water mark." *California,* 332 U.S. at 30, 67 S.Ct. 1658 (discussing *Pollard's Lessee v. Hagan,* 44 U.S. (3 How.) 212, 11 L.Ed. 565 (1845)). This limitation reflects the different concerns present with "internal" and "external" submerged lands: the state interest diminishes, and the national interests increases, as the land in question moves further into the open sea. *See id.* at 29-35, 67 S.Ct. 1658.

B

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[3] Allegiance to the paramountcy doctrine compels us to begin with the presumption that the United States acquired paramount rights to the disputed submerged lands off the CNMI's shores as a function of sovereignty. As we have held in *Eyak I,* the underlying principles of this doctrine apply "with equal force" to relationships other than that between states and the federal government. 154 F.3d at 1096. Through the Covenant, the Commonwealth agreed to United States sovereignty and received (among other benefits) protection and security in return. As the Court recognized in *California,* the United States' foreign affairs obligations demand that the national government have authority to control areas of national concern. *See* 332 U.S. at 35-36, 67 S.Ct. 1658. Absent an express indication to the contrary, we will not presume the parties intended a different arrangement here.

The CNMI principally challenges the reliance on the paramountcy cases for two reasons. [FN6] First, the Commonwealth contends that the paramountcy doctrine is inconsistent with the Covenant's limitations on the application of federal law to the CNMI. Second, the CNMI argues alternatively that the Covenant's transfer of real property creates a "recognized exception" to the paramountcy doctrine. We disagree on both counts.

FN6. We are unpersuaded by the Commonwealth's other arguments as well. We do not reach whether the CNMI government may properly raise an aboriginal title claim on behalf of its native inhabitants because our decision in *Eyak I* forecloses an aboriginal title challenge to our paramountcy holding. *See* 154 F.3d at 1095-97. We also refuse to extend common law trust principles to an international agreement that constituted, on the part of the people of the Northern Mariana Islands, "a sovereign act of self-determination." *See* Covenant pmbl.

**1**

The CNMI first asserts that the unique relationship between the United States and the CNMI makes the paramountcy doctrine inapplicable. According to the CNMI, federal law applies to the Commonwealth only to the extent that it is consistent with the Covenant. The CNMI argues that because the rationale for the paramountcy doctrine is based on foreign commerce, foreign affairs, and national defense powers found within the United States Constitution, the doctrine cannot apply to the CNMI because the Covenant does not expressly provide the United States with this same constitutional authority over the Commonwealth.

We do not dispute that " 'the authority of the United States towards the CNMI ***1063** arises solely under the Covenant.' " *Sagana,* 384 F.3d at 734 (quoting *Hillblom v. United States,* 896 F.2d 426, 429 (9th Cir.1990)). But the CNMI's argument wrongly assumes that the paramountcy doctrine and the Covenant are inconsistent. The paramountcy doctrine draws its authority from the inherent obligations placed on the sovereign governing entity to conduct international affairs and control matters of national concern. *See California,* 332 U.S. at 35-36, 67 S.Ct. 1658; *see also Eyak I,* 154 F.3d at 1096 ("This principle applies with equal force to *all* entities claiming rights to the ocean[.]"). The Covenant unquestionably places these powers and obligations in the United States. *See* Covenant § 101 (establishing a Commonwealth "in political union with and under the sovereignty of the United States of America"); *id.* § 104 (providing the United States with "complete responsibility for and authority with respect to matters relating to foreign affairs and defense"). The CNMI's attempt to differentiate between a paramountcy doctrine based on powers found solely in the United States Constitution and one that is incorporated through the Covenant separates the doctrine from its rationale.

" '[O]nce low-water mark is passed the international domain is reached.' " *Eyak I,* 154 F.3d at 1094 (quoting *Texas,* 339 U.S. at 719, 70 S.Ct. 918). The submerged lands addressed by the district court's summary judgment fit this description. Because the Covenant places sovereignty and foreign affairs obligations in the United States, the paramountcy doctrine applies.

**2**

The CNMI next argues in the alternative that the Covenant transferred the submerged lands to the Northern Mariana Islands, thereby meeting a recognized exception to the paramountcy doctrine that allows Congress to cede its paramount authority over seaward submerged lands. The fact that the United States *may* provide the submerged lands to the CNMI does not mean it has done so here. Neither the text of the Covenant nor the actions taken by the

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parties during and after the negotiations lead to a conclusion that such a transaction took place.

The CNMI correctly asserts that, despite the national concerns underlying the paramountcy doctrine, Congress can transfer ownership of submerged lands to the states or other entities. Congress has done so in the past. *See, e.g.,* Submerged Lands Act of 1953, 43 U.S.C. § § 1301, 1311 (transferring submerged lands up to three miles from shore back to the states); *see also* *Maine,* 420 U.S. at 525-27, 95 S.Ct. 1155 (observing that the Court held the Submerged Lands Act constitutional in *Alabama v. Texas,* 347 U.S. 272, 74 S.Ct. 481, 98 L.Ed. 689 (1954)).

The CNMI argues that the Covenant effected a similar transfer. The core of the CNMI's argument is that the transfer of "real property" in Section 801 of the Covenant includes seaward submerged lands. As noted above, Section 801 provides that "[a]ll right, title and interest of the Government of the [TTPI] in and to real property in the Northern Mariana Islands ... will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands." Although the Covenant does not define real property, the Commonwealth notes that the Quiet Title Act itself specifically includes disputes over "tide and submerged lands." 28 U.S.C. § § 2409a(i)-(*l*). If such lands were not "real property," the Commonwealth argues, such suits could not be brought under the Quiet Title Act.

***1064** We are hesitant to ascribe an implicit intent to cede paramount rights over seaward submerged lands on this basis. There is a significant distinction between the statutory transfers relied on by the CNMI and the alleged transfer in the Covenant: the statutes cited by the Commonwealth explicitly apply to submerged lands. *See* 43 U.S.C. § 1301 (defining submerged lands); 48 U.S.C. § 749 (defining and conveying submerged lands to Puerto Rico); 48 U.S.C. § 1705 (describing and conveying submerged lands to Guam, the Virgin Islands and American Samoa). The transfer found in Hawaii's Statehood Act is also informative. In addition to transferring to the new state all lands formerly held by the Territory as well as title to certain public lands held by the United States, this act also expressly made the Submerged Lands Act applicable to the new state. *See* Pub.L. No. 86-3, 73 Stat. 4 (1959). What these statutes demonstrate is that Congress knew how to grant submerged lands when it so desired. The fact no reference to submerged lands appears in the Covenant counsels against implying such a meaning here.

Ambiguity in drafting is far from novel, even within the limited universe of paramountcy cases. California raised an argument similar to the one the CNMI makes here, arguing that the state's Enabling Act ratified a territorial boundary that included a three-mile marginal sea. *California,* 332 U.S. at 29-30, 67 S.Ct. 1658. Although the Court's opinion did not focus on this assertion, judging from the Court's favorable decision for the United States, this argument apparently carried little weight. [FN7]

FN7. In *Texas,* the Court avoided a similar issue by relying on an "equal footing" clause rationale not available here. *See* 339 U.S. at 714, 70 S.Ct. 918.

A strong presumption of national authority over seaward submerged lands runs throughout the paramountcy doctrine cases, and we extend that same presumption to the case at hand. [FN8] Absent express indication to the contrary, the ownership of seaward submerged lands accompanies United States sovereignty. The Covenant lacks such an expression.

FN8. We also note, but do not rely on, the general presumption inherent in public land cases that transfer of title from the federal government is not lightly inferred. *See* *Guam ex rel. Guam Econ. Dev. Auth. v. United States,* 179 F.3d 630, 638 (9th Cir.1999) (citing *United States v. Union Pac. R.R. Co.,* 353 U.S. 112, 116, 77 S.Ct. 685, 1 L.Ed.2d 693 (1957)). Such a presumption does not apply with respect to grants to Native Americans. *See id.* (citing *County of Yakima v. Confed. Tribes & Bands of Yakima Indian Nation,* 502 U.S. 251, 269, 112 S.Ct. 683, 116 L.Ed.2d 687 (1992)); *but cf.* *United States v. Washington,* 157 F.3d 630, 645-46 (9th Cir.1998) (discussing circumstances in which the equal footing doctrine limits the implied transfer of non-oceanic submerged lands to Indian tribes). Because our decision does not rely on this general presumption, we do not find it necessary to decide whether the canons of construction applicable to Indian treaties should also apply to inhabitants of the CNMI. *Cf.* *Guam,* 179 F.3d at 638 (declining to decide the

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issue with respect to natives of Guam).

The CNMI can point to no language in the Covenant that expressly addresses submerged lands. Instead, the Commonwealth urges us to consider the expansive records of the Covenant's negotiations and history to extract the agreement's meaning. The district court's analysis of the extrinsic evidence relied on by the Commonwealth is persuasive. We conclude that there exists no genuine issue of material fact because the evidence is not "such that a reasonable jury could return a verdict for the nonmoving party." *Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 322 F.3d 1039, 1046 (9th Cir.2003) (internal quotation marks omitted). The CNMI cannot overcome the paramountcy ***1065** doctrine because there is no clear intention on the part of the United States to cede its authority off the shores of the Commonwealth that it is obligated to protect.

The CNMI places substantial emphasis on two orders by the Secretary of Interior to support its position. The purpose of Secretarial Order No. 2969, 40 Fed.Reg. 811 (1974), was to implement a 1973 policy statement by the United States. *Id.* at 812. The order empowered local district legislatures within the TTPI to create legal entities "to hold title to public lands within the district." *Id.* at 812. This order expressed "[l]imitations" on the transfer of, *inter alia,* "submerged lands." *Id.* It required the local legislatures to reserve "the right of the central government of the [TTPI] to regulate all activities affecting conservation, navigation, or commerce in and to the navigable waters and tidelands, filled lands, submerged lands and lagoons." *Id.* at 812. As the district court found, this order was not even implemented in the Northern Mariana Islands.

Secretarial Order No. 2989, 41 Fed.Reg. 15,892 (1976), applied solely to the Northern Marianas and became effective shortly after the Covenant's approval. The order addressed the interim governing trust administration of the Northern Marianas. One of its provisions transferred title to "public lands" from the TTPI to another administrator, the United States "Resident Commissioner." *Id.* at 15896. There is no indication in this order that the United States contemplated a permanent divestment of the paramount rights that the United States would obtain upon assuming sovereignty. Under the terms of the Covenant, the United States did not obtain that sovereignty until after the termination of the trust relationship. *See* Covenant § 1003. Read in context of the Covenant, Order 2989 demonstrates at most the recognition by the United States that the paramountcy doctrine could not apply until the United States acquired that sovereignty.

Other extrinsic evidence further erodes the CNMI's claim. Position papers by the Commonwealth have, on prior occasions, described the Covenant's lack of discussion about submerged lands as a "curious blind spot" within the agreement. We have relied in previous opinions on the Marianas Political Status Commission's "authoritative" "Section-by-Section Analysis of the Covenant" to assist us in discerning the meaning of the Covenant. *See Fleming v. Dep't. of Pub. Safety*, 837 F.2d 401, 408 (9th Cir.1988), *overruled on other grounds, DeNieva v. Reyes*, 966 F.2d 480, 483 (9th Cir.1992); *see also Sagana*, 384 F.3d at 734 (referencing the Analysis). Like the Covenant itself, this Analysis does not address submerged lands, shedding no light on this issue.

The official [FN9] analysis to the CNMI Constitution does not help the Commonwealth's position, either. This document acknowledges that the United States "has a claim to the submerged lands off the coast of the Commonwealth" based on the paramountcy doctrine. It explains that the CNMI's Constitution "recognizes this claim and also recognizes that the Commonwealth is entitled to the same interest in the submerged lands off its coasts as the United States grants to the states." Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 144 (Dec. 6, 1976). We agree. Absent express language to the contrary, the ***1066** CNMI is entitled to the same interest in the seaward submerged lands as that of the states when they submitted to the sovereignty of the United States. As the paramountcy cases established, that state interest is inferior to the federal rights. Although states have acquired greater control over submerged lands through congressional action, no similar legislation has provided analogous rights to the CNMI.

FN9. We have previously noted that the Northern Mariana Islands' Constitutional Convention officially adopted this analysis. *See Sablan v. Santos*, 634 F.2d 1153, 1154 (9th Cir.1980), *superseded by statute on other grounds as recognized by Gioda v. Saipan Stevedoring Co.*, 855 F.2d 625, 628-29 (9th Cir.1988).

**3**

As the CNMI acknowledges, when the people of the

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Northern Mariana Islands and the United States entered into the Covenant agreement in 1975, "both parties had reason to seek a union." Both parties received benefits from this agreement. That the newly formed Commonwealth subsequently objected to the loss of title to submerged lands as result of agreeing to United States sovereignty is as unavailing to the CNMI as that same argument was to states in *California, Texas, Louisiana* and *Maine.* The CNMI's position is even less persuasive given that the Covenant was negotiated after the paramountcy doctrine had become well-settled law.

We recognize the importance of the submerged lands surrounding the CNMI to the culture, history and future of the Northern Mariana Islands. We also trust that the Supreme Court was cognizant of the similar importance of submerged lands to coastal states. *See, e.g.,* California, 332 U.S. at 40, 67 S.Ct. 1658. The Supreme Court established the paramountcy doctrine in spite of these circumstances, leaving it to Congress to provide remedies for the states if it so chose. That same avenue is available here.

III

The Commonwealth admits that its Submerged Lands Act, 2 N. Mar. I.Code § § 1201-1231, [FN10] and Marine Sovereignty Act of 1980, 2 N. Mar. I.Code § § 1101-1143, [FN11] "combine to assert the Commonwealth's ownership of the submerged lands" in dispute. Because we hold that the United States has paramount rights to the submerged lands at issue here, *see supra,* a declaration of ownership (or sovereignty) over these submerged lands is directly contrary to federal law. *See* Texas, 339 U.S. at 719, 70 S.Ct. 918 ("[T]his is an instance where property interests are so subordinated to the rights of sovereignty as to follow sovereignty."). The district court properly held that the Commonwealth's Submerged Lands Act and Marine Sovereignty Act of 1980 are preempted by federal law. *Cf.* Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941) ("Our primary function is to determine whether ... [state] ***1067** law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.").

FN10. The Commonwealth's Submerged Lands Act controls the management of submerged lands owned by the CNMI. The CNMI legislature declared through this act, as amended, that the CNMI government has authority over "all submerged lands in the Northern Mariana Islands." *See* PL 6-13 § 1 (1988) (codified as amended 2 N. Mar. I.Code § 1201 note).

FN11. The Marine Sovereignty Act of 1980 declares "that the sovereignty of the Commonwealth extends beyond its land area to its internal waters, archipelagic waters, and territorial sea." 2 N. Mar. I.Code § 1114(a). The territorial sea has an outer limit of 12 miles from the "baseline" (the line segment designating the border of the archipelagic waters). *Id.* § 1123. This Act also declares that the CNMI has "sovereign rights" in an "exclusive economic zone," which is the area of sea immediately beyond the territorial sea, generally to a distance of 200 miles from the baseline. *Id.* § § 1114(b), 1124. The Act also provides that it does not "impose any impediment to any lawful action taken by the government of the United States for the defense and security of the Commonwealth or of the United States." *Id.* § 1136.

IV

We hold that the United States acquired paramount interest in the seaward submerged lands, as defined by the Supreme Court in *California,* found off the shores of the Commonwealth of the Northern Mariana Islands. [FN12] Laws passed by the CNMI legislature to the contrary are inconsistent with the paramountcy doctrine and are preempted by federal law. The district court's grant of summary judgment for the United States is AFFIRMED.

FN12. We express no opinion as to the specific contours of the boundaries of these waters and we do not read the district court's summary judgment as doing so, either. *Cf.* California, 332 U.S. at 26, 67 S.Ct. 1658 ("[T]here is no reason why, after determining in general who owns the three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary.").

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Honolulu, HI 96814

Dear Mr. Robinson:

In accordance with our responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act (NEPA), the Environmental Protection Agency (EPA) has reviewed the revised Draft Programmatic Environmental Impact Statement (DPEIS) "Towards an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-Based Fishery Ecosystem Plans" (CEQ # 20070140).

EPA understands that this Programmatic EIS is the first step towards developing and implementing the appropriate institutional framework and foundation for future fisheries management under an ecosystem approach (i.e., Fishery Ecosystem Plans (FEPs). The EPA fully supports the National Marine Fisheries Service (NMFS) for taking an ecosystem approach to fisheries management and commends NMFS for preparation of this initial analysis.

As discussed in the revised DPEIS, the preferred FEP Boundary alternative (Issue 1: Fishery Ecosystem Boundaries: Alternative 1D) that encloses each of the region's four archipelagic areas and a single pelagic FEP appears to be an appropriate approach for delineating FEP boundaries. Clearly, such an approach should provide significant positive long term impacts to the fisheries.

EPA's overall rating of the revised DPEIS is LO-Lack of Objection to the proposed action. Although we rated the original DPEIS and this revised DPEIS document as LO, EPA requested that a few issues be clarified and addressed in future documents on this action. We appreciate the responses provided to our previous comments. However, we have noted that a couple of new issues have arisen with the development of this new document that we hope will be clarified in the FPEIS. The general issues are as follows:

**Trophic Interactions and FEPs:**

1.) It would be helpful if the FPEIS discussed in greater detail how fishery interactions (i.e., predator-prey relationships) will be factored into the decision making process to add or remove species to the list of management unit species in FEPs.

**Environmental Justice (EJ) and FEP Process**

2.) The DPEIS mentions that "various fisheries in the Western Pacific Region have participants representing a variety of ethnicities that would fall under the minority provisions of the Executive Order. For example, the Hawaii-based longline fleet includes sizable proportions of Korean-Americans and Vietnamese-Americans, as well as individuals from a variety of other ethnicities." The DPEIS also states that "previous FMPs and research have identified environmental justice issues among such members of the fleet. Subsequent monitoring of these fishermen and their families was conducted to describe the range of social and cultural effects at the individual, family, community, and industry levels" (Allen and Gough 2006). While EPA appreciates that NMFS highlighted potential EJ issues with EJ fishing communities, we recommend that the FPEIS explain in greater detail what were the specific EJ issues that were identified by the Allen and Gough study. Also, we would recommend that the FPEIS provide a summary of the overall findings of the report by Allen and Gough. EPA noted that a statement is made in the environmental consequences section of the DPEIS that the proposed actions are inherently designed to "facilitate and strengthen the role of such groups within the fishery management process. " It would be helpful if the FPEIS further supported this statement by evaluating in greater detail whether EJ fishing communities would or would not be adversely impacted by the proposed actions. EPA recommends that the FPEIS provide a more detailed discussion of the structure and numbers of potential EJ fishing communities that may or may not be impacted by the proposed actions. For example, the FPEIS could incorporate and analyze the available data sets from the Allen and Gough study on EJ fishing communities to determine the potential impact.

We appreciate the opportunity to review this revised DPEIS. We also look forward to reviewing future documents related to this project. The staff contact for this review is Matthew Harrington and he can be reached at (202) 564-7148.

Sincerely,

Anne N. Miller

Anne Norton Miller
Director
Office of Federal Activities

cc: Steve Kokkinakis; NOAA Office of Strategic Planning

# United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
1849 C Street, NW - MS 2342 - MIB
Washington, D.C. 20240


TAKE PRIDE IN AMERICA

June 8, 2007

IN REPLY REFER TO:
9043.1
PEP/NRM
ER 07/327

Mr. William L. Robinson
Pacific Islands Regional Administrator
National Marine Fisheries Service
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814

Subject: Review of Draft Programmatic Environmental Impact Statement- Toward an Ecosystem Approach for the Western Pacific Region: From Species-Based Fishery Management Plans to Place-Based Fishery Ecosystem Plans

Dear Mr. Robinson:

The Department of the Interior (Department) has received and reviewed the Draft Programmatic Environmental Impact Statement: *Toward an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans* (DPEIS). The DPEIS was prepared by staff of the Western Pacific Regional Fishery Management Council (Council) and the National Marine Fisheries Service, Pacific Islands Regional Office (NMFS-PIRO). We provide our comments under the authority of and in accordance with provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*; 83 Stat. 852], as amended (NEPA), the National Wildlife Refuge System Administration Act, as amended (NWRSAA), and other authorities mandating the U.S. Fish and Wildlife Service (Service), National Park Service, and Department concern for environmental values. Based on these authorities, we offer the following comments for your consideration.

The DPEIS encompasses deep water corals and many coral reef species. The "measures being considered would reorganize the current fishery regulations by geographic area, but would not result in substantive changes to the existing regulations." The DPEIS states that "while principles of ecosystem approach to fisheries management direct managers to consider predator/prey relationships for each target species, it does not require managers to manage every species under an ecosystem approach." While monitoring and managing all species under an ecosystem approach may not be feasible, an alternative that accounts for other species occupying the same niche as the target species and that interact with the target species may be more appropriate from an ecosystem management perspective.

Hence, adaptive management measures that will be taken should be specified to ensure that all ecosystem-important species will be included in the Fisheries Ecosystem Plans (FEP), along with measures that will be taken to include species that prove important to managing species within each FEP.

Monitoring plans (including scope, frequency) need to be developed and implemented; in addition, the potential ways this information will impact the approach to ecosystem management need to be identified. The Final PEIS should address, with some level of detail, how NMFS and the Council would provide sustained funding at a level sufficient to ensure that species managed under the FEPs will be adequately monitored and that the adaptive management approach is working to a sufficient degree to protect managed species and ecosystems.

In general, ecosystem or place-based management is potentially viewed as movement in the right direction for marine fisheries-targeted stocks and their encompassing ecosystems. This management approach is different than fisheries species-based management and could well be beneficial to fisheries and marine ecosystems in and around the Pacific Islands National Park Service units. However, care is advised with respect to the complete ramifications and potential implementation of this or related documents.

The implementation of any ecosystem management program within the applicable terrestrial and marine jurisdictional framework of stakeholders and partners is another issue that requires further consultation and discussion in the DPEIS. Early attention to this potentially sensitive issue and the implications for management success will help to steer the future process and assist in the development of appropriate management tools and opportunities.

Based on the preferred alternative analyzed in this DPEIS, the regulatory Federal action to be implemented is realignment of existing fishery regulations contained in the Council's five current species-based Fishery Management Plan regulations into geographically-based Fishery Ecosystem Plan regulations and designation of appropriate management unit species to be managed in the FEPs. Non-regulatory measures considered include identification of appropriate advisory bodies and coordination activities to assist the Council and NMFS-PIRO manage these new geographically-based fishery management areas in Western Pacific Region.

In response to an earlier DPEIS with the same title prepared by the Council and NMFS-PIRO, the Service provided substantive comments on December 27, 2005. These comments outlined significant deficiencies that precluded meaningful NEPA analysis of anticipated impacts to fish and wildlife resources managed by the Service under its legally mandated public stewardship responsibility to protect and conserve fish and wildlife habitat associated with submerged lands and waters within 10 National Wildlife Refuges in the Central Pacific Ocean. The DPEIS does not acknowledge these comments or reflect changes that address the management issues identified by the Service. Nor does the DPEIS explain why consultation with the Service to resolve these issues did not occur.

The DPEIS proposes a Fishery Ecosystem Plan for the Pacific Remote Island Areas (PRIA), defined in the document as: "Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Wake Island, Palmyra Atoll and Midway Island. Because Midway is located in

the Hawaiian Archipelago it is not considered part of the PRIA in this document." U.S. coral reefs, submerged lands, and territorial seas in the PRIA associated with Baker Island National Wildlife Refuge (NWR), Howland Island NWR, Jarvis Island NWR, Johnston Island NWR, Kingman Reef NWR and Palmyra Atoll NWR are administered for Department of the Interior, by the Service, under general regulations for the National Wildlife Refuge System published under Title 50, Code of Federal Regulations. In addition, Service management actions have been implemented at these refuges, and they are currently preparing geographically-based Comprehensive Conservation Plans for these NWRs as required by the National Wildlife Refuge System Improvement Act of 1997. Although these are significant facts relative to existing management of federally protected resources of national importance, and are relevant to the proposed action, they are not fully considered in the analysis of impacts associated with the proposed action presented in the DPEIS.

The DPEIS does not evaluate the potential cumulative effects of the proposed action in relation to past, present, and potential future actions of the Service in managing six NWRs in the PRIA. Procedures under NEPA require potential cumulative effects of the proposed action, as well as cumulative effects of alternatives to proposed action, be analyzed in an EIS. Cumulative effects are defined as those combined effects on the human environment that result from incremental impact of proposed action when added to other past, present, or reasonably foreseeable future actions, regardless which Federal or nonfederal agency or person undertakes such other actions (40 CFR 150.8.7).

The Service has informed the Council and NMFS-PIRO in writing on many occasions in response to NMFS-proposed fishery management plans of legally mandated Service actions to maintain the biological diversity and ecological integrity of fish and wildlife resources through a geographically-based conservation management regime at NWRs in the Central Pacific Ocean. The Service has also informed NMFS that waters within boundaries of NWRs in the PRIA are closed to commercial fishing. If implemented, the proposed action would result in establishment of a governmental process that would require public and private resources and effort to pursue authorization of actions that are not compatible with the purposes for which NWRs were established, in accordance with National Wildlife Refuge System requirements found at 50 CFR 29. Clearly, the proposed action has potential to result in significant cumulative effects on existing management of federally protected resources of national importance. By not analyzing cumulative effects of such potential significance, the DPEIS falls short of being a document that would foster good decisions, as its purpose is intended to be under NEPA.

Finally, the National Wildlife Refuge System Administration Act gives the Interior Department primary responsibility for managing fish and wildlife resources on lands and waters within the National Wildlife Refuge System. We recommend the following section be added to the final EIS, Record of Decision, and related implementing regulations: *Relation to other laws.* "To ensure consistency between management regimes of different Federal agencies with shared management responsibilities of fishery resources within the PRIA regulatory area, fishing is not allowed in any waters withdrawn as a National Wildlife Refuge by the President or the Secretary of the Interior unless specifically authorized by regulations issued by the Service." We recommend NMFS consult with the Service prior to finalizing this DPEIS on the legal requirements for approval of actions permitted within NWRs and include a summary of results of

this consultation in the Final PEIS. We recommend all cases in which proposed actions would affect NWRs in the PRIA be identified and incorporated into the analysis presented in the final PEIS along with all relevant information on the outcome of any consultations with the Service on such proposed actions.

In conclusion, we find that deficiencies in the DPEIS preclude its use as a basis for a meaningful analysis of anticipated impacts to fish and wildlife resources and NWR management under the newly proposed fishery regulatory regime. The DPEIS does not fully analyze cumulative effects of proposed alternatives in relation to past, present, and future actions of the Service to maintain a geographically-based ecosystem approach for conserving and protecting fishery resources associated with NWRs in the PRIA. The DPEIS continues to propose activities that are incompatible with National Wildlife Refuge System requirements found at 50 CFR 29. Because of this, it appears the proposed Fishery Ecosystem Plans would also violate the intent of Section 304 of Magnuson-Stevens Fishery Conservation and Management Act, which requires that fishery plans and their amendments be developed and implemented in compliance with all applicable law. Therefore, we recommend that the Final PEIS include a thorough and complete analysis, as described above, of the effects of proposed action on NWRs in the PRIA. If these deficiencies are not corrected in the Final PEIS, the Department may refer the matter to the Council on Environmental Quality, pursuant to 40 CFR 1504.

Although we agree with the general concept of using an ecosystem approach to managing the nation's ocean resources, we nevertheless, desire to continue to pursue resolution of these significant marine conservation issues with your agency. We look forward to continuing to work with NMFS and the Council toward development of a Final PEIS that contains accurate information, is consistent with all applicable law, and represents an adequate basis for decision-makers.

If you have questions regarding these comments, please contact the Pacific Islands Fish and Wildlife Office Field Supervisor, Patrick Leonard, at (808) 792-9400, or the Hawaii and Pacific Islands National Wildlife Refuge Complex Project Leader, Barry Stieglitz, at (808) 792-9540.

Thank you for the opportunity to provide these comments.

Sincerely,

Willie R. Taylor
Director, Office of Environmental
Policy and Compliance

cc: CEQ, Washington DC
Assistant Secretary, Indian Affairs
Director, Fish and Wildlife Service
Director, Geological Survey
Director, Minerals Management Service
Director, National Park Service
Director, Bureau of Land Management
Commissioner, Bureau of Reclamation
Regional Environmental Office, OAK

PEP/RESMGT/WATER/NMFS (Alam)/DOI comments DEIS Place-based Ecosystem Plans;
202-208-5465

M. Trianni

**Page 2-8. Paragraph above Table 2-3**. The following statement, which is stated under Alternative 1C and implicit in 1D (and may also be implicit in 1B & 1E), "The Federal waters around CNMI and the PRIA are recognized as 0 to 200 miles from shore. Within these boundaries, both the demersal and pelagic fisheries would be managed under the proposed FEPs.." With regards to the CNMI this statement is problematic in that it proposes potential conflict with current Commonwealth laws and regulatory measures for marine resource management. The implementation of either Alternative 1C or 1D (or even 1B & 1E) will significantly impact the management efforts of the various natural resource agencies in the Commonwealth, given the aforementioned statement.

Although the legal status of the CNMI EEZ has currently been interpreted to be Federal waters for the purposes of submerged lands, the issue regarding marine resources is not so clear. It has been legally interpreted that Federal ownership of the CNMI EEZ does not pertain to marine resources, and a recent court case in the CNMI regarding the management authority of the CNMI Division of Fish and Wildlife (DFW), given the Federal interpretation of ownership of the EEZ, was resolved in favor of the DFW. Therefore, the inclusion of Alternatives that emphatically state that marine resources in the CNMI EEZ from 0-200 will be managed under the proposed FEP may be inappropriate.

**Page 3-4 last paragraph.** Does this statement make sense? "For example, the Atlantic Ocean has higher salinity levels than the Pacific Ocean because of input from the Mediterranean Sea (several large rivers flow into the Mediterranean)."

**Page 3-12 last sentence of first paragraph**. It is widely recognized that Dr. Steven Hare, presently of International Pacific Halibut Commission coined the term "Pacific Decadal Oscillation":

"Fisheries scientist Steven Hare coined the term "Pacific Decadal Oscillation" (PDO) in 1996 while researching connections between Alaska salmon production cycles and Pacific climate. PDO has since been described as a long-lived El Niño-like pattern of Pacific climate variability because the two climate oscillations have similar spatial climate fingerprints, but very different temporal behavior. Two main characteristics distinguish PDO from El Niño/Southern Oscillation (ENSO): first, 20th century PDO "events" persisted for 20-to-30 years, while typical ENSO events persisted for 6 to 18 months; second, the climatic fingerprints of the PDO are most visible in the North Pacific/North American sector, while secondary signatures exist in the tropics - the opposite is true for ENSO. Several independent studies find evidence for just two full PDO cycles in the past century: "cool" PDO regimes prevailed from 1890-1924 and again from 1947-1976, while "warm" PDO regimes dominated from 1925-1946 and from 1977 through (at least) the mid-1990's (Mantua et al. 1997, Minobe 1997). Minobe (1999) has shown that 20th century PDO fluctuations were most energetic in two general periodicities, one from 15-to-25 years, and the other from 50-to-70 years." **From *The Pacific Decadal Oscillation*** By Nathan Mantua, Ph. D., Joint Institute for the Study of the Atmosphere and Oceans University of Washington, Seattle, Washington, USA.

Hare citation:
Hare, S.R., 1996: Low frequency climate variability and salmon production. Ph.D. dissertation, School of Fisheries, University of Washington, Seattle.

**Page 3-30 middle paragraphs**. As this section deals with bottomfish habitat requirements, perhaps it would be appropriate to mention the tagging work of Henry

Okamoto that demonstrated that bottomfish species do and may move between islands and banks as adults.

**Section 3.5.2. Commonwealth of the Northern Mariana Islands**

**Page 3-71** The island of Uracas is located north of 20 degrees so the latitudinal rage should be extended to $21^0$ N.

Only the islands of Uracas, Maug, Ascunsion and Guguan are wildlife conservation areas.

**Page 3-71 & 3-72**. Bank A, Pathfinder Reef, Bank D, Bank C and Arakane Reef are part of the West Mariana Ridge (WMR) that also includes Stingray Shoals. They are located ~110-120 miles west of the main island chain and are no closer to the northern islands than they are to the southern islands. In fact, some of those banks are closer to the southern island chain. In this section is should also be mentioned that extensions of the northern and southern islands include, for the northern islands; Uracas Bank north of Uracas, Pakapaka reef, Malakis Reef, 300 Reef, Dump Coke Bank, Zealandia Banks all south of Anatahan.
For the southern islands; White Tuna Reef, ESE Reef and Sonome Reefs all north of FDM. Most of these, with the possible exception of Pakapaka Reef, all contain habitat that falls within the Coral Reef Ecosystem.

**Page 3-72**. The Tropic of Cancer begins at 23°30' (23.5°) N latitude. All of the islands and shallow reefs/banks of the CNMI fall within the tropical zone.

**Marine Environment**
**Page 3-72.** In the CNMI the eastern island aspect is the *windward* side and the western island aspect the *leeward* side, and therefore the reefs are much better developed on the western (leeward) side of the island. It is backwards in the DEIS, and if the source you cite actually has it stated incorrectly, another source should be cited.

Off the SW side of FDM exists an extensive reef platform from ~30 to 100 feet. It is well developed. Also, the nearshore coastline of FDM is comprised of wall features, some with well-developed reef structures.

**Page 3-73.** The last sentence of the paragraph at the top of the page states "Farallon de Medinilla is near a large shallow bank 1 mile north of the island (about 18 meters)." It is not clear what this means. There is a shallow reef north of the island that rises to ~18 feet, but there is no "large shallow bank 1 mile north of the island" that is implied to be 18 meters deep? A very large bank surrounds FDM that falls within the 100-meter contour line. To the north the 100-meter contour line is about 15 kilometers away. The depth range is mostly about 50-80 meters. A "large shallow bank 1 mile north of the island" at about 18 meters depth does not make sense.

The reference to the Crown of Thorns Starfish (COTS) as "pernicious" is misleading. The COTS is a natural predator of corals. It has evolved within the context of the coral reef ecosystem and to call it "pernicious" implies that its natural behavior is somehow 'bad'. The study of COTS has thus far been limited to a narrow time scale (the advent of scuba as a scientific tool) from a direct cause-effect perspective. In fact, long-term benefits COTS are to the corals they feed upon and the coral reef ecosystem as a whole has not been addressed. The cause(s) of COTS outbreaks is poorly understood, although outbreaks seem to exhibit a partly cyclic pattern. Although other species that feed on live coral such as the Humphead parrotfish (*Bolbometopon muricatum*) are held in high esteem and have attained a protected status in some regions, there is a distinct double-standard that is applied to COTS that is not improved by the implications contained in the term "pernicious".

**Marine Mammals and Seabirds**

**Page 3-75.** The *pan-tropical* whitebelly spinner dolphin (*Stenella longirostris longirostris*) is the only known cetacean in the CNMI that forms resident pods amongst the main island chains. It has also frequently stranded on occasion see: Trianni MS & CK Kessler. 2002. Incidence and strandings of the Spinner Dolphin, *Stenella longirostris*, in Saipan Lagoon. Micronesica 34(2) 249-260.

**Fisheries**

Section 3.4.1 appears to refer to sea turtles, and does not have any additional information on CNMI fisheries???

**Demersal Fisheries**

**Coral Reef**

**Page 3-77.** The sea cucumber harvest moratorium is for *all* sea cucumbers, and not just *Actinopyga mauritiana*. This section appears rather short in comparison to other sections that follow. To have a very small paragraph on CNMI Coral Reef Fisheries in an Coral Reef Ecosystem DEIS *seems* unfortunate, but I am no expert on DEIS protocols.

[Added note: These are comments from

Michael Trianni <mstdfw@gmail.com>

Date: Thu, 24 May 2007 13:23:56 +1000

To: WesternPacificRDPEIS@noaa.gov

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# Appendix F

## Public Comments on the Initial Draft Programmatic Environmental Impact Statement, "Toward an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans," October 27, 2005

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## Appendix F

Public Comments and Responses to Comments on an Initial Draft Programmatic Environmental Impact Statement, "Toward an Ecosystem Approach for the Western Pacific Region: From Species-Based Fishery Management Plans to Place-Based Fishery Ecosystem Plans," dated March 25, 2005.[3]

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
|---|---|
| **Comment 1:** The **"**Hold WesPac Accountable" and "I Support Strong Northwestern Hawaiian Islands (NWHI) Protection" letters, as well as a unique letter from the Marine Conservation Biology Institute (MCBI) stated that there was an inappropriately limited opportunity for public input. | **Response 1:** While seen as an important consideration, there was confusion between the actions considered in the Draft Programmatic EIS (DPEIS) and in this EIS and the Fishery Ecosystem Plans (FEPs) being developed by the Western Pacific Regional Fishery Management Council (WPRFMC). These are two different types of products, each with its own process and public review provisions. The DPEIS fulfilled the National Environmental Policy Act (NEPA) public review process through proper Federal Register notice and associated 45-day public comment period. No changes were made in response to this comment. |
| **Comment 2:** The **"**Hold WesPac Accountable" and "I Support Strong NWHI Protection" letters, as well as the MCBI letter claim that the Council voted on the FEPs prior to completion of the FPEIS. | **Response 2:** The Council reviewed the analyses presented here prior to voting on the FEPs and will review the public comments on the DPEIS to determine whether they wish to reconsider their action. This comment does not address the NEPA analysis or process and no changes were made in response. |
| **Comment 3:** The **"**Hold WesPac Accountable" and "I Support Strong NWHI Protection" letters, as well as two unique letters expressed concern over a | **Response 3:** The DPEIS describes a framework for beginning an incremental approach to the adoption of |

[3] The comments in this appendix were considered and incorporated into a subsequent Draft Programmatic Environmental Impact Statement (PEIS) that was distributed for public review and comment on March 30, 2007. See Chapter 6 and Appendix E for public comments on the 2007 revised Draft PEIS.

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
|---|---|
| perceived lack of specific information provided regarding changing from a species based management system to an ecosystem approach to management. | ecosystem approaches to management (EAM) in the Western Pacific Region. The DPEIS describe a realignment of existing fishery regulations under a place-based structure with refined management unit species (MUS) lists representative of these places. Although it is understood that the full implementation of EAM must take into account more than just target fisheries, and that EAM must consider ecosystem relationships such as food chains, trophic levels, habitat, and social and economic factors, the tools to effectively implement such a regime are still being developed. The DPEIS (and this EIS) seek to describe and address only the first steps in an adaptive management process that will eventually lead to a broader EAM. This first step merely creates a framework that can be used to build an ecosystem approach and does not change the present management of these resources. It is expected that future actions to further implement EAM, such as addressing trophic interactions, will require a thorough scientific and management assessment (including NEPA analysis) of their potential impacts. That process will have to be collaborative and interactive across many public, private and governmental spectrums to be successful. No changes were made in response to this comment. |
| **Comment 4:** The U.S. Environmental Protection Agency (EPA) commented that the preferred alternative under Issue 2 (List of MUS) chosen by NMFS and the Council would define and manage only the currently listed MUS which are known to be present within each FEP's boundaries. The DPEIS states that "while principles of ecosystem approach to fisheries management direct managers to consider predator/prey relationships for each target species, it does not require managers to manage every species under an ecosystem approach." This comment went on to say that while the EPA understands it would be difficult to | **Response 4:** NMFS agrees that an ecosystem approach to fisheries management should be comprehensive and take into account all species or stock complexes within each FEP boundary to the extent that we are to identify them to achieve Magnuson-Stevens Fishery Conservation and Management Act objectives. As discussed in the DPEIS (and this EIS), the value of including incidentally caught species would be negligible given that they are caught in |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
|---|---|
| monitor and manage all species under an ecosystem approach, an option that takes into account other species occupying the same niche as fisheries and that interacts with fisheries may be more appropriate from an ecosystem standpoint. Accordingly the EPA suggests that the EIS provide a more in- depth comparison of Alternative 2C (include existing MUS plus incidentally caught and associated species known to be present within each FEP's boundaries) to Alternative 2B (include existing MUS known to be present within each FEP's boundaries). | low numbers and are not targeted species. No changes were made in response to this comment. |
| **Comment 5:** The EPA commented that it supports Alternative 2B as it provides for protection of target and non-target stocks as well as protected species. However while the DPEIS discusses how the removal of species from the MUS list not physically present within each FEP's boundaries would be part of an adaptive management approach, it did not discuss how species could be added to the MUS list. As a result the EPA requests that adaptive management measures be included to ensure that all ecosystem important species will be include species that prove important to managing species within each FEP. | **Response 5:** As discussed in Section 1.3 of this DPEIS, federal fisheries in the Western Pacific Region are managed under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Under the MSA, additional MUS may be designated through the plan amendment process. This is the same process currently used to add or remove species from the MUS lists in the existing FMPs. The WPRFMC will be responsible for developing plan amendments that would add to or remove MUS from the FEPs. If approved by the Secretary of Commerce, FEP amendments will be implemented via proposed and final rulemaking by NMFS. No changes were made in response to this comment. |
| **Comment 6:** The EPA commented that there is no discussion under Issue 2 (List of MUS) concerning how the species managed under the restructured MUS lists will be monitored, The EPA requests that descriptions be included regarding how the MUS will be monitored, how frequently they will be assessed, and how these activities will be funded. | **Response 6:** As discussed in Section 3.6.4 of the DPEIS (and this EIS) the current MUS monitoring program under the existing FMPs will be maintained until better methodologies are found. |
| **Comment 7:** The Ocean Conservancy commented that NEPA requires that major Federal actions significantly affecting the quality of the human environment contain a detailed statement of, among other things, "the environmental impact of the proposed action." 42 U.S.C. § 4332(C)(i). However the Ocean Conservancy believes that by defining the action too narrowly, the agency has failed to consider the full effects on the human environment as required under NEPA and that a switch to environmental planning must include | **Response 7:** The DPEIS (and this EIS) describe a framework for beginning an incremental approach to the adoption of EAM in the Western Pacific Region. The DPEIS (and this EIS) describe a realignment of existing fishery regulations under a place-based structure with refined MUS lists representative of these places. As discussed in the DPEIS, although it is understood that the |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
|---|---|
| full discussions and analyses of the interconnectedness of marine habitats and species as a unified whole. In addition it must consider the food chain and possible disruptions to that chain. Only then will the quality of the effects on the human environment be fully discussed. | full implementation of EAM must take into account more than just the target fisheries, and that EAM must consider ecosystem relationships such as food chains, trophic levels, habitat, and social and economic factors, the tools to effectively implement such a regime are still being developed. The DPEIS (and this EIS) seek to describe and address only the first steps in an adaptive management process that will eventually lead to a broader EAM. This process merely creates a framework that can be used to build an ecosystem approach and does not change the present management of these resources. It is expected that future actions to further implement EAM, such as addressing trophic interactions, will require a thorough scientific and management assessment (including NEPA analysis) of their potential impacts. That process will have to be collaborative and interactive across many public, private and governmental spectrums to be successful. No changes were made in response to this comment. |
| **Comment 8:** KAHEA, the ‘Ilio ‘ulaokalani Coalition, and Environmental Defense commented that there was a failure to provide reasonable opportunity for public comment, analysis by State of Hawai`i, or by Wespac [WPRFMC] members. On December 20, 2005, Wespac held an “emergency meeting” by teleconference for the purpose of voting to take final action on over 1,200 pages of “Fishery Ecosystem Plans,” and recommend new Federal regulatory actions despite the absence of an opportunity for public comment on the final FEPs and despite a vote by Wespac in November, 2005 (at a previous public meeting in Guam) to weigh final approval of the FEPs at its next scheduled meeting in March, 2006. | **Response 8:** While seen as an important consideration, there was confusion between the NEPA analysis and the FEPs. These are two different types of products, each with its own process and public review provisions. The DPEIS fulfilled the NEPA public review process through proper Federal Register notice and associated public 45 day comment period. This comment does not address the NEPA analysis or process and no changes were made in response. |
| **Comment 9:** KAHEA, the ‘Ilio ‘ulaokalani Coalition, and Environmental Defense commented that the fact that Wespac and the National Marine Fisheries Service (NMFS) released (i.e. failed to release) the FEPs and DPEIS to the | **Response 9:** While seen as an important consideration, there was confusion between the NEPA analysis and the FEPs. These are two different types of products, each with |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
|---|---|
| public in a timely manner represents a violation of NEPA requirements. Wespac took "Final Action" on the FEPs prior to the close of public comment on the DPEIS which was ostensibly designed to solicit public input on whether the FEPs should be promulgated, and if so, which type of FEPs should be promulgated – (i.e. which federal regulatory actions should be taken). The Draft FEPs, proposing federal regulatory actions, were released one month prior to the DPEIS. The Final FEPs were not released to the public until two working days prior to the start of "public hearings." | its own process and public review provisions. The DPEIS fulfilled the NEPA public review process through proper Federal Register notice and associated public 45 day comment period. The Council reviewed the analyses presented here prior to voting on the FEPs and will review the public comments on the DPEIS to determine whether they wish to reconsider their action. This comment does not address the NEPA analysis or process and no changes were made in response. |
| **Comment 10:** KAHEA, the 'Ilio 'ulaokalani Coalition, and Environmental Defense commented that the FEPs upon which Wespac voted were riddled with what one Wespac member called "absolute inaccuracies." According to State representatives, the Hawaiian Archipelago FEP contains "numerous factual and typographic errors" which "indicate that the document is far from ready from final approval." The state representative presented examples including fifteen instances of species or entire families of organisms listed for Hawaii which "do not occur in the Hawaiian archipelago. | **Response 10:** Staff from the Hawaii Division of Aquatic Resources have reviewed the Hawaiian Archipelago FEP and identified those MUS species not known to occur in the Hawaiian Archipelago, these have been removed from the MUS lists in the FEPs. Similar refinements of the MUS lists for the other FEPs were made in response to comments from other local marine resource management agencies. In addition a professional editor has correct grammatical and typographic errors. These changes were carried over into this EIS. |
| **Comment 11**: KAHEA, the 'Ilio 'ulaokalani Coalition, and Environmental Defense commented that the DPEIS and the FEPs call for violations of existing rules and the Executive Orders which established the NWHI Coral Reef Ecosystem Reserve. For example, despite a ban on coral harvesting in the NWHI Reserve and a Record of Decision by NOAA forbidding any such harvest, both the DPEIS (pg. 165) and the FEP for the Hawaiian Archipelago ( pg. 117) describe coral harvesting quotas and activities for banks in the NWHI. The DPEIS failed to mention in its description on permitting ( pg. 164) that Coral Reef Ecosystem FMP permits may not be issued for the NWHI (to do so would violate the Executive Orders and NMFS rules). Despite the fact that the NWHI lobster fishery is closed under a permanent injunction and Executive Order, there are ten pages of discussion of details regarding the NWHI lobster fishery, including the fact that Wespac rules allow the taking of egg-bearing female | **Response 11:** The DPEIS included discussions of NWHI fisheries and applicable MSA fishery regulations. The Executive Orders were never codified under the MSA or any other regulatory authority and significant questions over their applicability remained. However the establishment of the NWHI Marine National Monument has been acknowledged in the EIS, and it has rendered these comments moot. No changes were made in response to this comment. |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
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| lobster and undersized juveniles ("retain all fishery") in the overfished waters of the NWHI (where the spiny lobster population has plummeted) but forbid the take of egg-bearing females and undersized juveniles in the Main Hawaiian Islands . | |
| **Comment 12**: KAHEA, the 'Ilio 'ulaokalani Coalition, and Environmental Defense commented that Wespac utilized public funds to make misleading claims regarding "agency" status. These commentors stated that their understanding is that Wespac is a Council authorized by the Magnuson-Stevens Act and is not a federal agency, therefore it is not liable to face lawsuits for its actions. However, Wespac has apparently been utilizing public funds to declare that it is a federal agency, including in Wespac's announcement regarding the FEP "public hearings," published in the Honolulu Advertiser on December 11, 2005. This "Notice of Public Hearings and Public Meetings," bearing the official Wespac seal , states that "The Council is the policy-making agency for offshore waters around the U.S. Pacific islands." However, both the State of Hawai`i and the U.S. Fish and Wildlife Service make policy regarding "offshore waters around the U.S. Pacific Islands." A quick survey of Wespac's website identifies other occasions when Wespac has distributed press releases and other materials to the public claiming that it is a federal agency (for example in November 2002, March and November, 2005, etc.) At the December 20, "public hearing" in Honolulu, Environmental Defense's Hawai`i representative asked for clarification from the NOAA Fisheries, Regional Administrator regarding whether Wespac was or was not an agency. The NOAA Administrator responded that Wespac is not a federal agency. No information was forthcoming regarding why the Council continues to misrepresent itself to the public as a federal agency (apparently utilizing federal funds to do so) or what steps NOAA intends to take regarding this misrepresentation and apparent misuse of federal funds. | **Response 12**: This comment does not address the NEPA analysis or process and no changes were made in response. |
| **Comment 13:** U.S. Fish and Wildlife Service (USFWS) commented that although it recognizes that a great amount of work went into producing the DPEIS, but despite the lengthy comments previously expressed by the USFWS and the Department of the Interior and formal agreements between NMFS and the USFWS regarding jurisdictional authorities that were incorporated into the | **Response 13:** NMFS will continue to work closely with the Council, the Department of Interior (USFWS) and the Department of Defense under the MSA's authorization for NMFS to protect, conserve and manage fishery resources in the U.S. EEZ . NMFS also recognizes that it is not |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
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| Coral Reef Ecosystem Fishery Management Plan, many of their substantive concerns regarding the UFWS' exclusive authority to manage fisheries within the boundaries of 10 National Wildlife Refuges (NWRs) in the Central Pacific Ocean remain inadequately addressed and not clearly described in the analysis contained in the DPEIS. | uncommon for multiple agencies to be vested with concurrent management authority involving marine resources and where applicable looks forward to integrated management approaches. Language in the FEPs (and their associated regulations) and this EIS mirrors that in the Coral Reef Ecosystem Fishery Management Plan regarding USFWS jurisdiction. No changes were made in response to this comment. |
| **Comment 14:** The USFWS commented that DPEIS Section 1.2.3; Roles and Responsibilities of the Federal Government ..; pg 4; first paragraph; first sentence should be changed to read as follows: "The US. Fish and Wildlife Service manages waters and submerged lands within Baker Island NWR, Howland Island NWR, Jarvis Island NWR, Kingman Reef NWR, Palmyra Atoll NWR, Johnston Island NWR, Rose Atoll NWR, Guam NWR, Midway Atoll NWR and Hawaiian Islands NWR and provides a comprehensive conservation approach to protect and conserve fish, wildlife and plants and their habitats for the continuing benefit of present and future generations of Americans." | **Response 14:** Text has been edited in response to this comment. |
| **Comment 15:** The USFWS commented that DPEIS Section 1.2.3; Roles and Responsibilities of the Federal Government ...; pg. 4 first paragraph include the following sentence after the first sentence of this paragraph: "Fishing is not allowed in any waters withdrawn as a NWR by the President or Secretary of the Interior unless specifically authorized by regulations issued by the Service." It is essential to include this sentence in the Final PEIS because NMFS agreed to include this clarifying language in the Record of Decision for the Coral Reef Ecosystem Fishery Management Plan (CREFMP) and in subsequent rules and regulations implementing the CREFMP. In addition, this exclusive regulatory authority of the Service to manage fisheries in NWRs applies to all current Fishery Management Plans and is particularly important to include in this PEIS because the establishment of boundaries for Fishery Ecosystem Plans in the Western Pacific Region is the proposed Federal action and categorized as regulatory in this document. | **Response 15:** Comment acknowledged. Given the status of this issue in discussions between NMFS and USFWS, this section was not changed. |
| **Comment 16:** The USFWS commented that DPEIS Section 2.1 Issue 1: Fishery | **Response 16:** The issue of jurisdiction remains unresolved |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
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| Ecosystem Plan Boundaries (Regulatory); pg 22; first paragraph; last sentence specifically identify the NWRSAA as a law that will be complied with in implementing the proposed action. Thus, the last sentence will read: "These actions will be taken in accordance with the MSA, NEPA, ESA, MMPA, NWRSAA, and other applicable laws and statutes". | and thus no changes were made in response to this comment. However the failure to specifically list any specific law or statute does not mean that it cannot be addressed. |
| **Comment 17:** The USFWS commented that DPEIS Section 3.5.1.2 Protected Species; pg 103; Table 20 Title should be modified to read as follows: "Twelve species of migratory seabirds reside at Rose Atoll NWR. | **Response 17:** Text has been edited. |
| **Comment 18:** The USFWS commented that DPEIS Section 3.5.5.1 Baker Island; pg. 153; Social Environment; Baker Island NWR should be corrected to reflect that the Baker Island NWR was established in 1974, not 1936. | **Response 18:** Text has been edited. |
| **Comment 19:** The USFWS commented that the fifth sentence in the above DPEIS section should read as follows: "The Refuge boundary, established by the President of the United States, lies 3 nm seaward of the shoreline and this area is managed by USFWS as a no-take marine protected area (MPA)." The USFWS also requested that the last sentence be deleted because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. In addition inclusion of the sentence confuses the public as to the extent of the no-take MPA at Baker Island NWR. | **Response19:** While there is potential overlap, recognizing the Council's existing management measures and regulations is required. No changes were made in response to this comment. |
| **Comment 20:** The USFWS commented that DPEIS Section 3.5.5.2 Howland Island; pg. 155; Social Environment; should be corrected to reflect that the Howland Island NWR was established in 1974, not 1976. | **Response 20:** Text has been edited. |
| **Comment 21:** The USFWS commented that the seventh sentence in the above DPEIS section should read as follows: 'The Refuge boundary, established by the President of the United States, lies 3 nm seaward of the shoreline and this area is managed by USFWS as a no-take MPA." The USFWS also requested that the last sentence be deleted because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. In addition inclusion of the sentence confuses the public as to the extent of the no-take MPA at Howland Island NWR. | **Response 21:** While there is potential overlap, recognizing the Council's existing management measures and regulations is required. No changes were made in response to this comment. |
| **Comment 22:** The USFWS commented that DPEIS Section 3.5.5.3 Jarvis | **Response 22:** Text has been edited. |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
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| Island; pg. 156-157; Social Environment; should be corrected to reflect that the Jarvis Island NWR was established in 1974, not 1976. | |
| **Comment 23:** The USFWS commented that the fourth sentence in the above DPEIS section should read as follows: "The Refuge boundary, established by the President of the United States, lies 3 nm seaward of the shoreline and this area is managed by USFWS as a no-take MPA." The USFWS also requested that the last sentence be deleted because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the true extent of the no-take MPA at Jarvis Island NWR. | **Response 23:** While there is potential overlap, recognizing the Council's existing management measures and regulations is required. No changes were made in response to this comment. |
| **Comment 24:** The USFWS commented that DPEIS Section 3.5.5.4 Palmyra Atoll; pg. 158; Social Environment should read as follows: 'The Refuge boundary, established by the Secretary of the Interior in 2001, coincides with the 12-nm territorial seas boundary and this area is managed by USFWS as a no-commercial-take MPA." Also, please delete the last sentence because the Council's 50-fathom low-use MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the extent of the no-take MPA at Palmyra Atoll NWR. | **Response 24:** While there is potential overlap, recognizing the Council's existing management measures and regulations is required. No changes were made in response to this comment. |
| **Comment 25:** The USFWS commented that DPEIS Section 3.5.5.5 Kingman Reef; pg. 159 does not include a "Social Environment" sub-section and fails to identify the existence of Kingman Reef NWR to the public. The USFWS requested that the following sentences be added "Since 2001, Kingman Reef has been a National Wildlife Refuge managed by USFWS. The Refuge boundary, established by the Secretary of the Interior, coincides with the 12-nm territorial seas boundary and this area is managed by USFWS as a no-take MPA." The USFWS also requested that the last sentence be deleted because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the true extent of the no-take MPA at Kingman Reef NWR. | **Response 25:** A Social Environment section was added for Kingman Reef with the following text: "In 2001, management authority of the refuge was transferred to the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service administers the island as a National Wildlife Refuge and asserts a 12-nautical mile boundary around the atoll. The Coral Reef Ecosystems FMP (69 FR 8336) established a low-use MPA from 0 to 50 fathoms around Kingman Atoll." |
| **Comment 26:** The USFWS commented that DPEIS Section 3.5.5.6 Johnston Atoll; pg 161; Social Environment; pg 161 should read as follows "Today, the | **Response 26:** Comment acknowledged. Given the status of this issue in discussions between NMFS, USFWS and the |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
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| U.S. Air Force continues to maintain administrative jurisdiction and control over the 3-nm Naval Defensive Sea around Johnston Atoll and access to his area is prohibited." | U.S. Navy, this section was not changed. |
| **Comment 27:** The USFWS commented that it continues to manage Johnston Atoll as a National Wildlife Refuge and noted that the USFWS rescinded its recreational fishing regulations at Johnston Island NWR because there are no longer any military personnel stationed on Johnston Island. The USFWS also commented that DPEIS Chapter 5 Environmental Management Issues; Section 5.7 Possible Conflicts Between the Alternatives and Other Plans; pg 219 fails to provide a full and objective discussion of significant impacts of the proposed action on the USFWS' ability to manage NWRs as commercial fishing within the Pacific NWRs is an activity that is not allowed by the USFWS. If the DPEIS is implemented as currently written, their ability to manage marine resources within NWR ecosystems will be seriously compromised because activities that would be permitted under the Final PEIS would violate their current management regimes at these NWRs. The USFWS is very concerned that the proposed type of overlapping management regime alluded to in the DPEIS appears to have a strong potential to result in unnecessary duplication of effort, bureaucracy, and expenditures, and be a source of confusion both to the Service and NMFS, as well as to the public. In their view, Council and NMFS pursuit of applying the proposed DPEIS place-based management regime within NWRs has been a misdirection of effort since the NWRSAA requires that the USFWS maintain sole and exclusive management authority over NWRs. To avoid unnecessary conflicts, they recommend that NMFS produce a Final PEIS that includes MPAs that are compatible with and reflective of the management regime currently being implemented by the USFWS within these Pacific NWRs. | **Response 27:** NMFS will continue to work closely with the Council, the Department of Interior (USFWS) and the Department of Defense under the MSA's authorization for NMFS to protect, conserve and manage fishery resources in the U.S. EEZ. NMFS also recognizes that it is not uncommon for multiple agencies to be vested with concurrent management authority involving marine resources and where applicable looks forward to integrated management approaches. No changes were made in response to this comment. |
| **Comment 28:** The USFWS commented that deficiencies in the DPEIS preclude its use as a basis for a meaningful analysis of anticipated impacts to fish and wildlife resources and NWR management under the newly proposed fishery regulatory regime because the DPEIS does not fully analyze the proposed alternatives for their compatibility with the primary purposes for which the relevant NWRs were established. Finally, the USFWS believes that the DPEIS | **Response 28:** NMFS believes that the document currently contains a thorough and complete analysis of the federal regulatory actions being proposed (designation of FEP boundaries and MUS lists). NMFS will continue to work closely with the Council, the Department of Interior (USFWS) and the Department of Defense under the |

| Comment on 2005 Initial Draft PEIS: | NMFS and WPFMC Response to Comment: |
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| proposes activities that are incompatible with the National Wildlife Refuge System requirements found at 50 CFR 29 and because of this, it appears that the proposed Fishery Ecosystem Plans would also violate the intent of Section 304 of the MSA that fishery plans and their amendments be developed and implemented in compliance with all applicable law. Therefore, they recommend that the Final PEIS include a thorough and complete analysis of the affects of the proposed Federal action on existing NWRs. If these deficiencies are not corrected in the Final PEIS, the USFWS will refer the matter to the Council of Environmental Quality, pursuant to 40 CFR 1504. | MSA's authorization for NMFS to protect, conserve and manage fishery resources in the U.S. EEZ. NMFS also recognizes that it is not uncommon for multiple agencies to be vested with concurrent management authority involving marine resources and where applicable looks forward to integrated management approaches. The DPEIS (and this EIS) describe a framework for beginning an incremental approach to the adoption of EAM in the Western Pacific Region. The DPEIS (and this EIS) seek to describe and address only the first steps in an adaptive management process that will eventually lead to a broader EAM. This process merely creates a framework that can be used to build an ecosystem approach and does not change the present management of these resources. It is expected that future actions to further implement EAM, such as addressing trophic interactions, will require a thorough scientific and management assessment (including NEPA analysis) of their potential impacts. That process will have to be collaborative and interactive across many public, private and governmental spectrums to be successful. No changes were made in response to this comment. |
| **Comment 29**: The American Samoa Department of Marine and Wildlife Resources commented that the DPEIS cites the Manua Islands at two different distances from Tutuila (60 and 70 miles) and that it is stated the region is geologically inactive yet a seamount is forming near the Manua Islands. | **Response 29:** Text has been edited. |

**Subject:** I Support Strong NWHI Protections
**From:** Photowonder2010@hotmail.com
**Date:** 15 Dec 2005 17:31:13 -0000
**To:** WPEAMPEIS@noaa.gov

Regional Administrator William Robinson, National Marine Fisheries Service
National Marine Fisheries Service
1601 Kapiolani Boulevard
Honolulu, HI 96814

Dear Regional Administrator Robinson, National Marine Fisheries Service,

I am deeply concerned about the future of the Northwestern Hawaiian Islands (NWHI), especially if the Western Pacific Region Fisheries Management Council (WESPAC) continues to propose commercial fishing in this fragile region. The NWHI are a rare and culturally-important habitat. Wespac's proposed Ecosystem Management Plan does not protect this unique ocean ecosystem.

Also, Wespac released 1,200 pages of these plans only a few days before the public hearings, giving the public little time to review them despite federal requirements for public comment. I urge an investigation of Wespac's tactics.

The NWHI are spawning grounds for many marine species found in the waters of the main Hawaiian Islands, where our fisheries, tourism, and diving industries are based. I support the application of the strong protections established by Governor Lingle for state waters of the NWHI to surrounding federal waters, and urge their protection from commercial activity.

Thank you.

Sincerely,

Adrienne Moumin
2807 Byron St.
Silver Spring, Maryland 20902

**Subject:** Hold Wespac Accountable
**From:** lafleurjourneys@yahoo.com
**Date:** 09 Dec 2005 02:32:35 -0000
**To:** WPEAMPEIS@noaa.gov

Administrator William Robinson

Dear Administrator Robinson,

I am gravely concerned about the future of the Northwestern Hawaiian Islands, if Wespac continues to propose commercial fishing in this fragile region.

Wespac's proposed Ecosystem Management Plan is fatally flawed. The Council admits that the "measures being considered would reorganize the current fishery regulations by geographic area, but would not result in substantive changes to the existing regulations."

By refusing to acknowledge the NWHI ecosystem and instead continuing to promote single species management, Wespac mocks the essence of ecosystem planning, which is designed to consider the interactions among various species.

The fishery council's continued use of the single species management model will guarantee more overfishing, more collapses in fish stocks, and subsequent habitat destruction.

Enough is enough! We have already seen the devastation of the NWHI lobster fishery. I am not willing to allow Wespac to threaten the integrity of this last coral reef wilderness.

I want you to know that I also support a Inspector General investigation of this rogue fishery council, which has for decades refused to protect our public trust resources. I join the call for investigation of the strong evidence of improper and dishonest conduct by Wespac in its campaign to undermine the NWHI Executive Orders and NWHI protections.

I urge you to support a full investigation of Wespac's activities, including scrutiny of their lobbying activities, misuse of public funds and manipulations of rules and regulations regarding public participation.

Mahalo for the opportunity to comment.

Sincerely,

steve LaFleur
P.o. box 643
Kihei, Hawaii 96753

**Subject:** FW: DEIS comment
**From:** "DMWR" <dmwr@samoatelco.com>
**Date:** Tue, 20 Dec 2005 09:35:02 -1100
**To:** <WPEAMPEIS@noaa.gov>

-----Original Message-----
**From:** Karl Brookins [mailto:asfisherysci1@yahoo.com]
**Sent:** Monday, December 19, 2005 3:55 PM
**To:** dmwr@samoatelco.com
**Subject:** DEIS comment

**Department of Marine and Wildlife Resources Comments**
**American Samoa Government**

Review of Draft Programmatic Environmental Impact Statement
*Towards an Ecosystem approach for the Western Pacific Region: from species-based management plans to place-ba! sed fishery ecosystem plans. October 27, 2005*

**Submission deadline: December 19, 2005 to WPEAMPEIS@noaa.gov**

The Draft Environmental Impact Statement (DEIS) is poorly drafted; many sentences are unclear and some unintelligible. Errors are common in the text making true evaluation of the document difficult to impossible. For e! xample the description of the preferred alternative 2B on page 177-178: The section includes the phrase "believed to occur" in the title, "known to occur" once in the text, and "physically present" appears four times in the text. Another example is that several of the paragraphs evaluating impacts on environment, stocks, protected species, fishery participants, etc. repeat nearly word for word e.g. pages 185 and 187. If there is actually no new information to include, the paragraphs are better combined to reduce redundancy and length of the document.

The DEIS is self-described as a foundational document for a change to more scientifically based ecosystem management upon which "subsequent phases ... will build off...". Science itself is based on previous works, as is the DEIS. However, the draft DEIS fails to list at least 69 citations in the references including some foundational scientific documents. References are also out of order, and Marine Ecology Progress Series 274:269-303 is attributed to at least five groups of authors with different titles. Errors listed above and others demonstrate the DEIS is seriously flawed and a poor choice as a foundational document.

In the DEIS sections desc! ribing American Samoa most of the citations are omitted from the references. Some important American Samoa information and references do not appear to be cited in the DEIS. One page reports Manua Islands as 60 miles from Tutuila, and the next page reports the distance as 70 miles. The document states the American Samoa region is geologically inactive and yet an undersea volcano is known to be building off Manua Islands.

The finding of little effect from the management actions is misleading in relation to impacts to fishery participants and communities, especially cumulative impacts as the DEIS is to be foundational; future management changes will build upon the ! DEIS thus having cumulative effects. For example beginning an ecosystem approach to fisheries management involves considering predator-prey

interactions and invariably involves leaving some resource for predators. Leaving it for predators translates into reduced catches and impacts to participants and communities like American Samoa that are highly dependent on fisheries for employment and food.

Karl Brookins, Ph.D., Chief Fishery Biologist, December 19, 2005

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COMMENTS OF ENVIRONMENTAL DEFENSE, `ILIO`ULAOKALANI COALITION, AND KAHEA: THE HAWAIIAN-ENVIRONMENTAL ALLIANCE

CONCERNING

THE DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT: Towards and Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans

December 27, 2005

Contacts:

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NWHI Committee Chair
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KAHEA:
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The Northwestern Hawaiian Islands hui represents a broad network of fishers, Native Hawaiians, scientists, environmentalists, divers and Hawai'i residents associated with the `Ïlio`ulaokalani Coalition, Environmental Defense, and KAHEA: The Hawaiian-Environmental Alliance, representing thousands of members throughout the Hawaiian Islands. Our testimony is based on community input received during over 100 meetings and 30 hearings held in Hawai`i on the Northwestern Hawaiian Islands in the past five years, as well as federal law.

**The recent actions of the Western Pacific Regional Fishery Management Council (Wespac)** regarding the introduction of "Fishery Ecosystem Plans" and a Draft Programmatic Environmental Impact Statement (DPEIS) **follow a pattern and practice of improper and dishonest conduct, and appear to be consistent with other Wespac attempts to undermine protections established for the Northwestern Hawaiian Islands.** This pattern includes a programmatic failure to meet legal mandates and the questionable use of federal funds to support the Wespac campaign to undermine the NWHI Executive orders, the efforts of the Reserve Council, and the sanctuary designation process.[1]

**We call for the withdrawal of the fatally flawed Fishery Ecosystem Plans (FEPs) and the Draft Programmatic Environmental Impact Statement (DPEIS) and we strongly support an Inspector General investigation of Wespac for the following reasons:**

1. **Failure to provide reasonable opportunity for public comment, analysis by State of Hawai`i, or by Wespac members.** On December 20, 2005, the Western Pacific Regional Fishery Management Council (Wespac) held a "emergency meeting" by teleconference for the purpose of voting to take Final Action on over 1,200 pages of "Fishery Ecosystem Plans," recommending

[1] See "Report on Suspect Actions of the Western Pacific Regional Fishery Management Council, Recommendation: The Inspector General of the Department of Commerce should investigate the Council," Oahu Game Fish Club, Waianae Boat Fishing Club, November 2005.

new Federal regulatory actions despite the absence of an opportunity for public comment on the final FEPs and despite a vote by Wespac in November, 2005 (at a previous scheduled public meeting in Guam) to weigh Final Approval of the FEPs at its next scheduled meeting in March, 2006.

2. The final FEPs were made available to the public only two working days prior to the start of December FEP "public hearings."

3. State representatives and Wespac members from Hawai`i indicated that they, themselves, had not received the documents in a manner to allow meaningful comment, and that the State had received the final, complete FEP for the Hawaiian archipelago only *after* two days of public hearings had already been held in Hilo and Kona.[2] In addition, the Honolulu "public hearing" on the FEPs was held the day of the Wespac "Final Action" on the FEPs and prior to the close of public comment on the DPEIS on December 27. At the Wespac meeting, prior to the vote on the FEPs staff read aloud a short summary of some written public comments on the DPEIS, despite that one week still remained in the DPEIS public comment period. Comments made in hearings on the FEPs were not differentiated from DPEIS comments and no summary or analysis of inputs solely from the recent hearings (including the Honolulu hearing) on the FEPs was provided.

4. **NEPA violations.** The process by which Wespac and the National Marine Fisheries Service (NMFS) released (i.e. failed to release) the FEP and DPEIS to the public in a timely manner represents a violation of NEPA requirements. Wespac took "Final Action" on the FEPs prior to the close of public comment on the DPEIS which was ostensibly designed to solicit public input on whether FEPs should be promulgated, and if so, which type of FEPs should be promulgated – (i.e. which federal regulatory actions should be taken). The Draft FEPs, proposing federal regulatory actions, were released one month prior to the DPEIS. The Final FEPs were not released to the public until two working days prior to the start of "public hearings."

5. **Error-riddled documents**. The FEPs upon which Wespac voted were riddled with what one Wespac member called "absolute inaccuracies."[3] According to State representatives, the Hawaiian Archipelago FEP contains "numerous factual and typographic errors" which "indicate that the document is far from ready from final approval." The state representative presented examples including fifteen instances of species or entire families of organisms listed for Hawaii which "do not occur in the Hawaiian archipelago. Now this is simply embarrassing. .... It's largely for the reputation of the Council as a whole that it shouldn't be endorsing documents like this before they're correct."[4]

> "Essentially, our take on it is that the State of Hawai`i has a certain amount of scientific integrity to uphold in this process and given that we have identified serious problems with the document as it stands, given that the NOAA representative has acknowledged those problems, given that several other Council members have also found those problems or other problems that we didn't see, it seems that there are a fair number of people on this Council who realize that this document is simply not ready for final action. And we

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[2] Letter from Wespac member, Governor's representative, Chair of Hawai`I Department of Land and Natural Resources, Peter Young to Kitty Simonds, December 2, 2005, statements by Dan Polhemus, DLNR, Fred Duerr (Wespac member), Rick Gaffney (Wespac member), Wespac meeting, December 20, 2005.

[3] Rick Gaffney, Wespac member, recreational fisher, statement on December 20, Wespac meeting (by telephone).

[4] Dr. Dan Polhemus, Director, Department of Aquatic Resources, DLNR. December 20, 2005. Wespac meeting, Honolulu.

simply do not understand why it is being rushed to final action and we do not see any benefit to the Council by doing this. And therefore we are not going to support this motion. We are not going to support final action on this document." – Dr. Dan Polhemus, Director, Department of Aquatic Resources, DLNR. December 20, 2005. Wespac meeting, Honolulu.

6. **Draft Programmatic Environmental Impact Statement (DPEIS) and FEPs call for violations of existing rules and the Executive Order** which established the NWHI Coral Reef Ecosystem Reserve. For example, despite a ban on coral harvesting in the NWHI Reserve and a Record of Decision by NOAA forbidding any such harvest, both the DPEIS (pg. 165) and the FEP for the Hawaiian Archipelago ( pg. 117) describe coral harvesting quotas and activities for banks in the NWHI. The DPEIS fails to mention in its description on permitting ( pg. 164) that Coral Reef Ecosystem FMP permits may not be issued for the NWHI (to do so would violate the EOs and NMFS rules). Despite the fact that the NWHI lobster fishery is closed under a permanent injunction and Executive Order, there are ten pages of discussion of details regarding the NWHI lobster fishery, including the fact that Wespac rules allow the taking of egg-bearing female lobster and undersized juveniles ("retain all fishery") in the overfished waters of the NWHI (where the spiny lobster population has plummeted) but forbid the take of egg-bearing females and undersized juveniles in the Main Hawaiian Islands.

**7. Wespac utilization of public funds for misleading claims regarding "agency" status.** Our understanding is that Wespac is a Council authorized by the Magnuson-Stevens Act and is not a federal agency, therefore not liable to face lawsuits for its actions. However, Wespac has apparently been utilizing public funds to declare that it is a federal agency, including in Wespac's announcement regarding the FEP "public hearings," published in the Honolulu Advertiser on December 11, 2005. This "Notice of Public Hearings and Public Meetings," bearing the official Wespac seal , states that "The Council is the policy-making agency for offshore waters around the U.S. Pacific islands." However, both the State of Hawai`i and the U.S. Fish and Wildlife Service make policy regarding "offshore waters around the U.S. Pacific Islands." A quick survey of Wespac's website identifies other occasions when Wespac has distributed press releases and other materials to the public claiming that it is a federal agency (for example in November 2002, March and November, 2005, etc.) At the December 20, "public hearing" in Honolulu, the Environmental Defense/Hawai`i representative asked for clarification from the NOAA Fisheries, PIRO Administrator regarding whether Wespac was or was not an agency. The NOAA Administrator responded that Wespac is, indeed, not a federal agency. No information was forthcoming regarding why the Council continues to misrepresent itself to the public as a federal agency (apparently utilizing federal funds to do so) or what steps NOAA intends to take regarding this misrepresentation and apparent misuse of federal funds.

**8. Violation of Council member duties under the Magnuson – Stevens Fishery Conservation and Management Act.**

All Wespac Council members have taken the federal oath:

- "as a duly appointed member of a regional fishery management Council established under the Magnuson – Stevens Fishery Conservation and Management Act, [to] hereby promise to conserve and manage the living marine resources of the United States of America by carrying out the business of the Council for the greatest overall benefit of the nation;"

- "to serve as a knowledgeable and experienced trustee of the nation's marine fishery resources, being careful to balance competing private or regional interests, and always aware and protective of the public interest in those resources;"

- to "commit yourself to uphold the provisions, standards and requirements of the Magnuson - Stevens Fishery Conservation and Management Act and other applicable law, and to conduct yourself at all times according to the rules of conduct prescribed by the Secretary of Commerce."

Those Council members (and members of the public) who were "knowledgeable and experienced" regarding the Hawaiian archipelago ecosystem pointed out the many flaws and factual errors in the Hawaiian archipelago FEP (see December 20 Wespac meeting transcript excerpts). A Hawai`i Council member stated: "I, too, would be embarrassed to go to a public hearing having voted on something like this that's inaccurate. Someone's going to stand up and say well how could you, you're supposed to be knowledgeable about this, how could you possibly have voted for this?"[5]

Wespac Chair, Frank McCoy of American Samoa, led the effort to override the concerns of those with knowledge and experience in Hawai`i regarding Hawai`i ecosystems. He was assisted by a Council member from Guam who joined the meeting late.

Given the lack of documentation provided to the public prior to hearings and the lack of analysis of public input prior to decision-making and given the confusion regarding the topic of the "public hearings" on the part of the public it is difficult to see how Wespac members voting to take "Final Action" on the FEPs were acting in accordance with their oath to be "always aware and protective of the public interest in those resources."

A Hawai`i Council member, concerned about the tremendous factual inaccuracies, including those in the species list for Hawai`i, expressed concern that an opportunity for discussion and correction of the errors was not provided in the Council meeting. Of the four Hawai`i "civilian" members, only two were present at the Honolulu meeting – one owns companies convicted of poaching in the NWHI; the other cut off discussion by immediately proposing a lengthy resolution to take Final Action, accept the FEPs, provide further input and then to allow "staff" to rewrite the error-riddled FEPs on their own, apparently not subject to any further Council oversight, votes, or public comment. The lengthy "surprise" resolution promoted by this member was located on a Wespac staff member's laptop. The staff member then presented it to the Council. None of the members on the phone could see the text of the resolution. The two Hawai`i members connected by telephone expressed strong concerns about giving staff "carte blanche" to do what they pleased. One Hawai`i member stated that it was like giving the staff (which had produced the original inadequate documents) a "blank check" to do anything they wanted.

**Appendix A:**

**Timeline of events pertaining t o development of Fishery Ecosystem Plans and DPEIS**

Compiled by Stephanie Fried, Environmental Defense / Hawai`i[6]

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[5] Fred Duerr, Wespac member, December 20 meeting, Honolulu (comment by telephone).

[6] This is only a partial timeline of recent events relating to the FEPs and the DPEIS. Additions and corrections warmly welcomed. Please send comments to stephf@environmentaldefense.org.

**Sept. 30, 2005**. Release of Draft FEPs. (Hawaiian Archipelago FEP missing Chapters 7 and 10), missing until at least Dec.7 from public versions of document.

**Oct. 27**. DPEIS released, approximately one month after the preferred alternative FEPs were released. DPEIS describes shift from Fishery Management Plans to Fishery Ecosystem Plans (FEP) and proposes a range of alternative configurations for each proposed FEP -- including objectives, boundaries, lists of species to be managed (Management Unit Species). The deadline for written comments is December 19, 2005.

**Nov. 10**. Federal register notice states that deadline for public comment on DPEIS is now December 26, 2005.

**Nov. 11**. Wespac meeting in Guam. Council votes that final approval of FEPs will occur at next Wespac meeting in March 2006. Hawai`i Department of Land and Natural Resources indicates to Wespac that FEP for Hawaiian archipelago is missing entire sections.

**Nov. 28.** Federal register notice announces Wespac Council meeting (to be held by teleconference) on December 20 and "public hearings" in Hawai`i, beginning December 12. The December 20 meeting – apparently an emergency meeting -- is not listed on Wespac's calendar of meetings for 2005, posted on Wespac website (www.wpcouncil.org). No topic is listed for the "public hearings", so it is unclear if the hearings are on the DPEIS or the FEPs. The agenda indicates that the meeting is held to take "Final Action" on FEP objectives, boundaries, management unit species designation, structure of advisory bodies, etc., in contrast to Council decision of November 11, which approved a March 2006 Final Action vote.

**Dec. 2**. Peter Young, Governor's representative to Wespac, Chair of the State of Hawai`i Department of Land and Natural Resources, writes to Kitty Simonds expressing "complete surprise" regarding the proposed Wespac Dec. 20 emergency meeting to vote on "final acceptance" of the FEPs; rejects meeting as inappropriate and calls for a postponement, given Council vote of November 11. The letter indicates that:

> "There has been no justification provided as to the need for such an "emergency" action in this regard as defined under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act."

The State's letter describes the fact that, as of December 2, DLNR has still not yet received a complete draft of the Hawaiian archipelago FEP and could not possibly provide comments in time for the Dec. 20 meeting. Missing from the Hawaii Archipelago FEP were chapters titled; "Chapter 10. Draft regulations for the Hawaii Archipelago FEP" and "Chapter 7. Integration of ecosystem approaches to fisheries management in the Mariana [sic] Archipelago FEP." The letter also underscored that "most Council members will be unable to personally attend the meeting" due to "proximity to the Christmas holiday season," and notes that holding a meeting by phone conference would "clearly limit the opportunity for debate." The State representative then detailed egregious errors found in a preliminary assessment of portions of the draft received by the state, expressed concern about Wespac's proposal to "expand the boundaries" of the FEPs despite the fact that the FEP boundaries already make up U.S. EEZ waters and that expansion could come at the expense of the state or international waters. [Note: or perhaps U.S. Fish and Wildlife refuges]. The State's representative also indicated that there was insufficient time for DLNR staff to "a) review the document, b) forward it back to WESPAC for revisions, and then c) receive a revised version from WESPAC to assess to what extent our revisions had been addressed."

**Dec. 6.** KAHEA attorney calls Wespac office seeking clarification on the subject matter of the "public hearings." Wespac staffer, Eric Kingma indicates to her that "the official deadline for public comments is December 26, but they would 'really like it' if we could get our comments in by Dec. 19 because on the 20th they have their Council meeting where they are going to be approving the FEPs." The attorney asks whether Wespac is "Approving the EIS already?" Kingma responded that "the EIS and the FEPs are related, so comments on the EIS would be taken to improve the FMPs."

**Dec.6.** State of Hawai`i, Department of Land and Natural Resources receives copies of the missing Chapters 7 and 10 from the Hawai`i Archipeago FEP. (According to testimony delivered Dec. 20, by state representative at Wespac hearing.)

**Dec. 6.** EPA federal register notice amends final comment date for DPEIS. New deadline is Dec. 27 instead of Dec. 26. Federal register notice indicates that this information is posted on NOAA PIRO website. As of December 26, this information is NOT posted on NOAA PIRO website. Wespac website still (as of Dec. 26) claims Dec. 26 deadline. The change of date is discovered by an environmentalist on Dec 26.

**Dec. 7**. (Wednesday) New versions of FEPs, dated December 1, are posted on the Wespac website, at the end of the day. This is the first time that members of the public are able to see the documents. There is no announcement about the posting of the documents. They are "discovered" by accident by environmentalists examining the Wespac website. The Hawai`i FEP is 299 pages long; the Pacific Remote Island Areas FEP is 232 pages long; there are 3 other FEPs. These FEPs, totaling over 1,200 pages, are the heart of the regulatory changes proposed in the DEIS -- in fact, the DPEIS presents a list of alternative FEP configurations and a preferred alternative.

**Dec. 9.** Environmental Defense representative calls Wespac office to obtain information on the topic of the hearings: FEPs or DPEIS? Receptionist is unable to provide any clarification and indicates that it is necessary to speak to an expert, who is in a meeting.

**Dec. 11** (Sunday) Wespac announcement of public hearings published in Honolulu Advertiser lists hearings on FEPs in five locations in Hawai`i and states that "The Council is the policy-making agency for offshore waters around the U.S. Pacific Islands." No mention is made of the DPEIS.

**Dec. 12** (Monday). First Wespac "public hearing" is held in Hilo. However, the lengthy FEPs which will be voted on by Wespac have only been available for less than two work days (Thursday and Friday). Despite Wespac advertisements of the hearing, linking it to another meeting where threats of bottomfishing closures in the Main Hawaiian Islands are made, attendance is sparse.

**Dec. 13** Wespac "public hearing" in Kona. Three people testify.

**Dec. 14.** Hawai`i DLNR receives a new, different and "complete" FEP document, two days after public hearings have begun. Wespac Chair, Frank McCoy writes to DLNR that, contrary to State's assertion, the Dec. 20 meeting is "not an 'emergency' meeting, it is a regular Council meeting." He does not explain why the meeting is not listed on the Wespac annual calendar, nor why it is a half-day meeting, instead of the normal four-day Wespac meeting, nor why it is held by teleconference. He responds to DLNR concerns about the lack of time for them to read, respond to, and check Wespac corrections in response to DLNR submissions by stating that "Council staff are preparing an errata that will be sent to all Council members for their review prior to the December 20 Council meeting. This approach facilitates an easy review of the revised text." No mention is made regarding how the public will be able to see the latest revisions, including the "errata" to the FEPs prior to public comment.

**Dec. 15.** Hearing in Kahului, Maui.

**Dec. 20** Wespac meeting to take "Final Action" on the FEPs. Honolulu "public hearing" on FEPs. Four members of the public testify. Only two "civilian" (non-agency) Council members are present in Honolulu – one, the Vice Chair, has owned companies convicted of poaching in the NWHI;

**Dec. 20.** At the Wespac meeting, an eight page document, dated December 15 and titled, "Errata" , with "new or revised text" "to clarify information in the Council's Fishery Ecosystem Plans dated December 1, 2005" was made available in hard copy format to members of the public who attended the hearing. It appeared to be largely a response to the DLNR letter of December 2. Members of the public attending other hearings apparently did not have access to this document. As of December 26, the "Errata" document has still not been posted on the Wespac website.

**Dec. 27**. Close of public comment on the DPEIS.

**Appendix B.**

**Unofficial transcript of Wespac meeting, December 20.**
**Transcribed from recording by S. Fried.**

[appended as separate Word file]

**Appendix B.**

**Unofficial transcript of Wespac meeting, December 20.**
**Transcribed from recording by S. Fried.**

**Given the time constraints, there was not enough time to transcribe the entire session. Notes are made where transcription is incomplete. Transcription begins at opening of meeting, when call is made to discuss and approve the proposed meeting agenda.**

**Dan Polhemus, Representative of the State of Hawai`i, Head, Division of Aquatic Resources, DLNR:** This is Dan Polhemus representing the State of Hawai`i, Division of Aquatic Resources. We question the reason for having final approval of FEPs on today's agenda. We have three basic reasons for this. First, the Council - at its 129th meeting in Guam -- voted to have final approval of these plans at its next meeting in March in order to provide sufficient time for public comment and editing of these plans. We don't believe that holding final approval today provides sufficient time. One of our rationales for this is that we have going through the Hawai`i ecosystem plan draft that we received on the 6th of December in its final complete form and have found numerous factual and conceptual errors in this plan. We have brought these to the attention to Wespac. They have very graciously and in a timely manner corrected many of these, but in going through the document we find that many many additional errors remain. By giving final approval to these plans today in their current form, the Council essentially endorses these errors which we do not believe is the proper thing for the council to do. In addition we believe that public comment, at least for the citizens of the state of Hawaii has been seriously abbreviated and abridged in that it was only allowed for the public to comment within the last week on this plan. The plan has been in a state of evolution. We only received our corrections to our first set of comments on this plan on Dec 6. [Transcriber's note: actual date Dec 14, DP corrects this later, below]. By that point several public comment meetings had already been held in Hilo and Kona. It is not at all clear to us that the public in certain meetings is seeing the same document as the public in other meetings. We also don't completely understand how you can hold public comment today in this meeting for this plan and then undertake final approval of this plan at the same meeting because we don't really understand how the public's comments will be incorporated in the plan prior to its final approval. Therefore, the state of Hawaii is asking that the final approval for these plans be withdrawn from the agenda at this time and reinstated in March as originally voted by the Council. Thank you.

**Chair, Frank McCoy (by telephone from American Samoa):** 1;22:37 As you know, uh, we responded to Peter [Young, Director, DLNR]' s letter that answered some of those questions. Uh, you know, technically, this, it's, it's uh there's a feeling here that...evolving into this FEP management scheme, that some big things are gonna change. Well that, that is not correct. And I don't think we should have any reason not to, to go in there. We've had ample time to do this. We voted on it a year ago, over a year ago, to start looking into this process. So, to say that we didn't have time, to review this and review that, I'm not gonna accept that... [laughter from audience in Honolulu] I'm gonna move on. The Samoan delegation and our management people here, there are some words in there that don't necessarily verify a lot of things but those are things we are going to run into with any management scheme as we go along and those are things we can correct along the way. This particular paper is not supposed to be written in stone to where nothing else can come along and change it. It's up to this Council to do so. We need to look, take a look at a broader view of what we're doing and, uh, in fact to do our responsibility under the MSA we, we are used to a single species, we, we would we're pretty much focused on a tunnel vision point of view. We need to broaden our view, we need to look a little, we need to take in what happens to some, at other little places, at different places. We need to seriously consider that, you know, we're all

part of this ecosystem and not just what we take from the ocean. We are part of the ocean. So, after having said that, uh, it's open for discussion.

**Rick Gaffney, Wespac member (Hawai`i), recreational fisher (by telephone)**: Mr. Chairman.

**Chair**: Uh, who are you?

**Rick Gaffney**: This is Rick Gaffney calling. Um, let me apologize in advance to other Council members and the Chair as a newcomer to the Council process, you know, I haven't been there for previous votes, I'm not fully up and running on the process. First off I'd like to endorse statement by State of Hawai`i because I have all of the same concerns. I would also like to enter for the record, that I have in fact submitted a letter with a number of the things I thought were incorrect, or misstatements or inaccuracies or things that I didn't think were clearly explained enough. I sent that to Kitty Simonds as soon as I had an opportunity to review the version of the documents and I haven't had any response to that either in this eratta document or in any other way. I haven't even had the benefit of the kind of response that Peter Young's questions gave. It just seems to me that this process moving much too quickly. We were basically given 1000 pages of documentation to review in less than a week before this meeting and, you know, I don't work for the council full time. I don't have time to sit day and night and read all those documents. But I can tell you that the documents that I have read -- the one on the Hawaiian archipelago, the one on the FEPs in general, the one on the pelagic FEPs -- I find a number of questionable statements, a number of absolute inaccuracies. I don't feel comfortable with going ahead, with voting on these documents, approving these documents when there are all these inaccuracies. Number two, I don't understand what the rush is, I don't understand why we can't take the time to make these documents correct before we proceed.

**Bill Robinson, Pacific Islands Regional Office Administrator, NOAA (Honolulu)**: I just wanted to comment that the arguments that we have just heard from the state of Hawai`i and member Gaffney are legitimate points of view that should be considered by the Council in determining and deciding whether to approve the FEPs or not. As for whether we should proceed with the agenda or not, I think in order to consider those views, you need to proceed with the agenda. My recommendation is that we proceed with the agenda and have that debate as part of this meeting.

**Dan Polhemus**: 1:16 I wanted to correct one statement I made. And then follow up on Bill's comment. First my recollection was slightly incorrect. We received draft chapters of the missing chapters on 6 December. We did not receive a complete document until the 14 of December, that is 6 days ago. By that time two public meetings for comment had been held, one on December 12 in Hilo and one on December 13 in Kona. So it is hard to understand that the public could have possibly seen a revised document that we, in fact, had not received until the 14$^{th}$. I also wish to state that the state of Hawai`i has no objection to ecosystem-based management. In fact, we endorse the concept. So we're not having any difficulty with that. Our issues lie entirely with this ecosystem fishery plan in its current form, which we simply feel has been rushed to completion and contains numerous inaccuracies. For instance, I have a copy here marked up by one of my biologists. It has approximately 15 little post-its in it that indicate places where it lists species within this ecosystem plan or families of organisms that do not occur in the Hawaiian archipelago. Now this is simply embarrassing. And if the Council gives final approval to a document like this, it once again is simply saying that it is willing to live with these errors and factual inaccuracies. And that's my concern. It's largely for the reputation of the Council as a whole that it shouldn't be endorsing documents like this before they're correct. I think in its vote in Guam, the Council did the correct thing. It gave itself until March to make sure that this plan is correct at which time I think there's no problem whatsoever in

going forward with it. I think you'll have a very properly edited document. I think as it stands today, it is completely inaccurate. Thank you.

**Chair, Frank McCoy**: Does anybody else have some comments?

**Hawai`i Council Member, Fred Duerr (by telephone)**. Yes, this is Fred Duerr from Hawai`i. I would too have appreciated more time. I have not completely read all of the documents I have. Although in reading them I find that a lot if it seems to be broiler plate or redundant. I question too, the accuracy and some things that are left out. When we were in Guam, I recall a gentleman standing up and saying that the information we had was incorrect and the information we had gotten, part of it was credited to him. As I read through this I find some things I question and things that I think should be added, discussed. I, too, would be embarrassed to go to a public hearing having voted on something like this that's inaccurate and someone's going to stand up and say "How could you vote, you're supposed to be knowledgeable about this, how could you possibly have voted for this?" And I think we better go back and clean up the inaccuracies and do a little more research or have the people do a little more research for us or provide us with some of this information as [unintelligible] as possible.

**Chair**: As we stated earlier, council members, this is only the beginning of a process. We"re gonna make mistakes, grant you that. We're not gonna create a perfect paper here, you know, that's the way it works, I mean. We gotta start off with something. We're not taking this for its value in this paper. We're supposed to use our original FMPs as guidelines. This is what's gonna guide us into this process and, uh, we're not just gonna discard what we have in place, uh, we, we, we're not putting in the so-called mistakes that everybody's calling mistakes. It's basically misplaced words and that kind of stuff. It's , you know, I don't see anything, uh, I don't, why would I, I'm the Chairman, I'm not ashamed to put this out.

**Bill Robinson, NOAA Piro Administrator**: Mr. Chairman..

**Chair**: And that's the way the world works. People make mistakes.

**Bill Robinson:** Mr. Chairman, this is Bill Robinson again. I'd just like to reiterate my earlier comment that we are having a substantive debate that should occur under Agenda item 3. We're on Agenda item 2 which is approval of agenda. If we want to have the substantive debate, we should approve the agenda and get on with it.

**Ed Ebisui,** Hawai`i member, in Honolulu at meeting: Mr. Chairman, this is Ed Ebisui.

**Chair:** Ed, please go ahead.

**Ed Ebisui:** Thank you. Um yeah, I support what Bill Robinson is saying and I think we ought to close discussion at this point and just have a vote on the draft agenda. I have things to say, but I think it more appropriate to that it should be done during the discussion phase and

**Chair:** OK, ladies and gentlemen, I think we got uh, yeah, we got sidetracked. So we'll go ahead and let's approve the, let's do what we need to do with the first part, and uh where were we on that? There was a motion (1:55), there was a second, there was a discussion of a proposal..

Yes, Mr. Chairman.

**Chair**: All those in favor, please communicate.

Ed Ebisui, yes; Sean Martin, yes; Bill Robinson, yes; American Samoa: 2 yes ; Guam; yes; CNMI; yes (2); Duerr yes; Gaffney ; No ; Dan Polhemus, No.

**Chair:** We're now on agenda item 3, Fishery Ecosystem Plans, and uh, we're just gonna call on Council staff to present the items A through E. Then we'll get in there and take it up with them. Council staff, please.

Summary, not transcript: Presentation by **Jarad Makaiau, Wespac staff**, on FEPs ensues – lengthy account of measures, modifications requested at 129th Council meeting and changes made to the Draft FEPs to produce the FEPs on which the Council is to vote. Describes 20 year effort to begin to consider "ecosystem management." Indicates that there is now an "errata document", dated December 15. Description of public comments on the *DPEIS* received up to the day prior to the Honolulu hearing (DPEIS comment period extends until Dec 27) and indicated that they had received 696 written comments primarily expressing concerns about the NWHI – i.e. that FEPs undermine NWHI protections because they are not consistent with Executive Order, State of Hawai`i marine refuge rules; that the FEPs do not recognize the NWHI ecosystem; are based on single-species models; that insufficient time was provided for public review of FEPs; supporting a call for an Inspector General investigation of Wespac.

Now we're going to Item 4: Public hearing. I'll turn this over to Vice Char Sean to conduct this hearing from there.

**Sean Martin, Wespac member, Hawai`i (Honolulu)**: Just for clarification purposes. If members of the public are in attendance at one of the sites around the region, we'd ask them to see the area coordinator and get a public comment card and fill that out. If you're wishing to make public comment and are on the phone we 'll accommodate that as well. I have no idea how many people we'll have in the remote areas or on the phone. We'll ask that you limit your comments to 3 minutes. At the end of 3 minutes, I'm going to ask Council staff, with a bell or something her to notify us that the time is up (bell rings). If I hear the bell. My intent is to go around to the regions in the following order. Am Samoa, CNMI, Guam and Hawai`i. … 34:58.

American Samoa? Frank, do you have anybody in attendance there?

**Chair:** No comment from Am. Samoa.

**Sean Martin**: CNMI?
**Sablan, CNMI (by phone)**: yes. Mr. (unintelligible) would like to comment.

**Mr. …:** I jus t want to extend my support for the whole idea. I'm intrigued. I'm hoping this thing is coming through. I'm in full support of it. I just want to extend that. Thank you.

**Guam**: Frank Tibits (?) Can you hear me? Thank you. My comment concerns boundaries of FEPs. Marianas plan appears, from memory 0 – 200, same for Guam; ours is 3 – 200. Seems that local regulatory agencies might be giving up some control from 0 – 3. We do not want to be losing regulatory authority from 0 to 3. The FEP should just be from 3 – 200 for Guam.

**Jarad Makaiau**: I can respond to that. The Marianas language is EEZ. That's defined in MSA. There are some jurisdictional issues. By using MSA language it falls into the definition of what the EEZ is, recognized as 3 – 200 nautical miles.

**Sean Martin**: Hawaii: First I'd like to call Joe Detley.

**Joe Detly:** Rick Gaffney are you there? Congratulations, Rick. My comments all have to deal with what definition of fish. I was just looking at this public hearing and council meting that came in the mail. I had an interesting experience in June trolling up to the NWHI and back. And on this trolling expedition which basically was strictly pelagic, we had to discard, probably in terms of poundage, maybe a third of our total catch which consisted of those things in the NWHI which were defined as bottomfish, that is kahala, rainbow runner, uku and ulua and I'm looking here that they're talking about reducing bottomfish catch in MHI and considering area closures at Penguin Bank, Middle Bank and summer seasonal closures throughout MHI. It's important I think to also take , if this comes about, to take kahala, uku and rainbow runner and ulua off the bottomfishing plan and put it over in pelagics. Otherwise you're going to run into a lot of discarded bycatch. I'm sure Rick know we catch a lot of kahala off the grounds of Kona,live baiting for ahi and marlin, not that that's avery valuable fish. But it just kinda violates the basic rules of fishery management to have the rules in place that would force me for no reason at all to throw away maybe two to three thousand pounds of fish caught pelagic trolling just because of an erroneous definition. And, that's it for me.

**Cha Smith, Kahea**: [Summary, not transcript] 26:59 Testifying on behalf of 2,000 people part of Kahea network throughout Hawai`i. We will be submitting written testimony. Violation of NEPA, public is being locked out of this process in numerous ways, some of which has been pointed out to you by swtate and federal officials, members of the Council. Serious errors and flaws. Procedural flaws made it virtually impossible for public to have any kind of meaningful contribution to this process. Honolulu hearing – during a work day (unlike neighbor island hearings), in holiday season. Are you trying to make it impossible for people to come? It's very difficult for people to come during the work day? I'd certainly like ot hear your rationale for that. Inspector General request for investigation. People feel like enough is enough. We support call for full public investigation. State refuge. Need to treat NWHI as an ecosystem. Current DPEIS will not provide level of protection needed throughout the NWHI. US F&W boundaries must be respected, not weakened or eroded. Wespac's a bit out of step (three minute bell rings on the phone) No reason for this "fast forward" – errors, need to start the hearings over, allow adequate time for public input, appropriate hearings.

**Marti Townsend**: [Summary, partial transcript] 20:00. Looking over the document. Listen to suggestion of State of HI and council members and allow enough time for public comment. NEPA violation. Need to stop what you're doing. Freeze. Correct the mistakes. Republish the document and re-start the clock on public comment. 90 day instead of 60 day public comment period (this is ecosystem plan, different from FMPs). This council should not be voting on this document at this time. Thank you.

**Stephanie Fried**: (partial transcript/partial summary – missing parts) Environmental Defense. Thank you for this opportunity to spend three minutes of time expressing an opinion on 1200 pages of documents that were presented, one draft of which was presented to the public on Wespac's website last Wednesday at close of business. Public hearings began in Hawai`I on Monday, that's two working days afterwards. There is no conceivable way that there could be informed public input on this set of documents through this process. I would also like to state that we heard Governor Lingle's representative strongly object to a vote in this meeting and heard the federal agency representative say that those concerns were legitimate. We second those concerns17:34 and have strong concerns about the NEPA process being followed. NEPA does require public input and again there is no way that the hearings that were held last week could provide public input on a 1200 page document htat we had not seen. I was very interested to hear from the State's representative that other documents came out on December 14. Of course, we haven't seen those. This morning I saw an errata document but of course I haven't been able to read that. I have looked at some of these plans and they are loaded with errors. There are so many errors. I'd like to go through some of this information. I hope you will bear with me and we will be trying to submit written comments.

Although I would like to call upon the NMFS representative to consider extending the December 26 deadline for comments on the DEIS because frankly the heart of the DEIS is these FEPs and there is absolutely no way to have a good detailed analysis of these plans done and there's been no public hearing process on these. I echo the state's call for a March vote on these, proceeded by a full and open period of public comment. One of the disadvantages of holding an emergency meeting such as this by telephone is that those of you on the phone are unable to see in the audience that there are a number of people standing around holding signs saying "Investigate Wespac", "Save the monk seals/ Stop Overfishing", "Protect our Oceans", "Stop the deception, investigate Wespac". If you were here in person, you would see this.

The process leading to this meeting is a textbook example of why a federal investigation of Wespac is fully warranted. I'd like to submit as part of my testimony, for the record, the request by the Oahu Game Fish Club and the Waianae Boat Fishing Club for an IG investigation. [Bell rings.] I hope you don't mind if I continue.....[not enough time to transcribe this material]; ....we don't even know what documents are being voted on because we haven't even seen any of the corrected versions. We don't know what is actually, what we're supposed to be commenting on. .... Concerned re FEP boundary "expansion"; lack of need for "emergency" meeting;

0:13:52 We call for a complete redoing of this process. We want to see an actual corrected document, not something that is so riddled with errors on the science, on the policy. We want to see a fully corrected document presented to the public, for public comment with enough time in advance to be able to read the document. Two working days is certainly not enough time to process all of this material. We want to see the NEPA process followed. And we're very very concerned that final action will be taken today. We're also concerned, and this is just looking through the DEIS document. This DEIS document appears to be promoting coral harvesting in the NWHI. There is a list of banks for which there are harvest quotas – Brooks Bank, etc. It appears to be promoting lobster fishing in the NWHI. We're not sure how, in the light of NOAA's recent rejection of these sorts of plans for the proposed sanctuary how this works. It seems to us that these FEP plans that we've seen so far are almost fake ecosystem plans. I can't think of a nicer word. They appear to be all of the same old single species plans just cobbled together, gift wrapped with a new name and presto, that's an Ecosystem Plan. We don't see any of the complexities that you'd need to deal with in an ecosystem. This whole process has been fraught with confusion. We're under the impression, and maybe I can ask the NMFS representatives to clarify, we're under the impression that Wespac is not an agency. We're under the impression that Wespac is a federal advisory council but not an agency. Is that correct?

Bill Robinson: Thank you, Mr. Chairman. That's right Magnuson Stevens Act establishes the Councils as federal entities which are advisory bodies.

Stephanie Fried: Right, to an agency, such as the National Marine Fisheries Service. So that's why we were very confused to see Wespac's announcement of the hearings stating that it is the policy making agency for offshore waters of the US Pacific.

**Sean Martin**: Any comments from American Samoa, Guam CNMI; Any telephone commenters from state of Hawaii. In that case, East Coast of US? West Coast of US? Any international guests that would like to make comments? Any telephone commentors from anywhere?

**Chair**: We'll open the meeting to Council discussion.

**Ed Ebisui:** Mr. Chairman, this is Ed Ebisui. Mr. Chairman, Ed Ebisui. Mr. Chairman, I have a motion. Please. One moment, I'm going to ask Jarad to get it up on the screen here. Ok, Mr Chairman, my motion is that the Council adopt the FEP Objectives, Boundaries, Management Unit Species, Structure of Council

advisory bodies and regional coordination and community participatoin. Prior t o transmitting to NMFS for review and approval , task council staff with working with NMFS to correct typos, errors, clarify any confusing language, allow DLNR to review Hawaii FEP and work to respond to any further concerns, respond to public comments, as appropriate, and coordinate with NMFS implementation schedule regarding other regulatory issues that are in process. That is my motion, Mr. Chairman.

**Ben,CNMI**: Mr. Chairman, CNMI, second the motion.

**Chair**: we have a second. For discussion. Ed can you please read it out so corrections can be made.

**Ed Ebisui:** [reads the motion again] [busy signal comes on loudly, apparently disconnecting council members from phone conference.]

**Chair:** Calls for break in meeting, voice drowned out by busy signal.

BREAK

Meeting resumes:

**Chair**: it's just what we're, what we're gonna to do.

6/ 3/13:08 **Rick Gaffney**: I have a problem with the fact that we're being asked to vote on something that's called a "Final Action." We're being asked to accept the FEP objectives 1 – 10 are precisely the way we want them. We're being asked to state that the FEP boundaries are precisely the way we want them, as Council Members. We're being asked to vote that the Management Unit Species are absolutely correct and in my reading of the documents, I can't do that. I have problems with all of those specifics and I think it's really really too early. I'm not willing to give carte blanche by voting in advance for a document that may be corrected and my concerns may or may not be incorporated. So that's my doubt at this point. I have a problem with accepting everything. I was hoping that as part of the council discussion process we could get answers to some of our questions. We could talk about the specific language of some of the objectives, talk about the list of MUS's and try to get some of this stuff straightened out before we voted on it today. I didn't expect an early motion which was asking us, as I understand it, basically to give carte blanch to council staff to proceed to finish a document that we have pre-approved. And I don't think that's an appropriate action.

**Ben Sablano from Commonwealth of Northern Marianas Islands**: Mister Chairman, I'd like to call for the question.

Laughter from the audience.

**Chair**: Ben are you still [unintelligible]. You know Rick I have no, any particular thing to say but that's the Council process. That's why council members get together and uh take on this responsibility [unintelligible] whether they agree or disagree on something. That's the priveledge given to us. Up to each individual to take it to heart and [unintelligible] use your common sense [unintelligible]that's your freedom too, as you wish. Any further comments? 6/43:43

**Ed Ebisui:** Mr. Chair this is Ed Ebisui. The only advice I have for Rick is that in my experience I've been on the losing end of many votes. But that's the way it is. The council has also reconsidered action too. So , it's all part of the process. Thank you.

**Rick Gaffney**: If I might respond. I appreciate the input from council Chair and Ed Ebisui whom I've known for many hears and I have a great deal of respect for his knowledge of council process and so forth. I'm new to this process and I apologize if I'm making it more difficult for some people. I just feel like this FEP thing that we're stepping into, which I support 100%, is so important that we get it right. We're making a major transition, as Jarad pointed out.

For 20 years, the Council has been talked to by the government about making the transition from species-based to place-based management. That's what we're doing. If you start that process with a flawed document, I really think we're making a mistake. I think we'll be a laughingstock in the public's eye and I just don't think it's appropriate. No one has explained to me why there's a rush to complete these Final Actions in today's meeting and why we can't ask the staff to go back and take some of these inputs from the state, from Council members and from the general public and fix them and come back and vote on this at the next Council meeting in March. I just feel like there's a rush to judgment here and I don't see the rush when the process has been twenty years long so far. Why are we forcing the situation in two weeks? It just doesn't make sense to me.

6 41 **32 Dan Polhemus**: Dan Polhemus, State of Hawai`i. I would like to comment and then I'll stop [unintelligible]. Essentially, our take on it is that the State of Hawai`i has a certain level of scientific integrity to uphold in this process and given that we have identified serious problems with the document as it stands, given that the NOAA representative has acknowledged those problems, given that several other Council members have also found those problems or other problems that we didn't see, it seems that there are a fair number of people on this Council who realize that this document is simply not ready for final action. And we simply do not understand why it is being rushed to final action and we do not see any real benefit to the Council by doing this. And therefore we are not going to support this motion. We are not going to support final action on this document.

**Chair**: Thank you for the comment. Do we have any more?

**Sean Martin**: Just a question for Council member Gaffney. Are there specific items in the document, I know you've articulated that you haven't really had time to read it, are their some specifics that stand out for you? It's just a question. You know to kind of get a flavor of what some of the things are that you may be referring to?

**Rick Gaffney**: Yeah, if I may, Mr. Chair may I respond.

[Silence]

**Rick Gaffney:** Mr. Chair, Rick Gaffney, may I respond?

**Frank Mc Coy:** Yeah go ahead.

**Rick Gaffney**: (partial transcript of Gaffney's detailed list of concerns). Yes, Sean I appreciate your opening that up. And I'm not even sure if it's appropriate under the current motion. I was going to take each of these items. I have language changes I'd like considered for the objectives 39:45… The MUS section in every one of the plans that I've read has errors in it. … Based on commercial harvest, not on the ecosystem. We're adopting a subset of the ecosystem and that doesn't make any sense to me. I found Chapter 7 in every one of the FMPs to be very non-definitive. Those are the kinds of things I'd like to spend time going through. I've already submitted one list to Kitty and asked for those to be considered.

37 35**Dan Polheums**: State of Hawai`i. I just wanted to point out one more example of the problems. This is in terms of just Wespac not keeping its own actions straight. In our draft of the Hawaii FEP the discussion of the black coral fishery, the size and height exemption language that fishermen previously harvested in state waters is still retained even though the Council took Final Action and removed this exemption at its 129th meeting in Guam. So at the very least, the FEP should at least reflect the current Wespac policies which it clearly doesn't. And once again, this simply indicates that this document is being rushed to completion and Wespac can't even keep its own policies straight inside its own document.

**Chair**. Any more comments? We're gonna have a couple more comments and then we're gonna put this thing to a vote. We're gonna call.

**Ray American Samoa**; Mr Chairman, I'd like make a motion [unclear] territorial jurisdiction participates in making corrections.

**Fred Duerr**: I've got a problem. If we vote for this, it's approved. What we're doing is we're saying is that we agree with whatever our staff comes up with. And even though we get to review it, we've already voted that we've accepted it. And it's like writing a blank check. I have a hard time writing a blank check and letting somebody fill in the amount. I would like to withhold my vote and see the document and have an opportunity to vote on what's really there rather than vote that I'm accepting whatever we come up with.

**Chair**: Uh, Fred, uh, I don't, uh I think this a misunderstanding here, uh when we saying this, we will be working with NMFS and NOAA and State of Hawaii and other entities, American Samoa Department of Fisheries, you know, I think we're not saying they're going to do whatever they want to tell us. I mean this is exactly what the council is for, to look after the interests of all of our constituency, including you know the indigenous people.That's what we're gonna do.

**Fred Duerr**: Yes, I guess, I, I guess I

**Chair**: We're not signing away a blank check, you know. We're already allowing participation to clarify any confusing language that may exist. I mean, there's nothin' wrong with it. We can't keep uh discussing it, we're discussing it here.

**Fred Duerr**: I understand that but maybe I just can't get it into my thick head that when we're taking Final Action, we're voting Final Action, and then we're saying that we're going to have staff make changes and yes, you can have some input but does that input, does it come back to the Council again? Do we get to review it? And vote on it again? What if we don't like it? What if we still don't feel that it satisfies… 33 35

**Chair**: Well, that's the process. That's the process. Thank you. Did I hear someone else there?
**Manny**: It's Manny from Guam.

**Chair**: Haven't heard from you, Manny.

**Manny**: I've been absorbing all the information from everyone and its disheartening that this document is being discussed over and over again. The thing that bothers me the most is that it's only a plan. And this plan provides for amendments to previous plans, to plans that we have on our shelves. This plan is gonna go through many changes in the future and the only thing I appreciate most about this plan is the tie-in of everything, everybody, all the stakeholders worked together on this plan. That's what really bothers me, coming from the islands, is that we have the federal side on one side, we have local government on one

side and we have other people in between. And now we're going to put everybody together and vote as one big stakeholders meeting. It seems to me that people don't like that idea. They have a different agenda. They want to keep their own little kingdom and that really bothers me. Because the people that suffer the most are people that use the water, the families, the fishermen, the subsistence fishermen of this island are gonna suffer continuously because of other impacts that we're not addressing because we say that the line of demarcation that goes from 0 to 3 belongs to you and 3 to 200 belongs to me. And we can't have dialogue. And that's all this plan is doing is providing for dialogue. And I think that all the people that have concerns, or problems, they have those problems. But I think we need to move forward. And to have this fishery ecosystem. And when we go to a council meeting and we discuss one proposal by someone, it sometimes takes half an hour to finish one sentence. You can imagine how long, the fish would be gone, the users would be gone before this document ever gets approved if we're gonna follow that type of discussion, line by line. And with that in closing, Mr. Chairman, I call for the question because this discussion has gone too far. And I'm sorry that people wanna wait til March. But I can't wait til march because there'll be another meeting in June and then another meeting in October and that's too much, way to much to finish waiting for this thing to go. Like I said it's not set in stone and I don't know if it's considered a blank check because I have not seen anything that funds anything or a blank check in the sense that people can do what they want because there are limits to every document that we produce. We have to deal with all the people involved. We do not circumvent federal law. We do not circumvent local law. We work together with all the stakeholders. And as a stakeholder, highly involved in this issue on this island, I really am appalled by the fact that we're gonna keep postponing this issue. Because the land-based issue is not being addressed and it's gonna affect the arcipelagic inshore { }. But as long as we continue to argue this point over and over and time again, it's gonna be a total waste of time. I'm tired of talking through the telephone. Thank you.

**Chair**: Thank you, Manny. Gentleman and Ladies of the council.

**Bill Robinson**: Mr. Chairman, Bill Robinson.

**Chair**: We can talk all day. We're still gonna all feel different about it though.

**Bill Robinson**: Mr Chairman

**Chair**: The Chair feels strongly that this is the way to go. We need to take a broader look and this opportunity is a way that allows us to do that. And it's up to you gentlemen, you vote your conscience, you vote what you concluded. But I'm gonna call for the question.

**Bill Robinson**: Mr. Chairman, this is Bill Robinson, may I make a couple of comments. I've stayed out of it so far.

**Chair**: Yeah, Bill.

**Bill Robinson**: I think the, although I don't have any substantive structural issues with the adoption of the objectives, boundaries and management species, I would point out that the structure of the council advisory bodies and regional coordination are really Council policy issues, they're not federal actions that are subject to NEPA. So I think really the issue here is whether council members believe there are substantive issues with the objectives, boundaries or management unit species or whether the motion can be adopted and all of the non-substantive issues can be cleaned up by a staff-to-staff review by the state of Hawai`i, and other council members and to go forward. If you think that the concept, and let me back up a little bit: what these FEPs are not new FMPs and the old FMPs are not going away. They are amendments to the existing FMPs that simply re-organize and re-title the existing plans in such a way as they transition

from single species based plans to place-based plans. They set the ground work for further elaboration through further Council action, for example, changes in the MUS might be the next thing that the Council might contemplate, changes in boundaries might be the next thing that the Council might contemplate or methods for encorporating ecosystem processes might be the next thing that the Council might contemplate.

This simply lays the groundwork for doing some of this so that's something to keep in mind. The comment was made that these are not fully mature evolved ecosystem plans and that's true. They are not. And it is true that there are still remaining issues and concerns that a number of us have. One concern that we have is jurisdictional issues. We want to make it very clear that the language in these FEPs does not cede any federal authority to communities, to states, to indigenous groups on a basis that would violate any principal federal laws or policies. By the same token we would want to make sure that the language is clear that the federal government is not usurping any authority that the territories or the states have the right to exercise and we, too, have some concerns about that and feel that those types of things have to be clarified, need to be clarified.

The only issue at this point, as is so often the case, is whether the Council is comfortable going forward with basic substance of the FEPs: the boundaries, management species, objectives and allowing the basic clarifications and error corrections to be done by staff prior to transmitting it to the NMFS. Or whether the Council feels it needs to see each and every correction. I would only point out that I can't think of a single instance when an action was submitted by the Council to NOAA fisheries and we haven't gone back to the Council and said, "Well, there's a mistake here. This detail is wrong. Change this." Even, in every case, after the council takes final action there's always a need for some modification. I think, you know, at this point I won't say any more. I think that's really the issue before you. The way that it's structured, we have some confidence that we can work with Council staff to clear up any errors 24 21 and any of the concerns that NOAA Fisheries has with it. And I would think that by working with the state of Hawaii and giving them the opportunity to provide input on their concerns, that concern could be met too. Those are my thoughts.

**Chair**: Well we have a motion and we've had a discussion and I'm gonna call for the question.

3;13 **Bill Robinson**: Mr. Chair. This is Bill Robinson again. I just wanted to add one thing and that's that, uh, from NOAA Fisheries standpoint, we would not accept the document to start Secretarial review unless we were comfortable that the concerns that we have were fully addressed.

**Chair**: [unintelligible] Wouldn't the modification come into consideration?

**Bill Robinson:** Mr. Chairman, what I was saying was that the outcome of this motion, the staff's working together and the various reviews that produce the final documents that come to NOAA Fisheries, we still would have an opportunity to review those final documents and if we don't feel that they, uh, match up with what we think is an appropriately, a document that is of appropriate quality, we'd probably send it back to the Council for further work.

**Chair**: Your concerns have been noted.

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December 20, 2005

VIA e-mail to WPEAMPEIS@noaa.gov

William L. Robinson
Pacific Islands Regional Administrator
National Marine Fisheries Service
1601 Kapiolani Boulevard
Honolulu, HI 96814

Subject: Draft Programmatic EIS

Dear Mr. Robinson:

Thank you for the opportunity to comment on the Draft Programmatic Environmental Impact Statement Towards an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans, dated October 27, 2005 (DPEIS). Although the overall goal of the document appears positive, the document is insufficient in that it does so little to improve the current management in the Western Pacific Region. As set forth below, this DPEIS suffers from serious flaws.

The DPEIS itself states repeatedly that that the "measures being considered would reorganize the current fishery regulations by geographic area, but would not result in substantive changes to the existing regulations." (DPEIS at i). Further, the alternatives considered "are strictly institutional." (DPEIS at 219).

NEPA requires that major Federal actions "significantly affecting the quality of the human environment" contain a detailed statement of, among other things, "the environmental impact of the proposed action." 42 U.S.C. § 4332(C)(i). Here, by defining the action too narrowly, the agency has failed to consider the full effects

on the human environment as required under NEPA. A switch to environmental planning must include full discussions and analyses of the interconnectedness of habitat and species as a unified whole. It must consider the food chain and possible disruptions to that chain. Only then will the quality of the effects on the human environment be fully discussed.

The analysis, as is, ignores the essence of ecosystem planning, which is designed to force consideration of the interactions among various species. The agency and the fishery council simply omit the interactions among various species, putting this important analysis off for another day. This is, in fact, not ecosystem planning at all.

Here, the ongoing reliance on the existing regulations indicates that continued single species management will continue. This ongoing use of the single species management model will guarantee the continuation of overfishing, collapses in stocks, and habitat destruction. That is most evident when it comes to the subject of bottomfishing in the Northwestern Hawaiian Islands. The DPEIS is internally inconsistent and continues to discuss falsely the current state of fishing in the NWHI. The DPEIS states: "The 'pristine' condition of this resource is likely to continue, because they are distant from land based sources of pollution as well as protected from any large-scale human activities in the region." (DPEIS at 137). However, the DPEIS also acknowledges that it was determined that the Hawaii Archipelago multi-species bottomfish complex was subject to overfishing as defined in the Magnuson-Stevens Act, "with the Main Hawaiian Islands the area where the overfishing problem primarily occurs." (DPEIS at 139). The truth is that there is overfishing in the NWHI, as set out in the very documents issued by NOAA[1], and this ecosystem plan is an appropriate place to address this problem. Ignoring the problem and allowing the overfishing to continue is simply an attempt to bury the ongoing problem and violate the tenets of NEPA.

In other areas, the DPEIS demonstrates the other problems of this area. The turtle populations are either listed as threatened or endangered. (DPEIS at 82-90). The Hawaiian monk seals, with their entire population occurring on the NWHI, is well below its "optimum sustainable populations." Since 1985, "the overall population has declined approximately three percent per year." (DPEIS at 92). Yet, the document refuses to analyze substantive measures to address these important environmental concerns. Instead, the DPEIS maintains that only procedural changes need be considered at this stage. Again, this is unacceptable under NEPA and flies in the face of common sense. What is

[1] By Federal Register Notice dated June 14, 2005, the National Marine Fisheries Service (NMFS) gave notice that it had made a determination that overfishing is occurring on the bottomfish multi-species stock complex around the Hawaiian Archipelago. See also May 27, 2005 letter from William Robinson, Regional Administrator of NMFS to Roy Morioka, Chairman of the Council, attached to the Federal Register Notice, and Appendix 5 of the Council's 2003 Annual Report on the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region.

needed is full application of the ecosystem approach and not simply a procedural move in that direction.

Thank you for consideration of our comments.

Sincerely,

Ellen Athas
Director of Ecosystems Protection

cc: Susan A. Kennedy
Acting NEPA Coordinator
nepa.comments@noaa.gov

MCBI
MARINE CONSERVATION BIOLOGY
*Institute*

December 26, 2005

William L. Robinson
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Mr. Robinson,

This letter constitutes Marine Conservation Biology Institute's (MCBI) comments on Wespac's *Draft Programmatic Environmental Impact Statement: Towards an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans*. As detailed below, MCBI has serious concerns about the legality and sufficiency of this document and Wespac's overall plan to replace FMPs with FEPs.

Background

Wespac has taken the first steps to move from fishery management plans (FMPs) to fishery ecosystem plans (FEPs), in an attempt to implement ecosystem-based management. As part of this transition, Wespac has released and approved five FEPs: one for each of the four different regions under its jurisdiction, and one for the pelagics fishery, which Wespac describes as cutting across all of the different regions. At somewhat the same time, Wespac has been writing a programmatic environmental impact statement (PEIS) on whether to transition to FEPs, and if so, what the geographic boundaries and species covered in the FEPs should be. These comments are intended to address the glaring faults with the draft programmatic environmental impact statement, entitled "Towards an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans."

MCBI applauds moves away from the flawed species-managed plans currently in place in the Western Pacific and towards ecosystem-based management, as recommended by the U.S. Commission on Ocean Policy and others. However, it is our view that Wespac's recent steps in the direction of ecosystem-based fisheries management are deeply flawed. We feel that the draft PEIS violates both NEPA and the Magnuson-Stevens Fishery Management and Conservation Act so extensively that it, and the FEPs that have already been approved by Wespac, should be withdrawn until a PEIS that does not violate existing law has been produced.

NEPA Violations

The draft programmatic environmental impact statement substantively violates NEPA. NEPA requires analysis of a potential action's environmental impacts *prior to final decisionmaking*. (42 U.S.C. § 4332(C).) In executing this analysis, NEPA's implementing regulations require

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that: "The [environmental impact] statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made." (CEQ NEPA Regulations at 40 C.F.R. § 1502.5.)

In the case of the draft PEIS and the FEPs, Wespac acted on the following dates:

| | |
|---|---|
| 9/30/05 | Release of Draft FEPs (as of 12/7/05, the Hawaii Archipelago FEP was still missing chapter 7, "Integration of Ecosystem Approaches to Fisheries Management in the Mariana Archipelago FEP" and chapter 10, "Draft Regulations for Hawaii Archipelago FEP") |
| 10/27/05 | Release of draft Programmatic EIS on the move from FMPs to FEPs |
| 12/20/05 | Public hearing held by Wespac in Honolulu on the draft FEPs (held simultaneously with the Wespac Council Meeting) |
| | Wespac took "final action" on the FEPs during its council meeting, approving the draft FEPs |
| 12/26/05 | End of public comment period on the draft Programmatic EIS on whether and how to have FEPs in the Western Pacific region |

As can be seen, Wespac took "Final Action" on the fishery ecosystem plans (FEPs) *prior even to closure of the public comment period for the draft PEIS.* Wespac therefore finalized its decisionmaking *substantially prior* to finishing the PEIS process, a clear violation of NEPA. The timeline followed by Wespac in releasing the draft PEIS and taking final action on the FEPs indicates that the PEIS could not be informing Wespac's decisionmaking, because their decisionmaking has been completed before the PEIS analysis. This is completely contrary to the intent and requirements of NEPA. It is our understanding that the usual process for amending FMPs requires that the draft amendment not be issued prior to a draft EIS on alternatives for the amendment, and similarly, that the final amendment not be issued prior to the final EIS. Only by following such a timeline is the agency able to incorporate NEPA analysis into its decision-making. In this case, however, Wespac issued the draft FEPs prior to the draft PEIS, and has taken final action on the FEPs prior even to the close of the draft PEIS comment period. There has also been no comment period on the draft or final FEPs, only on the current draft PEIS. In confusion about how NEPA was being followed in this process, MCBI spoke with staff in both the NMFS PIRO office and Wespac; both staffers told MCBI that the usual NEPA process followed for FMP amendments was not being followed in this case, and both expressed confusion at what exactly was being done in this case. The NEPA process has been so abused in this case that it seems no one is clear on what the timeline is, or when public comment is being accepted for the FEPs as opposed to the draft PEIS.

The entire process used by Wespac to decide how to implement ecosystem-based fisheries management is therefore flawed. We feel the only solution to this egregious violation is to withdraw the final FEPs until the final PEIS is completed.

Violations of the Magnuson-Stevens Act

Under Section 302 of the Magnuson-Stevens Act, the fishery management councils are required to establish fishery management plans (FMPs).

> Each Council shall, in accordance with the provisions of this Act – (1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to such plan that are necessary from time to time... 16 U.S.C. 1852(h).

In 1999, Congress mandated that NMFS write a report to set the stage for subsequent federal efforts to implement ecosystem-based fisheries management (EBFM). NMFS convened a panel of experts to assess the extent to which ecosystem principles are currently applied in fisheries research and management, and recommend how best to integrate these principles into future activities. This Ecosystem Principles Advisory Panel (EPAP) recommended that:

> Councils **should continue to use existing Fishery Management Plans** (FMP) for single species or species complexes, **but these should be amended to incorporate ecosystem approaches consistent with an overall Fisheries Ecosystem Plan** (FEP). The FEP, to be developed for each major ecosystem under Council jurisdiction, is a mechanism for incorporating the Principles, Goals and Policies into the present regulatory structure. The objectives of FEPs are to:
>
> • Provide Council members with a clear description and understanding of the fundamental physical, biological, and human/institutional context of ecosystems within which fisheries are managed;
> • **Direct how that information should be used in the context of FMPs**; and
> • Set policies by which management options would be developed and implemented. (EPAP Report at 2 (emphasis added).)

Congress has funded the Atlantic and Gulf of Mexico Councils to conduct a pilot program on implementing ecosystem-based fisheries management. However, nowhere is the Magnuson Act's provision requiring FMPs for managed fisheries excused. In fact, all guidance on development of fishery ecosystem plans is echoed in the approach that the South Atlantic Council is taking: keeping FMPs, creating a new over-arching FEP, and amending FMPs as needed to implement the FEP. Only by both implementing an FEP and amending existing FMPs to incorporate ecosystem principles and information laid out in the FEP, can ecosystem-based fisheries management be achieved while still complying with existing law under the Magnuson-Stevens Act.

Wespac, however, seems to be forging ahead on its own and disregarding the advice of the EPAP report, which recommended development and implementation of FEPs *in addition to* FMPs. Under the EPAP approach, FMPs should still be used to manage single and multi-species fisheries. In the opening of its draft PEIS on whether and how to switch to FEPs, Wespac is very clear that it is "developing five place-based Fishery Ecosystem Plans (FEPs) to **replace** the existing species-based Fishery Management Plans for fisheries in the Western Pacific region." (Draft PEIS at i (emphasis added).) There is nowhere in the draft PEIS an analysis of whether the Magnuson-Stevens Act authorizes such a switch in management structure, or what the

structure of the FEPs will be. Finally, there is no mention of how the Magnuson-Stevens Act requirements for FMPs of managed species will be met if FMPs have been replaced by FEPs. While we have serious concerns about many aspects of existing FMPs, and applaud a move towards ecosystem-based management in the Western Pacific, such a shift in management must not be done at the expense of existing law.

Wespac's Hindrance of Public Involvement

In the draft PEIS, Wespac states that:

> A major function of NEPA is to ensure that Federal agencies undergo a public disclosure process when making decisions that may affect the environment. The NEPA process fosters public participation by requiring that Federal agencies conduct public scoping meetings prior to the development of a Draft EIS as well as make all Draft and Final EISs available for public review and comment. (Draft PEIS at 11.)

Despite their assertion that public involvement is an important part of the NEPA process, Wespac has hindered public involvement on several occasions. Wespac held an Ecosystem Science and Management Planning Workshop in April 2005, "which was attended by world renowned ecosystem scientists as well as high-level government agency officials." (Draft PEIS at 19.) Wespac supports its move to FEPs by citing the results of this workshop: "The compiled proceedings of that workshop are currently under development, however, there was a general consensus amongst workshop attendees that the Council's plan to initiate an incremental shift towards ecosystem approaches to fisheries management by implementing place-based FEPs related to archipelagic boundaries was appropriate." (Draft PEIS at 19.) Despite Wespac's claim of the importance of public input, this workshop was not open to the public. After several requests, MCBI was able to have our Chief Scientist, Dr. Lance Morgan, attend the workshop, but he was informed in advance that there would be no opportunity for him to speak or contribute. The workshop, which Wespac appears to use to legitimize their switch to FEPs, could have offered an important opportunity to educate the public about ecosystem-based fisheries management, and to receive involvement of cross-disciplinary scientists – which is after all one of the main tenants of ecosystem-based management. Instead, Wespac chose to exclude the public from this important meeting.

We have found that the draft PEIS is so vague as to make commenting on it difficult; there is nowhere a discussion (other than the discussion of what geographic area they would cover) of how the FEPs would be structured, what they would contain, or how they would comply with the requirements of the Magnuson-Stevens Act. Without knowing more about how the FEPs would be carried out, it is difficult to comment on the draft PEIS. In looking at the FEPs for insight into how Wespac would implement the preferred alternatives of the draft PEIS, we are not imbued with confidence that Wespac will manage the fisheries of the Western Pacific in accordance with existing law or true involvement of the public.

The draft FEPs that were issued a month prior to the draft PEIS (we reiterate that the FEPs are in violation of NEPA) were missing key chapters until only a couple days prior to the vote on whether to approve them. The draft FEP for the Hawaii Archipelago, for example, was missing "Chapter 7 – Integration of Ecosystem Approaches to Fisheries Management in the Mariana

Archipelago FEP" (Draft FEP for the Hawaii Archipelago at 174), the section on how the document complies with Executive Orders 13178 and 13196 (Draft FEP for the Hawaii Archipelago at 194), and "Chapter 10 – Draft Regulations for Hawaii Archipelago FEP" (Draft FEP for the Hawaii Archipelago at 211). In addition to our own frustration and confusion as to when public comment on the FEPs is going to occur or on which version of the FEPs, we hear from the Northwestern Hawaiian Islands hui and others that the public feels shut out of the process.

Public review and involvement in the NEPA process requires the public to be allowed to be involved, and release of an EIS that is clear and comprehensive. The public was explicitly prohibited from involvement in the workshop that helped shape the draft PEIS preferred alternatives, and the draft PEIS is too vague to permit informed public comment.

Guidance on Fishery Ecosystem Plans

We feel that Wespac has also fallen short on its interpretation of ecosystem-based fisheries management (EBFM). There are on-going pilot projects to implement ecosystem-based fisheries management in the East Coast and Gulf of Mexico Councils. NMFS has refrained from issuing guidelines on how to implement EBFM until there is a legislative authority that applies to all councils, and until the results of the pilot project are determined.

The South Atlantic Council, part of this pilot project, has been engaged in a several year process to determine how to proceed with implementing ecosystem-based fisheries management and the eight principles established by the NMFS Ecosystem Principles Advisory Panel. The South Atlantic Council process has involved numerous meetings and workshops (15 workshops in 2003 alone), all open to the public, on the general and specific requirements of EBFM. The approach the South Atlantic Council has decided to take, and which it is in the process of implementing, is to release an FEP which will include comprehensive amendments to all of the FMPs. Deriving their authority from the Essential Fish Habitat Final Regulations, the South Atlantic Council is developing a comprehensive FEP derived from their comprehensive Habitat Plan. The FEP will result in an amendment to each of the FMPs to take into account the ecosystem-based foundation and principles expressed in the FEP.

> The transition from single species management to ecosystem management will involve incremental steps to better characterize the system and understand the complex relationships among humans, harvested fish and prey, all marine life and essential habitat and environmental characteristics of the South Atlantic Ecosystem. This effort will provide the Council with a foundation from which to attain a more comprehensive understanding of habitat and biology of species, fishery information, social and economic impacts of management and ecological consequences of conservation and management. The Fishery Ecosystem Plan will specify research and monitoring needed to fully address ecosystem management. (SAFMC Action Plan for Ecosystem-Based Management.)

This approach is consistent with the Magnuson-Stevens Act, which refers only to FMPs and makes no reference to FEPs, and with guidance from the Ecosystem Principles Advisory Panel and other groups.

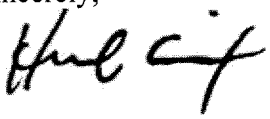
On the other hand, Wespac's approach is based on one workshop which was closed to the public, makes no attempt to abide by the requirements of NEPA or the Magnuson-Stevens Act, and does little to achieve the Ecosystem Principles Advisory Panel principles. While Wespac considers alternatives for four aspects of FEP implementation, there is no discussion of how FEPs will fit into the overall fisheries management process, or what the structure of the FEPs will be. The failure of the draft PEIS to address the eight Ecosystem Principles Advisory Panel principles is due in large part to the vagueness of the proposed action. Wespac several times raises the inadequacy of existing data, yet promotes gathering even more types of information. The inevitable conclusion is that Wespac will be swamped in data that is presented on different scales and which neither NMFS nor Wespac will be able to analyze due to lack of resources.

By barging ahead like a bull in a china shop, Wespac will almost certainly find that its approach at EBFM is not identical to the one finally authorized by law and regulations. It is duplicative and wasteful for Wespac to proceed on its own at this time, rather than waiting to conform to future national standards.

Conclusion

In summary, Wespac's draft PEIS on the move from FMPs to FEPs violates NEPA, the Magnuson-Stevens Act, and guidance on what ecosystem-based fisheries management should be. The only way to address these deficiencies is to withdraw both the draft PEIS and the already finalized FEPs, and rework the draft PEIS so that it is a legal and useful document. As part of this rewrite, the draft PEIS should consider not just what the geographic boundaries of FEPs should be, but whether the proposed action of creating FEPs to replace FMPs is authorized under current law or would require a change in law.

Sincerely,



Hannah Gillelan, Esq.
Director of Policy Research

# United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

In Reply Refer To:
PN-06-331

DEC 27 2005

Mr. William L. Robinson
Pacific Islands Regional Administrator
National Marine Fisheries Service
1601 Kapiolani Blvd.
Honolulu, Hawaii 96814

Re: Draft Programmatic Environmental Impact Statement Towards an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans

Dear Mr. Robinson:

The U.S Fish and Wildlife Service (Service) has reviewed the Draft Programmatic Environmental Impact Statement Towards an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans (DPEIS). The DPEIS was prepared by staff of the Western Pacific Regional Fishery Management Council (Council). Based on the preferred alternatives analyzed in this DPEIS, the Federal action that would be implemented is the realignment of the existing fishery regulations contained in the Council's five current species-based Fishery Management Plan regulations into geographically-based Fishery Ecosystem Plan regulations. The measures being considered include identification of appropriate boundaries, management unit species, and advisory bodies that would result in the reorganization of current species-based fishery regulations into geographically-based fishery management areas in the Western Pacific Region.

This letter has been prepared under the authority of and in accordance with provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*; 83 Stat. 852], as amended (NEPA), the National Wildlife Refuge System Administration Act, as amended (NWRSAA), and other authorities mandating Service concern for environmental values. Based on these authorities, we offer the following comments for your consideration.

## GENERAL COMMENTS

In general, we recognize that a great amount of work has gone into producing this DPEIS. Yet, despite the lengthy comments previously expressed by the Service and Department of the Interior and formal agreements between the National Marine Fisheries Service (NMFS) and the

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Service regarding jurisdictional authorities that were incorporated into the Coral Reef Ecosystem Fishery Management Plan, many of our substantive concerns regarding the Service's exclusive authority to manage fisheries within the boundaries of 10 National Wildlife Refuges (NWRs) in the Central Pacific Ocean remain inadequately addressed and not clearly described in the analyses contained in this DPEIS.

*Management Responsibility for National Wildlife Refuge Resources*

The DPEIS includes a discussion of NMFS as the primary Federal agency responsible for stewardship of the nation's living marine resources and their habitats. We appreciate NMFS' stewardship efforts, but given that the focus of this DPEIS is to establish a geographic-based ecosystem approach, the DPEIS should more fully disclose that the Service also has a legally mandated public stewardship responsibility to manage submerged lands and waters within 10 NWRs in the Central Pacific Ocean. U.S. coral reefs, submerged lands, and territorial seas associated with these NWRs are administered by the Service under the general regulations for the National Wildlife Refuge System published under Title 50, Code of Federal Regulations. We believe that Congress intends the Service to have primary responsibility for managing fish and wildlife resources within NWRs that are located in Federal waters. The Department of Justice Office of Legal Counsel's 2000 legal opinion regarding jurisdiction in the Northwestern Hawaiian Islands substantiates the Service's legal authority to be the primary federal agency for managing fish and wildlife resources and their habitats within a NWR. We recommend that the Final PEIS include a section on how the Service's existing geographic-based natural resource management approach and legal authorities will be incorporated into the NMFS Fishery Ecosystem Plans. Section 304 of the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA) supports this recommendation by mandating that Fishery Management Plans be consistent with any applicable law, such as the NWRSAA.

SPECIFIC COMMENTS

Section 1.2.3; Roles and Responsibilities of the Federal Government...; pg 4; first paragraph; first sentence: We recommend that this sentence be changed to read as follows: "The U.S. Fish and Wildlife Service manages waters and submerged lands within Baker Island NWR, Howland Island NWR, Jarvis Island NWR, Kingman Reef NWR, Palmyra Atoll NWR, Johnston Island NWR, Rose Atoll NWR, Guam NWR, Midway Atoll NWR and Hawaiian Islands NWR and provides a comprehensive conservation approach to protect and conserve fish, wildlife and plants and their habitats for the continuing benefit of present and future generations of Americans."

Section 1.2.3; Roles and Responsibilities of the Federal Government...; pg. 4 first paragraph: We recommend that the following sentence be inserted after the first sentence of this paragraph: "Fishing is not allowed in any waters withdrawn as a NWR by the President or Secretary of the Interior unless specifically authorized by regulations issued by the Service." It is essential to include this sentence in the Final PEIS because NMFS agreed to include this clarifying language in the Record of Decision for the Coral Reef Ecosystem Fishery Management Plan (CREFMP) and in subsequent rules and regulations implementing the CREFMP. In addition, this exclusive regulatory authority of the Service to manage fisheries in NWRs applies to all current Fishery Management Plans and is particularly important to include in this PEIS because the

establishment of boundaries for Fishery Ecosystem Plans in the Western Pacific Region is the proposed Federal action and categorized as regulatory in this document.

Section 2.1 Issue 1: Fishery Ecosystem Plan Boundaries (Regulatory); pg 22; first paragraph; last sentence: Because of the significance of the role that the 10 NWRs play as existing Marine Protected Areas and NMFS' desire to establish place-based regulations, we recommend that the last sentence specifically identify the NWRSAA as a law that will be complied with in implementing the proposed action. Thus, the last sentence will read: "These actions will be taken in accordance with the MSA, NEPA, ESA, MMPA, NWRSAA, and other applicable laws and statutes."

Section 3.5.1.2 Protected Species; pg 103; Table 20 Title: Please modify the second sentence to read as follows: "Twelve species of migratory seabirds reside at Rose Atoll NWR...

Section 3.5.5.1 Baker Island; pg. 153; Social Environment; Baker Island NWR was established in 1974, not 1936. Also, please correct the fifth sentence to read as follows: "The Refuge boundary, established by the President of the United States, lies 3 nm seaward of the shoreline and this area is managed by USFWS as a no-take marine protected area (MPA)." In addition, please delete the last sentence because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the extent of the no-take MPA at Baker Island NWR.

Section 3.5.5.2 Howland Island; pg. 155; Social Environment; Howland Island NWR was established in 1974, not 1976. Also, please correct the seventh sentence to read as follows: "The Refuge boundary, established by the President of the United States, lies 3 nm seaward of the shoreline and this area is managed by USFWS as a no-take MPA." In addition, please delete the last sentence because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the true extent of the no-take MPA at Howland Island NWR.

Section 3.5.5.3 Jarvis Island; pg. 156-157; Social Environment; Jarvis Island NWR was established in 1974, not 1976. Also, please correct the fourth sentence to read as follows: "The Refuge boundary, established by the President of the United States, lies 3 nm seaward of the shoreline and this area is managed by USFWS as a no-take MPA." In addition, please delete the last sentence because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the true extent of the no-take MPA at Jarvis Island NWR.

Section 3.5.5.4 Palmyra Atoll; pg. 158; Social Environment; Please correct the eighth sentence to read as follows: "The Refuge boundary, established by the Secretary of the Interior in 2001, coincides with the 12-nm territorial seas boundary and this area is managed by USFWS as a no-commercial-take MPA." Also, please delete the last sentence because the Council's 50-fathom low-use MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the extent of the no-take MPA at Palmyra Atoll NWR.

Section 3.5.5.5 Kingman Reef; pg. 159: This section does not include a "Social Environment" sub-section and fails to identify the existence of Kingman Reef NWR to the public. To correct this omission, please add the following sentences: "Since 2001, Kingman Reef has been a National Wildlife Refuge managed by USFWS. The Refuge boundary, established by the Secretary of the Interior, coincides with the 12-nm territorial seas boundary and this area is managed by USFWS as a no-take MPA." Also, please delete the last sentence because the Council's 50-fathom no-take MPA is within the Refuge and does not provide any additional protection. Inclusion of the sentence confuses the public as to the true extent of the no-take MPA at Kingman Reef NWR.

Section 3.5.5.6 Johnston Atoll; pg 161; Social Environment; pg 161: Please correct the sixth sentence to read as follows: "Today, the U.S. Air Force continues to maintain administrative jurisdiction and control over the 3-nm Naval Defensive Sea around Johnston Atoll and access to this area is prohibited. Also, the USFWS continues to manage Johnston Atoll as a National Wildlife Refuge. Note: The USFWS rescinded its recreational fishing regulations at Johnston Island NWR because there are no longer any military personnel stationed on Johnston Island."

Chapter 5 Environmental Management Issues; Section 5.7 Possible Conflicts Between the Alternatives and Other Plans; pg 219: The DPEIS fails to provide a full and objective discussion of significant impacts of the proposed action on the Service's ability to manage NWRs. Commercial fishing within the Pacific NWRs is an activity that is not allowed by the Service. If the DPEIS is implemented as currently written, the Service's ability to manage marine resources within NWR ecosystems will be seriously compromised because activities that would be permitted under the Final PEIS would violate the Service's current management regimes at these NWRs. We are very concerned that the proposed type of overlapping management regime alluded to in the DPEIS appears to have a strong potential to result in unnecessary duplication of effort, bureaucracy, and expenditures, and be a source of confusion both to the Service and NMFS, as well as to the public. In our view, Council and NMFS pursuit of applying the proposed DPEIS place-based management regime within NWRs has been a misdirection of effort since the NWRSAA requires that the Service maintain sole and exclusive management authority over NWRs. To avoid unnecessary conflicts, we recommend that NMFS produce a Final PEIS that includes MPAs that are compatible with and reflective of the management regime currently being implemented by the Service within these Pacific NWRs.

## SUMMARY COMMENTS

Deficiencies in the DPEIS preclude its use as a basis for a meaningful analysis of anticipated impacts to fish and wildlife resources and NWR management under the newly proposed fishery regulatory regime. The DPEIS does not fully analyze the proposed alternatives for their compatibility with the primary purposes for which the relevant NWRs were established. Finally, the DPEIS proposes activities that are incompatible with the National Wildlife Refuge System requirements found at 50 CFR 29. Because of this, it appears that the proposed Fishery Ecosystem Plans would also violate the intent of Section 304 of the MSFCMA that fishery plans and their amendments be developed and implemented in compliance with all applicable law. Therefore, we recommend that the Final PEIS include a thorough and complete analysis of the affects of the proposed Federal action on existing NWRs. If these deficiencies are not corrected

in the Final PEIS, the Service will refer the matter to the Council of Environmental Quality, pursuant to 40 CFR 1504.

Although we agree with the general concept of using an ecosystem approach to managing the nation's ocean resources, we, nevertheless, desire to continue to pursue resolution of these significant marine conservation issues with your agency. We hope that these comments will enable NMFS to more fully address our basic concerns. We look forward to continuing to work with NMFS and Council toward development of a Final PEIS that is consistent with all applicable laws and that represents an adequate basis for decision-makers.

If you have questions regarding these comments, please contact either myself at (808) 792-9400 or Hawaii and Pacific Islands National Wildlife Refuge Complex Project Leader, Barry Stieglitz, at (808) 792-9540.

Sincerely,

Patrick Leonard
Field Supervisor

cc: CEQ, Washington DC
FWS, Washington DC
FWS, Region 1, Portland Oregon
FWS, Refuges, Honolulu, Hawaii
USEPA - Region IX, San Francisco, California
USEPA - Region IX, Honolulu, Hawaii
NMFS, Strategic Planning Office, Silver Springs, Maryland
NOS-NWHICRER, Honolulu, Hawaii
DLNR-DAR, Honolulu, Hawaii
WPRFMC, Honolulu, Hawaii

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

DEC 22 2005

National Marine Fisheries Service
Attention: William L. Robinson
Pacific Islands Region
1601 Kapiolani Blvd., Ste. 1101
Honolulu, HI 96814

Dear Mr. Robinson:

In accordance with our responsibilities under Section 309 of the Clean Air Act and the National Environmental Policy Act (NEPA), the Environmental Protection Agency (EPA) has reviewed the Draft Programmatic Environmental Impact Statement (DPEIS) "Towards an Ecosystem Approach for the Western Pacific Region: From Species-based Fishery Management Plans to Place-based Fishery Ecosystem Plans."

The EPA fully supports taking an ecosystem approach to fisheries management and commends NMFS for preparation of this initial analysis. EPA understands that this Programmatic EIS is the first step towards developing and implementing the appropriate institutional framework and foundation for future fisheries management under an ecosystem approach (i.e., Fishery Ecosystem Plans (FEPs)). We support the ecosystem approach presented in the DPEIS. The preferred FEP Boundary alternative (Issue 1: Fishery Ecosystem Boundaries: Alternative 1C) that encloses each of the region's four archipelagic areas and a single pelagic FEP appears to be an appropriate approach for delineating FEP boundaries. Clearly, such an approach will provide significant positive long term impacts to the fisheries.

EPA's overall rating of the DPEIS is LO-Lack of Objection to the proposed action. Although we rated the document LO, EPA requests that the following issues be clarified and addressed in the DPEIS. Specifically, the general issues are as follows:

1.) Issue 2: List Of Management Unit Species (MUS) discusses the various options for MUS l lists that will be managed under an ecosystem approach. The preferred option for Issue 2, Alternative 2B, chosen by NMFS/Council is to define and manage only the current MUS l listed fisheries believed to be present within each developed Fishery Ecosystem Plan boundary. The DPEIS states that "while principles of ecosystem approach to fisheries management direct managers to consider predator/prey relationships for each target species,

it does not require managers to manage every species under an ecosystem approach." While EPA understands it would be difficult to monitor and manage all species under an ecosystem approach, an option that takes into account other species occupying the same niche as fisheries and that interact with fisheries may be more appropriate from an ecosystem management standpoint. EPA believes that Alternative 2C, which defines MUS as those current fisheries plus incidentally caught and associated species that are known to occur within each FEP boundary is more in line with a ecosystem approach. Accordingly, EPA suggests that the FPEIS provide a more in depth comparison of Alternatives 2C to Alternative 2B for Issue 2.

2.) We support the provisions that Alternative 2B for Issue 2 provides for protection of target and non-target stocks as well as protected species. While the DPEIS discusses how the removal of species from the MUS list not physically present in the FEP would be part of an adaptive management approach, it does not discuss how species could be added to the MUS list if evidence becomes available that they are present in the FEP boundary. With this in mind, EPA suggests that the FPEIS discuss the adaptive management measures that will be taken to ensure that all ecosystem important species will be included in the FEP's MUS list and the measures that will be taken to include species that prove important to managing species within each FEP.

3.) There is no discussion under Issue 2, List of MUS, about how the species managed under the restructured MUS lists will be monitored. Under the existing Fishery Management Plans, stock assessments of managed fisheries are to be conducted on an annual basis. Alternative 2 does not specify how the species to be managed will be assessed and how the frequency of the assessments may or may not impact the approach to ecosystem management. In addition to the question on monitoring, the FPEIS should address how the NMFS/Council will provide for funds to ensure that species managed under the proposed FEPs will be adequately monitored and that the adaptive management approach is working to a sufficient degree to protect managed species.

We appreciate the opportunity to review this DPEIS. We also look forward to reviewing future documents related to this project. The staff contact for this review is Matthew Harrington and he can be reached at (202) 564-7148.

Sincerely,

Anne Norton Miller
Director
Office of Federal Activities

cc: Steve Kokkinakis; NOAA Office of Strategic Planning
John Hansel; NMFS Office of Sustainable Fisheries

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