

May 28, 2013

Dan Wolford, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, #101
Portland, OR 97220

RE: Agenda Item H.1., Updating the Federal List of Authorized Fisheries and Gear

Dear Chairman Wolford,

We are writing to express our support for your effort to revise and update the Pacific Fishery Management Council's (Council) List of Authorized Fisheries and Gear (List). We urge the Council to approve proposed revisions to the List at this meeting so that it contains only current West Coast fisheries operating in federal waters, and to transmit those recommendations to the National Marine Fisheries Service (NMFS) for implementation. We further request that the purse seine fishery for Pacific saury be stricken from the List, as this species is unmanaged, the fishery has not been conducted for decades, and saury is a critical forage species that must be protected pursuant to the Council's ecosystem-based initiative #1.¹

By taking this action, the Council will better prepare itself to address future proposals to develop new fisheries because any new fishing activity would have to adhere to a notification requirement and a 90-day waiting period before proceeding. This small window for conservation planning would give the Council the opportunity to petition NMFS to block the proposed fishing activity for up to one year if analysis indicates that it would compromise the effectiveness of conservation and management efforts under the MSA. As explained below, because of loopholes in the current List, new fisheries could begin without any required notification or request for Council approval.

Regarding Pacific saury, we request that it be removed from the List for two reasons. First, there is currently no U.S. fishery for this unmanaged species, and there has not been one for roughly 40 years. Second, according to the preliminary summary of lower-trophic-level (forage) species included in the Fishery Ecosystem Plan (FEP) initiatives document², Pacific saury is an unmanaged forage species eligible for protection under initiative #1; the intent of which is to prohibit new fisheries on forage species until the Council can assess any potential negative impacts.³ Below we present a more detailed rationale for these recommendations.

The List of Authorized Fisheries and Gear

The List is required under section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. §1855(a)). This section describes what the List is and calls

¹ PFMC. February 2013. Pacific Coast Fishery Ecosystem Plan. Public Review Draft of Ecosystem Initiatives Appendix. Page A-4.

² *Ibid.* p.11

³ *Ibid.* p.4.

for the establishment of guidelines describing how to determine whether a newly proposed fishing activity is sufficiently different from those already listed and thus would require notification. This section goes on to establish the notification process and potential response mechanisms (emergency regulations) available to the Council and the Secretary of Commerce.

The Code of Federal Regulations at [50 CFR 600.747](#) goes further by specifying how to determine whether a fishery requires notification, describing the procedure for providing notification to the Council, and providing further detail on the potential responses to the notification depending on whether a Council finds that the newly proposed fishery would compromise its existing conservation and management efforts.

Upon implementation of the List in 1999, NMFS issued a press release that included the following quote from Penny Dalton, then Director of NMFS:

“We can now proactively manage new gear or fisheries. In the past, fishermen were free to fish for any species or use any gear unless managers took action to restrict them. These new regulations are part of a precautionary approach to fisheries management...”⁴

Unfortunately, the fact that the List for every regional Council includes pre-authorized commercial and recreational fisheries for species that are not managed in Fishery Management Plans (FMP) undermines the precautionary approach described by Ms. Dalton. The broad categories in the List effectively mean that no notification or review is required before starting a new fishery.

June 2012 Motion

At its June 2012 meeting, the Council passed a motion that established a management objective to protect unmanaged forage species, and laid out a process for achieving that objective. The first stage in that process was to update and revise the List. Specifically, the motion directed that:

“A. Regarding the LOF (List of Authorized Fisheries and Gear), all Council advisory bodies shall be tasked with identifying fisheries and authorized gears for Federal fisheries operating in the U.S. Exclusive Economic Zone (EEZ) off each state in the most specific and narrow terms possible,⁵ for incorporation into the updated List. This exercise shall be completed by the advisory bodies and provided to the EPDT (Ecosystem Plan Development Team) as soon as possible after completion of the FEP.

⁴ NMFS. 1999. Press Release: NOAA Fisheries Implements List of Allowable Fisheries; Gear. Available at: <http://www.publicaffairs.noaa.gov/releases99/dec99/noaa99081.html>

⁵ Emphasis added

B. For state-managed fisheries, the states shall be responsible, through their EPDT representatives, for preparing the list of state-managed fisheries which have a nexus with Federal waters, for inclusion in the updated List.”⁶

The current iteration of the List at [50 CFR 600.725\(v\)](#) requires substantive revisions to ensure that it accurately reflects only current fisheries and also to effectively implement the notification requirement and waiting period for newly proposed fisheries described at [50 CFR 600.747](#). First, the List presently includes fisheries that no longer exist and/or for which there are no management measures or regulations, such as the seine fishery for Pacific saury. These fisheries must be removed from the List to comply with the June 2012 motion.

Second, the List also includes two broad catch-all categories for both commercial and recreational fisheries on species that are not managed under a Council FMP. Fishing gears authorized under these two categories include most known gear types typically used in commercial and recreational fisheries.⁷ As stated above, this loophole means that no notification or approval from the Council is required of anyone wishing to commercially or recreationally harvest any non-FMP species using an authorized gear.

We have also heard concerns that updating the List should not unduly constrain or otherwise restrict any existing fishery. Regarding this concern, the Council’s Fishery Ecosystem Plan states:

“Potential revisions to this table should consider only those fisheries that occur wholly or partially within federal waters. No revision to the table should have the effect of prohibiting currently legal directed fisheries or incidental catch.”⁸

We offer two comments regarding this issue. First, it is important to note that removing a fishery from the List does not prohibit that fishery from occurring in the future. The only additional constraint imposed by removal from the List is the notification requirement and waiting period described at [50 CFR 600.747](#). Second, the above quote seems to imply that any species that may potentially be caught incidentally in an authorized fishery must be included on the List. This should not be the case, otherwise every potential bycatch species from every Council managed fishery would need to be included.

Notification Requirement and Process

Notification is required for the development of any new fishery that is not already authorized by a regional Council’s List. No new fishing activity may occur without 90-day advance notice to the appropriate Council. Upon receipt of a complete application, the Council has a 90-day window to review and consider the new proposed fishery. If the Council finds that the proposed

⁶ PFMC. June 2012. Supplemental Revised Council Action on Consideration of Further Protection of Currently Unmanaged Forage Species. Agenda Item G.1.d.

⁷ The recreational category includes spear, trap, handline, pot hook and line, rod and reel, and hand harvest. The commercial category includes trawl, gillnet, hook and line, longline, handline, rod and reel, bankdit gear, cast net and spear.

⁸ PFMC. February 2013. Pacific Coast Fishery Ecosystem Plan. Public Review Draft of Ecosystem Initiatives Appendix. Page A-5.

fishery would not compromise its existing conservation and management efforts, it would request that NMFS update the List to reflect the newly operating fishery. If the Council finds otherwise and wishes to prohibit or postpone the activity, it would need to petition NMFS to implement emergency or interim regulations to prohibit the new fishing activity, and take action through a new or existing FMP to establish permanent regulations for the proposed fishery. Depending on whether or not NMFS agrees with the Council's finding, it can either publish emergency regulations to prohibit the new fishery, or publish a proposed rule in the Federal Register and request public comment on the merits of the potential fishery prior to making a determination.

There are a few key points to bear in mind regarding this notification process. First, the two broad catch-all commercial and recreational categories will need to be stricken from the List for the notification process to be required for any new fishery. Second, if a fishery were proposed that could possibly have negative impacts on the ecosystem and/or other managed fisheries, the Council would be in a position where it would have to:

- Rely on NMFS to agree with the Council's finding of potential negative impact.
- Rely on NMFS to promulgate emergency regulations to prohibit the fishery within the 90-day waiting period, with such regulations only enforceable for 180 days.
- Begin work on amending an existing FMP to establish permanent regulations for the proposed fishery before NMFS could extend the temporary prohibition for another 180 days (allowing up to a one-year delay on the proposed activity).

Relying on NMFS to agree with the Council's findings and act within 90 day period to temporarily prevent a harmful new fishery is problematic. Fisheries should only be allowed after they have been found to not pose any negative impacts to existing fisheries or the broader ecosystem. The best way to implement this approach to developing fisheries is through the regulatory FMPs over which the Councils have authority, not by asking the agency to take emergency action with an uncertain outcome.

Pacific saury

Pacific saury is a small to medium sized (22-28cm) pelagic schooling fish found throughout the North Pacific Ocean. It is an important forage species for a wide range of marine predators, in particular for highly migratory species such as tunas and sharks. It is primarily an offshore species that becomes abundant during cold ocean regimes, such as la Niña periods.⁹

Pacific saury is one of the most popular food fishes in Japan and Korea. It is also used as bait in hook & line fisheries throughout the world. Global landings of Pacific saury fluctuate between ~200,000 - ~600,000mt, with most production coming from Japan, Korea, Taiwan, Thailand and Russia.¹⁰ Pacific saury is primarily caught commercially with purse seine, lampara, dip net and trawl gear.

⁹ PFMC. February 2013. Pacific Coast Fishery Ecosystem Plan. Public Review Draft of Ecosystem Initiatives Appendix. Page A-11.

¹⁰ FAO. 2010. Species Fact Sheet: *Cololabis saira*. Available at: <http://www.fao.org/fishery/species/3001/en>

There is currently no commercial or recreational fishery for Pacific saury in the U.S. Exclusive Economic Zone. It is not managed by or under the jurisdiction of any state or the federal government. Any Pacific saury use or consumption in the U.S. comes from Asian imports.¹¹ In the 1950's, following the collapse of the Pacific sardine fishery, there was interest and attempts at establishing a commercial fishery for Pacific saury off the U.S. West Coast, both by domestic and Japanese vessels. After several Western stocks such as anchovy and mackerel rebounded in the mid 1970's, efforts to harvest Pacific saury were discontinued.¹² However, because of its large biomass and availability, it will remain at risk of being fished without regulations until it is removed from the List.

Currently, the List includes a pre-authorized commercial purse seine fishery for Pacific saury. This means that a purse seine fishery for Pacific saury may begin at any time, without notification to the federal government or to the Council and without any sort of catch limit or fishery specific regulations. This policy is problematic because Pacific saury is ecologically critical as prey for a wide variety of marine wildlife, including commercially and recreationally valuable species. The schooling characteristic of Pacific saury that makes them so attractive to predators also renders them susceptible to industrial purse seine fisheries. Unregulated harvest of Pacific saury could lead to depletion of the species and cause negative impacts on ecosystem structure and function. This is precisely why it is included in the preliminary summary of lower-trophic level (forage) species developed by the EPDT for consideration in implementing ecosystem-based initiative #1. For these reasons, this pre-authorized fishery for which there is no scientific information or management measures must be removed from the List.

Ecosystem-Based Fishery Management

Ecosystem-based management is a foundational principle for ocean resource management in the United States.¹³ Ecosystem-based fisheries management (EBFM) approaches have been incrementally implemented by regional Councils over the last several decades. As early as 1998, the Ecosystem Principles Advisory Panel, convened by the National Marine Fisheries Service at the request of Congress, produced a report which found that EBFM “will contribute to the stability of employment and economic activity in the fishing industry and to the protection of marine biodiversity on which fisheries depend.”¹⁴ Since that time, the body of knowledge on EBFM has grown along with calls from government scientists and fishery managers as well as the fishing industry itself, lauding its merits and advocating its implementation. For example, in 2005 the Pacific States Marine Fisheries Commission convened a panel of scientists to identify a process to help Regional Councils “move forward in incremental ways, from the existing

¹¹ Love, Milton. 1996. Probably More Than You Want To Know About the Fishes of the Pacific Coast. Really Big Press. Santa Barbara, CA. p.134

¹² NMFS. SWFSC. 1992. Technical Memorandum 9251: Underutilized Species. p. 199-201. Available at: <http://swfsc.noaa.gov/publications/CR/1992/9251.PDF>

¹³ NMFS. 2012. Ecosystem-Based Fisheries Management. New Council Member Training. Available at: http://www.nmfs.noaa.gov/sfa/reg_svcs/Councils/Training2012/O_Eco_FishManagement.pdf

¹⁴ National Marine Fisheries Service (NMFS). 1999. *Ecosystem-Based Fishery Management. A Report to Congress by the Ecosystem Principles Advisory Panel*. United States Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, Silver Springs, Maryland.

management approaches that generally consider ecosystem interactions in an implicit and often peripheral way, to a management system that, over time, would incorporate explicit EBFM considerations into the fishery assessments themselves.”¹⁵

Commonly found in much of the literature on the subject of EBFM is the recognition that while a lack of scientific knowledge is a barrier to full implementation, there are certain first steps and actions that can be taken under our current management framework and understanding of ecosystem science. According to the EPAP report and others, chief among those is to reverse the burden of proof on the development of new fisheries.¹⁶

The modus operandi for fisheries management should change from the traditional mode of restricting fishing activity only after it has demonstrated an unacceptable impact, to a future mode of only allowing fishing activity that can be reasonably expected to operate without unacceptable impacts.

By updating and revising the List to reflect only those fisheries that currently exist, the Council is truly taking that small but critical first precautionary step recommended by the EPAP and described by the head of NMFS when the List was first published in 1999. Furthermore, while the Council continues to pursue FMP-level protections to prevent new fisheries on unmanaged forage species until adequate science and management measures are in place, this revised List provides an interim level of protection until legally binding regulations can be put in place.

We appreciate the Council undertaking this endeavor and look forward to working with all stakeholders to maintain healthy oceans and sustainable fisheries.

Thank you in advance for your time and consideration.

Sincerely,



Steve Marx

The Pew Charitable Trusts

¹⁵ Pacific States Marine Fisheries Commission (PSMFC). 2005. *Strengthening Scientific Input and Ecosystem-Based Fishery Management for the Pacific and North Pacific Fishery Management Councils*. Suggestions from a panel discussion. July 19-20, 2005. Seattle, Washington.

¹⁶ See EPAP Report, Mangel, M. et al. 1996. Principles for the conservation of wild living resources. *Ecological Applications* 6(2):338-362., Sissenwine, M. P. 1987. Councils, NMFS, and the Law. Pages 203-204 in: R. Stroud (ed.) *Recreational Fisheries* (11). Sport Fishing Institute. Washington, D. C., Dayton, P. K. 1998. Reversals of the burden of proof in fisheries management. *Science* 279:821-822.