

November 13, 2009

Gary Locke, Commerce Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Statement of Disagreement
Western Pacific Regional Fishery Management Council, WPRFMC (WESPAC)
Amendments to the Pelagics Fishery FMP Allowing Additional Harvest of Pacific Bigeye Tuna
Approved at WESPAC's 146th meeting, October 2009

Dear Secretary Locke:

In line with the authority provided me under Section 302 (e) (4) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as a voting member of the Western Pacific Regional Fishery Management Council (WPRFMC, more commonly referred to as (WESPAC,)) I submit this Statement of Disagreement with the amendments made to WESPAC's Pelagics Fishery Management Plan (FMP) with respect to Pacific bigeye tuna; WESPAC approved the amendments at its 146th meeting, October, 2009.

I am presently serving as an at-large voting member on WESPAC (my term is from 2007 – 2010.) Prior to that, while I was the Director of the State of Hawaii Department of Land and Natural Resources, I served as the State of Hawaii representative on WESPAC (2003 – 2007.)

My concerns are focused on three primary (and interrelated) issues:

- WESPAC Approval of Increased Harvest of the Overfishing and Overfished Pacific Bigeye Tuna
- Questionable Agreement Apparently Negotiated Between the WESPAC Council Chair and WESPAC Member(s) Prior to the FMP Discussion/Action by WESPAC
- Retaliatory Actions Against WESPAC Council Members

I express to you my strong disagreement with the recent WESPAC amendments to its Pelagics Fishery FMP that call for additional harvest of the overfishing/overfished Pacific bigeye tuna and ask that you reject them in their entirety. In addition, I ask that you investigate the agreement between the Hawaii Longline Association and the Territory of American Samoa related to the chartering of vessels for additional harvest of Pacific bigeye tuna, as well as the participation of WESPAC members and WESPAC staff in that agreement and subsequent recommendations/action on the Pelagics FMP amendments. Finally, I ask that you instruct the WESPAC Council and WESPAC staff to immediately stop all retaliatory threats and actions against dissenting voting members who do not follow lockstep on every discussion or action of WESPAC.

I will address these separately, below:

Do well by doing good.

Background - WESPAC Approval of Increased Harvest of Pacific Bigeye Tuna

As you know, Congress created the regional fishery management councils to advise your Department on recommended fishery conservation and management measures for fisheries that occur in U.S. waters. Councils do this by preparing and submitting to you fishery management plans (FMPs) for species that occur in those waters. WESPAC developed an FMP for western Pacific pelagic species (Pelagics FMP). This FMP covers fishing for Pacific bigeye tuna.

In 2004, your predecessor formally determined that overfishing of bigeye tuna was occurring Pacific-wide. This determination triggered MSA requirements that are intended to end this overfishing, including the requirement that the Pelagic FMP contain measures that “prevent overfishing.” At WESPAC’s recent 146th meeting (October 2009,) WESPAC was given a briefing on the continued overfishing status of Pacific bigeye tuna stock. At that same meeting, the WESPAC Scientific and Statistical Committee (SCC) representative reported that the fishery is now “overfished,” signifying a further decline in their status.

Because Pacific bigeye tuna are also highly migratory, and do not respect political boundaries, the United States is a signatory to international agreements to protect and manage this species. The international Western and Central Pacific Fisheries Commission (WCPFC) has measures calling for reduction in bigeye tuna harvest; however, the limits do not apply to small island States and territories while undertaking responsible development of their domestic fisheries.

At the 146th meeting, several amendments to the WESPAC Pelagics FMP were approved. These included amendments that effectively increase the harvest of the overfishing/overfished Pacific bigeye tuna.

WESPAC appears to be using a decision by the WCPFC to justify its amendments allowing additional harvest of Pacific bigeye tuna, but fails to recognize that there are underlying responsibilities to end overfishing and rebuild the stocks called for in MSA, the guiding authority for WESPAC and all other U.S. Fishery Councils.

WESPAC’s Pelagic FMP Amendments Should be Rejected

You should reject the Pelagic FMP amendments because I believe they are illegal.

The MSA was recently amended to prevent any regional council from recommending annual catch limits that “exceed the fishing level recommendations of [the relevant] scientific and statistical committee.” (MSA section 302 (h) (6)) In its formal recommendation on the proposed FMP amendments, the WESPAC Scientific and Statistical Committee (SSC) reported to the WESPAC Council:

Given the continued decline of the status of the bigeye stock the SSC does not support any increase in bigeye catch by any entity authorized by the Commission, and declines to endorse any specific alternatives

Although unilateral action by WESPAC will not end overfishing of Pacific bigeye tuna, under MSA, WESPAC has the responsibility and is required to prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to end overfishing in the fishery and to rebuild affected stocks of fish. Additional harvesting in an overfished fishery with continued overfishing is contrary to these unambiguous requirements.

Underlying the legal requirements is the fact that allowing an increase in fishing levels for a species that has many years of overfishing and, as reported by WESPAC's SSC, has recently fallen into the overfished status, is extremely bad policy. As Congress found in passing the MSA:

International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place.

The current situation takes this problem to another level – using international fishing agreements as an excuse to increase harvest in a long-troubled fishery, despite U.S. law that compels a contrary result. This perfectly exemplifies why WESPAC has the reputation as “a notorious enabler of reckless overfishing by commercial fleets”. <http://www.nytimes.com/2009/01/07/opinion/07wed1.html>

You should reject this attempt to bypass U.S. law and stop this terrible precedent for fisheries management.

Questionable Agreement Apparently Negotiated Between the WESPAC Council Chair and WESPAC Member(s) Prior to the FMP Discussion/Action by WESPAC

While I have not formed an opinion (and do not have sufficient information at this point to do so) on the appropriateness of the agreement presumably between the Hawaii Longline Association (HLA) and the Territory of American Samoa, I believe there are legitimate and significant questions concerning the timing, circumstances and details of the agreement that apparently has American Samoa charter HLA vessels for these additional fishing privileges.

With respect to timing, it is curious that before any FMP amendments are made or alternatives are even presented to or considered by the WESPAC Council, an agreement to harvest fish by a select group of fishers is negotiated and agreed to prior to the WESPAC meeting. Further, it is curious that during the staff presentation, the WESPAC Council was encouraged to support the staff recommendations.

During the staff presentation and justification for the amendments, the WESPAC Council was reminded of the recent events affecting American Samoa: regional earthquake and tsunami, closure of the American Samoa tuna canneries and the uncertain fate of the American Samoa longliners (who previously targeted albacore to supply the canneries.) Yet, following those brief references, the discussion immediately turned to and focused on the opportunity and justification for the Territory of American Samoa to charter vessels from elsewhere as a means to implement the FMP amendments.

Thankfully, the American Samoa longline fleet was not seriously impacted by the earthquake/tsunami; but there is no doubt that their future is uncertain, especially given the closure of the tuna canneries. Given that the longline fleet and local infrastructure are in need of support, it seems that the emphasis for development of a fishery should be to support American Samoa fishers, not enhance some distant fleet in the Hawaiian Islands. Likewise, it would seem that the benefits of developing an expanded fishery should also seek to benefit American Samoa land-based activities dealing with fish landings and servicing of vessels.

To the contrary, it is curious that, while all of the other FMP amendment “action” alternatives required that all landings for off-loading and servicing of vessels must occur in American Samoa (thus, fully benefitting the American Samoa land-based support communities,) the staff-recommended preferred alternative and the alternative ultimately approved by WESPAC requires that only three landings for off-

loading and vessel servicing must take place in American Samoa, each year. The preferred alternative appears to provide the least benefit to American Samoa and significantly greater advantage to Hawaii longliners.

MSA and the Department of Commerce Rules of Conduct are clear that U.S. Fishery Council members must disclose conflicts when addressing matters before the Council. In extreme cases, where Council members have a significant and predictable financial benefit and there is a close causal link between a decision and an expected and substantially disproportionate benefit to the member's financial interest, members must disqualify or recuse themselves from participation.

It is curious that the WESPAC Council was never given details of the agreement, yet was told the agreement was between the Territory of American Samoa and the HLA. However, at the beginning of the session Sean Martin, WESPAC Chair and HLA member, recused himself from the action. This suggests WESPAC Chair Martin may have an individual benefit significantly greater than the benefit he may gain simply as a member of HLA. While Chair Martin disclosed conflicts on previous WESPAC Council actions (including those benefitting HLA,) he rarely recuses himself from participating in the discussion and vote. In light of the agreement purportedly negotiated for the benefit of the HLA, it is interesting that Chair Martin recused himself in this case.

The circumstances also raise questions of the appropriateness of WESPAC Council members apparently negotiating amongst themselves on terms dealing with increased harvesting of fish (which can only be authorized with subsequent amendment to the Council's FMP) before the full Council has even heard or considered amendments to the FMP – especially for additional harvest of an overfishing/overfished stock. Given the timing and circumstances, it appears that the agreement and subsequent WESPAC action to amend the FMP may disproportionately benefit an individual or limited group of fishers with added fishing privileges.

I am reminded of MSA National Standard 4 that states that conservation and management measures shall not discriminate between residents of different States and allocation or assignment of fishing privileges shall be fair and equitable to all fishermen and carried out in such manner that no particular individual, corporation or other entity acquires an excessive share of such privileges. It appears, however, that an individual or entity may have gained a substantially greater share in these fishing privileges, due to the American Samoa-HLA agreement and subsequent FMP amendments.

Because the details of the agreement are not clear, I recommend that you review the agreement between the Territory of American Samoa and the HLA to make sure it does not conflict with the provisions of the MSA.

Likewise, I suggest that you call for an investigation into the appropriateness of the timing and circumstances leading to the agreement, including an investigation into the participation by WESPAC Council members and WESPAC staff in the agreement and FMP amendments, including the subsequent recommendations on preferred alternatives.

Retaliatory Actions Against WESPAC Council Members

WESPAC has a climate that makes it extremely difficult to express opinions contrary to the Council leadership and executive director. I have ultimately resorted to the FOIA process to gain access to critical documents that help me make informed decisions and in doing so have been accused of violating my duties to the Council. I stand by my actions and am secure in the knowledge that every action I have

taken is intended to further the Council's mission to be part of the system that results in the responsible stewardship of ocean resources, including the people who rely on the sustainable use of those resources for their lives or livelihoods.

At the same time, civil discourse has not been part of my experience with Council leadership and staff, and the current situation is no different. In addition to the numerous subtle acts of retaliation and obstruction that have been taken against Council members who disagree with or question Council leadership and staff, we are subject to more public attempts to chill us from meaningfully participating in Council actions.

One example is the unprecedented emphasis in the incredibly-biased Council press release on the recent Pelagics FMP amendments. Following the 146th meeting, WESPAC published a press release titled: "U.S. Territories Ask for 'Justice' in Pacific Tuna Allocations" that, in part, states:
(<http://www.wpcouncil.org/councilmtgs/146/2009.10.23%20PressRelease%20146%20CM.pdf>)

A major discussion item the past two days has been an amendment to the Pelagic Fishery Management Plan (FMP) that would authorize American Samoa, Guam and the Commonwealth of the Northern Mariana Islands (CNMI) to utilize their Western and Central Pacific Fishery Commission (WCPFC) longline bigeye tuna catch limits through arrangements with U.S. vessels permitted through the Pelagic FMP. The primary objective of this amendment is to stimulate fisheries development in the U.S. territories.

"Where is the justice?" asked Council member Duenas.

In a clearly retaliatory-motivated (and unprecedented) move, the Council frames the issue as one of "justice" for the territories and then states the following:

Hawaii Council members Peter Young and Laura Thielen, chair of the Department of Land and Natural Resources, argued against the amendment.

After long discussions, the Council—with the exception of Young and Thielen—agreed to amend the Pelagics FMP to establish an annual longline bigeye catch limit of 2,000 mt for each of the U.S. Pacific island territories and provide them with limited authority to utilize their longline bigeye catch limits through arrangements (charter, lease or similar mechanisms) with Pelagic FMP permitted vessels.

The press release does not clearly note the long and serious overfishing condition of the Pacific bigeye tuna stock, the WESPAC SSC (WESPAC's own committee of science advisors) reported that the stock is now overfished, WESPAC's obligation and responsibility to end overfishing and rebuild overfished stocks under MSA, or that the Council's own SSC "does not support any increase in bigeye catch by any entity authorized by the Commission". Yet each of these points is critical both to legal duties and to further a public understanding of the Council actions. Indeed, were it practicing open and transparent decision-making, the Council would bring up these points and then explain why its actions are justified despite them.

It is deplorable that dissenting members to an action are called out in a press release following a Council meeting. In the context it is presented, this gives the impression that Laura Thielen and I are somehow 'unjust', because we did not agree with the amendments to increase the harvest of bigeye tuna. This

retaliation against Council Members looks like the WESPAC Council and WESPAC staff are trying to pressure WESPAC members to vote certain ways.

Because Council Members do not simply go along with the majority or rubber stamp the recommendations and motions of the executive director does not mean Council Members should be subjected to retaliatory statements in WESPAC press releases (suggesting dissenting Council Members are not fair and/or not fulfilling responsibilities as Council Members) or any other retaliatory actions by the WESPAC Council or WESPAC staff.

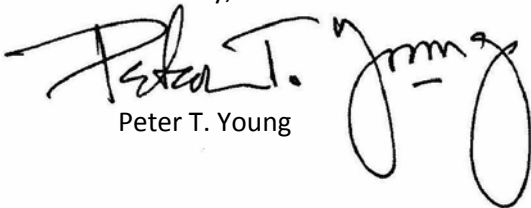
I realize that it is difficult for you as the Secretary of Commerce to address such situations. Nevertheless, I raise it with you to ensure that you are aware of the full extent of the challenges that some Council members – far from the D.C. beltway – endure as we try in good faith to meet our duty to the United States as Council members. I have already seen in Hawaii the difficulty of getting otherwise-qualified people to advance themselves for a Council seat, as they know from others' experience the toxic environment that prevails on WESPAC.

Request to Reject the Amendments, Call for Investigation and Protect Council Members Against Retaliation

In summary, I express to you my strong disagreement with the recent WESPAC amendments to its Pelagics Fishery FMP that call for additional harvest of the overfishing/overfished Pacific bigeye tuna and ask that you reject them in their entirety. In addition, I ask that you investigate the agreement between the Hawaii Longline Association and the Territory of American Samoa related to the chartering of vessels for additional harvest of Pacific bigeye tuna, as well as the participation of WESPAC members and WESPAC staff in that agreement and subsequent recommendations/action on the Pelagics FMP amendments. Finally, I ask that you instruct the WESPAC Council and WESPAC staff to immediately stop all retaliatory threats and actions against dissenting voting members who do not follow lockstep on every discussion or action of WESPAC.

Nothing less than the integrity of the Council system, in general, and the operations of WESPAC, specifically, are at stake.

Sincerely,



Peter T. Young

Copies:

Dr. Jane Lubchenco, NOAA Administrator
Dr. James W. Balsiger, NOAA Acting Assistant Administrator for Fisheries
Mr. Bill Robinson, Regional Administrator, NOAA Fisheries, Pacific Islands Region