

March 27, 2024

Sarah Malloy, Acting Regional Administrator
NMFS Pacific Islands Regional Office
1845 Wasp Blvd., Bldg. 176
Honolulu, HI 96818

Re: Catch and Retention Limits for Striped Marlin in the Western and Central Pacific Ocean
North of the Equator - NOAA–NMFS–2022–0148

Dear Ms. Malloy:

Thank you for the opportunity to submit these comments on NOAA Fisheries' Proposed Rule for Catch and Retention Limits for Striped Marlin in the Western and Central Pacific Ocean (WCNPO) North of the Equator as well as the Draft Environmental Assessment (collectively Proposed Rule). Wild Oceans, the International Game Fish Association and American Sportfishing Association engage in the conservation of highly migratory species, nationally and internationally, to revitalize fisheries and restore their vital role as keystone predators that maintain balance and diversity in marine ecosystems from the top down. The Pacific's largest predatory fish have been drastically impacted by industrial fishing. Some highly migratory species are the object of determined recovery efforts, but others, such as WCNPO striped marlin, hover at historically low spawning biomass.

NOAA Fisheries' Proposed Rule seeks to establish a 457 metric ton (t) catch limit and 443t retention limit for striped marlin caught by U.S. fishing vessels in the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean Convention (WCPFC) area north of the Equator and west of 150° W (Alternative 2). NOAA Fisheries abdicates their duty to adopt catch limits that consider the U.S. relative impact by basing the proposed catch limit **solely** on the international catch limit for the U.S. established by the WCPFC Conservation and Management Measure (CMM) 2010–01, “Conservation and Management Measure for North Pacific Striped Marlin” adopted in 2010. The only benefit of a 457t catch limit is to meet our obligation to ensure consistency with the international catch limits established in CMM 2010-01. It does not reduce our catch of striped marlin, reduce bycatch of striped marlin, or reduce mortality of striped marlin. The Proposed Rule fails to meet the Agency's obligations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and fails to act with precaution, instead allowing for INCREASED catch on an overfished stock.

For the following reasons and to ensure compliance with requirement of MSA including §304(i), we recommend that NOAA Fisheries adopt a striped marlin catch limit of less than 409t consistent with the most current rebuilding analyses, a retention limit at least 20% below the

catch limit to address the U.S. relative impact on the stock including bycatch and discard and to avoid excess fishing mortality, and complimentary conservation measures to reduce the catch, discard and mortality of striped marlin, protect vulnerable life histories, and improve recreational and small-boat opportunities.

The proposed catch limit exceeds recommendations and best available science for international actions that will end overfishing and rebuild WCNPO striped marlin.

In the 14 years since the WCPFC adopted CMM 2010-10, NOAA Fisheries and the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC) have demonstrated that the CMM 2010-10 catch limits are insufficient to end overfishing and rebuild the stock. The proposed catch limit ignores the continued depleted status of WCNPO striped marlin as overfished and subject to overfishing, the WCPFC Interim Rebuilding Plan for North Pacific Striped Marlin (Interim Rebuilding Plan) adopted in 2019, and the rebuilding projections prepared by NOAA Fisheries and the ISC.

The Proposed Rule should comply with the Interim Rebuilding Plan. The 2019 benchmark stock assessment for WCNPO striped marlin reaffirmed the status of the stock as overfished and subject to overfishing. This depleted status prompted the WCPFC to adopt the Interim Rebuilding Plan for North Pacific Striped Marlin in 2019 which established an interim rebuilding target of 20%SSB $F=0$, to be reached by 2034, with at least 60% probability. Since then, scientists have provided a clear path for rebuilding the stock. The Interim Rebuilding Plan also calls on member states to “develop measures to rebuild the stock in accordance with the rebuilding objective... Members should consider reduced catch limits and retention, release, and gear requirements, among other potential tools.” The Proposed Rule does not follow the intent of the Interim Rebuilding Plan or the best scientific information available on rebuilding.

The Proposed Rule should follow the best available science and set a catch limit lower than a limit provided by the rebuilding analyses. In 2021, The Pacific Islands Fishery Science Center (PIFSC) prepared a working paper¹ and described analyses and stock projections to develop a rebuilding plan for the stock. Three alternative harvest scenarios were developed to rebuild the striped marlin stock and satisfy the rebuilding goals. All three analyses resulted in a U.S. catch reduction of at least 13.4% to 409t. The 2023 Stock Assessment recommended that: “catch should be kept at or below the recent level (2018-2020 average catch = 2,428 t)... to recover above SSBMSY and near the 20% SSBF=0 reference level (3,660 t) by 2040, or sooner at the lower catch levels under a low recruitment regime.” Using the U.S proportion of total reported catch would result in a limit of 409 t or about 18% of the ocean-wide catch. The

¹ Brodziak, J. 2020a. Some Rebuilding Analyses for the Western and Central North Pacific Ocean Striped Marlin Stock. Working Paper: PIFSC Honolulu, HI. *available at* <https://repository.library.noaa.gov/view/noaa/29537>

Proposed Rule is inconsistent with even the meager catch reduction needed to rebuild the stock by 2034 under a phased rebuilding plan or by 2040 under constant catch and instead allows a **20 percent increase** in catch.

Consistent with The Interim Rebuilding Plan, the Proposed Rule should consider not only catch limits and retention, but release, gear requirements and other potential tools.

NOAA Fisheries arbitrarily dismisses the addition of boat-side conservation and management measures to ensure fishing mortality is reduced on paper and on the water. NOAA Fisheries concludes, without any analysis, that “effort limits and gear restrictions were rejected from analysis because these...**may** have deleterious impacts on target species catch and fishery economic performance” [emphasis added]. The Proposed Rule provides no other means of preventing excess mortality.

NOAA Fisheries should couple any catch limit with other tools such as release of striped marlin alive at haulback. The Agency rejects this measure because, according to Environmental Assessment Table 5,² releasing striped marlin brought to **all** longline vessels, not just U.S., alive at haulback would not result in rebuilding of the stock. However, they do not prepare any analysis of the cost or benefit to coupling live release with a retention limit and whether this could ensure NOAA Fisheries meets the purpose and need of this action, to manage the U.S. catch of WCNPO striped marlin while minimizing adverse economic impacts to the affected fisheries, by ensuring all catch, **including discards**, is considered and making sure the fishery does not exceed a specified catch limit. Instead, NOAA Fisheries dismisses a live-release requirement, concluding without analysis that such action will have “considerable economic impact to the fleet.”

NOAA Fisheries rejects without evidence the protection of juveniles or spawning grounds through area based management “because there is little evidence to show any current fishing area has a disproportionate impact on the WCNPO striped marlin stock.”³ Spatial management measures, such as time–area closures, offer a widely advocated strategy for managing bycatch in fisheries and the impact on particular life-history stages. A 2022 PIFSC Working Paper⁴ observes that the Hawaii longline fishery coincides with a nursery area for juvenile striped marlin in the Western and Central North Pacific. Spawning grounds of striped marlin are confirmed in the Hawaiian waters. The Kona Gyre and Cross Seamounts have historically been regarded as primary spawning grounds and nursery habitat for striped marlin, and the influx of large striped marlin in quarters 2 and 3 coincides with the expected influx of adult fish to the

² This analysis relies on Table 5 in the EA. NOAA Fisheries should update Table 5 with information from the most recent stock assessment. The 2023 stock assessment predicts the stock can rebuild by 2040 by maintaining current catch levels and Table 5 should be updated to determine the impact of US or stock-wide requirements of live releases for striped marlin.

³

⁴

Hawaii longline fishing grounds during spawning season. NOAA Fisheries does not provide any analysis of whether a time-area closure when the U.S. longline fleet presents the highest CPUE on juveniles or spawning adults could improve the stock biomass and recovery.

NOAA Fisheries should fully consider other management measures endorsed by the public such as removing the shallowest hooks or increasing hook depth. The shallowest hooks adjacent to the longline floats have substantially higher billfish catch than any deeper hooks. Recent studies demonstrated a significant reduction of istiophorid catch when the shallow hooks were eliminated in deep set longline sets.

The proposed rule fails to fully consider the “relative impact” of fishing vessels of the United States because, in part, it does not consider the impact of actual catch (including bycatch).

In June 2020, NOAA Fisheries determined the stock was overfished and experiencing overfishing, that international management measures are not effective to end overfishing and that §304(i) requires the development of domestic regulations “to address the relative impact of fishing vessels of the United States.”⁵ National Standard 1 guidelines include some advice for determining “relative impact” including, but not limited to the impact of the actual catch **(including bycatch)**. Information used to determine relative impact must be based upon the best available scientific information.

NOAA Fisheries does not provide a full picture of the U.S. impact on the stock because it fails to include consideration of the striped marlin caught east of 150° W latitude or discarded striped marlin bycatch. Instead, NOAA Fisheries quantifies the U.S. impacts on the stock as its catch history used in the stock assessment which only includes catch within the boundaries of the WCPFC convention area. According to the 2023 Stock Assessment, genetic studies suggest there are three genetically distinct populations of striped marlin including one that includes Japan, Hawai’i and California. The determination of “relative impact” and the rule exclude consideration of catch of striped marlin east of 150° W by Hawai’i based longline vessels and California based longline vessels. In addition, the California based longline fishery is prohibited from landing marlin in California, and must discard their striped marlin catch. The Proposed Rule should consider the catch and discard of striped marlin east of 150° W in the relative impact.

The relative impact analysis should also consider the relative impact of the striped marlin catch that is discarded. The Proposed Rule catch limit does nothing to prevent the fleet from reaching the limit and then discarding marlin bycatch thereby increasing fishing mortality further. The proposed action considers only one accountability measure, to require release of striped marlin

⁵ Letter from Mike Tossato

when the fleet reaches 97% of the total catch limit. NOAA Fisheries should provide analysis to determine if this threshold is adequate, whether different thresholds, thresholds specific to each quarter, or a combination of a lower threshold with mandatory live release, could provide a large enough buffer between the retention limit and catch limit to avoid excess mortality. Without an additional buffer, once the retention limit is reached, fishermen will continue their pursuit of target species, and catch, kill and discard striped marlin. The Proposed Rule should consider the relative impact of this discarded bycatch.

When considering relative impact, NOAA Fisheries makes arbitrary conclusions of fact without evidence in the Environmental Assessment. In 2022, NOAA Fisheries prohibited the use of wire leaders in longline gear for Hawai'i-based longline fisheries to decrease the catch of the endangered oceanic whitetip shark and improve the survivability of hooked whitetip sharks. NOAA Fisheries asserts without sufficient evidence that this transition from steel wire leaders to nylon monofilament will also decrease the catch of striped marlin. NOAA Fisheries does not provide any data from the Hawai'i-based longline fishery to support this assertion. Instead, the EA cites a research study from Australia that showed a decrease in the catch of some marlin species on monofilament, but an overall increase in catch of all marlins. Experienced small-boat fishermen have witnessed that monofilament actually increases the catch of small marlin. Further on the water confirmation of the impact of monofilament on the catch of striped marlin is needed before the Agency can rely on this as proof of addressing the relative impact on striped marlin.

NOAA Fisheries fails to analyze the socio-economic impact of the proposed rule on recreational and small-boat fishermen. However, charter fishermen target striped marlin and release the majority of their catch. Small-boat fishermen also fish for striped marlin and seek out the delicacy of the “pumpkin colored” marlin. Reducing the catch of striped marlin through boat-side conservation measures or requiring the release of live marlin will not only help the stock rebuild, but will improve near-shore fishing opportunities for small-boat fishermen. The EA should consider how reduced longline catch would improve small-boat catch.

The proposed rule will allow the U.S. to INCREASE catch of an overfished stock. Finally, the Proposed Rule will allow the U.S. to increase catch. The U.S. catch averaged 409t per year between 2015 and 2020. The proposed rule seeks to allow a catch of 453t. It is contrary to the heart of MSA to allow increased catch and mortality of an overfished stock. For example, pursuant to MSA, when a stock is overfished, a rebuilding catch limit must be set to reflect the annual catch that is consistent with the schedule of fishing mortality rates in the rebuilding plan and any limit should include mortality not accounted for in landings. Alternative 2 is inconsistent with the schedule of fishing mortality in the rebuilding analyses prepared by PIFSC and ISC.

Pacific-wide, the annual catch of striped marlin has continued to decline and juveniles comprise the majority of the catch. The best scientific information available reflects the need to keep catch

below current levels in order to rebuild the stock. The Proposed Rule instead allows an INCREASE in catch on overfished striped marlin and takes no steps to minimize catch or excess mortality. MSA 304(i) does not absolve NOAA Fisheries from acting with common sense and consistent with best available science to address the U.S. relative impact on this depleted stock and to build sustainable highly migratory species.