

## **6.0 CROSS-CUTTING MANDATES**

In addition to being prepared in accordance with the requirements of the Magnuson-Stevens Act and the National Environmental Policy Act, this document also addresses requirements of other applicable federal laws and Executive Orders. These laws and orders are described here and their applicability to this action assessed.

### **6.1 Other Federal Laws**

#### **6.1.1 Coastal Zone Management Act**

Section 307(c)(1) of the Federal Coastal Zone Management Act (CZMA) of 1972 requires all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. The preferred alternative would be implemented in a manner that is consistent to the maximum extent practicable with the enforceable policies of the approved coastal zone management programs of Washington, Oregon, and California. This determination has been submitted to the responsible state agencies for review under section 307(c)(1) of the CZMA. The relationship of the groundfish FMP with the CZMA is discussed in Section 11.7.3 of the groundfish FMP. The groundfish FMP has been found to be consistent with the Washington, Oregon, and California coastal zone management programs. The recommended action is consistent and within the scope of the actions contemplated under the framework FMP.

Under the CZMA, each state develops its own coastal zone management program which is then submitted for federal approval. This has resulted in programs which vary widely from one state to the next. Because the intent of Amendment 16-1 is administrative in nature—to establish the process and standards for adoption and review of rebuilding plans for overfished species—none of the alternatives are expected to affect any state's coastal management program.

#### **6.1.2 Endangered Species Act**

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery Biological Opinion's (December 15, 1999) incidental take statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental take statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002 that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. The proposed action is within the scope of these consultations.

#### **6.1.3 Marine Mammal Protection Act**

The Marine Mammal Protection Act (MMPA) of 1972 is the principle federal legislation that guides marine mammal species protection and conservation policy in the United States. Under the MMPA, NMFS is responsible for the management and conservation of 153 stocks of whales, dolphins, porpoise, as well as seals, sea lions, and fur seals; while the U.S. Fish and Wildlife Service is responsible for walrus, sea otters, and the West Indian manatee.

Off the West Coast, the Steller sea lion (*Eumetopias jubatus*) eastern stock, Guadalupe fur seal (*Arctocephalus townsendi*), and southern sea otter (*Enhydra lutris*) California stock are listed as threatened under the ESA; and the sperm whale (*Physeter macrocephalus*) Washington, Oregon, and California (WOC) stock, humpback whale (*Megaptera novaeangliae*) WOC - Mexico stock, blue whale (*Balaenoptera musculus*) eastern north Pacific stock, and Fin whale (*Balaenoptera physalus*) WOC stock are listed as depleted under the MMPA. Any species listed as endangered or threatened under the ESA is automatically considered depleted under the MMPA.

The West Coast groundfish fisheries are considered a Category III fishery, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals, in the annual list of fisheries published in the *Federal Register*. Based on its Category III status, the incidental take of marine mammals in the West Coast groundfish fisheries does not significantly impact marine mammal stocks. Amendment 16-1 is administrative in nature and would not change the effects of the groundfish fisheries on marine mammals.

#### **6.1.4 Migratory Bird Treaty Act**

The Migratory Bird Treaty Act of 1918 was designed to end the commercial trade of migratory birds and their feathers that, by the early years of the 20th century, had diminished populations of many native bird species. The Act states that it is unlawful to take, kill, or possess migratory birds and their parts (including eggs, nests, and feathers) and is a shared agreement between the United States, Canada, Japan, Mexico, and Russia to protect a common migratory bird resource. The Migratory Bird Treaty Act prohibits the directed take of seabirds, but the incidental take of seabirds does occur. The proposed action is administrative in nature and is unlikely to affect the incidental take of seabirds protected by the Migratory Bird Treaty Act. The cumulative effect of connected actions on seabirds is not likely to significantly differ from current conditions.

#### **6.1.5 Paperwork Reduction Act**

The proposed action, as implemented by any of the alternatives considered in this EA, does not require collection of information subject to the Paperwork Reduction Act.

#### **6.1.6 Regulatory Flexibility Act**

The purpose of the Regulatory Flexibility Act (RFA) is to relieve small businesses, small organizations, and small governmental entities of burdensome regulations and record-keeping requirements. Major goals of the RFA are; (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. An initial regulatory flexibility analysis (IRFA) is conducted unless it is determined that an action will not have a "significant economic impact on a substantial number of small entities." The RFA requires that an IRFA include elements that are similar to those required by EO 12866 and NEPA. Therefore, the IRFA has been combined with the RIR and NEPA analyses.

Section 7 (below) summarizes the analytical conclusions specific to the RFA and EO 12866.

### **6.2 Executive Orders**

#### **6.2.1 EO 12866 (Regulatory Impact Review)**

EO 12866, Regulatory Planning and Review, was signed on September 30, 1993, and established guidelines for promulgating new regulations and reviewing existing regulations. EO 12866 covers a variety of regulatory policy considerations and establishes procedural requirements for analysis of the benefits and costs of regulatory actions. Section 1 of EO 12866 deals with the regulatory philosophy and principles that are to guide agency development of regulations. It stresses that in deciding whether and how to regulate, agencies should assess all of the costs and benefits across all regulatory alternatives. Based on this analysis, NMFS should

choose those approaches that maximize net benefits to society, unless a statute requires another regulatory approach.

The Regulatory Impact Review (RIR) and IRFA determinations are part of the combined summary analysis in Section 7 of this document.

### **6.2.2 EO 12898 Environmental Justice**

EO 12898 obligates federal agencies to identify and address “disproportionately high adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations in the United States” as part of any overall environmental impact analysis associated with an action. NOAA guidance, NAO 216-6, at §7.02, states that “consideration of EO 12898 should be specifically included in the NEPA documentation for decision making purposes.” Agencies should also encourage public participation—especially by affected communities—during scoping as part of a broader strategy to address environmental justice issues.

The environmental justice analysis must first identify minority and low-income groups that live in the project area and may be affected by the action. Typically, census data are used to document the occurrence and distribution of these groups. Agencies should be cognizant of distinct cultural, social, economic or occupational factors that could amplify the adverse effects of the proposed action. (For example, if a particular kind of fish is an important dietary component, fishery management actions affecting the availability or price of that fish could have a disproportionate effect.) In the case of Indian tribes, pertinent treaty or other special rights should be considered. Once communities have been identified and characterized and potential adverse impacts of the alternatives are identified, the analysis must determine whether these impacts are disproportionate. Because of the context in which environmental justice developed, health effects are usually considered and three factors may be used in an evaluation: whether the effects are deemed significant, as the term is employed by NEPA; whether the rate or risk of exposure to the effect appreciably exceeds the rate for the general population or some other comparison group; and whether the group in question may be affected by cumulative or multiple sources of exposure. If disproportionately high adverse effects are identified, mitigation measures should be proposed. Community input into appropriate mitigation is encouraged.

The EIS prepared for 2003 groundfish specifications and management measures (PFMC 2003) describes coastal communities affected by the proposed action and impacts to those communities. Available demographic data show that, coastal counties where these communities are located are variable in terms of social indicators like income, employment, and race and ethnic composition. However, equivalent data specific to the groups directly affected by the proposed action are not available. Treaty tribes harvesting West Coast groundfish are part of the Council’s decision-making process on groundfish management issues; and tribes with treaty rights to salmon, groundfish, or halibut have a seat on the Council.

None of the changes to the FMP under Amendment 16-1 implemented by the proposed action directly affect groundfish allocations or harvest levels that could in turn disproportionately impact low income and minority populations. Actions pursuant to this amendment, most importantly the development of harvest specifications and management measures needed to ensure stock rebuilding could result in changes to coastal communities’ income with possible disproportionate effects on low income and minority populations. These actions will be subject to future NEPA analyses in which environmental justice implications can be evaluated.

### **6.2.3 EO 13132 (Federalism)**

Executive Order 13132, which revoked EO 12612, an earlier federalism Executive Order, enumerates eight “fundamental federalism principles.” The first of these principles states, “Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.” In this spirit, the Executive Order directs agencies to consider the implications of policies that may limit the scope of or preempt states’ legal authority. Preemptive action having such “federalism implications” is subject to a consultation process with the states; such actions should not create unfunded mandates for the states; and any final rule published must be accompanied by a “federalism summary impact statement.”

The Council process offers many opportunities for states (through their agencies, Council appointees, consultations, and meetings) to participate in the formulation of management measures. This process encourages states to institute complementary measures to manage fisheries under their jurisdiction that may affect federally managed stocks.

None of the proposed changes to the groundfish FMP would have federalism implications subject to EO 13132.

#### **6.2.4 EO 13175 (Consultation and Coordination With Indian Tribal Government)**

Executive Order 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared federal and tribal fishery resources. At Section 302(b)(5), the Magnuson-Stevens Act reserves a seat on the Council for a representative of an Indian tribe with federally-recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. government formally recognizes the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish. In general terms, the quantification of those rights is 50% of the harvestable surplus of groundfish available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

None of the alternatives under consideration for Amendment 16-1 would affect tribal groundfish allocations.

#### **6.2.5 EO 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds)**

Executive Order (EO) 13186 supplements the Migratory Bird Treaty Act (above) by requiring federal agencies to work with the U.S. Fish and Wildlife Service to develop memoranda of agreement to conserve migratory birds. NMFS is scheduled to implement its memorandum of understanding by January 2003. The protocols developed by this consultation will guide agency regulatory actions and policy decisions in order to address this conservation goal. The EO also directs agencies to evaluate the effects of their actions on migratory birds in environmental documents prepared pursuant to the National Environmental Policy Act.

As discussed in this EA, the proposed action will not directly affect protected species, including seabirds, and were, therefore, not evaluated. The cumulative effect of connected actions is not likely to differ from current conditions.