

BYCATCH PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

On September 24, 2004 (69 FR 57277), the Environmental Protection Agency published a notice of availability for the Pacific Coast Groundfish Fishery Management Plan Bycatch Mitigation Program Final Environmental Impact Statement (Bycatch Program FEIS). This EIS addresses the remand of groundfish Amendment 13 due to a 2000 order from the U.S. District Court (N.D. California) in *Pacific Marine Conservation Council v. Evans* (200 F.Supp.2d 1194, 2002 WL 827423 [N.D. Cal.]). In its conclusion, the court found as follows: (1) Amendment 13 failed to establish an adequate bycatch assessment methodology; (2) The National Marine Fisheries Service (NMFS) did not comply with its duty to minimize bycatch and bycatch mortality; (3) NMFS violated the National Environmental Policy Act (NEPA) by not taking a “hard look” at the environmental consequences of Amendment 13; and (4) the Environment Assessment NMFS performed in conjunction with Amendment 13 failed to consider a reasonable range of alternatives and environmental consequences, in violation of NEPA.

The Bycatch Program FEIS contains the preferred alternative, Alternative 7, identified by the Council at their April 2004 meeting. (Attachment 1 excerpts the description of this alternative from Chapter 2 of the FEIS and summarizes the catch cap component.) Alternative 7 contains elements from three of the alternatives described in the draft EIS. These elements may be summarized as follows:

1. Amend the fishery management plan (FMP) to require the use of current bycatch minimization measures.
2. Amend the FMP to fully describe the current standardized bycatch reporting methodology.
3. Amend the FMP to incorporate the Groundfish Strategic Plan goal of reducing overcapacity in all commercial fisheries.
4. Implement a sector-specific bycatch accounting methodology.
5. Support the future use of individual fishing quota (IFQ) programs for appropriate fishery sectors.
6. Authorize the use of sector-specific total catch cap programs to reduce bycatch of overfished (depleted) species in appropriate sectors of the fishery. These programs could include monitoring standards, full retention programs, and individual vessel incentives for exemption from caps.

The Bycatch Program FEIS states “The proposed action would set groundfish bycatch mitigation policies and future program directions. The Council is expected to immediately undertake preparation of a new groundfish FMP amendment that will include the conservation and management measures necessary to minimize bycatch and minimize the mortality of bycatch that cannot be avoided, to the extent practicable.” Therefore, these items must be addressed in an FMP amendment incorporating “bycatch mitigation policies and future program directions.” This amendment would be Amendment 18 to the groundfish FMP.

Attachment 2 provides draft recommendations from Council and NMFS staff on where the FMP might be amended to incorporate the Council's preferred alternative from the Bycatch Program FEIS. Staff expect that Amendment 18 would primarily affect FMP Chapter 6, "Management Measures." This FMP chapter has not been reviewed or revised for its overall structure and organization since Amendment 4, in 1990. More recent piecemeal amendatory language to Chapter 6 has made that chapter somewhat confusing in its organization. Staff recommend the Council also consider a re-organization and update of Chapter 6 as part of Amendment 18.

In addition to providing guidance on amendatory language establishing bycatch monitoring and mitigation policies and program direction, and describing current program elements, the Council may wish to consider the relationship between Amendment 18 and future processes to implement program elements. Two other actions—the Trawl Individual Quota (TIQ) EIS and an associated EIS evaluating inter-sectoral allocations—could eventually implement components of the bycatch mitigation program. (At this meeting, under Agenda Item E.6, the Council will adopt a preliminary range of alternatives for the TIQ EIS. In addition to ITQs, sectoral and vessel-specific catch caps are options under consideration.) While these actions may involve FMP amendments and could implement bycatch program elements, their scopes and time lines make them inappropriate venues for incorporating broad bycatch policy and program direction elements into the FMP, which instead would be accomplished by Amendment 18. Nonetheless, the Council may wish to consider how these and other processes, such as future regulatory amendments, may be used to implement components of the bycatch mitigation program identified in the Bycatch Program FEIS preferred alternative.

In determining next steps in implementation, the Council may wish to provide guidance on:

- Subjects covered in and content of the amendment.
- A time line for preparation of draft amendment language, Council review, and submission to NMFS for Secretarial approval. (It is important to note that the NEPA requirements have been met; the time line only needs to satisfy Magnuson-Stevens Act requirements.)
- Future actions to implement bycatch mitigation program elements, such as sectoral and vessel-specific catch caps, and any interrelation with ongoing actions, such as the TIQ EIS.

Council Action:

Determine next steps in implementation.

Reference Materials:

1. Agenda Item E.5.a, Attachment 1: *Alternative 7 (The Preferred Alternative)* excerpted from the Bycatch Program EIS and *Summary Description of The Catch Cap Component of The Preferred Alternative*.
2. Agenda Item E.5.a, Attachment 2: *Fishery Management Plan Elements Potentially Addressed by the Bycatch Program Amendment (Amendment 18)*.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Determine Next Steps in Implementation.

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10/15/04

2.2.7 Alternative 7 (The Preferred Alternative)

The Council approved the following motion at its April 2004 meeting as its preferred alternative:

Create a new Alternative 7 that includes elements of Alternatives 1, 4, and 5. Elements from Alternative 1 that would be included in Alternative 7 would be all current programs for bycatch minimization and management, including but not limited to: setting optimum yield specifications, gear restrictions, area closures, variable trip and bag limits, season closures, establishing landings limits for target species based on co-occurrence ratios with overfished stocks, etc. The FMP would be amended to more fully describe our standardized reporting methodology program and to require the use of bycatch management measures indicated under Alternative 1 for the protection of overfished and depleted groundfish stocks and to reduce bycatch and bycatch mortality to the extent practicable. These would be used until replaced by better tools as they are developed.

Elements from Alternative 4 that would be included in Alternative 7 would be the development and adoption of sector-specific caps for overfished and depleted groundfish species where practicable. We anticipate phasing in sector bycatch caps that would include: monitoring standards, full retention programs, and individual vessel incentives for exemption from caps.

Elements of Alternative 5 that would be included in Alternative 7 would be the support of future use of Individual Fishing Quota programs for appropriate sectors of the fishery. The FMP would incorporate the Strategic Plan's goal of reducing overcapacity in all commercial fisheries.

Additionally, baseline accounting of bycatch by sector shall be established for the purpose of establishing future bycatch program goals.

Alternative 7 would continue most of the current bycatch reduction measures and would reduce bycatch by expanding the defining catch or mortality limits for overfished species. *CATCH LIMITS* or caps for overfished groundfish species would be established for each fishing sector. All vessels in a sector would be required to stop fishing when a catch limit for that sector is reached. The inseason catch monitoring or verification program would be upgraded to ensure sector catch limits are not exceeded. Larger retention limits for non-overfished groundfish would be made available to vessels carrying an approved monitoring system (observer or other method).

In order to prevent sector catch limits from becoming a series of derby fisheries, methods to restrict individual vessels will continue to be necessary. The most

effective way to do this without increasing groundfish (discard) bycatch would be to establish individual vessel catch limits in addition to the sector caps. However, in the short term this will not be feasible with the current monitoring and catch verification system. Until greatly expanded monitoring is available, the primary means of slowing the rate of fishing will continue to be trip (retention) limits. However, individual vessels may take an observer at their own expense in order to gain exemption from their sector catch limits. Such vessels could be assigned individual catch limits for designated species, and they would agree to stop fishing for all groundfish upon reaching any catch limit. These vessel caps would not be transferable between vessels and would expire at the end of the specified period.

In the short term, vessel trip limits for each sector would be continued, and landings of target species would be monitored throughout the season as they are now. Catch of overfished species by each sector would be estimated during the season based on assumed co-occurrence rates for each sector. Those rates would be adjusted from year to year based on updated observer data. In the longer term, the observer program will be upgraded to provide inseason catch data on overfished species. At that time, catch of overfished species will no longer have to be estimated based on target species landings, and each sector will be managed based on current information.

Eight commercial fishery sectors are identified under the current regulations: limited entry trawl; limited entry longline; limited entry pot; three whiting sectors (catcher/processor, mothership and shore-based); open access; and tribal. The recreational fishery is also a recognized sector. Additional sectors could be established by subdividing any of these sectors. Under this alternative, each sector would be monitored separately with stratified, partial observer coverage. Catch rates and closure dates for each sector would be projected based on observer reports. If individual commercial vessel caps were adopted, every vessel would need to be monitored.

This alternative would modify the definition of trip limits to include catch (mortality) limits and would also establish catch (mortality) caps for each sector. Vessels would no longer be required to discard overfished groundfish species, although they could choose to discard them. Non-overfished groundfish would be managed the same as under the status quo (no action) alternative, except that vessels carrying an observer (or other approved monitoring system, if any) would be eligible for larger trip (retention) limits for non-overfished species. However, they would still be required to stop fishing upon reaching a catch limit. The NOAA Fisheries West Coast Groundfish Observer Program would monitor each sector by placing observers on a portion of the vessels in each sector. Catch rates of overfished/restricted species would be projected to all unobserved vessels operating in the sector. Vessels not carrying a NOAA Fisheries-funded observer could carry an observer at their own expense in order to be eligible for the larger trip limits and to gain exemption from the sector caps. An electronic monitoring

(video) option may be available if NOAA Fisheries determines such a program would provide the necessary catch/mortality information. This could require increased retention of certain species.

Economic bycatch could also be addressed under this alternative by prohibiting discard or limiting the amount of groundfish that may be discarded. If allowed, discard would be measured by onboard observers (or electronic monitoring). If discard were prohibited, economic (non-regulatory) bycatch of groundfish would be greatly reduced.

The option of creating more sectors could reduce the need for other controls to limit fishing activities. To accomplish this, vessels would be assigned to one or more sectors, perhaps through an endorsement attached to the limited entry permit. When a sector limit is reached, further fishing by those vessels would be prohibited or severely curtailed. Alternatively, sectors might be defined by target fisheries that would be closed when a catch limit is reached. Bycatch (discard) under such an approach could be controlled by requiring *FULL RETENTION* or placing limits on discards.

SUMMARY DESCRIPTION OF THE CATCH CAP COMPONENT OF THE PREFERRED ALTERNATIVE

The description of the preferred alternative focuses on the implementation of sectoral and vessel-specific catch caps. Elements of this component of the alternative include:

- Sectoral total catch caps are established for overfished groundfish species. Eight current regulatory-based sectors are identified; additional sectors could be added.
- In the short term, the current cumulative trip limit regime would continue.
- Vessels carrying an “approved monitoring system” (e.g., at-sea observer) would fish under larger retention limits (cumulative trip limits) for non-overfished species.
- Vessels could opt out of sectoral catch caps by voluntarily carrying a fisheries observer (or approved monitoring system). These vessels would be eligible for nontransferable vessel-specific catch caps. Vessels could carry an observer at their own expense in order to become eligible for these vessel-specific catch caps.
- In the short term, total catch of overfished species will be estimated using current methods of modeling the relationship between landings and total catch. With future improvements in the monitoring program, total catch could be estimated directly.
- Once a sector has reached the total catch cap for any overfished species, all vessels in the sector must stop fishing, except for those vessels that have qualified for vessel-specific caps. They could fish until any of their caps were reached.
- Retention requirements could be a feature of this bycatch mitigation program. The FEIS does not describe the specifics of such a feature, such as to which species, or in what circumstances, a retention requirement would apply.

**FISHERY MANAGEMENT PLAN ELEMENTS POTENTIALLY ADDRESSED BY THE
BYCATCH PROGRAM AMENDMENT (AMENDMENT 18)**

In addition to incorporating language describing the Council's policies and program direction for bycatch monitoring and mitigation, Amendment 18 could also update and reorganize the fishery management plan (FMP), so it better reflects the current management regime. These changes would be categorically excluded from further National Environmental Policy Act analysis, pursuant to NAO 216-6 §6.03a.3(b).

Chapter 1, *Introduction*: Update introduction language, so it includes references to recent FMP amendments.

Chapter 2, *Goals and Objectives*: Review FMP goals and objectives and revise as necessary to be consistent with the Council's preferred alternative from the Bycatch Program EIS. Add Strategic Plan goal on capacity reduction, per the preferred alternative. Review definitions, and update as needed.

Chapter 5, *Periodic Specification and Apportionment of Harvest Levels*: Revise FMP language from Amendment 17, per Council's recommendations from September 2004 meeting on "red light/green light" process.

Chapter 6, *Management Measures*: Per the Council's preferred alternative: revise sections on bycatch, observers, and standardized reporting methodologies; revise section on allocation and add section on discard cap programs; revise section on permits to reference individual fishing quota (IFQ) program development as requiring bycatch-reduction measures; add section on the use of Rockfish Conservation Areas (RCAs) as a management tool for reduction of overfished species bycatch. Update and re-organize chapter to reflect Council's current practices and procedures for recommending new management measures and regulatory programs; remove references to foreign fishing. Integrate any management measures from Chapter 11 that are still relevant to today's fisheries into this chapter.

Chapter 7, *Experimental Fisheries*: Remove references to development of domestic fisheries as primary reason for exempted fishing permits (EFPs). Update with Council's current EFP policies, and cite promotion of gear development for bycatch reduction as a Council-supported use of EFPs. Also, add a requirement that recipients of EFPs report on their total catch of overfished species as a condition of issuance of EFPs.

Chapter 8, *Scientific Research*: Add requirement for reporting on total catch of overfished species as a condition of Secretarial acknowledgment of scientific research.

Chapter 11, *Management Measures that Continue in Effect with Implementation of Amendment 4*: Integrate measures from this chapter that are still relevant to the fisheries into Chapter 6, and remove Chapter 11 from the FMP.

No changes are planned for other parts of the FMP, except for minor editorial corrections.

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