

12.0 RESPONSE TO COMMENTS

The 45-day public comment period on the DEIS for Amendment 16-2 closed on November 3, 2003 (68 FR 54900). NMFS received a comment letter from the United States Environmental Protection Agency (USEPA) Region 10 in accordance with their responsibility to review and rate EISs pursuant to NEPA and Section 309 of the Clean Air Act. USEPA gave the DEIS a rating of EC-2 (Environmental Concerns - Insufficient Information) and attached detailed comments. No comments were received from members of the public or non-governmental organizations. The detailed USEPA comments are reproduced below followed by responses to these comments.

NMFS F/SF3 (Domestic Fisheries Division) also received a memo from NMFS F/HC2 (Habitat Protection Division) recommending the FEIS clearly label those sections that constitute an EFH assessment of the action's impacts, as required by 50 CFR 600.920(e)(3) and provide a schedule for completion of the EIS evaluating programmatic measures to identify and describe West Coast groundfish EFH and minimize potential impacts. Section 7.3 of this EIS has been expanded to include this information.

12.1 Bycatch of Overfished Species

EPA Comment

The EIS states that effective bycatch accounting and control mechanisms are critical for staying within target catch optimum yields and the first element in limiting bycatch is accurately measuring bycatch rates by time, area, depth, gear type and fishing strategy. The EIS also states that the best available means of obtaining bycatch rate information is through the Observer Program. Preliminary observer data for the fishery indicates that bycatch rates for overfished species appeared to be higher than was assumed for the 2003 preseason modeling. Consequently, the National Marine Fisheries Service (NMFS) has increased the number of observers in the West Coast Groundfish from 20 to 40 (approximately 20% of fishing fleet). The EIS should evaluate and discuss the benefits of significantly increasing the observer coverage program for the West Coast Groundfish. Increasing observer coverage would vastly increase the accuracy of bycatch rate data, thus providing more accurate optimum yield estimates and better management of fish stocks.

An Observer Program with a focus on obtaining bycatch rate data would benefit from a 'lessons learned' approach in which there is a strong reliance on former observer input for modifications to the program. Former observer input regarding fishing practices and bycatch takings could be used to help future observers collect better data more efficiently. Former observers' knowledge of shipboard activities could prove beneficial to new observers in obtaining data that helps resolve disparities among observer data, logbooks and fishtickets. Communication between the observers and the data users could serve to reduce margins of error in modeling analyses and help identify where additional data collection could yield more accurate modeling results.

The Council Preferred Alternative to adopt interim rebuilding plan targets (and most of the other action alternatives), includes depth-based management as a means of controlling bycatch of overfished stocks. According to the EIS, tight control of bycatch is essential to the conservation and rebuilding of overfished stocks. Therefore, enforcement of the depth restrictions is critical for meeting these goals. The EIS discusses both Vessel Monitoring Systems (VMS) and the helicopter, fixed winged aircraft and Coast Guard patrols as means of enforcing depth and area restrictions. The EIS discusses the financial and technical constraints to implementing these enforcement measures, and references other efforts such as pending legislation and funding, which would make these measures feasible.

While we recognize the constraints to implementing these measures, EPA is concerned that a lack of enforcement on depth restrictions could jeopardize NMFS' and Pacific Fishery Management Council's (PFMC) ability to constrain fishing to sustainable levels. If funding or authority for implementing VMS or increased patrols is not feasible, then the EIS should discuss other means available to ensure harvest and bycatch of these species is limited to proposed levels.

The EIS provides a limited discussion of some potentially more severe future measures if action is not taken now to protect these groundfish species, but the document does not discuss what those measures might be. Given the economic consequences of fishery closures, and the environmental consequences of over fishing these species, a more thorough discussion of the steps NMFS and PFMC are taking (or may have to take in

the future) to ensure enforcement of the guidelines is warranted. If enforcement cannot be assured, then the proposed conservative harvest levels and management measures may prove ineffective.

The EIS should provide a thorough discussion of how NMFS and PFMC will ensure enforcement of the proposed guidelines. The EIS should clarify the progress of the Environmental Assessment/Regulatory Impact Statement for the pilot VMS program and the commitment of funds for related expenditures. Information on what the pilot program entails (e.g., number of vessels participating, amount of funding, geographic area of use) should be included. In the absence of these methods of enforcement, the FEIS should provide a substantive discussion of how NMFS and PFMC will monitor and enforce depth and area closures in 2003 through other management measures. The EIS should document the proposed actions that will be taken if the enforcement of bycatch restrictions is not successful.

Response to EPA Comment

Section 4.3.1.2 (Bycatch Accounting and Control) has been edited and expanded to address comments relative to the NMFS West Coast Groundfish Observer Program and associated benefits to bycatch accounting.

Sections 3.3.4 (Enforcement) and 4.3.1.3 (Potential Rebuilding Measures to Consider) have been edited and expanded to address comments relative to controlling bycatch through effective enforcement of depth-based management and the progress of VMS program implementation.

12.2 Impacts on Habitat

EPA Comment

The Magnuson-Stevens Act obligates the Fisheries Councils and NMFS to identify and characterize essential fish habitat (EFH) that is necessary to allow for groundfish production to support long-term sustainable fisheries for groundfish and for groundfish contributions to a healthy ecosystem. Bottom trawling gear is known to modify seafloor habitats by altering benthic habitat complexity and by removing or damaging infauna and sessile organisms. The EIS summarizes the EFH areas for all the life history stages of West coast groundfish species and provides additional background information on the types of habitat needed by the four EIS focused species. However, programmatic measures designed to identify, protect, and minimize potential fishing impacts on West Coast rockfish EFH will be analyzed in a supplemental EIS.

The EIS states that any habitat protection measures identified in the West Coast Rockfish EFH EIS that can be applied to encourage rebuilding overfished groundfish species, either through reducing total mortality or enhancing population productivity, should be seriously considered as an adjunct to other harvest control measures analyzed in this plan. We recommend that the 16-2 Amendment EIS contain provisions for amendment or modification to incorporate any protection measures that are identified in EFH EIS. Such protection measures should be considered equivalent to those measures currently identified in the EIS to reduce mortality or enhance population productivity, not subordinate. In addition, we recommend that the 16-2 Amendment EIS discuss which parameters utilized for estimating optimum yield for the four overfished species may be impacted by protection measures identified in the EFH EIS and the potential effects EFH protection measures may have on the optimum yield estimates presented. We also recommend that the 16-2 Amendment EIS contain a schedule for generation of the EFH EIS.

Response to EPA Comment

This EIS deferred to the programmatic EFH EIS for in-depth analysis of habitat protective measures as a means to increase the potential productivity of the stocks analyzed herein. The focus of this EIS was to analyze the effects of alternative harvest limits and rebuilding schedules in rebuilding these four stocks. Secondly, this EIS explored various mechanisms and management strategies for rebuilding stocks, including habitat protection. The EPA comment states that the EFH EIS should not be subordinate to this EIS in determining management strategies, including habitat protective measures, that may be effective in rebuilding these stocks. Both EISs seek to amend the Pacific Coast groundfish FMP to achieve Magnuson-Stevens Act rebuilding objectives. Neither EIS is subordinate to the other. The EPA comment also recommends this EIS contain provisions for amendment or modification to incorporate any protection measures that are identified in EFH EIS. Since each EIS contemplates an FMP amendment, and the FMP is the legal framework for West Coast groundfish management, which includes the framework provisions for

rebuilding overfished species, provisions for habitat-related amendment in this EIS are, therefore, unnecessary. If habitat protective measures are ultimately decided as a result of the EFH EIS process, then the FMP will be amended accordingly, and these measures will become a part of the rebuilding strategy.

The EPA also commented on the need to discuss which parameters utilized for estimating OY for the four overfished species (subject to rebuilding plans analyzed in this EIS) may be impacted by protection measures identified in the EFH EIS and the potential effects EFH protection measures may have on the OY estimates presented. While there would be no immediate direct effect on setting OYs to rebuild these stocks, there is an indirect effect on rebuilding OYs. The effect of any habitat protective measures specified from the EFH EIS process would be to conceivably improve stock productivity. Increased stock productivity would then be evident in resource surveys, which would be reflected in new stock assessments. Stock assessment parameters affected by increased productivity, coupled with revised estimates of virgin, unfished, biomass would result in changes to OY.

Finally, the EPA recommended this EIS characterize the schedule for generation of the EFH EIS. The final schedule for generating the EFH EIS was decided subsequent to publication of the draft EIS for Amendment 16-2. However, this schedule is now known. This final EIS has been modified at the beginning of Chapter 2 and Section 7.3 include the schedule for generating the EFH EIS.

12.3 Environmental Justice

EPA Comment

Section 8.2.2 states that the proposed action could disproportionately impact low income and people of color communities and that these actions will be subject to future NEPA analyses in which environmental justice implications can be evaluated. The Amendment 16-2 EIS should disclose what efforts were taken to ensure effective public participation. If low income or people of color communities will be impacted by the proposed project, the EIS should disclose what efforts were taken to meet environmental justice requirements consistent with Executive Order (EO) 12898 (*Federal Actions to Address Environmental Justice in Minority and Low-Income Populations*). In addition to the efforts taken to identify low income and people of color communities, this should include the following.

- A comprehensive accounting of all impacts on low income and people of color, including (but not limited to) cumulative and indirect impacts, exposure pathways unique to the impacted communities, historic exposures, and impacts to cultural, historic and protected resources. In addition, the EIS needs to determine if the impacts to low income and people of color communities will be disproportionately higher than those on non-low income and non-people of color communities. For such a determination, the EIS must identify a reference community, provide a justification for utilizing this reference community, and include a discussion of the methodology for selecting the reference community.
- The EIS must demonstrate that communities bearing disproportionately high and adverse effects have had meaningful input into the decisions being made about the project. The EIS needs to describe what was done to inform the communities about the project and the potential impacts in will have on their communities (notices, mailings, fact sheets, briefings, presentations, exhibits, tours, news releases, translations, newsletters, reports, community interviews, surveys, canvassing, telephone hotlines, question and answer sessions, stakeholder meetings, and on scene information), what input was received from the communities, and how that input was utilized in the decisions that were made regarding the project.

Response to EPA Comment

Section 8.2.2 (EO 12898 Environmental Justice) has been edited and expanded to address these comments.

12.4 Tables/Graphs/Readability

EPA Comment

The EIS provides a clear description of the proposed alternatives, existing environment, and environmental impacts. Throughout the EIS, complex fisheries issues related to the proposed actions are described whenever possible through narrative and summary of trends, using tables and figures at the end of each

chapter to provide specific details. Our review of previous fishery management plan EISs, have recommended to NMFS that they take this approach, and are pleased to see it used in this document. However, in some instances, the text in the main body of the document does not provide enough information for a complete comparison among the alternatives, fish species, or types of fisheries (e.g., commercial or recreational). We recommend that the EIS provide more detailed charts that associate each alternative with the related impacts in Chapter 4. For example, the ranked impacts chart on Page 4-1 should break out the negative habitat effects and short term economic costs into more detailed categories.

Response to EPA Comment

Council and NMFS staff appreciate the recognition of the work we have done in this area and will continue to try to improve the quality of documents in this regard. The example cited in the comment is a summary table. The comment requests that impacts be broken out into more detailed categories. A summary of economic effects across 14 categories can be found in Table 4.5-1. A reference has been added to point the reader to the more detailed summary table.