

GROUND FISH MANAGEMENT TEAM REPORT ON INSEASON ADJUSTMENTS INCLUDING THE REGULATORY AMENDMENT FOR SET-ASIDES

The Groundfish Management Team (GMT) reviewed the white paper by Council staff ([Agenda Item E.8, Attachment 1](#)) for managing the amounts of fish deducted from the annual catch limits (ACLs) to accommodate groundfish mortality in tribal fisheries, non-groundfish fisheries (i.e., incidental open access fisheries), exempted fishing permits (EFP), and research (collectively called “off the top” set-asides). The GMT believes that the intent of this is an attempt to mitigate the potential for a situation similar to that which resulted in the October 2014 emergency Council meeting. We understand the solution explored in the white paper is a process that allows set-asides to be released outside of a Council recommendation at a Council meeting. That is, the alternatives would explore providing the National Marine Fisheries Service (NMFS) the authority to reallocate set-asides to a sector in need.

Background

Establishing Set-Asides

The current Council approach for establishing most non-whiting set-asides is to set them equal to the maximum mortality reported by the West Coast Groundfish Observer Program (WCGOP) in recent years. For 2015-2016, research, incidental open access, and recreational fisheries, set-asides for most species in regulation are equal to the maximum mortality reported by WCGOP from 2005 to 2012¹. There are two exceptions to this approach for research set-asides. For canary rockfish and yelloweye rockfish, the Council policy was not based on the maximum historical catch. Instead, the Council considered the canary rockfish catch of 7.2 mt in 2006 from the NMFS trawl survey, a large amount, since surveys in later years encountered substantially less canary rockfish. Therefore, the Council adopted a 4.5 mt canary rockfish set-aside, which is higher than the average research catch from 2005 to 2012. For yelloweye rockfish, the Council adopted a 3.3 mt research set-aside based on anticipated research needs of the International Pacific Halibut Commission (IPHC; 1.1 mt), Washington Department of Fish and Wildlife (WDFW; 1 mt), Oregon Department of Fish and Wildlife (ODFW; 1 mt), and other projects (0.2 mt). Set-aside for the tribal fishery is based on tribal requests to meet the needs of treaty fisheries. EFP set-aside is recommended by the Council based on the requests of the applicants and other factors.

Adjusting Set-Asides Inseason

Amounts deducted from the ACL to accommodate groundfish mortality from scientific research, incidental open access fisheries, and EFPs (off the top deductions) can be modified inseason, based on the best available information. The amount estimated to go unharvested could be re-apportioned back to the groundfish fishery according to sector needs. The process includes reappportionment-through an inseason action at a Council meeting and is subsequently published in the *Federal Register*. At a subsequent Council meeting, the Council would review set-asides and recommend full reappportionment, partial reappportionment, or no reappportionment, based on consideration of the allocation framework criteria outlined in the groundfish fishery management

¹ Recommendations were made prior to the 2013 report becoming available.

plan (FMP), the FMP objectives, and managing the risk of exceeding an ACL. Any reapportionment of groundfish would be distributed in proportion to the original allocations for the calendar year, modified to account for Council recommendations with respect to sector needs. Reapportionment would be based on best available information, but would most likely occur later in the year, following the September or November Council meetings to ensure the source of the reapportionment is no longer in need of the amount reallocated.

Flexible Management of Set-Asides

As mentioned above, the GMT understands the purpose of the proposed action would be to allow reapportionment of groundfish between Council meetings, in certain situations, by allowing NMFS to use their automatic authority-to avoid disruption of fisheries and avoid the need for an emergency Council meeting. **The GMT highlights the importance that any process to allow for the flexible management of set-asides needs to be transparent to avoid issues with equity or fairness. In the regulations, NMFS must have a clear set of rules to guide when it's appropriate to automatically reapportion groundfish to another sector, and that must not be discretionary.**

The GMT has discussed this issue at three meetings (November 2014, February 2015 work session, and April 2015) and a pre-April Council meeting conference call. We continue the discussion here with the intent of digging a little deeper into some of the details that might need to be explored when deciding how, or if, flexible management of set-asides could work. We offer some initial thoughts below relative to the issues touched on in [Agenda Item E.8, Attachment 1, April 2015](#) and some additional considerations.

What Set-Asides?

The GMT believes that Tribal set-asides should not be considered for reallocation. Tribal fisheries are year-round, and bycatch could come at the end of the year. The research projects that tend to have the greatest impacts (NMFS and IPHC surveys) are often concluded by late summer and their impacts updated as early as the September Council meeting. In some years, EFPs may not get started or may be concluded by late in the year; therefore, any unused impacts from EFPs could also be available. For the non-groundfish fisheries (shrimp, etc.), in some cases, there are very large set-asides and often there is little risk of utilizing the full amount of that set-aside; however, in other years, there is a higher risk that the full amount will be utilized. This is especially true for the shrimp fishery, which closes on October 31. Although landed groundfish might be accounted for on fish tickets throughout the year, and the fishing season ends early enough to project final landings estimates, uncertainty will persist due to discard.

Which Species?

Identifying which species would be eligible for this type of action may need to be specified in the final regulations. **It seems logical that overfished species, which tend to be the limiting species in most fisheries, should be included. However, given the inability to predict which species may become constraining or limit access to target stocks, the GMT notes the need for flexibility and suggests that all species be considered as this issue is scoped.** As the analysis is refined, it should provide guidance on which species are most likely to constrain one sector while going unharvested in another sector(s).

Equity Considerations

NMFS should not be put in a position of having to make allocation decisions between sectors, in the case where not enough allocation is available to satisfy all needs. Further, in cases where multiple sectors request set-aside of the same species, equitable distribution may be near impossible. It will be important to outline a specific procedure when more than one sector is in need of additional allocation. Should distribution of set-aside be warranted, the sector(s) from which the set-aside is transferred will need to have an analysis to project impacts through the remainder of the year.

What Triggers an Automatic Action?

Under the current process, the GMT and/or the GAP would typically alert the Council of fishery management needs during a Council meeting. The approach under flexible management may be similar to the standard process with state agencies requesting NMFS consideration outside of a Council meeting. What if the need is identified by a member of a fishing sector (e.g., a vessel fishing in the Shorebased IFQ Program)? **It will be important to establish a process and criteria for initiating a request.**

Possible Alternatives

There may be other options to explore that could help reduce the likelihood of needing an emergency Council meeting to address immediate sector needs. For example, the Council could revise the method for how the amounts deducted from the ACL are calculated, apportioning more allocation to the fishery harvest guideline from the start of the year.

Another option might be a system similar to that used for nearshore rockfish where the states decide how to apportion their allocation (harvest guideline) between sectors and could adjust inseason without the need for Council action. This option may only work for certain species and may not work for all states because of differing regulatory requirements among the states; this option may only provide a solution for Oregon.

Process/ Schedule

A decision on what process to analyze this within (i.e. the next biennial harvest specifications cycle), and how it would fit within the other workload priorities already identified would need to occur. **If this moves forward, the Council will need to identify a schedule for completion.** That decision should be based on the need for the timing of the action as well as consideration for how this fits within the other workload priorities. In other words, is there a need for this to be in place for 2016 or can it wait to be part of the 2017-2018 biennial harvest specifications and management measures cycle? If there is a high risk that set-asides will need to be moved outside of a Council meeting prior to the 2017-2018 cycle, then it may need to be included sooner. However, recall that the intent of the omnibus package and process was to attempt to stave off multiple one-off items and to try to package items together. Therefore, if needed prior to 2017, perhaps this could be packaged with other items already identified in the workload priorities.

GMT Recommendation:

The GMT recommends a more detailed analysis of the alternatives and additional strategies should be scoped before a preliminary preferred alternative is selected.