



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

West Coast Region
7600 Sand Point Way N.E.
Seattle, Washington 98115

August 13, 2015

Ms. Dorothy Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, Oregon, 97220-1384

Dear Chair Lowman,

This letter is to inform the Pacific Fishery Management Council (Council) that that NOAA's National Marine Fisheries Service (NMFS) is implementing most of the inseason actions recommended at the June 10-16, 2015 Council meeting. NMFS is not implementing two of the recommended changes to fishery management measures because they would need to be implemented through a notice and comment rulemaking, and not as inseason actions, to be consistent with the Pacific Coast Groundfish Fishery Management Plan (FMP), Federal regulations, and the Administrative Procedure Act (APA).

The Council made recommendations for changes to 2015 groundfish fishery management measures and transmitted those measures in a letter dated June 29, 2015. Recommended changes to trip limits for sablefish, blackgill rockfish, black rockfish and big skate are being implemented via inseason action. However, NMFS has concluded that the increases to commercial trip limits for the Minor Shelf Rockfish Complex and California scorpionfish must be implemented as a regulatory amendment, with two *Federal Register* notices (See FMP Section 6.2, Paragraph D) and taking into account public comment. NMFS has found that we do not have good cause to waive notice and comment under the APA for these two changes to management measures.

NMFS has good cause to waive notice and comment rulemaking only when the requirements of the APA would interfere with meeting NMFS's statutory obligations (*see Natural Res. Def. Council, Inc. v. Evans*, 316 F.3d 904, 911 (9th Cir. 2003)). In the case of inseason adjustments to trip limits, this means that the proposed changes must be supported by new information that (1) was not available when the trip limits were originally put in place and (2) demonstrates that the management measures are not performing as expected. The presence of such new information supports the need for swift implementation and explains why the action could not have been implemented earlier when there would have been time to complete notice and comment rulemaking. Absent such new information, there is no justification for waiver because the proposed changes could have been put in place during the earlier notice and comment rulemaking, meeting NMFS's obligations under both the Magnuson-Stevens Conservation and Management Act and the APA. This requirement mirrors the FMP, which explains that single-meeting notice is appropriate for an action if the Council's review of new information shows that



“the rate of landings is *substantially different than anticipated*, and that the current routine management measures will not achieve harvest management objectives.” (FMP 6.2.1) (emphasis added).

In part, the Council’s rationale for these changes was that catch in 2015 was well below the harvest specifications for these species and that modest increases to trip limits could be accommodated and still keep catch of both target and co-occurring overfished species within their harvest specifications.

However, NMFS has concluded that the new information presented at the June meeting does not demonstrate a need for swift implementation of trip limit increases for Minor Shelf Rockfish and California scorpionfish. Instead, the information presented suggests that catch is at or above the levels anticipated when the trip limits were first put in place. The most recent 2015 fishery information available for Minor Shelf Rockfish and California scorpionfish indicate that catches are similar or higher than in 2014. Based on available information, it is very unlikely that small increases to trip limits for these species would cause harvest specifications to be exceeded; however, the Council rationale could have been posed and analyzed in the biennial harvest specifications and management measures and implemented through a notice and comment rulemaking. NMFS will work with the Council on the appropriate process for measures that cannot be implemented inseason.

NMFS strongly supports the Council’s efforts to provide opportunities for industry to harvest a larger proportion of available target species, as well as the ability to manage groundfish fisheries inseason, through a single *Federal Register* notice, based on the best available fishery information and requests from industry. However, if a change to regulation is to be implemented as an inseason action, it must be developed, considered, and recommended consistently with FMP Section 6.2.1 and regulations at 50 CFR 660.60(c).

NMFS will continue to work with the Council for successful implementation of routine management actions inseason, using the best available science. The deliberations by the Council and its advisory bodies, and the work of the members of the public at Council meetings and in their home-ports, demonstrate an impressive commitment to the principles of the Magnuson-Stevens Conservation and Management Act.

Thank you for your time and effort.

Sincerely,



William W. Stelle, Jr.
Regional Administrator

cc: Pacific Fishery Management Council – D. McIsaac