

Groundfish Advisory Subpanel Report on  
Legislative Matters

The Groundfish Advisory Subpanel (GAP) received a briefing from Ms. Jennifer Gilden on legislative matters discussed by the Legislative Committee. The primary focus of GAP discussions were priorities for reauthorizing the Magnuson-Stevens Act (MSA). The GAP offers the following comments and recommendations.

- Flexible Annual Catch Limits (ACL) management. The GAP is concerned that current ACL management is too stringent to accomplish the intent of optimum yield (OY) management. There is too much precaution in deciding the ACL specification. ACLs should be managed to better meet the goal of OY attainment, the socioeconomic objectives of the MSA, and to minimize fishery instability. The concept of long term averaging or multi-year ACLs will better enable implementation of the carry-over provisions in the fishery management plan (FMP). This conceptual change will have no biological consequence to our long-lived groundfish stocks.
- Eliminate the 10-year rebuilding rule and provide more consideration of community needs for stocks that must be rebuilt in a longer time period. The 10-year rule, where stock rebuilding must occur within 10 years if possible, leads to an awkward and discontinuous policy that disrupts fisheries for little conservation gain. For example, if a stock can rebuild in 9.9 years but at a cost of closing all fisheries, this becomes a mandate even if the economic disruption is greatly lessened with an 11-year rebuilding plan. This is illogical and potentially disastrous for fishing-dependent communities.
- Clarify rebuilding policy. There is an unwritten NMFS policy that once a rebuilding plan is adopted, it must be maintained until the biomass target is reached, even in the case when a new assessment representing the best available science indicates the stock was never overfished, or the stock is in the precautionary zone and subject to the harvest control rules in the FMP (e.g., the 40-10 rule). Changes in rebuilding rules could also clarify this policy.
- Establish a mandate or policy to better differentiate signal vs. noise in stock assessments and rebuilding analyses. Uncertainty in stock assessments and rebuilding analyses for overfished stocks has created a situation where seemingly small changes to analytical results can lead to dire consequences to fisheries and fishing communities. This disruption is especially egregious when analytical results vary due to assessment uncertainty.
- Streamline the National Environmental Policy Act (NEPA) and MSA processes. While the 2006 reauthorization of the MSA seemingly made streamlining the NEPA and MSA processes a mandate, NMFS has not addressed this. We still have an inefficient process where there are two administrative tracks to satisfy NEPA and MSA process mandates. This unnecessarily delays implementation of regulations and ties up NMFS and Council resources that could be used to make progress on other important initiatives. Specifically, it makes sense to use the regional fishery management council process,

which is designed to engage the public before decisions are made, as a substitute to the notice and comment rulemaking required in the NEPA process. This would not compromise the quality of analysis required by NEPA. Council decisions are widely noticed to the public to solicit maximum input before decisions are made.

- Clearly permit the use of the mixed stock exemption. The GAP agrees with the SSC that this is necessary. There are instances in west coast groundfish management where the mixed stock exemption should receive serious consideration and the lack of guidance on how to analyze or consider invoking the mixed stock exception has led to this policy never receiving due consideration.
- Limited Access (LAPP) cost recovery. LAPP cost recovery provisions should be clarified to define recoverable costs as only those incremental costs directly related to administration of the LAPP. The determination of recoverable costs should be done in regard to a “with and without” basis (i.e., before and after LAPP implementation) in order to allow identification of the incremental change in such costs under the pre-existing management regime compared to the new regime post-implementation. NOAA Fisheries should be required to quantitatively describe recoverable costs in an open and transparent process that includes regional council review and approval. Congress gave authority over development of LAPP cost recovery programs to the regional councils. NOAA Fisheries should not subsume this authority by developing cost recovery programs independent of the regional councils.
- Allow electronic monitoring. Amend the MSA to specifically allow electronic monitoring in lieu of human observers.
- Maintain the positive aspects of the MSA. The GAP believes there are many mandates and aspects of the MSA that should not be changed. Decisions on allocation and on how to rationalize fisheries should continue to be made at the regional level and not be subject to top-down mandates. Catch share programs and formal allocations provide stability in fisheries management. National initiatives to sunset catch share programs or formal allocations are bad ideas. The aspects of the MSA establishing regional control in decision-making work very well and allow tailoring of fisheries management according to regional needs. Changing this aspect of the MSA will compromise the positive foundation of the MSA and will lead to disastrous consequences.

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04/09/13