

CONTINUATION OF REGULATORY DEEMING FOR FMP AMENDMENT 20 (TRAWL RATIONALIZATION) AND AMENDMENT 21 (INTERSECTOR ALLOCATION)

At its April 2010 meeting, the Pacific Fishery Management Council (Council) reviewed the initial allocation rule draft regulatory language covering both the initial allocation of harvest privileges needed for trawl rationalization (Amendment 20, Agenda Item B.6.a, Attachment 1) and the sector allocations of Amendment 21. At that time, the Council made several decisions regarding questions of clarification, interpretation, and refinement, and tasked the Council staff to continue to work with National Marine Fisheries Service staff to make the appropriate language adjustments and further refinements to the rule. The Council also authorized the Executive Director with reviewing all final language and deeming regulations as necessary or appropriate to implement its policy intent. It also appointed an Ad Hoc Regulatory Deeming Workgroup to review the remaining set of implementing regulations for trawl rationalization (collectively termed the components rule).

On May 7, 2010, the Council transmitted Amendments 20 and 21, together with the draft regulations, to NMFS. This action started a Magnuson-Stevens Act approval process which requires the Secretary of Commerce (Secretary) to make a final decision on the Council recommendations within 95 days of the transmission. The associated public comment period on Amendments 20 and 21 opened May 12 and will close on July 12. The proposed initial allocation rule is expected to publish at the end of May at which time a public comment period will open under the Administrative Procedures Act. A Secretarial decision on approval is expected on August 10 (see NMFS Rulemaking Schedule provided as Agenda Item B.6.b, Supplemental NMFS Report 1).

At this meeting, the Council is scheduled to determine whether the components rule implementing Amendment 20 is consistent with the Council action, and necessary or appropriate to implement the Council recommendation. Under the regulatory deeming process adopted by the Council in 2009 (Council Operating Procedure 1), the Executive Director is charged with deeming regulations, unless otherwise directed by the Council. However, because of the complexity of regulations on trawl rationalization, the specific agenda items have been scheduled for full Council review and regulatory deeming decision making. This agenda item was titled to cover both Amendments 20 and 21, on the off chance that the additional revisions made after the April Council meeting went beyond the refinements authorized by the Council and required redeeming of the initial allocation rule. The initial allocation rule did not contain refinements that warranted a second look by the Council, therefore, it is not expected that Amendment 21 issues will be addressed at this meeting.

The Regulatory Deeming Workgroup (Workgroup) met May 20-21 and reviewed the May 19, 2010 draft of the trawl rationalization components rule available at that time (Agenda Item B.6.a, Attachment 2). This draft was preliminary and the components rule was still expected to undergo substantial revision before it would be ready for deeming by the Council. The Workgroup developed an extensive list of comments and has provided a generalized summary of those comments in the report on its May meeting (Agenda Item B.6.b, Regulatory Deeming

Workgroup Report). The Workgroup is scheduled to meet again just prior to the June Council meeting (June 10 and 11). At that time it will review the version of the components rule NMFS is expected to provide for Council deeming (Agenda Item B.6.b, Supplemental NMFS Report 2). NMFS will also provide the Council with a report on interpretations and clarifications, as it did at the March and April Council meetings (Agenda Item B.6.b, Supplemental NMFS Report 3).

The Council is scheduled to take up a number of trawl rationalization follow-up issues this fall, including scoping for an amendment on Community Fishing Associations (CFAs) and the development of provisions for use of the quota set aside for the Adaptive Management Program. A letter on CFAs from Congresswoman Lois Capps is included in the briefing materials (Agenda Item B.6.b, Congressional Letter). This letter also discussed the need for a project to study the use of electronic monitoring to replace of observers on vessels using fixed gear within the scope of the trawl IFQ program. The schedule and elements of a trailing amendment will not be addressed under this agenda item but be taken up under Agenda Item G.4 on Future Council Meeting Agenda and Workload Planning.

Council Action:

- 1. Determine whether draft trawl rationalization components rule is consistent with final Council action on Amendment 20.**

Reference Materials:

1. Agenda Item B.6.a, Attachment 1: Proposed Groundfish Fishery Management Plan Amendment 20 (Trawl Rationalization).
2. Agenda Item B.6.a, Attachment 2: Draft Program Components Rule (5/19/2010).
3. Agenda Item B.6.b, Regulatory Deeming Workgroup Report.
4. Agenda Item B.6.b, Supplemental NMFS Report 1: NMFS Rulemaking Schedule.
5. Agenda Item B.6.b, Supplemental NMFS Report 2: Draft Program Components Rule (June 2010).
6. Agenda Item B.6.b, Supplemental NMFS Report 3: NMFS Interpretations and Request for Clarifications.
7. Agenda Item B.6.b, Congressional Letter.
8. Agenda Item B.6.c, Public Comment.

Agenda Order:

- a. Agenda Item Overview **Jim Seger**
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Consider Regulatory Deeming and Implementing Issues for the FMP Amendments (Continues on Wednesday and Thursday as necessary)

PFMC
05/28/10