

GROUND FISH ADVISORY SUBPANEL REPORT ON OMNIBUS REGULATION CHANGE PRIORITIES

The Groundfish Advisory Subpanel (GAP) heard a report by Ms. Kelly Ames, Mr. Dayna Mathews, and Ms. Jamie Goen, and offers the following comments on the Omnibus Regulation Changes.

Introduction

The GAP discussed the long list of issues included in the Omnibus Regulation Changes. GAP members noted it is incredibly difficult to choose just a handful of the items in section C from [Agenda Item J.1.a, Attachment 1, Groundfish Management Measures for Council Consideration](#), to propose moving forward.

The GAP also expressed frustration about why some regulations have not moved more quickly through the rulemaking process at National Marine Fisheries Service (NMFS). The most glaring example is the 2015 harvest specifications and management measures regulations. The Council, Council staff, and GAP worked on this for months, attempting to streamline the process, purposely delaying issues along with limiting their requests so as to ensure a January 1 start date – at the request of NMFS – yet we learned just prior to this meeting that the bulk of those regulations would be delayed until March 1. In light of recent rulemaking performance, the GAP wonders how much confidence NMFS has in its projections. NMFS continues to move the goal post on many issues, and chafing gear is a prime example. It has been 22 months since the Council took final action (for the second time) on this issue and we still do not have a final rule in place. This item was considered “low hanging fruit,” which brings into question whether any action can be considered a quick and easy fix.

The GAP would like to thank Ms. Jamie Goen for her thoughtful and detailed approach to moving the omnibus forward. While she acknowledged and explained many of the problems with getting regulations into place on a timely basis, she also noted some of the positives that have come out of recent regulatory changes: stocks are rebuilding, some sectors have increased flexibility and many groundfish species have been labeled sustainable.

GAP Priorities

As a preface to this section, the GAP appreciates NMFS’ efforts to package and prioritize omnibus items ([Agenda Item J.1.b, NMFS Report 2, NMFS Groundfish Priorities](#)). In its report, NMFS identifies a finite number of slots where Council priorities could be added to the workload (notably, four items under "C. Candidate Items," page 3; and the two items under "Priority 2," page 4). From these two categories, the GAP recommends removing items #39, #56, #64, and #19 because they are low priorities and/or unnecessary. We also recommend removing item #45 because this is an internal NMFS task.

The GAP urges the Council to add the following items in place of the six items identified by NMFS (we note that #52, widow quota share reallocation, is on both the NMFS and GAP list of priorities). We recommend the following priorities as items that, once implemented, can contribute immediate

positive economic benefit to participants. We have packaged some in groups that would a) bring the most economic value to the fleet overall; b) should be relatively simple to accomplish if done at the same time; and c) make the most sense. In order of priority, they are:

1. #52, Widow rockfish reallocation (*Note: this is already listed as a “Priority 2” item by NMFS on page 4, but the GAP recommends this be a high priority.*)
2. Comprehensive changes:
 - #47, trawl RCA boundary adjustments (Remove certain management area restrictions)
 - #46 and #48, Comprehensive gear modifications (which includes a year-round midwater non-whiting opportunity)
3. Regulatory overhaul related to trawl rationalization program to adjust and/or eliminate regulatory artifacts no longer applicable to a rationalized fishery:
 - #44, elimination of the prohibition of at-sea processing south of 42 degrees
 - #43, declaration issues
4. #60, Mid-water sport fishery (OR and CA)
5. #66, 60-mile bank boundary lines

Discussion

The GAP worked from [Agenda Item J.1.a, Attachment 1, Groundfish Management Measures for Council Consideration](#) and [Agenda Item J.1.b, NMFS Report 2, NMFS Groundfish Priorities](#). Given the limited number of items that could be moved forward, we discussed including one item from each sector (non-whiting trawl, whiting, fixed gear, open access and sport) to ensure fairness to each sector.

However, some GAP members argued that moving items forward that would benefit the trawl individual quota (TIQ) program would also benefit other commercial sectors. Making the TIQ program actually work would maintain a volume of fish coming across the dock on a year-round basis that will support processing infrastructure and other secondary and tertiary supply businesses. This is essentially the same infrastructure that receives deliveries from fixed gear and open access vessels. At the same time, maintaining strong processing and related marine business infrastructure is key to keeping coastal communities thriving.

A number of GAP and audience members pointed out that from a conservation standpoint, the TIQ program is working great, but from an economic standpoint, the program is a failure. There is still much work to do to make it sustainable from an economic perspective. Promises of flexibility and the elimination of archaic regulations, meant to govern a non-rationalized fishery, have not happened and are stuck in a regulatory purgatory. The TIQ fishery is not realizing the full benefits of rationalization. For example, command and control regulations still constrain the ability of the fishery to fish where it wants, how it wants, when it wants. Expenses have increased dramatically but incomes have not. Fishermen reported actually losing money under TIQ while also losing access to fishing grounds – the polar opposite of what was promised.

One member mentioned #74, combining longline and fishpot gear into a single fixed gear limited entry gear endorsement. There was no discussion or consensus about moving forward with this issue.

Trawl Rationalization Program issues: traditional (non-whiting) groundfish

Cumulative attainment of non-whiting groundfish species has been consistently below one-third of what is available. If this trend continues, it threatens the viability of the traditional groundfish fleet, which was anticipated to receive significant benefits from the rationalization program. While the whiting fishery has operated fairly well under the rationalized program, there are additional fixes that need to occur. The trawl fleet as a whole (whiting and non-whiting) face all the burden and costs of being fully rationalized without realizing all the benefits. The fleet still cannot fish where they want, when they want, and how they want, and this has resulted in the poor economic performance of the non-whiting sector. The GAP believes that addressing three main issues in the non-whiting sector as quickly as possible will result in higher revenues to the fleet. These include:

1. #52, Widow rockfish reallocation; and
2. Comprehensive changes:
 - a. #47, trawl Rockfish Conservation Area (RCA) boundary adjustments (remove certain management area restrictions); and
 - b. #46 and #48, comprehensive gear modifications (which includes a year-round midwater non-whiting opportunity).

Widow rockfish quota share reallocation (#52)

Widow rockfish quota share was allocated to TIQ participants to provide for incidental catch of widow to allow them to access their allocation of target species. This allocation had no relation to the individual participant's catch history of widow rockfish. Many people who formerly fished for widow rockfish received very little in the way of allocation because of the way that the allocations of widow rockfish were made.

Now that widow rockfish is rebuilt, the GAP believes widow rockfish quota share should be reallocated as a target species¹.

The GAP believes this re-allocation would maximize economic revenue from the fishery. Specifically, it should be reallocated to allow for a target fishery for those who targeted it previously. The approach that was used for all other species (catch history and equal sharing) of widow would benefit those who historically paid the conservation price of ceasing to fish. Specifically, it should be reallocated to allow for a target fishery for those

¹ From the Pacific Coast Groundfish Fishery Management Plan, Appendix E, page E-11, at http://www.pcouncil.org/wp-content/uploads/GF_FMP_ApdxE_TRat.pdf:

“Reallocation With Change in Overfished Status: When an overfished species is rebuilt or a species becomes overfished there may be a change in the QS allocation within a sector (allocation between sectors is addressed in the intersector allocation process). When a stock becomes rebuilt, the reallocation will be to facilitate the re-establishment of historic target fishing opportunities. When a stock becomes overfished, QS may be reallocated to maintain target fisheries to the degree possible. That change may be based on a person's holding of QS for target species associated with the rebuilt species or other approaches deemed appropriate by the Council.”

who targeted it previously, while ensuring there are adequate amounts for bycatch needs in the shoreside whiting sector.

Comprehensive RCA boundary adjustments (#47)

When the RCAs were initially implemented there were no other tools available to the Council that would accomplish the objective of minimizing catch of certain rockfish species. Since that time, the trawl rationalization program was developed and implemented, and particular characteristics of the catch share program provide much better tools to address catch of species of concern. The 100 percent monitoring and the personal accountability afforded through the program have reduced catch of species of concern significantly.

Significant work has already been completed on this issue and a broad group of industry and other stakeholder representatives have put together a proposal for RCA boundary changes. These suggested changes will protect discreet areas without closing broad swaths of the ocean to fishing. Access to some of these areas is an immediate way for the fleet to extract more value out of the fishery while still maintaining accountability. The GAP does not believe the RCA issue should be delayed due to the ongoing essential fish habitat (EFH) process. The GAP believes it is important that RCA and EFH issues move forward on separate tracks.

Gear changes (#46 & #48)

Many pre-TIQ regulations were based on the need to minimize rockfish catch under the trip limit management regime. With 100 percent monitoring and individual accountability, there are now more direct means to control rockfish catch. At the same time, many of the pre-TIQ regulations limit efficiency and some even hamper the ability to fish more cleanly (e.g. two-seam net requirement as part of selective flatfish trawl definition shoreward of the RCA).

The Trawl Rationalization Regulatory Evaluation Committee (TRREC) spent considerable time and effort developing recommendations for gear changes that would be more appropriate for a rationalized fishery (see: [Agenda Item E.7.b, Supplemental TRREC Report, Nov. 2011](#)). Existing regulations are preventing gear development and experimentation. Prohibitions on use of particular gear in certain areas or times are preventing higher revenues from being achieved. The NMFS catch report shows the midwater target fisheries for yellowtail and widow rockfish are increasing but the fleet is prevented from prosecuting this fishery outside of the whiting season. Allowing a year-round midwater opportunity for yellowtail and widow rockfish will provide immediate economic benefits to the fleet. The attainment rate for yellowtail rockfish was 32 percent in 2012 – leaving more than 4.5 million pounds of yellowtail rockfish in the water. At an average price of \$0.55 a pound, this equates to more than \$2.5 million in forgone revenue. Clearly there are opportunities to increase the harvest for this stock within the ACL and this will provide immediate benefit to the fleet.

Trawl Rationalization Program issues: whiting fisheries regulatory overhaul

The groundfish regulations are full of antiquated restrictions that are no longer applicable under a rationalized program where harvesters are always monitored and are 100 percent accountable for what they catch. Considerable work has already gone into identifying the regulations that need to be altered or in many cases, eliminated. The whiting industry has identified two regulatory issues that need to be addressed and while they are not a high priority for the non-whiting trawl fleet, they are important to the whiting industry. They are:

Elimination of the prohibition on at-sea processing south of 42 degrees (#44)

This regulatory change will allow the at-sea whiting fleet to fish further south beyond the range of some rockfish species such as Pacific Ocean perch and rougheye. Prosecution of the fully rationalized whiting fishery south of the 42-degree line will not pre-empt or negatively impact California coastal communities or fishery participants. A few times each year, the aggregation of whiting is limited to the southern region and is sometimes slow to head north. This causes scratchy fishing if the fleet is forced to spread out by heading further north. Scratchy fishing increases bycatch of rockfish. Congestion near the 42 degree line can force the fleet into areas of higher bycatch of widow rockfish and canary rockfish. This restriction no longer serves a purpose. Elimination of the prohibition to prosecute the whiting fishery further south will immediately allow the fleet to better avoid rockfish bycatch in a cost effective manner.

Declaration issues (#43)

Currently, when whiting catcher vessels finish harvest of mothership whiting, they are required to travel back to port to declare they are switching to the shoreside whiting fishery. By allowing vessels to make that declaration at sea, they can cost effectively harvest fish on their trip back to port. Often fishing is excellent and bycatch low in the area where they have finished delivering to a mothership processor. Current communication and monitoring technology allow this measure to make sense from an enforcement perspective. Amending this regulation will immediately save the fleet time and money.

Recreational issues

Mid-water sport fishery in OR and CA (#60)

This has been a priority for GAP members for several years now, and the Council has supported it in the past. Much of the background work has been done on this and it should be relatively simple to move forward.

Trawl, non-trawl, recreational issues

60-mile bank boundary lines (#66)

An area known as the 60-mile bank is a cowcod-rich area along the U.S./Mexico border. This area is not marked with RCA lines, leaving it unenforceable by California Department of Fish and Wildlife (CDFW). This creates a huge area deeper than 60 fathoms that is fished without enforcement. The 60-mile bank needs to be clearly defined so both vessels and enforcement are on the same page and cowcod limits are not exceeded. When the Cowcod Conservation Areas were created, the 60-mile bank was overlooked. It is presently being fished for rockfish by commercial vessels due to a loophole allowing their presence. The possibility and reality of substantial bycatch of cowcod in this fishery could lead to closures of both recreational and commercial hook-and-line fisheries south of Point Conception. We urge the Council delineate the 60-fathom curve on the bank, allowing enforcement of the 60- to 150-fathom RCA closure.

Removals from and adjustments to NMFS list of priorities

The GAP gives a low priority to the open access license limitation issue (Amendment 22), #19 (NMFS Priority 2, page 4). The analysis is stale and the fishery largely regulates itself. It's also not clear why Amendment 22 needs to be addressed now; it's been languishing for several years.

The GAP further recommends the Council remove #39, Increase VMS (vessel monitoring system) ping rates, from the NMFS Priority 1 list. The other three items in Section C on the NMFS Priority 1 list also should be removed. They are: #45, revise regulations on at-sea and shoreside flow scales; #56, cost recovery for the permit stacking program; and #64, management model review and refinement.

Regarding the ping rates, the GAP has said several times in the past, most succinctly in our [March 2014 GAP statement](#), increasing the ping rate is unnecessary and retaliatory.

Mr. Dayna Mathews, with NMFS Office of Law Enforcement, reported to the GAP that VMS compliance has improved and the system overall seems to be working just fine. So why the sudden urgency to increase ping rates and add huge economic burdens to the entire groundfish fleet?

The communications cost list in [Agenda Item J.1.b, NMFS OLE Report 2](#), does not make clear the increase for fishermen who use Boatracs. For a fisherman now using Boatracs with one ping an hour, the cost is \$34.95 a month. Four pings an hour would equate to \$186.15 a month – an increase of more than fivefold. This is an extreme example, but at minimum, the annual cost increases to the fleet overall would be in the hundreds of thousands of dollars. Furthermore, this would disproportionately affect smaller vessels.

NMFS OLE representatives maintain the Decision in the F/V Risa Lynn case, Docket No. SW1002974, was heavily based on the inadequacy of the ping rate and that the Decision mandates new Federal law. However, nowhere in that Decision does it say NMFS should use a 15-minute ping rate.

The NMFS report No. 2 lists this as a Priority 1 issue because it is responding to litigation, but again, the decision does not mandate NMFS change the rate.

The GAP is primarily concerned that 99 percent of the fishermen who comply with laws and regulations will be economically burdened with a system meant to catch the 1 percent who may be offenders – and that is simply not fair. It's especially unfair when we have ample time to explore other technologies that could be implemented for far less cost.

The GAP also suggests that as a compromise, NMFS/NOAA General Counsel consider mandating increased ping rates for only those fishermen who agree to a settlement. For example, NMFS issues a \$20,000 fine to an offender but suspends \$10,000 of it on the condition that there are no new violations, the fisherman pays the \$10,000 and also agrees to an increased ping rate for two years.

This would be a much less controversial way to work with the industry, rather than treating all fishermen as offenders.

PFMC
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