

CHAPTER 7 CROSS-CUTTING MANDATES

7.1 Other Federal Laws

7.1.1 Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act (CZMA) of 1972 requires that all Federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. The Council's preliminary preferred alternative would be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management programs of Washington, Oregon, and California. This determination will be submitted to the responsible state agencies for review under Section 307(c)(1) of the CZMA. The relationship of the groundfish FMP with the CZMA is discussed in Section 11.7.3 of the Groundfish FMP. The Groundfish FMP has been found to be consistent with the Washington, Oregon, and California coastal zone management programs. The recommended action is consistent and within the scope of the actions contemplated under the framework FMP.

7.1.2 Endangered Species Act

As described in Section 3.10, a variety of ESA-listed threatened and endangered species occur within the action area. These include salmon, marine mammals, turtles, and seabirds. While some of the alternatives may alter the timing, intensity, and location of fishing activities, these changes are not expected to significantly affect interactions of the fishery with protected species. With respect to ESA-listed salmon, only Chinook are expected to interact with the fishery. NMFS manages the trawl fishery to comply with incidental take levels of Chinook set forth in ESA section 7 consultations.

7.1.3 Marine Mammal Protection Act

The MMPA of 1972 is the principle Federal legislation that guides marine mammal species protection and conservation policy in the United States. Under the MMPA, NMFS is responsible for the management and conservation of 153 stocks of whales, dolphins, porpoise, as well as seals, sea lions, and fur seals; while the USFWS is responsible for walrus, sea otters, and the West Indian manatee.

Off the west coast, the Steller sea lion (*Eumetopias jubatus*) eastern stock, Guadalupe fur seal (*Arctocephalus townsendi*), and Southern sea otter (*Enhydra lutris*) California stock are listed as

threatened under the ESA. The sperm whale (*Physeter macrocephalus*) Washington, Oregon, and California stock, humpback whale (*Megaptera novaeangliae*) Washington, Oregon, and California - Mexico Stock, blue whale (*Balaenoptera musculus*) eastern north Pacific stock, and Fin whale (*Balaenoptera physalus*) Washington, Oregon, and California stock are listed as depleted under the MMPA. Any species listed as endangered or threatened under the ESA is automatically considered depleted under the MMPA.

West coast groundfish fisheries are considered Category III fisheries, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals, in the annual list of fisheries published in the FR. Based on its Category III status, the incidental take of marine mammals in the west coast groundfish fisheries does not significantly impact marine mammal stocks. However, recent west coast fixed-gear fisheries, including sablefish pot fisheries, have demonstrated a take of humpback whales, which may result in a recategorization of these fisheries to Category II. Consultation under the MMPA would then be needed to implement Category II fisheries in the next biennium. The proposed action could affect the intensity, duration, and location of groundfish fisheries through processes such as fleet consolidation and gear conversion. Impacts to marine mammals are discussed in Chapter 4.

7.1.4 Paperwork Reduction Act

The purposes of the Paperwork Reduction Act (PRA) are to minimize the burden of information collection by the Federal Government on the public; maximize the utility of any information thus collected; improve the quality of information used in Federal decisionmaking, minimize the cost of collection, use, and dissemination of such information; and improve accountability. The PRA requires Federal agencies to obtain clearance from the Office of Management and Budget before collecting information. This clearance requirement is triggered if certain conditions are met. "Collection of information" is defined broadly. In summary, it means obtaining information from third parties or the public by or for an agency through a standardized method imposed on 10 or more persons. Collection of information need not be mandatory to meet the trigger definition. Even information collected by a third party, if at the behest of a Federal agency, may trigger the clearance requirement. Within NMFS, the Office of the Chief Information Officer is responsible for PRA compliance. Obtaining clearance can take up to 9 months and is one aspect of NMFS's review and approval of Council decisions.

The proposed action, as implemented by any of the alternatives considered in this EIS, may require collection of information subject to the PRA.

7.1.5 Regulatory Flexibility Act

The purpose of the RFA is to relieve small businesses, small organizations, and small governmental entities of burdensome regulations and recordkeeping requirements. Major goals of the RFA are (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. An IRFA is conducted unless it is determined that an action will not have a "significant economic impact on a substantial number of small entities." The RFA requires that an IRFA include elements that are similar to those required by EO 12866 and NEPA. Therefore, the IRFA has been combined with the RIR, and both are substantially based on the analyses contained in this EIS document. Appendix H contains analytical conclusions specific to the RFA and EO 12866.

7.2 Executive Orders

7.2.1 EO 12866 (Regulatory Impact Review)

EO 12866, Regulatory Planning and Review, was signed on September 30, 1993, and established guidelines for promulgating new regulations and reviewing existing regulations. The EO covers a variety of regulatory policy considerations and establishes procedural requirements for analysis of the benefits and costs of regulatory actions. Section 1 of the EO deals with the regulatory philosophy and principles that are to guide agency development of regulations. It stresses that, in deciding whether and how to regulate, agencies should assess all of the costs and benefits across all regulatory alternatives. Based on this analysis, NMFS should choose those approaches that maximize net benefits to society, unless a statute requires another regulatory approach.

The RIR and IRFA determinations are part of the combined summary analysis presented in preliminary draft form in Appendix H of this document.

7.2.2 EO 12898 (Environmental Justice)

EO 12898 obligates Federal agencies to identify and address disproportionately high adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations in the United States as part of any overall environmental impact analysis associated with an action. NOAA guidance (NOAA Administrative Order [NAO] 216-6, at '7.02, states that "consideration of EO 12898 should be specifically included in the NEPA documentation for decision-making purposes."

Section 8.5 in Appendix A to the 2005-06 groundfish harvest specifications EIS (PFMC 2004a) describes a methodology, using 2000 U.S. Census data, to identify potential "communities of concern" because their populations have a lower income or a higher proportion of minorities than comparable communities in their region. Based on this information, but focusing on more isolated, rural coastal communities, Section 4.14 of this document discusses the potential effects of the proposed action on communities. Fishery participants make up a small proportion of the total population in these communities, and their demographic characteristics may be different from the community as a whole. However, information specific to fishery participants is not available. Furthermore, various segments of the fishery-involved population may differ demographically. For example, workers in fish processing plants may more often be from a minority population, while deckhands may be more frequently low income in comparison to vessel owners.

Participation in decisions about the proposed action by communities that could experience disproportionately high and adverse impacts is another important principle of the EO. The Council offers a range of opportunities for participation by those affected by its actions and disseminates information to affected communities about its proposals and their effects through several channels. In addition to Council membership, which includes representatives from the fishing industries affected by Council action, the GAP, a Council advisory body, draws membership from fishing communities affected by the proposed action. While no special provisions are made for membership to include representatives from low-income and minority populations, concerns about disproportionate effects on minority and low-income populations could be voiced through this body or to the Council directly. Although Council meetings are not held in isolated coastal communities for logistical reasons, they are held in different places up and down the west coast to increase accessibility.

The Council disseminates information about issues and actions through several media. Although not specifically targeted at low-income and minority populations, these materials are intended for

consumption by affected populations. Materials include a newsletter, describing business conducted at Council meetings, notices for meetings of all Council bodies, and fact sheets intended for the general reader. The Council maintains a postal and electronic mailing list to disseminate this information. The Council also maintains a website (www.pcouncil.org) providing information about the Council, its meetings, and decisions taken. Most of the documents produced by the Council, including NEPA documents, can be downloaded from the website.

7.2.3 EO 13132 (Federalism)

EO 13132, which revoked EO 12612, an earlier federalism EO, enumerates eight fundamental federalism principles. The first of these principles states Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people. In this spirit, the EO directs agencies to consider the implications of policies that may limit the scope of or preempt states' legal authority. Preemptive action having such federalism implications is subject to a consultation process with the states; such actions should not create unfunded mandates for the states; and any final rule published must be accompanied by a federalism summary impact statement.

The Council process offers many opportunities for states (through their agencies, Council appointees, consultations, and meetings) to participate in the formulation of management measures. This process encourages states to institute complementary measures to manage fisheries under their jurisdiction that may affect federally managed stocks.

7.2.4 EO 13175 (Consultation and Coordination with Indian Tribal Government)

EO 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At Section 302(b)(5), the MSA reserves a seat on the Council for a representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. government formally recognizes that the four Washington coastal tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes U&A fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer its fisheries and to establish its own policies to achieve program objectives.

Section 4.15 describes the effects of the proposed action on tribal fisheries. The proposed action does not affect the tribes' treaty rights. Through the Council process the proposed action has been developed in consultation with the affected tribes through their representative on the Council.