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6 March 2000

Jim Lone, Chair
Pacific Fishery Management Council
2130 SW Fifth Avenue, Suite 224
Portland, OR 97201

RE: AGENDA ITEM D3, Coastal Pelagic Species Management Plan Amendment

Dear Mr. Chair and Other Members of the Council:

On behalf of the Center for Marine Conservation (CMC), thank you for this opportunity to comment on the Coastal Pelagic Species (CPS) Plan Amendment. CMC is a non-profit organization with more than 120,000 members who are committed to protecting ocean environments and conserving the abundance and diversity of marine life. As you may know, CMC has played an active role in both California state and federal fisheries management on the West Coast for many years. We believe the CPS Plan Amendment has great potential to promote productive fisheries and ecosystems along the West Coast. However, we recommend the changes below to help ensure that outcome.

The CPS Plan Amendment addresses three sets of options: determination of the maximum sustainable yield (MSY) for market squid; defining the allowable biological catch (ABC) for market squid; and bycatch requirements for all CPS.

MSY for Market Squid

Legal Framework

The maximum sustainable yield (MSY) plays a fundamental role in federal fishery management. MSY defines an upper catch limit that Councils are not allowed to exceed. As you know, the "optimum yield" is that which will: (i) provide the greatest overall benefit to the nation, taking into account the protection of marine ecosystems; (ii) is prescribed by the maximum sustainable yield, as reduced by relevant economic, social or ecological factors; and (iii) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield. 16 U.S.C. § 1802(28). The terms "overfishing" and "overfished" are defined as a "rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis." 16 U.S.C. § 1802(29). The National Standard Guidelines define MSY as the "largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological and environmental conditions." 50 C.F.R. § 600.310(c)(1). These Guidelines further specify that "estimates [of MSY] must be based on the best scientific information available . . . and must incorporate appropriate consideration of risk." 50 C.F.R. § 600.310(c)(2)(ii). The National Marine Fisheries Service further asserts that "the phrase 'on a continuing basis' in the [Magnuson-Stevens Fishery Conservation and Management Act] definition of 'overfishing' indicates that stocks are to be maintained at levels capable of producing MSY (and OY) on a continuing (uninterrupted) basis; thus short-term overfishing that causes populations to decline below these levels is not permissible." 63 Fed. Reg. 24216 (May 1, 1998).

Because of the complex and technical nature of estimating MSY, the National Marine Fisheries Service issued additional technical guidance on this aspect of the Magnuson-Stevens Fishery Conservation and Management Act. In cases such as market squid, where information is limited, this technical guidance paper provides the following advice: "it may be reasonable to use the historical average catch as a proxy for MSY, taking care to select a period when there is no evidence that abundance was declining." V.R. RESTREPO, ET AL., TECHNICAL GUIDANCE ON THE USE OF PRECAUTIONARY APPROACHES TO IMPLEMENTING NATIONAL STANDARD 1 OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT, NOAA TECHNICAL MEMORANDUM NMFS-F/SPO-31 (1998), PG. 26. Out of context, this statement could be interpreted as suggesting that MSY should be calculated by looking at an average over a time when catches were high while ignoring bad years. Within the context of the rest of the paper, which focuses extensively on the use of precautionary management, it is clear that the statement cautions Councils to avoid estimating MSY based on a history of declining catch levels because the decline could be symptomatic that catch levels exceed MSY.

The Current Options

The CPS Management Team recommended five MSY options for the Council to consider, with a preferred alternative. Their alternatives included:

1. MSY equals 113,320 metric tons (mt). This, the preferred option, is based on landings from the highest annual catch ever recorded in the history of the fishery, from April 1996 through March 1997.
2. MSY equals 85,000 mt. This option represents 75% of the highest annual catch ever recorded. There is no clear rationale as to why 75% was chosen as an option.
3. MSY equals 97,675 mt. This option is based on the average landings from the two highest catch years ever recorded in the history of the fishery, 1995-96 and 1996-97.
4. MSY equals 75,570 mt. This option is based on the average landings from the four highest catch years ever recorded in the history of the fishery, from 1993-94 through 1996-97.
5. MSY equals 450,000 to 570,000 mt. This option is based on the idea that landings have not been constrained by squid productivity and could thus be four to five times higher than the highest catches ever recorded.

CMC Recommended Options

None of these options adequately consider legal requirements or the best available science. The Council has received guidance to base MSY on a long-term average, 50 C.F.R. § 600.310(c)(1), and to avoid using time periods associated with a decline. V.R. RESTREPO, ET AL., TECHNICAL GUIDANCE ON THE USE OF PRECAUTIONARY APPROACHES TO IMPLEMENTING NATIONAL STANDARD 1 OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT, NOAA TECHNICAL MEMORANDUM NMFS-F/SPO-31 (1998), PG. 26. In fact, the four years represented in these five options directly preceded the two lowest landings in fourteen years. The CPS Management Team argues that high catch levels recorded during 1999-2000 demonstrate that previous catch levels were sustainable, and that the two years of low landings were a result of El Niño oceanic conditions. This may be the case, but does not provide justification for ignoring the two most recent years of landings. El Niño is part of prevailing oceanic conditions, and thus must be addressed in the long-term average used to determine MSY for market squid. CMC recommends that the Council add the two following

options, and select one of the two as the preferred alternative. We believe that these are the only two alternatives that can be justified based on the best available science and the law.

6. MSY equals 53,725 mt. This option is based on the average annual landings over the past six years.
7. MSY equals 12,366.6 mt during El Niño years and 75,570 mt during other years. This option averages landings over the most recent three El Niño years and the most recent four 'other' years. We have the capacity to predict El Niño years ahead of time, and it would be quite feasible for the Council to establish clear criteria for choosing which MSY would be appropriate for the upcoming year.

ABC for Market Squid

Legal Requirements

"Allowable biological catch" (ABC) is defined in the CPS Fishery Management Plan as a prudent harvest level based on an MSY control rule. The Magnuson-Stevens Fishery Conservation and Management Act does not give explicit guidance on the development of control rules beyond its mandate that Councils not jeopardize the capacity of a fishery to produce maximum sustainable yield on a continuing basis. 16 U.S.C. § 1802(29). The National Standard Guidelines provide wide latitude in developing control rules, as long as they are based on the best available scientific information and incorporate appropriate consideration of risk. 50 C.F.R. § 600.310(c)(2)(ii). Risk will be higher for stocks or stock complexes about which we have limited information, such as market squid. This concept is addressed explicitly in the CPS Fishery Management Plan, which states, "MSY control rules for CPS must be explicitly risk-averse," and "[g]reater uncertainty regarding a stocks [sic] status should result in more conservative harvest levels." AMENDMENT 8 TO THE COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN (1998). PG. B-82.

The Plan further states that "[m]any CPS stocks are important as forage (e.g., Pacific sardine and northern anchovy) for a wide range of predators including other fish, birds, and marine mammals. Ecosystem considerations are important elements of the goals and objectives for the CPS FMP. MSY control rules for CPS should, therefore, help reduce the frequency of low biomass conditions and overfished stocks and facilitate recovery of overfished stocks to the extent possible." AMENDMENT 8 TO THE COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN (1998). PG. B-82.

Based on some of this same reasoning, the CPS Fishery Management Plan specifies a default control rule for monitored species (those without a need for quotas or active management) whereby the ABC is set equal to 25% of the MSY.

The Current Options

The CPS Species Management Team recommended three ABC options for the Council to consider, and one preferred alternative. Their alternatives included:

1. ABC equals to MSY. This, the preferred option, was justified primarily by stating that it would be the least likely to trigger overfishing considerations.
2. ABC equals 75% of MSY. This option was only recommended if the Council chose a high value for MSY.

3. ABC equals 25% of MSY. This option was based on the default recommendations in the CPS Fishery Management Plan, but was only recommended if the Council chose an MSY level equal to four or five times the highest landings ever recorded in the fishery.

CMC Recommended Options

MSY should be chosen based on considerations of the best available science and risk-minimization, as it forms the legal and scientific foundation for MSY control rules and other provisions to prevent overfishing. Therefore, we consider it inappropriate to consider options that make the choice of MSY based on the selection of ABC. We recommend that the Council delete the caveats that tie the Council's choice of ABC to specific MSY options from the description of ABC options. Additionally, since option 2 is based on an arbitrary percentage of MSY, we recommend that an additional option be considered to better represent a range of options. CMC urges the Council to consider the four following options:

1. ABC equal to MSY.
2. ABC equal to 75% of MSY.
3. ABC equal to 50% of MSY.
4. ABC equal to 25% of MSY.

We further recommend that the Council adopt option 4 as its preferred alternative. First, there is a great deal of uncertainty, and therefore risk, associated with market squid management. The original market squid provisions to prevent overfishing were disapproved by the Secretary of Commerce because these provisions did not specify an MSY. The Council chose to not specify MSY because of the limited information available about this fishery. Information is still limited as indicated by the Council's inability to make a biological estimate of MSY or the fishing rate or biomass level associated with MSY. Without such basic information, market squid are at risk of overfishing without ample risk-minimization.

Additionally, squid fishing activity typically targets spawning aggregations. Aggregating species face a particularly high danger of overfishing when catch data are the foundation of their management, as is the case here. Because of the aggregating behavior of these species, catch rates can remain high until abundance drops to dangerously low levels.

Moreover, as is true for other CPS, squid are a key component of their ecosystem and are found in the diets of fish, birds, and marine mammals. Because they are a key prey species for fish, including Pacific swordfish, market squid *are* essential fish habitat. See 50 C.F.R. § 600.815(a)(8) (defining EFH to include prey species). By law, the Council is charged to "minimize to the extent practicable adverse impacts on such habitat caused by fishing." 16 U.S.C. § 1853(a)(7). Although the Council does not yet actively manage Pacific swordfish, they are one of several species that will be covered by the Highly Migratory Species Fishery Management Plan being developed by the Council. And, due to the key role squid play in their ecosystem, inadvertent overfishing of them would have significant negative ecological impacts.

Based on uncertainties about the productivity of squid, the fact that fishing activity targets spawning aggregations, and the fundamental role squid play in their ecosystem, CMC recommends that the Council follow their default policy for CPS and select option 4 above.

Bycatch Requirements for All CPS

Legal Requirements

By law, the Council is required to establish a standardized reporting methodology to document bycatch and take steps to minimize bycatch to the extent practicable. 16 U.S.C. § 1853(a)(11).

CMC Recommended Options

CMC supports the options developed by the CPS Management Team with only minor revisions. We recommend that option 1 and 2 be combined to read as follows:

1. Require logbooks for the limited entry fishery, the live bait fishery, and the incidental fishery (those vessels landing less than 5 mt), *and a system to independently validate these data.*

Observer programs could be one type of independent validation but may not be the most cost-effective solution for documenting bycatch, especially for these relatively clean fisheries. Instead, the Council might consider working with a university program (e.g., the Pikitch study of groundfish bycatch), using industry-government cooperative research, or any one of a number of lower-cost alternatives to periodically corroborate results from logbooks.

We also strongly recommend that the Council consider a 7th option to use closed areas as a bycatch-minimization technique. The CPS Management Team report states several times that existing closed areas play an important role at limiting bycatch, particularly closed areas over shallow, rocky-bottom habitat. Since this technique is important for minimizing bycatch in these fisheries, it should be stated in the Plan. This statement need not create additional closed areas if the current system is adequate. At minimum, the existing closed areas should be identified as important to bycatch minimization efforts.

CMC recommends that the Council make these two options preferred alternatives along with option 3 for State monitoring of landings at the dock. In combination, these three provisions will provide real and meaningful bycatch reporting and minimization. If the Council supports option 1 as restated above, option 6 would no longer be necessary. CMC does support the intent of option 6, but we believe that these reporting requirements should not be limited to the northern range of the fishery.

CMC appreciates this opportunity to submit comments on the CPS Plan Amendment. If you have any questions about our recommendations, please call Josh Sladek Nowlis at (415) 391-6204 or Stephanie Mairs at (202) 429-5609.

Sincerely,



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