

STATUS OF FEDERAL SETNET REGULATIONS

Situation: The Pacific Coast Groundfish Fishery Management Plan (FMP) prohibits the use of setnets in the exclusive economic zone (EEZ) north of 38° N latitude (Point Reyes, California) and allows California's state setnet laws involving the take of groundfish to apply in the EEZ south of 38° N latitude, as long as state provisions remain consistent with the FMP and the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act. However, the implementing regulations for the FMP do not specifically authorize California to regulate setnets in the EEZ south of 38° N latitude.

In 1990, California voters approved the Marine Resources Protection Act (MRPA), which prohibits the use of setnets to take rockfish in the EEZ. It also prohibits the use of setnets to take all species of fish in state waters along the mainland shore, within one mile of the offshore Channel Islands south of Point Arguello and in an area of the EEZ less than 35 fathoms deep at the Huntington Flats between the ports of San Pedro, Los Angeles County and Newport Beach, Orange County.

The absence of federal groundfish regulations that specifically address California laws resulted in a federal district court challenge on the legality of California's enforcement of setnet prohibitions on the take of groundfish in the EEZ in the Huntington Flats area. On November 22, 1996, a court order prohibited the California Department of Fish and Game from enforcing the MRPA prohibition on the use of setnets at Huntington Flats, and authorized setnet permittees to fish for **all** commercial species of fish (not just groundfish) with setnets in the EEZ at Huntington Flats in waters less than 70 fathoms deep. This temporary restraining order was extended by a preliminary injunction issued March 20, 1997.

In April 1997, to resolve the unintended conflict between federal and California law, the Council adopted a management option to "implement federal regulations that are the same as California state laws prohibiting the use of set nets to take groundfish species in four areas of federal waters (the most controversial of which is inside 35 fathoms in the Huntington Flats area between Point Fermin and the Newport jetty)." The Council proposed the National Marine Fisheries Service (NMFS) implement federal regulations consistent with California state regulations; the reasons for this were to decrease the potential for unenforceable regulations, reduce the possible catch and discard mortality of state-managed species, and reduce the potential for interactions with protected species.

At this meeting, NMFS will provide a progress report on development of federal regulations for the Huntington Flats setnet closure.

Council Action: None.

Reference Materials: None.

PFMC
02/22/00