



February 16, 2000

RECEIVED

FEB 18 2000

PFMC

William Stelle, Jr.
Regional Administrator
National Marine Fisheries Service
7800 Sand Point Way N.E., Bldg. #1
Seattle, WA 98115-0070

Donald O. McIsaac
Executive Director
Pacific Fishery Management Council
2130 SW Fifth Avenue, Suite 224
Portland, OR 97201

Dear Mr. Stelle and Dr. McIsaac:

Last March, the National Marine Fisheries Service (NMFS) properly rejected the bycatch provisions of Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (FMP). As NMFS pointed out in its decision letter to the Pacific Fishery Management Council (PFMC or the Council), the Magnuson-Stevens Fishery and Conservation Management Act (FCMA) specifically mandates that all FMPs (a) establish a standardized reporting methodology to assess bycatch and (b) include specific measures in the FMP to minimize bycatch and bycatch mortality. 16 U.S.C. § 1853(a)(11). As NMFS correctly pointed out in its rejection letter, Amendment 11 failed to meet this statutory standard. Letter from William Stelle, NMFS, to Jerry Mallet, PFMC, March 3, 1999, at 2.

We are aware that NMFS and the Council have been occupied with a variety of important activities over the past year, a substantial portion of which have been aimed at addressing the current troubling trends in the groundfish fishery. Without taking anything away from these efforts by your two organizations, we are writing to express our concern that nearly a full year has passed since the disapproval of Amendment 11's bycatch provisions without the emergence of any proposed new revisions to the FMP to address bycatch issues. We ask you to place the highest priority on expeditiously preparing a bycatch amendment to the groundfish FMP that mandates an aggressive bycatch data-gathering and evaluation program and a fully protective set of measures (for immediate implementation) designed to minimize bycatch and bycatch mortality.

Mr. William Stelle, Jr.
Mr. Donald McIsaac
February 16, 2000
Page 2

There is considerable evidence not only that bycatch is a substantial problem in the groundfish fishery but that fishery managers are not taking advantage of the best available data concerning bycatch to design and implement adequate measures that will prevent and minimize bycatch. For example, in the groundfish fishery specifications and management measures that were published last month, NMFS admitted that “[b]ycatch ... information in the groundfish fishery is scarce” and that “there is no exact measure of bycatch amounts in most fisheries ...” 65 Fed. Reg. 221, 236 (Jan. 4, 2000). NMFS also acknowledged that the assumed discard rates it used for many species in calculating allowable harvests were based on “limited studies” conducted roughly fifteen years ago, *id.*, facts that raise the clear risk that these data are inadequate for purposes of preparing adequately protective measures to minimize bycatch as required by FCMA. See also 65 Fed. Reg. at 233 (“The lack of current discard information ... makes it difficult to assess the success or failure of the proposed management measures.”).

As things stand right now, bycatch results in undocumented mortality and probable adverse impacts on marine populations and marine ecosystems. To allow bycatch to continue with so little understanding of its impacts on total mortality of target and bycatch species and on marine ecosystems risks undermining FMCA mandates to avoid overfishing and rebuild overfished species. Moreover, bycatch constrains the productivity of some fisheries that could otherwise generate higher yields and more stable economic opportunity. This is a violation of FMCA mandates to optimize yield and sustain participation of fishing communities.

At the same time, managers have access to information sources such as triennial trawl survey data and recent trawl logbook data that provide some indication of the co-occurrence rates of various species, and may reveal places where bycatch rates are highest for certain species. Yet these sources have not so far been tapped to improve the outdated assumptions used in developing optimum yields, or to develop strategies to minimize bycatch and discards.

FCMA’s explicit requirements for bycatch data-gathering plainly were enacted to address the precise situation currently faced in the groundfish fishery, where it is clear that bycatch is a problem but managers lack the specific data necessary to fully account for total fish mortality, set sustainable catch levels, and avoid overfishing. The lack of bycatch information also severely limits the ability to design fully effective approaches to minimizing bycatch. Thus, given the current state of bycatch information concerning the groundfish fishery, it is especially important that the Council and NMFS act expeditiously to establish the bycatch monitoring and analysis requirements mandated by the law.

NMFS’ regulations make clear the mandatory nature of the Council’s duty to collect detailed data on bycatch and bycatch mortality. Those regulations provide:

A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type,

PACIFIC FISHERY MANAGEMENT COUNCIL

2130 SW Fifth Avenue, Suite 224
Portland, Oregon 97201

CHAIRMAN
Jim Lone

EXECUTIVE DIRECTOR
Donald O. McIsaac

Telephone: (503) 326-6352
Fax: (503) 326-6831
www.pcouncil.org

February 23, 2000

Mr. Drew Caputo, Senior Attorney
Natural Resources Defense Council
71 Stevenson Street, Suite 1825
San Francisco, CA 94105

Ms. Karen Garrison, Senior Policy Analyst
Natural Resources Defense Council
71 Stevenson Street, Suite 1825
San Francisco, CA 94105

Mr. Mark Powell
Center for Marine Conservation
580 Market Street, Suite 550
San Francisco, CA 94104

Ms. Jennifer Bloeser
Pacific Marine Conservation Council
PO Box 327
Arcata, CA 95518

Dr. Rod Fujita
Environmental Defense Fund
Rockridge Market Hall
5655 College Avenue, Suite 304
Oakland, CA 94618-1583

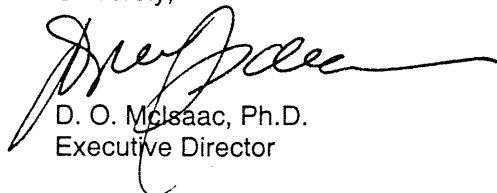
Dear Environmental and Conservation Group Representatives:

Thank you for your letter of February 16, 2000 regarding the bycatch provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I appreciate your continued attention, your patience, and your positive suggestions regarding this important issue. As you have pointed out, reduction in bycatch waste entails significant benefits to the resource, the industry, and fishing communities.

The Pacific Fishery Management Council (Council) is making progress towards development of an amendment to the Groundfish Fishery Management Plan (FMP) that can meet the requirements of law. The amendment drafters will present a status report on the bycatch amendment at the Council's upcoming March 7-10 meeting. At the April 3-6 meeting, the Council will review the draft amendment package and, if it is ready, will release it for public review and comment. The Council is scheduled to take final action on the amendment at its June meeting. By this scheduling, the Council has placed a high priority on bringing this FMP into conformance with the bycatch mandate of the Magnuson-Stevens Act.

I am including copies of your letter in the March briefing books for each of the Council members, and I will also provide a copy to the staff members who are drafting the amendment package. I encourage you to attend the upcoming Council meetings and express your concerns and suggestions directly to the Council. Copies of the draft amendment documents will be available at the meetings. If you are unable to attend and would like copies of the documents, please contact this office and we will mail copies to you.

Sincerely,



D. O. McIsaac, Ph.D.
Executive Director

cc: Mr. Jim Lone
Mr. Jim Glock

Mr. William Stelle, Jr.
Mr. Donald McIsaac
February 16, 2000
Page 3

disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of [National Standard 9] and of section 303(a)(11) and (12) of the Magnuson-Stevens Act.

50 C.F.R. § 600.350(d)(1) (emphasis added). In promulgating these regulations, NMFS further specified the mandatory nature and the importance of improved bycatch monitoring programs: "It is clear that, in order to be able to assess the amount and type of bycatch occurring in various fisheries, monitoring programs must be established." 63 Fed. Reg. at 24,227 (May 1, 1998) (emphasis added).

We are aware of the resource limitations under which NMFS and the Council operate. FCMA, however, does not recognize resource limitations as an excuse for failing to implement its mandate. As NMFS has specifically said in connection with FCMA's bycatch monitoring requirements, in response to a comment that such monitoring requirements might be costly and burdensome to implement: "The FCMA makes no allowance for the financial or administrative burden of establishing such [bycatch] reporting programs. ... [M]onitoring programs must be established." Id.

Furthermore, cost-effective studies may be possible through cooperate research with academic institutions and fishermen; such studies should be planned and implemented if they are determined to be the best way to reduce uncertainty about bycatch and discard mortality. In any case, the need for more studies or for an observer program should not be used as an excuse for inaction.

In the meantime, the requirement to review *existing* data sources to determine bycatch mortality in each fishery has not, to our knowledge, been met. The Council and NMFS must use the available data to establish bycatch minimization measures, taking a more precautionary approach than might otherwise be needed to account for the uncertainty inherent in these less-than-complete sources. Until the Council implements measures to minimize bycatch and concomitant mechanisms to account for uncertainty, we believe it will fall short of the requirements of FCMA. And until such action is taken, NMFS' efforts to secure funding for bycatch assessment programs will continue to be undermined by those who benefit in the short term from inadequate bycatch reduction measures.

In light of the mandatory nature of FCMA's requirements to establish bycatch monitoring programs and adequate measures designed to minimize bycatch and bycatch mortality, we urge NMFS and the Council to take expeditious action on a bycatch amendment to the groundfish FMP that complies with all requirements of the law. We also urge that you take steps immediately to incorporate the best available information on bycatch and species co-occurrence into the determination of optimum yields, and to consider in-season adjustments for specific species based on that determination.

Mr. William Stelle, Jr.
Mr. Donald McIsaac
February 16, 2000
Page 4

Other immediate measures could include action to: (1) close areas where co-occurrence of depleted species with productive stocks is high; (2) allocate larger shares of the resource to fishing sectors with demonstrably lower bycatch rates, either through a harvest priority policy (explicitly allowed in FMCA) or other means; (3) set a bycatch performance standard based on the most selective gear types and mandate that all fishing sectors meet it; and (4) implement monitoring of the bycatch of overfished species through an appropriately validated full-retention program or its functional equivalent.

We recognize that the Council recently took several steps that may reduce bycatch relative to recent years. Examples include the prohibition on landings of shelf groundfish species by trawl vessels using rollers larger than 8 inches in diameter, and a reduction in the optimum yield of chilipepper to reduce bocaccio bycatch. We view these actions as steps in the right direction, but cannot consider them sufficient to meet the bycatch minimization mandates of FMCA because they lack monitoring programs that could validate their results, and are not based on the required review of data for each fishery to determine bycatch mortality, or on a comprehensive evaluation of bycatch minimization options.

We would be pleased to discuss the issues raised in this letter at any time. Please contact Drew Caputo or Karen Garrison at (415 777-0220) if you have questions or to begin that discussion.

Sincerely,

Drew Caputo /kk

Drew Caputo
Senior Attorney, NRDC

Karen Garrison
Karen Garrison

Senior Policy Analyst, NRDC

Mark Powell /kk
Mark Powell

Pacific Fisheries Manager, Center for Marine Conservation

Rod Fujita /kk
Dr. Rod Fujita

Marine Biologist, Environmental Defense

Jennifer Bloeser /kk
Jennifer Bloeser

Staff Scientist, Pacific Marine Conservation Council