

**NATURAL RESOURCES DEFENSE COUNCIL
CENTER FOR MARINE CONSERVATION
ENVIRONMENTAL DEFENSE**

June 20, 2000

William Stelle, Jr., Regional Administrator
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Seattle, WA 98115-0070

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

RECEIVED

JUN 20 2000

PFMC

Re: Bycatch provisions and Amendment 13

Dear Mr. Stelle and Dr. McIsaac:

We are writing with regard to Amendment 13 to the Pacific Coast Groundfish Fishery Management Plan and its Draft Environmental Assessment (DEA), and more generally with regard to the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act) requirements to assess and minimize bycatch and bycatch mortality. We appreciate the DEA's discussion and analysis of alternatives for assessing bycatch and for management measures that would reduce bycatch; identification of alternatives is certainly a step in the right direction. But in order to meet the mandates of the Act—a requirement now long overdue—we believe the Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) *must adopt specific measures* to assess and minimize bycatch mortality and implement them promptly. Amendment 13 falls far short of that requirement.

We have two primary concerns about the bycatch provisions of Amendment 13. First, the Council's preferred alternative for bycatch assessment—to implement a standardized reporting methodology when funds become available—leaves the prospects for a tangible bycatch assessment program completely up in the air, in clear violation of Magnuson-Stevens Act requirements. Second, the preferred alternative for bycatch minimization, while the best of the proffered options, does not involve adoption or implementation of a single measure that would reduce bycatch. Amending the Groundfish Fishery Management Plan (FMP) to add a list of bycatch reduction measures that "might" be adopted at some later point does not meet the Magnuson-Stevens Act requirement to include specific measures in the FMP to minimize bycatch and bycatch mortality. We describe these concerns in greater detail below.

Bycatch assessment (DEA Section 4.2, Issue 2). The Council's preferred alternative for a bycatch assessment program contingent on funds becoming available is no different from the bycatch assessment strategy it has pursued for the past two years. That approach has so far produced no actual bycatch assessment program, regardless of concerted efforts by many influential people to secure funding. Delaying indefinitely the implementation of such necessary and, under section 303(a)(11) of the Magnuson-Stevens Act and 50 C.F.R. 600.350(d)(1), nondiscretionary measures in hopes of funding becoming available is facially inconsistent with the Act. As NMFS has emphasized, "The statute makes no allowance for the financial or administrative burden of establishing such reporting 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. 24, 227 (May 1, 1998).

The Council has acknowledged that "information about bycatch and discard rates in the non-whiting groundfish fisheries" is "desperately needed." Draft Environmental Assessment, at 24. Currently, bycatch and discard rates are unknown in the non-whiting fleets. Draft Environmental Assessment, at 20. Groundfish management currently relies on extrapolation of discard data from a 1988 study that estimated overage rates due to trip limits, and made no attempt to estimate bycatch and discards due to the co-occurrence of groundfish species. To the extent those estimates underpredict overall bycatch and discard rates, the management practices that rely on these estimates may result in continued, unseen overfishing, population declines, and possible stock collapse. Draft Environmental Assessment at 20. Furthermore, the lack of accurate bycatch assessment and related bycatch reduction measures may impede or prolong the rebuilding of depleted species. Management of the Pacific Coast Groundfish Fishery without basic information about the impacts of bycatch on total mortality of target and bycatch species has resulted in ongoing violations of the Magnuson-Stevens Act mandates to avoid overfishing, rebuild overfished species, optimize yield, and sustain participation of fishing communities.

The absence of any information on bycatch mortality has also made assessment of measures intended to reduce bycatch, as required under 50 C.F.R. 600.350(d)(2), impossible. While the Council has attempted to reduce bycatch through experimentation with alternative management measures such as more flexible cumulative landings regimes and gear restrictions, it acknowledges that there is no scientific confirmation for the effectiveness of these activities. Draft Environmental Assessment, at 16-17. Such measures cannot be deemed effective at reducing bycatch until steps are taken to validate their benefits.

We recognize that the Council would prefer to establish an observer program with federal funding, and that implementation of such a program would go a long way towards addressing the above concerns. However, it is unacceptable and inconsistent with the Magnuson-Stevens Act to make compliance with the essential legal requirement for

bycatch assessment contingent upon funding that has not yet been secured. The Council must implement an observer program or a comparable assessment program regardless of whether additional funding becomes available. NMFS and the Council clearly have the authority to implement an assessment program now. They could, for example, require that a rotating portion of the groundfish fleet carry observers at their own expense as a condition of holding a license, if federal funding is not obtained. In short, the EA must identify, and the Council must adopt, an alternative that will ensure compliance with legal requirements to collect reliable data on bycatch and bycatch mortality.

Measures to reduce bycatch and bycatch mortality (DEA Section 4.3a, Issue 3). As NMFS pointed out in its decision letter to the Council, the Magnuson-Stevens Act mandates that all FMPs include specific measures to minimize bycatch, and Amendment 11 failed to meet this statutory standard. Letter from William Stelle, NMFS, to Jerry Mallet, PFMC, March 3, 1999, at 2. Unless the Council adopts specific bycatch reduction measures as part of Amendment 13, it will again fail to meet that statutory standard. The Magnuson-Stevens Act requires that each FMP "shall...include conservation and management measures" that minimize bycatch and bycatch mortality. 16 U.S.C. § 1853(a)(11). Under this plain statutory requirement, it is not enough to envision the adoption of bycatch reduction measures down the line. Adequate and effective measures must be "include[d]" in the FMP itself.

The DEA has identified a number of promising, feasible measures that could be adopted immediately and implemented as soon as federal requirements for notice and comment are met. These measures have been analyzed and discussed at more than one Council meeting, and there is no legally valid reason for delaying their adoption. Measures in that category include:

- shorter fishing seasons combined with higher cumulative landings limits;
- improving species-to-species landings limit ratios, with appropriate adjustments to catch limits;
- time and area closures and creation of marine reserves to avoid bycatch hot spots, particularly for species that are overfished, approaching an overfished condition, or otherwise at risk;
- conducting a pilot study and data assessment to determine comparative bycatch rates for various types of groundfish gear, as a basis for increasing allocations to cleaner gear types;
- mandatory full retention of bycatch, combined with verification measures such as tamperproof cameras and penalties for exceeding catch limits;

Other measures that require verification and may require additional analysis, such as bycatch and discard caps and reservation of a portion of the harvest for those who fish cleanly, should be fast-tracked to be proposed at the Council's next meeting.

In summary, we urge the Council and NMFS to meet their legal duties to adopt, as part of Amendment 13, specific bycatch minimization measures and a bycatch assessment plan that will go into effect whether or not government funding becomes available. We

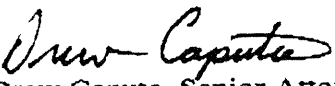
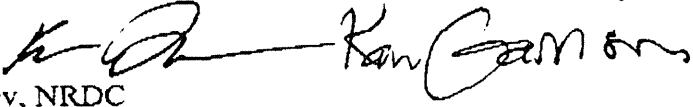
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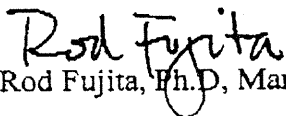
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appreciate the opportunity to comment on this important issue. Please call Karen Garrison (415 777-0220) with any questions.

Sincerely,

 
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Rod Fujita, Ph.D, Marine Ecologist, Environmental Defense