Exhibit C.1.d
Public Comment
November 2000

NRDC
THE EARTH'S BEST DEFENSE

NATURAL RESOURCES DEFENSE COUNCIL

October 5, 2000

BY FAX (206-526-6736) AND FIRST-CLASS MAIL

William Stelle Jr.
Administrator, Northwest Region
National Marine Fisheries Service
7600 Sand Point Way N.E.
BIN C15700, Bldg. 1
Seattle, WA 98115-0070

Dear Mr. Stelle:

In early September, the National Marine Fisheries Service ("NMFS") announced its approval of rebuilding plans for bocaccio, lingcod, and Pacific ocean perch ("POP), three overfished species that are managed under the Pacific Coast Groundfish Fishery Management Plan ("FMP"). Notice of Approval of Overfished Species Rebuilding Plans, 65 Fed. Reg. 53,646 (Sept. 5, 2000). On behalf of its more than 400,000 members, the Natural Resources Defense Council hereby files its comments on this decision by NMFS.

While we are pleased that NMFS is taking steps to attempt to protect bocaccio, lingcod and POP (collectively "the three overfished species"), the rebuilding plans approved by the agency fail to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act"), the National Environmental Policy Act, and basic administrative law. We urge NMFS to rewrite these rebuilding plans in a manner that complies with applicable law.

I. NMFS Has Violated the Magnuson-Stevens Act by Approving Rebuilding Plans That Are Neither an FMP, an FMP Amendment, Nor Regulations.

Section 304(e)(3) of the Magnuson-Stevens Act mandates that rebuilding plans for overfished species take the form of "a fishery management plan, plan amendment, or proposed regulations for the fishery ..." 16 U.S.C. § 1854(e)(3). Since the rebuilding plans for bocaccio, lingcod and POP are neither FMPs, FMP amendments, nor regulations, NMFS's approval of these plans constitutes an obvious violation of the Magnuson-Stevens Act.

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II. NMFS Has Failed to Establish Rebuilding Periods That Are the Shortest Time Periods Possible.

Section 304(e)(4)(A) of the Magnuson-Stevens Act requires each rebuilding plan to "specify a time period for ending overfishing and rebuilding the fishery ..." 16 U.S.C. § 1854(e)(4)(A). This rebuilding period must be "as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem." Id. at § 1854(e)(4)(A)(i).

As an initial matter, the rebuilding plans for the three overfished species fail to specify a discrete rebuilding period for each species. For example, the bocaccio rebuilding plan concludes that "the maximum allowable rebuilding time is 26 years plus one mean generation length (12 years for bocaccio), for a total of 38 years." Pacific Fishery Management Council, Initial Rebuilding Plan for West Coast Bocaccio, Sebastes paucispinus (hereafter "Bocaccio Rebuilding Plan") 1 (Feb. 2000). See also Notice of Approval of Overfished Species Rebuilding Plans, 65 Fed. Reg. at 53,647 ("[i]n the case of bocaccio, ... the maximum rebuilding time would be 38 years").This conclusion, however, falls well short of the statutory requirement to actually "specify a time period for ending overfishing and rebuilding the fishery ..." 16 U.S.C. § 1854(e)(4)(A).

Even if the rebuilding plans did establish specific rebuilding periods for each overfished species, the plans would still violate the Magnuson-Stevens Act due to their failure to show that the rebuilding period selected is the shortest one possible, as required under the statute. The bocaccio rebuilding plan, for example, acknowledges that the minimum time necessary to rebuild bocaccio populations could be as little as 20 years. Bocaccio Rebuilding Plan at 1. Thus, even if the bocaccio rebuilding plan had specified a rebuilding period of 38 years, the plan fails to establish that such a 38-year period is the shortest period possible for rebuilding the species. By approving rebuilding plans for the three overfished species that fail to demonstrate that the rebuilding periods established are as short as possible, NMFS has violated the Magnuson-Stevens Act.

III. The Rebuilding Plans Fail to Meet the Statutory Requirements to End Overfishing and to Rebuild Affected Stocks.

Section 304(e)(3) of the Magnuson-Stevens Act requires that rebuilding plans be sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish ..." 16 U.S.C. § 1854(e)(3)(A). The rebuilding plans for the three overfished species fail to meet this test, because they contain no constraints on fishing or other activities that have caused the dramatic drops in the populations of these species and that stand in the way of rebuilding the

stocks. In essence, the rebuilding plans approved by NMFS are vague statements of aspiration that present the goal of rebuilding the species but that mandate no specific requirements to make rebuilding a reality. Apparently, NMFS prefers to seek to address those requirements on a year-by-year basis in the annual specifications and management measures that NMFS is required to issue for the groundfish fishery each year whether or not stocks within that fishery are overfished. This failure to specify measures and limits designed to rebuild the overfished species means that the rebuilding plans offer the three overfished species no more protection than they had prior to the approval of the rebuilding plans.

By approving rebuilding plans that fail to mandate actions sufficient to end overfishing in the fisheries and to rebuild the affected stocks of fish, NMFS has violated the Magnuson-Stevens Act.

IV. The Rebuilding Plans Fail to Address Bycatch Adequately.

Bycatch is a substantial problem in the Pacific Coast Groundfish Fishery. NMFS has acknowledged, for example, that bocaccio "is caught incidentally in commercial and recreational fisheries targeting many other different species." 65 Fed. Reg. 45,308, 45,310 (July 21, 2000). NMFS also has acknowledged that "[b]ycatch'... information in the groundfish fishery is scarce" and that a "lack of current discard information ... makes it difficult to assess the success or failure" of its measures for managing the groundfish fishery. 65 Fed. Reg. 221, 236, 233 (Jan. 4, 2000).

Rebuilding plans for overfished species must comply with the national standards for fishery conservation and management established by the Magnuson-Stevens Act. 16 U.S.C. § 1851(a). National Standard 9, concerning bycatch, "requires Councils to consider the bycatch effects of existing and planned conservation and management measures." 50 C.F.R. § 600.350(b). More specifically, NMFS's regulations provide:

> To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must ..., [f]or each management measure, assess the effects on the amount and type of bycatch and bycatch mortality in the fishery.

Id. at § 600.350(d)(2) (emphasis added). Since there is no such adequate consideration and assessment of bycatch in any of three rebuilding plans prepared by the Pacific Fishery Management Council, NMFS violated the Magnuson-Stevens Act by approving the plans.

National Standard 9 also requires fishery management councils and NMFS to minimize bycatch and, to the extent bycatch cannot be avoided, to minimize the mortality of such bycatch. 16 U.S.C. § 1851(a)(9). Since the rebuilding plans for the three overfished

species fail to include adequate measures to minimize bycatch and bycatch mortality, NMFS violated the Magnuson-Stevens Act when it approved the plans.

Finally, and perhaps most basically, the Magnuson-Stevens Act requires rebuilding plans to include "a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery ..." 16 U.S.C. § 1853(a)(11). See also 50 C.F.R. § 600.350(d)(4) ("To evaluate conservation and management measures relative to this and other national standards, as well as to evaluate total fishing mortality, Councils must ... [m]onitor selected management measures.") (emphasis added). Since the rebuilding plans contain no measures to monitor or assess bycatch of the three overfished species, the plans violate the Magnuson-Stevens Act.

The current experience with bycatch in the bocaccio fishery highlights why NMFS's approval of the rebuilding plans was not consistent with law. For the year 2000, NMFS set the harvest level for bocaccio at 100 metric tons. This harvest level is intended entirely to account for bocaccio bycatch. In NMFS's words, "[t]hese very conservative harvest levels do not allow directed bocaccio targeting, but rather acknowledge that some incidental catch will occur." Notice of Approval of Overfished Species Rebuilding Plans, 65 Fed. Reg. at 53,647.

Unfortunately for bocaccio, no later than June 2000, less than halfway through the management year, it became clear that bocaccio bycatch was running far ahead of the assumptions used in establishing the harvest level. On July 17, the Pacific Fishery Management Council ("the Council") wrote a letter in which it broadcast its concern about the high bycatch rates undermining the effectiveness of the rebuilding plans. The Council's executive director wrote:

> At the Council's June 26-30, 2000 meeting ..., the Council received a report that recreational harvest of bocaccio and lingcod south of Cape Mendocino appears to be proceeding much more rapidly than anticipated. In fact, recreational take of bocaccio in this area has already exceeded the preseason estimate and threatens to reach the entire annual quota for all fisheries. Similarly, the catch of lingcod taken by recreational fishers is also higher than anticipated. The Council is extremely concerned about the status of these important groundfish stocks, the effectiveness of the rebuilding plans, and the management of all fisheries that impact these stocks.

Letter from D.O. McIsaac, Ph.D., Executive Director, Pacific Fishery Management Council, to Robert Treanor, Executive Director, California Fish & Game Comm'n 1 (July 17, 2000) (emphasis added) (attached to this letter as Exhibit A). Even assuming arguendo that the year 2000 groundfish management measures can properly be deemed part of the rebuilding plans for the three overfished species, NMFS plainly violated the Magnuson-Stevens Act and basic principles of administrative law by approving the rebuilding plans after receiving information

from the author of the rebuilding plans that the assumptions underlying the year 2000 harvest levels are faulty and that the Council is "extremely concerned about ... the effectiveness of the rebuilding plans." We urge NMFS in the strongest possible terms to rewrite the rebuilding plans for the three overfished species to take proper account of bycatch and to set harvest levels that will be effective in rebuilding these species.

V. The Rebuilding Plans Fail to Assess Adequately Effects on Essential Fish Habitat and to Minimize Adverse Effects on Essential Fish Habitat.

Under the Magnuson-Stevens Act, rebuilding plans must "minimize to the extent practicable adverse effect on [essential fish] habitat caused by fishing ..." 16 U.S.C. § 1853(a)(7). The rebuilding plans also "must contain an assessment of the potential adverse effects of all fishing equipment types used in waters described as [essential fish habitat]," 50 C.F.R. § 600.815(a)(3)(ii), among other required assessments. Because the rebuilding plans fail to assess adequately impacts to habitat of the three overfished species and fail to minimize adverse effects on essential fish habitat, NMFS violated the Magnuson-Stevens Act by approving the rebuilding plans.

VI. NMFS Failed to Comply With the National Environmental Policy Act.

The National Environmental Policy Act ("NEPA") requires federal agencies to evaluate the environmental impacts of any "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). NMFS's approval of the rebuilding plans for the three overfished species plainly may have a significant environmental impact, in light of the depleted nature of the fisheries and the important effect the rebuilding plans should have on the Pacific Coast groundfish fishery. By failing to prepare an adequate environmental impact statement on the rebuilding plans, or at least to prepare an environmental assessment that can properly support a finding of no significant impact, NMFS has violated NEPA.

VII. Conclusion.

As NMFS has properly recognized, bocaccio, lingcod and POP are in a precarious, depleted state. To provide for the proper management and rebuilding of these overfished species, we urge NMFS and the Council to remedy the above-specified shortcomings as soon as possible so that the rebuilding plans comply with all applicable legal requirements.

Sincerely,

Drew Caputo
Senior Attorney

Karen Garrison
Senior Policy Analyst

cc: Donald McIsaac, Ph.D.
Executive Director
Pacific Fishery Management Council

Public comment agenda item # C.1

October 13th, 2000

Dear Pacific Management Council;

About 10 years ago I wrote letters during the public comment periods requesting that you require us to use the most selective gear possible **(no discards)**. What state would the fisheries be in today if you had simply outlawed fishing methods with large bycatches?

About 9 years ago the Council went to limited entry permits for qualified fishermen with the intent of reducing pressure on the fisheries by reducing the amount of boats fishing. **So - How are the fisheries doing now?** Please let's learn from past mistakes.

I do understand that you don't want to be caught in a verbal war between fishermen of different gear types. I now believe that **the only fair way to manage the fisheries is to have large permanently closed fishing zones** so groundfish like canary rockfish and cowcod (which take a very long time to reach maturity) have a good chance to reproduce.

I also understand that us fishermen as a rule hate closures. So instead of calling the permanently closed areas "no fishing zones" how about calling the areas that are not closed **"commercial fishing zones"** or **"open fishing zones"**.

Please, don't repeat history anymore - be brave and do the right thing!

Sincerely,

Lloyd Reeves

Lloyd Reeves - owner groundfish permit #0005
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TO: Mr. Jim Glock
Pacific Fishery Management Council

October 13, 2000

Cow Cod Bio Mass (Cortes Bank only)

The last time I collected a shelf rock fish quota, we worked 1 ½ days on the Cortes Bank in an area equal to about 200 acres. Of that quota, 60 fish were cow cod. They totaled almost 1000 pounds, with a 16 pound average weight.
I have modeled the Cow cod bio mass on our last effort at the Cortes Bank:

1. Cortes Bank 230,400 acres
2. 60 Cow Cod = 1000 pounds
3. 200 acre area worked = 50 lb. per acre

On strict modeling there is a bio mass of 5760 tons. Factor in 100% error: 2880 tons and factor in another 100% error and there is still 1440 tons.

Taking the last modeled number and the statement that Cow Cod are at 2% of their historic level, that means this bank supported 72,000 tons or 144,000,000 pounds of Cow Cod. The largest recorded catch was 184 tons in one year.

The Cow Cod is a minor- very minor shelf species. If you factor in all the other species; vermilion, boccacio, chili-pepper, red widow, brown speckled, etc., you have just about run out of water for them to swim in!

A conservative estimate would be 40% of historic levels. This small sampling survey of 60 fish is the only real science I have seen to date. Also, it has been my observation after 30 years on the fishing grounds that Cow Cod are for the most part a solitary fish as opposed to the great schools of other species; chili peppers, red widows, etc..

Value of California Fish

I. **Value of fish to California Business and it's citizens**

example;
1 (one) 6 lb. Vermilion rock fish (shelf species)

Fisherman	**@**	**$ 3.00=**	**$ 18.00**
Wholesaler	**@**	**$ 4.50=**	**$ 27.00**
Restaurant (average sushi bar)			
125 piece per fish	@	$2.00= per piece	$250.00

This one fish will generate **$295.00**

II. People employed or directly affected — Number of people

1. Boat	
Crew	3
2. Support	
Fuel Dock	8
Bait Boat and Packer	40
3. Equipment and Suppliers	
Engines, Generators	22
Electronics	6
Hydraulics	10
Shipyards	30
Maintenance	15
4. Markets (wholesale only)	
IMP (example)	44
Restaurant (medium)	11
5. Fish & Game personnel, Harbor Master and personnel (avg)	26
People directly and substantially benefiting:	**215**

How to restore depleted area to near carrying levels in 10 years, easily and with very low monetary expenditures.

Take the roe and milt from gravid fish. Mix together and reintroduce into the proper areas. In this way we can achieve nearly 100% fertilization rate as opposed to a fraction of the percent in nature. This is being done right now in private industry in other nations. This is not new, or particularly difficult.
I would strongly suggest that Steve Kelly (F/V Island Tak) and Joe Villareal (F/V Mirage) be hired or chartered to procure the Cow Cod as they move into their spawning cycle, checking small amounts until they appear "ripe" then taking larger amounts.
If there becomes a "timing" problem, the milt/roe could be handled the same as human sperm and eggs; with liquid nitrogen. It is economical and easy.

I understand that there are some sport fishing problems near the metropolitan centers. These problems should be easy to change if you have the will to.

There are a lot of platforms waiting to be "decommissioned." They come complete with habitat and financing. I visualize at least 1000 steel artificial reefs. The Southern California coastal bank is woefully lacking significant hard bottom habitat/ relief. Obviously there is not enough oil platforms for 1000 reefs, but it would be an immediate start.

In viewing video from the State Land Commission's fiasco of removing 28 well heads and re-entry structures on the Gaviota coast, it appears steel will out produce rock habitat 10 to 1. I have an edited version of these videos, which can be made available for your viewing the amount of fish and other sea life on these structures. It is truly amazing.

Regarding the bocaccio issue; during the last 3 years that I have been fishing squid, I have seen and "lit up" a lot of 20-30 ton spots of juvenile bocaccio. Santa Cruz, Santa Rosa, Santa Barbara, and Catalina. Bocaccio are everywhere in mass quantities, with the end of El Nino, there are some monster year classes. The stocks appear to be healthy and reproducing like crazy. These juvenile fish came from somewhere .

Captain Steve Kelly, F/V Island Tak, says that there are school after school living 20-30 fathoms in the mud in front of Oxnard and in the Santa Monica Bay. The outer banks also hold large populations of adult fish; the Tanner, Cortes, Cherry and Potato Banks and San Nicolas Island.

It seems that California is at a cross-roads with population and marine environment/resource. Ocean run fish is the only pure protein available to us. We also expect the ocean to provide recreational fishing. The commercial sector provides the rest of the state's citizens access to this pure food resource. Both are important, both have problems but are curable in the short term with the proper programs.

TO CUT EVERYTHING OFF IS NOT THE ANSWER OR SOLUTION. THE SKY IS NOT FALLING IN SOUTHERN CALIFORNIA. MANAGEMENT HAS NOT PROVIDED ANY SCIENCE -ZERO- FOR THEIR MANAGEMENT DECISIONS.

The only science you have is an environmental business that needs disaster to remain in business. Taco Bell got $63 million for genetically-altered corn in their tortillas. Find the money for real science.

I have outlined for you a solution. Please give it the most serious consideration. These programs will require a fisherman's oversight committee and I would want to be a part of that.

Respectfully submitted,

Phil Schenck
F/V Terri's Gale
Point Conception Groundfishermen's Assoc.

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