

## RECONSIDERATION OF 1997 HUNTINGTON FLATS DECISION

Situation: At the April 1997 meeting, the Council adopted a motion to recommend that NMFS implement federal regulations to prohibit the use of setnets to take groundfish species in four areas of federal waters (the most controversial of which is inside 35 fathoms in the Huntington Flats area). This would mirror state law prohibiting the use of set gillnets to take state-managed species in that area. At that meeting, California Department of Fish and Game (CDFG) staff summarized the analysis behind the department's request for federal regulations. CDFG data showed that federal groundfish species were only 16% of the gillnet catch in the exclusive economic zone (EEZ), and only 5% of the value of the catch. Ms. Eileen Cooney explained the legal challenge brought by the Los Angeles Commercial Fisherman's Association (LACFA) in federal district court and reviewed relevant portions of the preliminary injunction in that case. She pointed out that the preliminary injunction prevents CDFG from enforcing its gillnet regulations in the EEZ and that the judge in that case was awaiting Council action.

The Council considered three options:

- Option 1. Maintain the status quo. Under this option, federal regulations would not be adopted, but a determination could be made that state regulations are consistent, or not consistent, with the Council's groundfish plan.
- Option 2. Implement federal regulations that are the same as California state laws prohibiting the use of setnets 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).
- Option 3. Implement federal regulations to *provide for* setnet fishing for federal groundfish species in the Huntington Flats area out to 35 fathoms, or alternatively out to 70 fathoms, and implement federal regulations that are the same as California state laws that *prohibit* setnet fishing in three Central California areas.

CDFG supported adoption of Option 2 due to concern about discard of state-managed fish if gillnetting for federal species were to be allowed in the EEZ. The Council agreed and adopted Option 2. However, the final rule has been delayed. Meanwhile, in November 2000, the court issued a Consent Decree establishing a permanent injunction against the state preventing it from enforcing its prohibition on retention of state-managed species, subject to the outcome of the NMFS rulemaking. Under the terms of the Consent Decree, if NMFS closes the Huntington Flats area, then the state can apply to the court to have the injunction dissolved. The LACFA agreed not to oppose this action. However, this would not preclude the LACFA from filing a separate legal challenge against the NMFS rules.

At the March 2001 meeting, the Council agreed to consider whether to reconsider their April 1997 action on this matter. If the Council withdraws its support for implementation of federal setnet regulations, it would recommend NMFS not implement the final rule. If the Council does not withdraw its support, NMFS will proceed with the rulemaking.

CDFG plans to compare 1998-2000 setnet landings data for the area to the data used in the 1997 recommendation. That report should be available in supplemental material distributed at the Council meeting. In addition, CDFG is expected to produce a formal recommendation prior to the Council meeting.

### **Council Action:**

- 1. Recommendations to NMFS on regulations closing Huntington Flats to setnets.**

### **Reference Materials:**

1. Exhibit F.3, Supplemental CDFG Report, CDFG landings data analysis.
2. Exhibit F.3.c, Public Comment 1, letter from Mary L. Hudson dated March 16, 2001.
3. Exhibit F.3.c, Public Comment 2, letter from Mary L. Hudson dated March 18, 2001.

Groundfish Fishery Strategic Plan Consistency Analysis

This agenda item is expected to require Council decision making that raises issues of consistency with the bycatch and capacity reduction objectives in the plan. However, the allocation recommendation plan contains language in principle #5 to "consider the diversity of local and regional fisheries, community dependency on marine resources and processing capacity and infrastructure in allocation decisions."

PFMC  
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