

COMMENT¹
**DRAFT AMENDMENT 10 TO THE PFMC
COASTAL PELAGIC SPECIES
FISHERY MANAGEMENT PLAN
APRIL 2002 ("Draft")**

Scope of Comment. The Draft involves "two distinct, unrelated elements that address deficiencies in the CPS FMP," concerning (1) management of the limited entry CPS finfish fishery, and (2) the need for a Market Squid MSY control rule. **This Comment is restricted to the first element.** In this first element, the draft proposes management measures to "ensure fishing capacity . . . is in balance with resource availability." Three (3) actions are proposed to achieve this purpose: (1) establishing a "capacity goal"; (2) establishing "limited permit transferability to achieve and maintain the capacity goal", and (3) "establishing a process for considering new limited entry permits".

**POSITIONS ON PROPOSED MEASURES AFFECTING
THE CPS LIMITED ENTRY PROGRAM**

1. What should the limited entry CPS finfish fishery "look like" in terms of the number and the amount of capacity? The Draft and this Comment agree on the capacity goal as stated in Option A.1.² This Comment disagrees with the Draft's conclusion that "the current fleet of 65 vessels would satisfy this goal." (Draft-p.1)

a. Expansion or Status Quo. The Draft supports the status quo and proposes that the "Coastal Pelagic Species Limited Entry Fleet" (CPS-LEF) remain at 65 vessels. This Comment proposes an expansion in the CPS-LEF from 65 to 75 vessels.

b. Total calculated Gross Tonnage (GT): The Draft calculates the gross tonnage of each vessel in the existing CPS-LEF to arrive at a total calculated Gross Tonnage (GT). This Comment agrees with Draft's

¹ This Comment is based upon discussions with the owners of the following San Diego based commercial fishing vessels: NEW HORIZON, ROSEMARIE C., SHEELAGH B., and TEMPTATION. Each can establish the following facts: (1) They have been licensed as California commercial fishermen for at least 20 years and have participated in the CPS fishery for at least one of those 20 years; (2) They have an ownership interest in a commercial fishing vessels that uses a purse seine for the taking of market squid, and that a commercial market squid vessel permit has been issued to these vessels or their replacement vessels annually, by the California Department of Fish and Game (CDFG) commencing with the permit for the 1998-99 permit year; (3) They have valid drift gill net shark and swordfish permits issued by the CDFG that has not been suspended or revoked; (4) They have a history of being engaged in United States Tuna fishery of the Eastern Pacific as a member of the San Diego Commercial Fishing Community; (5) They are not able to meet the qualifying criteria originally established in Amendment 8 and 50 CFR § 660.512 (b)(1) for issuance of new CPS finfish limited entry permits, in that their vessels did not land 100 metric tons of CPS finfish during a five-year window period from January 1, 1993, through November 5, 1997, and (6) They were unable to obtain, before January 1, 2001, a transferred limited entry permit.

² A fleet that has a "normal harvesting capacity equal to the long-term expected aggregate finfish target harvest level, approximately 110,000 mt, and with physical capacity available to harvest peak period amounts of finfish, 275, 000 mt."

concept of a GT, and method of computing GT. The Draft proposes that 5,650.9 mt of GT represent the fleet capacity goal. This Comment proposes that this GT be increased to 10% of 5,651mt or 565 mt, for a total of 6216 mt. of GT.

This measure to expand the fleet will not require an amendment to the FMP. Amendment 8 allows for the issuance of new permits consistent with the parameters of a framework that may be developed in the future. "This decision by the Council to choose Option 1 was based on the recognition of a need to issue new permits in the future as a response to "a substantial increase in the abundance of CPS finfish resources together with substantially enhanced markets." EIS-7. The Analysis of FMP Amendment 8, Option 1, at page B-76, stated the following:

"Under Option 1 the fleet could be expanded to any desirable size through the issuance of new permits, and could include more vessels than initially qualify for limited entry permit."

2. Conditions for Transfer of Existing Permits: This Comment supports Option B.3.

3. Adjusting Permit Transferability : This Comment supports Option C.4.

4. Issuing New Limited Entry Permits: This Comment proposes a Modified Option D. 3 by establishing new qualifying criteria for 10 new permits, as follows: To individuals who did not qualify because of the landing requirement under Amendment 8 and who can establish the following conditions: (1) eligibility for "grandfathered permits" under Section 8101, California Fish & Game Code (F&GC) and (2) possession of current permits issued by the California Department of Fish and Game (CDFG) for their vessels to take Market Squid by round haul gear.³ Option 1 of FMP Amendment 8, at page B-76, and above quoted, suggests in the following clause that the Draft's interpretation is incorrect: "the fleet could be expanded . . . and could include more vessels than initially qualify for limited entry permit."

The Draft, at page 1, notes that the CPSAS and the public have expressed concerns that the number of permits initially issued may not reflect "optimal capacity in the fishery." The PROPOSAL of this Comment, described herein, will add vessels to the CPS finfish fleet which rely on other fishing opportunities such as squid, swordfish, sharks, and tuna. Both of these points were included in Option 1 of the CPSMT's statement on the LEF issues presented to the Council during its November, 2000 meeting.⁴

³ The Draft at page 7 contends that a change in eligibility criteria "would require an amendment to the FMP."

⁴ "Option 1. Maintain a larger, diverse CPS finfish fleet (current size?) which also relies on other fishing opportunities such as squid and tuna."

PROPOSAL TO ISSUE TEN (10) NEW LIMITED ENTRY PERMITS

Qualifying Criteria: A California licensed fisherman who owns a commercial fishing vessel that did not initially qualify for a limited entry permit under Amendment 8 because of the failure of his or her vessel to land 100 metric tons of CPS finfish from January 1, 1993, through November 5, 1997, is eligible for new limited entry permits, provided that following two conditions exist:

Condition One. That the CDFG has verified to the NMFS that the applicant fisherman owns or has a partnership or shareholder ownership interest in a commercial market squid vessel using a purse seine or lampara net for the taking of market squid for commercial purposes, and that a commercial market squid vessel permit has been issued to such vessel or its replacement vessel annually, commencing with the permit for the 1998-99 permit year.

Condition Two. That the California Department of Fish and Game (CDFG) has verified to the NMFS that the applicant fisherman has been licensed as a California commercial fisherman for at least 20 years and has participated in the CPS fishery for at least one of those 20 years.

Within Section 2.1.3.4.D, pages 6-7, the Draft does not consider qualifying round haul vessels whose history in the CPS fishery predated the "window period" and who have been permitted by the CDFG to engage in the California Market Squid fishery since 1998.

Significant legal and factual relationships exist between the CPS Finfish Limited Entry Program (CPS-LEP) and the jurisdiction or authority exercised by the State of California. Section 8150 and Section 8411, F&GC, were amended in 2000, and took effect on January 1, 2001. These two Sections of the F&GC require the CDFG to manage the sardine and the Pacific Mackerel resources "in conformance with the Federal regulations as recommended by the Pacific Fishery Management Council and as adopted by the Secretary of Commerce." Section 8101, F&GC has been California law for about 20 years. Section 8101 was first applicable to limited entry fisheries established by statutes that became "operative after January 1, 1982". Effective January 1, 2001, it became applicable to limited entry fisheries established by regulations that became "operative after January 1, 1999" [The 1997 California Market Squid Act

permitted commercial vessels using round haul gear (purse seines or lampara nets) to engage in the fishery in 1998.^{5]}

Why the requirement of a Market Vessel Squid Permit issued to a round haul vessel using a purse seine or lampara net? Table 6.4 (p. 38) of the Draft, covering the period 1995 through 2000, shows the importance of Market Squid revenue to 48 vessels in the CPS LEF.. It shows that Market Squid annual revenue represented 46.6% for 17 vessels that annually averaged 1,668 mt of CPS finfish landings, 26% for 7 vessels that averaged 1,286 mt of CPS finfish landings, and 66.5% for 14 vessels that average annually 795 mt of CPS finfish landings. This requirement ensures that the new permit holders can rely on other fishing opportunities besides the CPS finfish fishery.

BACKGROUND REASONS FOR PROPOSAL

Attached you find the Affidavit of Vincenzo Crivello (CRIVELLO”), dated 30 January 2001, managing owner of the ROSEMARIE C. Official Number 1,037,553. This Affidavit illustrates some of the problems confronted by the San Diego Commercial Fishing Community who did not meet the landing qualifying criteria under Amendment 8. Other significant problems are the following:

Squid Fish Buyer Discrimination. The experience of CRIVELLO is instructive to show the problems of a fisherman who has a Market Squid Permit but not CPS Limited Entry Permit. Fish Buyers have consistently told CRIVELLO that they discriminate against him in favor of vessel owners who have both a CPS Finfish Limited Entry Permit and a California Market Squid Permit over his vessel. CRIVELLO is unable to land CPS when these Fish Buyers want Pacific Sardines or mackerel and not squid. The actions of these Buyer are seriously impacting CRIVELLO’S ability to negotiate fair and reasonable market arrangements for fishing squid. These “market actions,” by causing the idleness of his vessel and crew, have also severely reduced the financial capacity of CRIVELLO to raise funds and lending capacity to consider the purchase of a CPS Limited Entry Permit as proposed by Amendment 10 (Option 3-CPSMT Preferred Option). [Appendix C, Table 1 (p.11) states that 55 of the 65 vessels in the Limited Entry Program have Squid Permits issued by the CDFG]

History shows that the squid resource is not readily available off California during El Nino See: Attachment: CDFG Table 3B If Market Squid is not

⁵ This privilege to fish during the following years depended upon action to renew this initial or 1998 permit. The failure to renew resulted in the termination of the right to fish. The right to transfer the permit to a replacement vessel was restricted only to cases where the replacement vessel was lost, stolen, destroyed, or suffered a major mechanical breakdown. Under this “moratorium” program, owners of Southern California based tuna baitboats and drift gill net boats exercised the option of converting their vessels to purse seiners. The Market Squid Act did not create a limited entry program; therefore, the provisions of Section 8101, F & G C (“Grandfathered Permits”) were not applicable. The Market Squid Act was amended in 2001, requiring the Fish and Game Commission to adopt a market squid fishery management plan. [See: Section 8425, F & GC.]

available, CRIVELLO has no option of fishing CPS finfish. In this circumstance, there is less likelihood for CRIVELLO to attain “an overall efficiency gain in terms of optimizing vessel operations.” We agree with the Draft that the market advantage resides in those vessels who have “the suite of CPS fisheries opportunities.”

No Administrative Remedies Available. Amendment 8 was adopted without provisions that would consider factors that prevented vessels owners from landing 100 metric tons during the “window time period.” The regulations adopted by the NMFS only prescribed a process for determining whether the landings were made during the “window time period” and whether the landings were of 100 metric tons or greater. If these two conditions were not met, the NMFS SFD and the Regional Administrator were compelled to deny initial issuance and the appeal, respectively. The appeal had to be decided “in accordance with the permit eligibility criteria” set forth in the final rule and in the FMP. For these reasons, the process of submitting an application on behalf of CRIVELLO was not a meaningful option. Nor the process of seeking an appeal to the Regional Administrator. Under Amendment 8 and NMFS Regulations, administrative remedies were not meaningfully applicable to CRIVELLO.

Failure of Amendment 8 to consider and analyze the fishing access restrictions imposed upon the San Diego Commercial Fishing Community by the Magnuson-Stevens Act when it was amended to assert fishery jurisdiction over highly migratory species (HMS). This conclusion is supported by the following NOAA statement in response to a letter Comment made by the undersigned on behalf of seven (7) owners of vessels operating from San Diego:

“Although the analysis may not have addressed all of the particular impacts of Amendment 8 on a specific fishing community such as the commercial fishing community in San Diego County, the limited entry scheme, besides preventing overcapitalization, is designed to protect historic participation in the fishing while providing maximum benefits to all users. . . .”⁶ _

The owners of Southern California based tuna baitboats, which use CPS finfish as live bait, were not forced to consider converting, moving, or selling their tuna baitboats until the early 1990s. Effective in 1992, the 1990 amendments to the Magnuson-Stevens Act made it illegal for US Flag vessels to fish for tuna, swordfish, sharks, and other HMS within the 200 mile EEZ of Mexico without a Mexican fishing license. San Diego tuna fishermen first started fishing off Mexico in about 1919. However, since the enactment of the HMS amendment, no arrangement has been negotiated by the State Department with the Government of Mexico to allow a continuation of this traditional tuna fishery. The obligations of the Secretary of State set forth in Section 202(e)(1) and (2) of the Magnuson-Stevens Act have not been performed.⁷

⁶ 64 CFR 69891

⁷ “(2) **Access Negotiations.**-The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for

The US judiciary has not made any interpretations of the Magnuson-Stevens Act, as it applies to the traditional tuna fishing activity of San Diego based vessels off Mexico.⁸ Nor have these courts interpreted the provisions of Section 3377(b), Title 16, USCS (The Lacy Act) as they would apply to fishing activities of San Diego based vessels engaged in traditional fishing for highly migratory species off Mexico. These pertinent facts were not considered by the PFMC nor found in the contents of Amendment 8.

The most realistic options available to the San Diego Commercial Fishing Community in reacting to the access problems created by the Magnuson-Stevens Act were the following: (1) to continue as a baitboat/troller by entering the Albacore fisheries in the South Pacific, off Midway Island in the Central Pacific, or off the West Coast States; (2) to convert the vessel and enter the Limited Entry Drift Gill Net Fishery for Swordfish and Shark by using the provisions of Section 8101, F&GC, and (3) to convert the vessel to a purse seiner and fish for CPS and/or Market Squid.

When the PFMC considered Amendment 8, the record shows that the above plight of the San Diego Commercial Fishing Community was not adequately considered. Further, Amendment 8 inadequately acknowledged a historic connection of CPS and the San Diego Commercial Fishing Community. NOAA's response was limited to the argument that since the FMP provided an "open access fishery north of 39° N. Lat." the concerns of the San Diego fishermen were accommodated. NOAA suggested that the San Diego fishermen should wait for the time when the "abundance of CPS is large and market conditions make harvesting feasible." Then, the San Diego fishermen could "gain benefits from the fishery" by fishing under Amendment 8, in that they could fish CPS north of 39° North Latitude. To date, this option has not benefited these San Diego fishermen.

REASONS IN SUPPORT OF PROPOSAL

1. The PROPOSAL will not contribute to overcapitalization. Based upon a CDFG report dated January 12, 2001,⁹ it is estimated that 8 vessels will qualify under the PROPOSAL. This is because a small number of individuals will qualify in meeting the eligibility requirements of Section 8101, F&GC. The State of California has developed data on the total number of fishermen that might be eligible for the issuance of a Market Squid Permit under Section 8101, F&GC. This work was performed in connection with the preparation of a draft Market Squid Fishery Management Plan that will include a limited entry program.

tuna species within the exclusive economic zones of other nations on reasonable terms and conditions." 16 U.S.C. 1822; M-S Act § 202

⁸ (f) **Nonrecognition**- It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States; (2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement, or (3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management."

⁹ CDFG Letter dated January 11, 2001, prepared for Management Options Meetings.

For the 2001/2002 season, 193 Market Squid vessel permits have been issued by the CDFG, including 55 vessels in the CPS Limited Entry Fleet. **See Attachment, Table 3A.** Not all 193 vessels fish squid with round haul gear.¹⁰ Many of the vessels issued a Market Squid Vessel Permit do not have documented participation in the fishery, some fish squid with scoop nets, and many are operating as light vessels servicing fishing vessels.¹¹

For vessels operating in San Diego County, four (4) vessels satisfy the conditions of the PROPOSAL, namely, NEW HORIZON, ROSEMARIE C., SHEELAGH B., and the TEMPTATION.¹² Attached are current US Coast Guard documentation for these four vessels. Based upon the formula provided in the Draft at page 19, the calculated gross tonnage (GT) of for each of these vessels, are the following: NEW HORIZON (50.0 GT), ROSEMARIE C. (75.8 GT); SHEELAGH B. (112.0 GT), and TEMPTATION (59.6 GT). A total of 297GT.

2. The PROPOSAL will cause significant savings in investment costs, obviate the need for new construction costs, offer an offset to the very limited production experience of the vessels below the 70th rank as proposed by Option D.2., and add efficient and active vessels rather than inefficient and inactive vessels.

WILL THE CURRENT FLEET OF 65 VESSELS SATISFY THE CAPACITY GOAL (OPTION A.1)

Introduction. The decision of the Council to establish a CPS finfish limited entry program for the fishery south of 39° was explained in Amendment 8, as follows:

“ The Council chose limited entry. The Council's recognized that vessels currently participating in the CPS finfish fishery are capable of harvesting more CPS finfish than is available under current biomass conditions, and that excess harvesting capacity is expected to increase due to newcomers into the fishery, attracted by limitations in other fisheries and expanding biomasses of some CPS stocks. . . .” Amendment 8 (CPS) EIS-2

¹⁰ “Status of the Market Squid Fishery with Recommendations for a Conservation and Management Plan,” CDFG, Marine Region, Report to the Legislature, March 19, 2001. Page 29

¹¹ “140 vessels made at least one landing of squid between 1981 and 2000. . . . As with many moratorium fisheries, it is likely that many permits were purchased on speculation they would eventually have a high resale value, or that holding a permit may secure a future fishing opportunity. Additionally, many of the permitted vessels without documented participation are light vessels currently active in the fishery that purchased a vessel permit in order to preserve the right to land squid in excess of 2 tons per trip should there be an increase in demand or opportunity for a premium squid market.” Status of the Market Squid Fishery with Recommendations for a Conservation and Management Plan, CDFG, Marine Region, Report to the Legislature, March 19, 2001, p.29.

¹² Based upon a CDFG list of vessels having a squid vessel permit dated February 2001, there were 11 operating vessels having San Diego County ownership. Of these 11 vessels, 3 vessels also had a transferred CPS Permit: ANTOINETTE W., BARBARA H., and the CALOGERA A. The SOUTHERN LIGHT is a “light boat” servicing the SHEELAGH B. The BENTO and MAKAHA are not round haul vessels. It is believed that NICOLA J., which has a GT of 33.3, is servicing the CALOGERA A. as a light boat.

With only two full years of experience with the CPS-LEP, the public and others have questioned the Council's decisions on the target size of the fleet and on the restrictions placed on permit transfers. Production results in the Pacific Sardine fishery do not support a finding that the fleet's harvest is in balance with resource availability. The harvest guideline for the Pacific Sardine fishery in 2000 was 186,791 mt. PacFIN reported W-O-C landings in 2000 of 67,890 mt. **A shortfall of 118,901 mt.** The harvest guideline for the Pacific Sardine fishery in 2001, was 134,737 mt. PacFIN reported W-O-C landings of 74,978 mt. **A shortfall of 59,759 mt** For 2002, the harvest guideline is 118,442 mt, and as of April 3, 2002, the harvest was 17,730 mt.¹³

Appendix C, Figure 4 (p.14) of the Draft shows that for 1999, the 65 vessels in the CPS-LEF had aggregate landings of about 68,000 mt of finfish, and about 42,000 mt in 2000. PacFIN reports for W-O-C show CPS landings in 1999, of 76,063 mt. For 2000, W-O-C landings of 103,332 mt. [Appendix C, Table 2 (p. 11) shows CPS finfish landings in 1999 of 74,083mt, and for 2000, landings of 61,343 mt.] If the PacFIN numbers are correct, then they show that the 65 CPS LE fleet declined in CPS productivity from a share of 89% in 1999 to only 40.6% for 2000.

If the experience of the 65 vessels during 1999 and 2000 is a guide for predicting the future, then the claims made in Amendment 8 that each of these round haul vessels could annually land 6500 mt of CPS and that "about 75 vessels would have sufficient harvesting capacity to take almost all the CPS finfish likely to ever be available," may be unfounded.¹⁴ For 1999, the average production per vessel was about 1046 mt. For 2000, a decline to 646 mt. These results assume that Appendix C, Figure 4 is correct. If Appendix C, Table 2 is correct, then the numbers change to 1140 mt in 1999 and 944 mt for 2000.

¹³ As a result of permit transfers, the original 65 vessel CPS Finfish Limited Entry Fleet was changed when 20 vessels sold their permits. The Buyer List shows a 20 vessel fleet of 2064 registered gross tons and 1344 registered net tons. The Seller List shows a 20 vessel fleet of 1112 registered gross tons and 633 registered net tons. Since these sales permitted larger and more modern vessels, one could reasonably assume greater CPS productivity than predicted by Amendment 8.

¹⁴ "Low-volume producers could probably average about five mt per trip. Assuming five trips a week and a six-month season, these vessels could land (five mt/trip x five trips/week x 26 weeks/year) 650 mt of CPS finfish per boat per year. High volume producers (round haul vessels) could probably average 50 mt per trip. Assuming five trips a week and a six month season, these vessels could land (50X5X26) 6500 mt per boat per year. **On this basis, 105 low-volume and 63 high-volume producers could land about (68,250 + 409,500) 477,750 mt of CPS finfish per year.** Thus, current capacity may be as much as 20% greater than the combined maximum sustainable yield (MSY) for anchovy, Pacific (chub) mackerel and sardine (about 400,000 mt per year. . . . Recent experience in the fishery and some crude calculations indicate that about 75 vessels would have sufficient harvesting capacity to take almost all of the CPS finfish likely to ever be available." (emphasis added) Amendment 8, at page B-47.

Reality or Theory? In view of the above production experience and of the now proven errors of fleet capacity prediction in Amendment 8, why does the Draft persist in proposing the status quo of 65 vessels as the target fleet size for the CPS Finfish LEF? Appendix C, pages 2-3, "Capacity Revisions" with Tables and Figures, provides the analysis supporting this proposal.

The Draft claims that if all 65 vessels entered port at one time, they would have about 5,561mt of CPS in their holds for unloading to the Fish Buyers. How many times would a "fleet turnaround" of this type occur theoretically during a CPS finfish fishing season? For the 2000 season, a "fleet turnaround" could be computed as happening 12 times (67,890/5691). In 2001, about 13 times (74,978/5691). This rule of thumb is offered as a test of reality for the Draft's estimates of the 65 vessel fleet's "normal harvesting capacity" and its "physical harvesting capacity."

The Draft contends that the physical harvesting capacity of the current fleet to catch CPS finfish ranges from 361,000 mt to 539,000 mt. Theoretically, in order for this fleet to catch and land 361,000 mt of CPS, these 65 vessels would have to make over 63 "fleet turnarounds". For the landing of 539,000 mt, over 95 "fleet turnarounds." Known existing shoreside processing capacity strongly suggest that these outcomes are unrealistic. The Draft presents no estimate of shoreside capacity for processing CPS or squid.¹⁵ If the possibility of landing this catch is not realistic, then what is the value of using the fleet's physical harvesting capacity to determine whether the size of the fleet is ideal in terms of number and capacity?

The Draft states that the estimated "normal harvesting capacity" for the 65 CPS LE fleet ranges from 60,000 mt to 111,000 mt. Yet, the Draft at Appendix C, Figure 4, page 14, provides harvest data of "finfish" for 2000 (est. 41,000 mt) but not for 2001. Appendix C, Figure 4, shows the highest recorded landing of CPS "finfish" by the LE fleet was in 1999 (est. 68,000 mt). Therefore, the estimate of "normal harvesting capacity" in the range from 60,000 mt to 111,000 mt required a computation that included the following elements: an estimate of the average number of annual trips X the average recorded landings of CPS per trip X 65 vessels.

For example: To achieve a landing of 111,000 mt., one could use the estimate of the average load per vessel as 50 mt and the average annual number of fishing trips as 34. [50mt of CPS x 34trips x 65vessels=a season production of 110,500mt] A similar result can be achieved by a lower estimate in the number of fishing trips and with a higher estimate in the average load per vessel [60.5mt x 28 x 65= 110,110].

¹⁵ The Draft in Appendix C provides estimates for both finfish and squid harvesting capacity applicable to the current fleet.

The Draft does not identify the numbers used for average number of trips annually and the average recorded landings of CPS per trip annually. These numbers dictate the fleet's "normal harvesting capacity." Since it can be argued that the result or 111,110 mt can also dictate these numbers, the Draft should provide enough data to determine how the range in the "normal harvest capacity" was measured.¹⁶

The Draft notes the existence of limitations on the reliability of the landing and trip data used in the analysis. Appendix C, pp1-2, notes that "not all 65 vessels fished in each year of the 1981-2000 period, this is an unbalanced panel data set."¹⁷ The Draft, in developing its data envelopment analysis (DEA), was required to take into account "the volume of catch-landings per trip" taken by the CPS-LEF in the squid fishery as well as in the CPS finfish fishery. [Appendix C, p. 2] A vessel is only a tool, and its measure of success in terms of making trips and filling the hold is dependent primarily upon the Captain and his crew, and secondarily on unloading and other market conditions. The data set presented in the Draft cannot be used to determine how many vessels in the fleet were operated by the same Captain during each year of the 1981-2000 period. The reality is that this "human performance factor" can substantially affect a vessel's "average number of annual trips over the period" or "normal effort." So also, can this factor impact "the maximum number of annual finfish landings (trips) observed over the 1981-2000 period" or the "vessel's physical effort." These two elements are essential in the Draft's determinations of "normal harvesting capacity" and "physical harvesting capacity."

Appendix C does not help a reviewer determine how the above data set limitations affected the determinations of landings and trips critical to the formula used in the analysis. For this reason, the analysis in the Draft is questionable in making the claim that the "normal harvesting capacity" of the 65 CPS LEF is "equal to the long-term expected aggregate finfish target harvest level, approximately 110,000 mt, and with physical capacity available to harvest peak period amounts of finfish, 275,000 mt."¹⁸ This deficiency plus the productivity of the fleet in 2000 and 2001, and thus far in 2002, provides little support for the Draft's proposed action, that is, to continue limiting the target size of the fleet to 65 round haul vessels.

¹⁶ At Appendix C, page 3: "A vessel's physical harvest capacity and normal harvest capacity is measured on a per trip basis. Annual capacity for each vessel is its per trip capacity multiplied by a measure of its number of trips per year. . . . In this analysis, each vessel's physical effort was the maximum number of annual finfish landings (trips) observed over the 1981-2000 period. Each vessel's normal effort was the average number of annual trips over the period. Therefore, each vessel's annual physical harvesting capacity was defined as its physical capacity per trip multiplied by its maximum number of annual trips (physical effort), and each vessel's annual normal harvesting capacity was defined as its normal capacity per trip multiplied by its average number of annual trips (normal effort).

¹⁷ Within the 65 vessel fleet, 5 vessels were built in the decade of the 90s, and 5 during the period 1985-89; 5 vessels were built in the decade of the 30s, and 6 in the decade of 40s. 20 vessels became new participants in the fishery starting in 1999 as a result of purchasing transferred permits

¹⁸ CPS Amendment 10, page 4.

RECOMMENDATIONS

1. The Draft does not present information as required under Section 303(a)(4)(C), as part of "any fishery management plan which is prepared by the Council for the CPS fishery". What is the capacity and extent to which United States CPS processors, on an annual basis, will process CPS landed by the CPS fleet? This is a relevant issue. Mexican fishery officials have indicated their interest in taking Pacific Sardines within the US EEZ. Canada is a participant in the Pacific Sardine fishery. Therefore, this information is relevant.

It is recommended that the Draft provide information on the annual capacity of the US CPS processors to process CPS landed by the CPS fleet.. The need to issue new LE permits may be justified because of "substantially enhanced markets."

2. Under existing NMFS regulations, there is no process for considering new limited entry permits. Since July 1, 2000, applications for a limited entry permit cannot be accepted by the Sustainable Fishery Division (SFD).¹⁹ Under this condition, no initial issuance decision can be made by the SFD and no appeal decision can be made by the Regional Administrator under § 660.512(g).

It is recommended that the Draft note this existing regulatory condition.

CONCLUSION

The Council should experiment with the target size of the fleet by first increasing its size to about 75 round haul vessels as suggested in Amendment 8. The Council should adopt the eligibility criteria for this expansion as proposed in this Comment. In this manner, the CPS finfish limited entry fleet will become moderately larger and more diverse in fishing opportunities. Importantly, these reasonable actions will result in being responsive to the socioeconomic needs of those California commercial fishermen who operate round haul vessels in the Market Squid fishery in competition with the 65 CPS finfish Limited Entry Fleet.

Thank you for the opportunity to review the Draft Amendment and present my comments.

Respectively submitted this May 28, 2002

August Felando

Attachments:

1. Affidavit of Vincenzo Crivello dated 30 January 2001 (4 pages)
2. USCG Documentation: NEW HORIZON; ROSEMARIE C. SHEELAGH B. ; TEMPTATION.
3. CDFG Tables 3A and 3B.
4. Section 8101, California Fish & Game Code

¹⁹ 64 CFR 69896. § 660.512(f) (6). SFD means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.. See: § 660.502

