

PACIFIC FISHERY MANAGEMENT COUNCIL

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June 14, 2002

Dr. William T. Hogarth
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

Dear Dr. Hogarth:

Thank you for the opportunity to outline the views and concerns of the Pacific Council about the recent petition filed with National Marine Fisheries Service (NMFS) by Oceana, a non-governmental organization concerned with the health of our oceans. We believe the special note in the *Federal Register* describing the request by NMFS of the eight Regional Fishery Management Councils to aid in the evaluation of the petition is a positive statement about the critical role the Councils play in this important bycatch issue and further strengthens the working relationship between NMFS and the Councils.

While taking issue with the rhetorical tone and some of the details of their petition, we are generally supportive of their aim to count and control bycatch. However, we want to point out some of the problems entailed in actually implementing the very broad measures suggested in the petition. Also, in any response to the petitioners, we urge you stress the role of the Councils in addressing bycatch issues. The petition does not mention the role of the Councils in the federal fishery management process; developing workplans, catch limits and conducting rulemaking in the void of the public interface and regional input that occurs in the Council process would be highly inadvisable.

In the first proposed action, the Oceana petition calls on NMFS to immediately develop and implement comprehensive observer programs for all fisheries and with sufficient coverage to obtain statistically reliable bycatch estimates. I concur with the petition's implication that observers can be a very effective method for gathering detailed information on fishing activities. In fact, for many years we have called on NMFS to implement just such a program for our West Coast groundfish fisheries. We are delighted that sufficient funding was recently obtained to begin direct observation of these fisheries. However, observer programs—which require placing trained biologists aboard vessels—pose several logistical constraints; as a result, they are not always the most effective way to accurately determine bycatch rates in "all fisheries." It can be difficult to accommodate observers on small vessels and they entail some cost to the operator. For these reasons observers are generally infeasible for small-boat recreational fisheries. Yet collectively, these vessels can harvest a considerable share of the sustainable catch, and some method needs to be implemented where bycatch problems exist. A second difficulty relates to monitoring infrequently encountered species. Endangered species are an example of the challenge: encounter rates can be very low and a substantial proportion of vessels within a given fleet would have to carry observers in order to obtain statistically valid

estimates of "take." It is also worth noting that there are fisheries where bycatch is well documented by other means or bycatch mortality is low. One example from the West Coast would be the market squid fishery. There is little bycatch and the whole catch is landed, making shore-side monitoring very effective. The West Coast harpoon swordfish fishery catches fish individually, without other species bycatch.

The proper conclusion would seem to be that NMFS should not rush to implement a comprehensive observer program for every U.S. fishery. A more considered, strategic approach is called for. This relatively costly tool should only be deployed in those situations where the cost is justified by some reasonable expectation or demonstrable return. This will be in fisheries where other information clearly demonstrates that there is a problem with un-assessed bycatch and direct observation is the most cost-effective technique.

The second action the Oceana petition calls for is the use of "reasonable" estimates of bycatch when setting "all" allowable catch levels. We concur with the petition on the point of reasonableness, while noting that the Council process currently uses the best available science to develop these estimates. The petition does not distinguish between bycatch and bycatch mortality; depending on the fishery, some proportion of discarded fish may survive. Our harvest mortality monitoring and control system takes this into account. An interpretation of "reasonable" is at the crux of this demand. Given available data, we believe our estimates have been reasonable. The state, tribal, academic, and federal scientists developing these estimates continually work to refine them as better information becomes available. The West Coast groundfish observer program mentioned above should provide us with a substantial improvement in data from several target fisheries; on which to base better future estimates.

The third proposed action in the Oceana petition asks for bycatch caps: absolute limits would be separately established for bycatch as distinct from total catch mortality. Once these caps are reached the relevant fishery would be closed. Most of the fisheries under Council purview are managed according to optimum yields, set for individual stocks or stock complexes, depending on data availability. If stock sustainability is the main concern, bycatch mortality need not be accounted for separate from directed catch mortality--total mortality should be the guiding criteria in fishery closure considerations; it would make no sense to close a directed fishery on a stock with 75% of the optimum yield yet to be caught if a small bycatch limit for the same stock is attained in another fishery targeting on a different stock. There does not appear to be any additional conservation benefit by establishing separate bycatch caps if total mortality limits are set. We recognize the petition's concern that bycatch represents a "waste of marine life" and assume this is his basis for bycatch limits distinct from total catch limits. Decisions to limit bycatch for the purpose of minimizing wastage, which are regulatory discards or economic discards that are not conservation problems, are best made on a case-by-case basis through the Council process. This allows an airing of the difficult and often contentious issues surrounding social values that are difficult to quantify.

Finally, the Oceana petition calls for bycatch assessment and reduction rulemaking covering all federally managed fisheries, and closure of any fishery that does not have the rule in place within 12 months. Again, we support the need to reduce bycatch generally, and particularly if it is a significant contributor to an unsustainable level of fishing mortality. However, the proposal favored by the petition is unrealistic, because of its broad application, short timeline, and reliance on data that the petition already argued were inadequate. It would be virtually impossible to complete the assessments and necessary rulemaking within the proposed 12 month time period. The development of the proposed bycatch reduction plans would require substantial time and resources in order to acquire the capacity for detailed monitoring (which, as discussed above, might not be justified in all cases). This by itself is likely to take longer

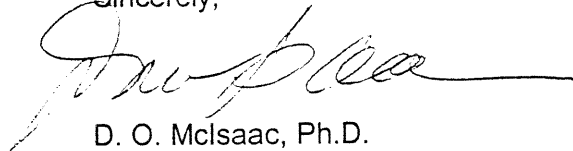
than 12 months, with items (c) and (d) the obvious subjects of a multiple-meeting Council process. While it is laudable to develop bycatch assessment and reduction plans with the features described in the petition, the 12-month ultimatum approach is totally inadvisable and represents an unduly severe burden on the fishing industry, even unwarranted and punitive in some cases.

We would also like to point out that even in the absence of such an ostensibly draconian bycatch control proposal, the Pacific Council has developed some bycatch reduction measures.

A requirement to use small footropes and a ban on chafing gear discourages fishing over rocky bottom where bycatch can be a problem and other gear restrictions have been implemented for the purpose of reducing bycatch. Off California, a large Cowcod Conservation Area has been instituted to prevent bycatch of this overfished species; other area closures have been instituted in areas with high bycatch rates. Trip limits governing groundfish fisheries are designed to encourage fishing on particular species during those times of year when the likelihood of catching associated bycatch species is reduced. There are many other examples. The Council will continue to consider such bycatch-reducing measures and recommend their implementation as appropriate.

In closing I would like to reiterate my sympathy for the intentions—if not the proposed methods of execution—contained in the petition Oceana has submitted to NMFS. Although the petition letter does not acknowledge the vital role that Councils play in husbanding our fishery resources, we will be involved in all efforts to develop sound solutions in those cases where bycatch compromises sustainable fishery management.

Sincerely,



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

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