

BYCATCH PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

On September 24, 2004 (69 FR 57277), the Environmental Protection Agency published a notice of availability for the Pacific Coast Groundfish Fishery Management Plan Bycatch Mitigation Program Final Environmental Impact Statement (Bycatch Program FEIS). This EIS addresses the remand of groundfish Amendment 13 due to a 2000 order from the U.S. District Court (N.D. California) in *Pacific Marine Conservation Council v. Evans* (200 F.Supp.2d 1194, 2002 WL 827423 [N.D. Cal.]). In its conclusion, the court found as follows: (1) Amendment 13 failed to establish an adequate bycatch assessment methodology; (2) The National Marine Fisheries Service (NMFS) did not comply with its duty to minimize bycatch and bycatch mortality; (3) NMFS violated the National Environmental Policy Act (NEPA) by not taking a “hard look” at the environmental consequences of Amendment 13; and (4) the Environment Assessment NMFS performed in conjunction with Amendment 13 failed to consider a reasonable range of alternatives and environmental consequences, in violation of NEPA.

The Bycatch Program FEIS contains the preferred alternative, Alternative 7, identified by the Council at their April 2004 meeting. (Attachment 1 excerpts the description of this alternative from Chapter 2 of the FEIS and summarizes the catch cap component.) Alternative 7 contains elements from three of the alternatives described in the draft EIS. These elements may be summarized as follows:

1. Amend the fishery management plan (FMP) to require the use of current bycatch minimization measures.
2. Amend the FMP to fully describe the current standardized bycatch reporting methodology.
3. Amend the FMP to incorporate the Groundfish Strategic Plan goal of reducing overcapacity in all commercial fisheries.
4. Implement a sector-specific bycatch accounting methodology.
5. Support the future use of individual fishing quota (IFQ) programs for appropriate fishery sectors.
6. Authorize the use of sector-specific total catch cap programs to reduce bycatch of overfished (depleted) species in appropriate sectors of the fishery. These programs could include monitoring standards, full retention programs, and individual vessel incentives for exemption from caps.

The Bycatch Program FEIS states “The proposed action would set groundfish bycatch mitigation policies and future program directions. The Council is expected to immediately undertake preparation of a new groundfish FMP amendment that will include the conservation and management measures necessary to minimize bycatch and minimize the mortality of bycatch that cannot be avoided, to the extent practicable.” Therefore, these items must be addressed in an FMP amendment incorporating “bycatch mitigation policies and future program directions.” This amendment would be Amendment 18 to the groundfish FMP.

Attachment 2 provides draft recommendations from Council and NMFS staff on where the FMP might be amended to incorporate the Council's preferred alternative from the Bycatch Program FEIS. Staff expect that Amendment 18 would primarily affect FMP Chapter 6, "Management Measures." This FMP chapter has not been reviewed or revised for its overall structure and organization since Amendment 4, in 1990. More recent piecemeal amendatory language to Chapter 6 has made that chapter somewhat confusing in its organization. Staff recommend the Council also consider a re-organization and update of Chapter 6 as part of Amendment 18.

In addition to providing guidance on amendatory language establishing bycatch monitoring and mitigation policies and program direction, and describing current program elements, the Council may wish to consider the relationship between Amendment 18 and future processes to implement program elements. Two other actions—the Trawl Individual Quota (TIQ) EIS and an associated EIS evaluating inter-sectoral allocations—could eventually implement components of the bycatch mitigation program. (At this meeting, under Agenda Item E.6, the Council will adopt a preliminary range of alternatives for the TIQ EIS. In addition to ITQs, sectoral and vessel-specific catch caps are options under consideration.) While these actions may involve FMP amendments and could implement bycatch program elements, their scopes and time lines make them inappropriate venues for incorporating broad bycatch policy and program direction elements into the FMP, which instead would be accomplished by Amendment 18. Nonetheless, the Council may wish to consider how these and other processes, such as future regulatory amendments, may be used to implement components of the bycatch mitigation program identified in the Bycatch Program FEIS preferred alternative.

In determining next steps in implementation, the Council may wish to provide guidance on:

- Subjects covered in and content of the amendment.
- A time line for preparation of draft amendment language, Council review, and submission to NMFS for Secretarial approval. (It is important to note that the NEPA requirements have been met; the time line only needs to satisfy Magnuson-Stevens Act requirements.)
- Future actions to implement bycatch mitigation program elements, such as sectoral and vessel-specific catch caps, and any interrelation with ongoing actions, such as the TIQ EIS.

Council Action:

Determine next steps in implementation.

Reference Materials:

1. Agenda Item E.5.a, Attachment 1: *Alternative 7 (The Preferred Alternative)* excerpted from the Bycatch Program EIS and *Summary Description of The Catch Cap Component of The Preferred Alternative*.
2. Agenda Item E.5.a, Attachment 2: *Fishery Management Plan Elements Potentially Addressed by the Bycatch Program Amendment (Amendment 18)*.

Agenda Order:

- a. Agenda Item Overview
- b. Reports and Comments of Advisory Bodies
- c. Public Comment
- d. **Council Action:** Determine Next Steps in Implementation.

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10/15/04