

Agenda Item H.6.c
Supplemental Public Comment
November 2005

October 25, 2005

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RECEIVED

OCT 25 2005

PFMC

Mr. Donald Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

RE: Agenda Item H-6: Amendment 18

Dear Mr. Lohn and Mr. Hansen:

The undersigned organizations submit these comments concerning the public review draft of Amendment 18 (Bycatch Mitigation Program). While we support and have advocated for some of the tools discussed in the public review draft (please see our previous correspondence), we continue to have concerns that this amendment does little to minimize bycatch and fails to establish an adequate standardized reporting methodology.

Magnuson-Stevens Act

As you know, any fishery management plan (FMP) and any regulation promulgated to implement an FMP must be consistent with the ten National Standards specified in section 301 of the Magnuson Stevens Act (MSA). Of particular relevance to Amendment 18 is National Standard 9, which requires that:

Conservation measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. 16 U.S.C. 1851(a)(9).

The MSA further requires that fishery management plans must:

establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority – (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided. 16 U.S.C. 1853(a)(11).

Congress required these legal obligations to be met by October 1998.

Mr. D. Robert Lohn
Mr. Donald Hansen
October 25, 2005
Page 2

PMCC Litigation

Earlier attempts to comply with these legal mandates through Amendment 13 to the groundfish FMP failed. See *Pacific Marine Conservation Council v. Evans*, 200 F.Supp.2d 1194 (N.D. Calif. 2002) ("PMCC"). The court in *PMCC* rejected Amendment 13 because, among other things, it failed to include an adequate assessment methodology and failed to minimize bycatch and bycatch mortality. Amendment 18 is supposed to remedy these legal defects. Throughout the development of the Programmatic Bycatch Environmental Impact Statement, we have repeatedly raised concerns that the Council and agency were failing to (1) disclose and analyze current bycatch data; (2) adopt measures to minimize bycatch to the extent practicable; and (3) implement a standardized reporting methodology. The draft FMP language amplifies these concerns as it amounts to a catalogue of potential management measures available to the Council, with no concrete plan or timeline to meet statutory duties.

Bycatch Minimization is Mandatory

Rather than clearly requiring the Council to take specific measures to minimize bycatch, the draft FMP is full of merely permissive language. See, e.g., Groundfish FMP Amendment 18/19 at p. 36: "The Council may initiate new and practicable management measures to reduce groundfish bycatch in the groundfish fisheries...." In order to meet legal mandates, the FMP amendment must contain clear language mandating measures to minimize bycatch.

Focus On Overfished Species

Bycatch of overfished species is certainly a problem that deserves some focus. However, the MSA's bycatch requirements do not differentiate between overfished species and other marine life. Therefore, a bycatch mitigation plan that focuses solely on overfished species does not meet the legal mandate set out in the Act.

Our proposal to count and minimize bycatch in the Pacific Groundfish Fishery (submitted to the Council in December 2004) emphasized bycatch minimization of overfished species, but also accounted for bycatch of non-overfished groundfish and other marine life. The FMP amendment must include specific measures to minimize bycatch of all marine life.

Timeline

The draft FMP amendment includes no timeline for implementation of any bycatch mitigation measures. The June 2005 Groundfish Bycatch Mitigation Program Work Plan suggests possible implementation of "comparatively modest interim measures," (or interim sector total catch limits) during the 2007-2008 biennial management cycle, with the implementation of "more comprehensive limits," suggested for 2009-2010. The work plan also states that a vessel-specific total catch limit program "could be" developed for implementation beginning in 2011. At the September meeting, the Council declined to adopt even these wholly inadequate timelines.

Mr. D. Robert Lohn
Mr. Donald Hansen
October 25, 2005
Page 3

Congress required implementation of bycatch mitigation measures by October 1998. It is now late into 2005, and further delay is unacceptable. At a minimum, total mortality limits for all overfished species must be implemented by the next management cycle, and the Council must adopt a clear schedule to implement bycatch minimization measures for all species in this amendment.

Standardized Reporting Methodology

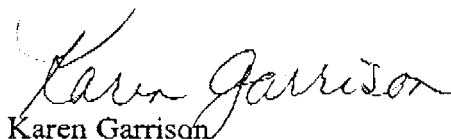
One of the deficiencies we identified in the Bycatch EIS is the failure to analyze bycatch reporting methodologies and bycatch types and amounts in the various sectors of the groundfish fishery. The public review draft of Amendment 18 similarly fails to implement a robust standardized reporting methodology. For example, with regard to observers, the FMP amendment merely references future development and implementation of an observer program, with no timeline or definition of purpose. The FMP amendment must include a robust standardized reporting methodology, rather than the promise to do something in the undefined future.

As we have before, we urge the Council to add clear language to Amendment 18 that will implement bycatch accounting and minimization of overfished species and other marine life as soon as possible as required by the Magnuson-Stevens Act.

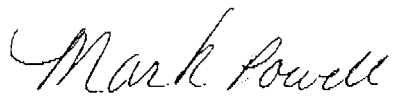
Sincerely,



Jim Ayers
Oceana



Karen Garrison
Natural Resources Defense Council



Mark Powell
The Ocean Conservancy



Peter Huhtala
Pacific Marine Conservation Council