



June 8, 2009

BY FAX AND EMAIL

Donald Hansen and Council Members
Pacific Fishery Management Council
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Portland, OR 97220-1384

Re: Public Comments on Proposed Process and Schedule for Developing 2011-2012
Biennial Harvest Specifications and Management Measures

Dear Mr. Hansen and Council members:

The Natural Resources Defense Council hereby submits the following comments concerning the Proposed Process and Schedule for Developing 2011-2012 Biennial Harvest Specifications and Management Measures.

We believe that the following analyses are required under the National Environmental Policy Act and the Magnuson-Stevens Act to appropriately evaluate the environmental impact of the proposed action. We therefore respectfully request that they be included in the EIS analysis.

1. Structure alternatives to analyze socio-economic impact of incremental increases in overfished species OY

Under the Magnuson-Stevens Act (“MSA”), overfished species must be rebuilt in a time period that is “as short as possible.” 16 U.S.C. § 1854(e). The justification for this priority, even when it causes economic hardship, lies in the statutory recognition that a healthy, rebuilt fishery is in the interests of both fishing community and environmental goals. See 16 U.S.C. § 1801(a)(1) (noting that the nation’s fishery resources “constitute valuable and renewable natural resources,” that many of these species’ survival is threatened and that others’ survival will soon be threatened by “increased fishing pressure, . . . [and] the inadequacy of fishery resource conservation and management practices and controls.”). Congress stated explicitly that it intended with the MSA “to take immediate action to conserve and manage the fishery resources.” 16 U.S.C. § 1801(b)(1). These concerns and priorities remained unchanged by the 2006 MSA

Reauthorization which, in fact, created even stronger measures to protect overfished species. See, e.g., 16 U.S.C. § 1854(e) (requiring that overfishing be stopped “immediately”); 16 U.S.C. § 1854(4)(A) (eliminating language which allowed plans and regulations to specify a time period during which overfishing could occur).

The issue of how to interpret “considering the needs of the fishing community” in light of the MSA’s mandate to “rebuild as quickly as possible” has been squarely considered by one federal Court of Appeals. In NRDC v. NMFS, the Ninth Circuit concluded that “Congress intended to ensure that overfished species were rebuilt as quickly as possible, but wanted to leave some leeway to avoid disastrous short-term consequences for fishing communities.” 421 F.3d 872, 880 (9th Cir. 2005). The Court illustrated “disastrous short-term consequences” as a “total fishing ban.” Id. It concluded that because a total ban would cause disastrous short-term consequences, the agency wasn’t required to prohibit all fishing (which would rebuild the species the fastest), but could “set limited quotas that would account for the short-term needs of fishing communities.” Id. “The purpose of the Act is clearly to give conservation of fisheries priority over short-term economic interests.” Id. at 879.

Accordingly, to comply with the MSA’s requirement to rebuild as quickly as possible, T_{target} must be set as close to T_{min} as possible. The leeway the agency has to extend T_{target} beyond T_{min} is limited to the amount of fish necessary to prevent disastrous short-term consequences to fishing communities. Therefore any T_{target} longer than T_{min} must be specifically demonstrated as necessary to prevent a short-term disaster to fishing communities. See NRDC, 421 F.3d at 880 (reiterating that although the agency is allowed to consider the needs of fishing communities in setting a rebuilding plan, “the time period must be *as short as possible*”) (emphasis in original, internal quotations omitted).

The rebuilding alternatives must be constructed in a manner that allows managers to choose OYs which would rebuild overfished species as quickly as possible while avoiding a short-term disaster to the fishing communities. To determine the lowest level of OYs possible before triggering an economic disaster, the rebuilding alternatives should start with an analysis of zero fishing (which is likely to be disastrous) and then incrementally increase the OYs with each alternative. The economic analysis would then show the economic impacts of increasing the rebuilding times with higher OYs. The legally required alternative would be the one with the smallest OYs without causing an economic disaster.

The EIS for the 2009-2010 specifications failed to comply with this framework. Instead, the rebuilding alternatives were “strategically constructed suites of depleted species’ OYs designed by the GMT to show how the available yields of these species constrain fishing opportunities by sector north and south of 40° 10’ N latitude and on the continental shelf and slope.” DEIS at 29. After the zero harvest analysis, there was only one conservation alternative, Alternative 3, which was constructed with “relatively low OYs for all the depleted species.” DEIS at 204. Thus, the DEIS has presumed a certain level of fishing activity and proceeded to examine how it should be allocated between different fisheries

and geographies. This analysis, although interesting, did not answer the fundamental question of what minimum OY level of each species is necessary to avoid disastrous short term consequences to fishing communities.

The failure to construct alternatives which range from highly conservation-oriented to less conservation-oriented represents a departure from the structure of the 2007-2008 EIS analysis. The 2007-2008 DEIS organized three alternatives as follows: “Alternative 1 is intended to conform most closely to the preferred low OY values; catches under Alternative 2 are midrange in the high-low range; Alternative 3 is most consistent with the preferred high OY values.” 2007-2008 DEIS at vii. The EIS for the 2011-2012 specification cycle should return to the earlier framework. In addition, it should add more Alternatives of incrementally increased OYs to better refine where the minimum OYs necessary to avoid a disaster occur.

Because an analysis of how low OYs can be without causing a short-term disaster is at the heart of the environmental impact analysis (and compliance with the MSA and NEPA), we request that you re-instate analysis of alternatives which begin with low OYs and incrementally increases them with each alternative.

2. Analyze the threshold of economic activity below which a disaster would occur

An articulation of the disaster threshold appears necessary to comply with the MSA. In NRDC v. NMFS, 421 F.3d 872 (9th Cir. 2005), the Ninth Circuit specifically interpreted how the competing goals outlined in the MSA of “rebuilding as quickly as possible” and “taking into account the needs of the fishing community” interact. It concluded that the goal of rebuilding as quickly as possible takes priority and can be delayed only to the extent that it is necessary to avoid “disastrous short-term impacts” to the fishing community. Therefore, the agency must identify the disaster threshold it seeks to avoid so that it can be determined whether the agency is, in fact, rebuilding as quickly as possible.

Before decision-makers (and interested public) can determine whether a proposed OY of an overfished species would be so low that it would cause a “short term disaster” to fishing communities, they must know what level of economic activity is necessary to avert a short-term disaster. This must be a specific analysis –general references to the groundfish disaster declaration in 2000 as causing hardship to fishing communities in the past and pointing to other ailing fisheries, such as salmon (see the 2009-2010 DEIS at 546), are insufficient to establish this basic building block to the rebuilding period decisions.

Without a benchmark for disastrous consequences, evaluation of the agency’s actions becomes an impermissibly murky target. Consider the following statement from the 2009-2010 FEIS, which lacked a specific disaster benchmark. “Although, as discussed above, lower OYs and associated management measures bring about less adverse impacts to overfished species, the Council also considered the needs of fishing communities in selecting its preferred alternative. The cumulative decline in revenue and income over

the past decade have been significant. Additional substantial reductions in revenue due to management restrictions would likely have additional significant short-term socioeconomic impacts.” FEIS at 612. This non-specific criterion appears to justify a very wide range of agency actions –including quite high OYs and long rebuilding times. Such a moving target does not comport with the MSA’s requirement to rebuild overfished species in as short a time as possible.

3. Analyze the effect that the ITQ will have on communities identified as “vulnerable” in the 2011-2012 Biennial Harvest Specifications and Management Measures

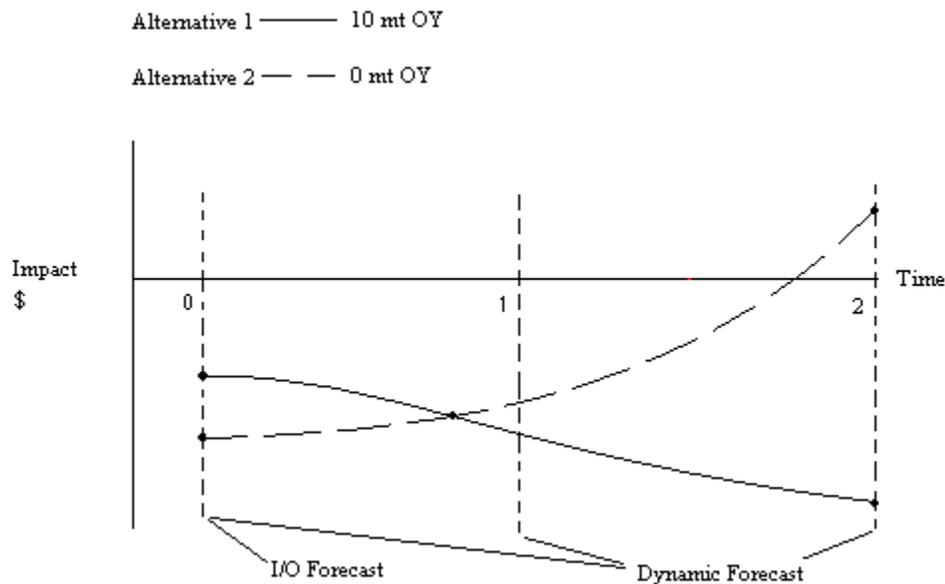
In the past, the agency has justified higher OYs of overfished species as necessary to preserve vulnerable fishing communities. See 2009-2010 DEIS Chapter 7. However, the agency has also recently identified likely impacts to many of these same communities from other programs, specifically the Trawl ITQ program, which is scheduled to be implemented in 2011. See Trawl Rationalization Appendix C: Description and Results of Analytical Tools (Attached as Exhibit A) at C-5 (“[I]t is reasonable to expect ports with vessels that have a relatively long travel time to fishing grounds, have relatively unsuccessful operators, relatively costly vessels, and relatively few support businesses to be at a disadvantage when compared to other regions. In addition, ports that are adjacent to fishing grounds with high constraining overfished species abundance would also tend to be at a disadvantage as the presence of constraining overfished species would encourage operators to move to areas with lower abundance.”); C-10 (“This information shows that Bellingham, Neah Bay, Newport, and Princeton/Half Moon Bay have greater than 50 percent of their non-whiting trawl catch occurring in areas indentified as a moderately high or high bycatch area.”).

It makes little sense to refuse to rebuild overfished species in as short a time as possible out of concern for vulnerable communities if those communities will not be preserved by the higher OYs. Such a decision would lack a rational basis. To show that it is preventing a disaster with higher OYs, decision-makers must consider the effect other agency programs will have on these communities, especially programs the agency has already identified as highly likely to adversely impact vulnerable communities.

4. Use the best available economic science

The 2011-2012 specifications EIS should use the best available science. First, like stock assessments, the economic analysis in the EIS should undergo review including rigorous panel and/or peer review scrutiny. Second, the EIS should use current data sets from IMPLAN instead of the badly outdated ones (from 1998) relied upon in the last two groundfish specifications cycles. Third, the EIS should base its analysis on a dynamic model instead of a static I/O model to appropriately calculate the impacts of the proposed action over its lifetime and to be able to fully calculate tradeoffs between options. See Figure 1, depicting the benefit of utilizing a dynamic model instead of an I/O one.

Figure 1: Example of Alternatives Evaluation with Dynamic Model



Fourth, the EIS should calculate all economic benefits of rebuilding, not just costs. The NOAA Guidelines lay out the following requirements for the “Summary of Expected Economic Effects: “(1) list all benefits and costs of each alternative, either monetized or non-monetized; (2) identify when the benefits and costs would occur; and (3) identify to whom the benefits and costs would accrue.” (NOAA Guidelines at 18). The analysis must quantify both costs and benefits whenever possible. “Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider” (NOAA Guidelines at 7). The following are some of the benefits which the EIS should analyze:

1) Consumptive benefits of rebuilding quickly

The EIS must calculate the consumptive benefits of rebuilding, on a per year basis as the species is rebuilt. As part of the consumptive benefit of the rebuilt fishery, EIS must also calculate the benefit of the additional target species fish that can be taken which are currently limited by their co-occurrence with overfished species.

We suggest that in performing this analysis NMFS use methods such as those discussed in Sumaila (2005), “Fish Economics, the Benefits of Rebuilding U.S. Ocean Fish Populations.

2) Non-consumptive benefits of rebuilding quickly

The NOAA Guidelines “[r]ecognize the growing regulatory emphasis on protected resources and habitat by recommending that analysts highlight, where appropriate, the effects on the non-consumptive uses of fisheries, other living marine resources, and the benefits derived from these resources and their habitats” (NOAA Guidelines at 2). As part of this decision, NMFS must evaluate non-market goods as part of its decision-making process. According to the NOAA Guidelines, “[n]ot all goods and services important to consumers are exchanged through markets and receive market prices. These non-market goods include environmental amenities, other public goods and recreational experiences. . . . *Including these non-market goods is particularly important when considering habitat, ecosystem, and many marine mammal issues*” (NOAA Guidelines at 15) (emphasis added).

We suggest that the EIS utilize methods based on Farber (2006) to help evaluate non-consumptive uses. See Table 1. Farber (2006) aligns each of the ecosystem services with a rating of amenability to economic valuation and the corresponding method of valuation. With this type of procedural outline, economic research on the Pacific groundfish fishery can focus on estimating the more plausible values.¹

Table 1: Groundfish ecosystem services

Ecosystem service	Amenability to economic valuation	Most appropriate method for valuation
Nutrient cycling	Medium	Avoided Cost, Contingent Valuation
Nutrient regulation	Medium	Avoided Cost, Contingent Valuation
Biological regulation	Medium	Avoided Cost, Production Approach
Food	High	Market Pricing, Production Approach
Recreation	High	Travel Cost, Contingent Valuation, Ranking
Aesthetic	High	Travel Cost, Contingent Valuation, Ranking, Hedonic Pricing
Science	Low	Ranking

Adopted from Farber (2006)

The NOAA Guidelines provide additional guidance on how to evaluate non-market benefits, further underscoring the importance that this kind of analysis be undertaken. “Whenever practicable, these non-market goods should be given monetary values as a consumer’s WTP using non-market valuation techniques such as travel cost, stated preference, and hedonic methods” (NOAA Guidelines at 15). Willingness to pay (“WTP”) methods are also endorsed, to be used “when measuring benefits for increment in market or non-market goods.” *Id.* at 13, 13 n.3.

¹ For further clarification of the general methods listed in this table see James (1994) or the NOAA Coastal Ecosystem Restoration webpages: <http://www.csv.noaa.gov/coastal/economics/envvaluation.htm> <http://www.csv.noaa.gov/coastal/economics/methodsenvaluation.htm>

3) The cost of assemblage shifts:

The shifting assemblage of the Groundfish Fishery is a serious ecological side effect of traditional commercial fishery management.² These shifts are being amplified by competitive total allowable catches (TACs) and by regulations allowing the targeting of high value species.³ According to Levin et al. (2006), the decades of concentrated fishing on rockfish (which NMFS and the Council permitted) has caused depletion of these species. This rockfish depletion has led to fundamental assemblage shifts at the population level (see Levin et al. 2006 (“Our analyses suggest that over the last 25 years there have been fundamental changes in the fish assemblage on the continental shelf of the U.S. Pacific coast.”)). This depletion has also caused NMFS and the Council to curtail fishing of rockfish (as required under the MSA), which in turn has caused fishermen to then target the less commercially valuable roundfish.

Historically, fishery management choices that have maintained competitive, effort creeping behavior have permanently hindered the ability of fish stocks to rebuild.⁴ We cannot disregard the economic costs associated with the negative externality of ecosystem decline. The assemblage shift caused by rockfish depletion is hardly a welcome event and should be calculated as part of the EIS analysis. It reflects a condition of significantly reduced biodiversity and the availability of fish for fishermen that are less commercially valuable. The EIS for the rebuilding amendment must account for the cost of the assemblage shift which is a direct result of fishing effort. See Levin et al. (2006) (“fishing has played a large role in the changes we documented”).

We first requested that these net benefit calculations be part of the specifications evaluation in the 2007-08 specifications cycle and then repeated the request for the 2009-2010 specifications cycle. In response, the agency has stated that it lacks the sufficient information. See, e.g., 2007-08 EIS at 615 (“Unfortunately there is not sufficient information on West Coast groundfish fisheries for a complete enumeration of net economic benefits from the fishery”).

As noted earlier, the EISs for previous cycles have produced in excess of 250 pages of economic analysis of costs. See, e.g., 2007-2008 EIS which, between Chapter 7 of the EIS (157 pages) and Appendix A (113 pages), generated 270 pages of almost exclusively short-term cost analysis. This effort focuses almost exclusively on the short-term costs of the alternatives. We respectfully suggest that two specifications cycles is more than sufficient time to obtain appropriate data for the net benefits calculations and that the EIS for the 2011-2012 specifications cycle should prioritize this analysis.

5. Present options for managing for the anticipated impacts of global warming on fisheries

² Levin, Phillip et al. (2005)

³ Grafton, R. Quentin et al. (2006)

⁴ Imeson (2006) and Roy (1996).

Impacts from rising CO₂ emissions and ocean acidification to date have been largely unaccounted for in current fisheries management. As the 2009-2010 DEIS stated, “Future effects of ocean conditions on the status of affected species . . . are not encompassed within the analysis of the present action. Most notably, the criteria used to analyze impacts on depleted species, such as the time to rebuild under a constant harvest rate and the probability of successfully rebuilding the stock by T_{MAX}, do not account explicitly for the effects of climatological events.” 2009-2010 DEIS at 239-40.

Given the mounting evidence that climate change and its effects are already occurring, decision-makers should have options to address these impacts - and the uncertainty that they bring - in the decision making process. For example, the current ‘overfished’ state and decades-long (20-50 year) rebuilding programs of many rockfish species put many west-coast fisheries in a vulnerable position. Rebuilding depressed populations quickly and promoting healthy, productive ecosystems will be the most important strategies to minimize the negative ecological and socio-economic effects of climate change on fisheries. IPCC 1995; FAO 2002 (www.fao.org/docrep/009/a0699e/A0699E00.HTM); ACIA 2005; WBGU 2006.

Accordingly, the EIS should include analysis on the following series of management changes recommended by scientists given the fisheries challenges and uncertainties that climate change and ocean acidification bring:

- 1) Confront the additional uncertainty that climate change brings to fisheries management by explicitly incorporating uncertainty from various sources including climate change into analyses and decision making. Pre-determined standards regarding uncertainty should be established.
- 2) Exercise precautionary management. Fisheries management decisions continue to err on the side of short-term economic interests at the expense of long-term ecological resilience. (Ludwig et al. 1993; WBGU 2006). Now, more than ever, management must favor decisions that are robust to uncertainty. A practical step to implementing a more effective precautionary regime is the use of a supplemental compulsory buffer between the maximum fishing mortality threshold and the annual catch limit. Such buffers can serve as ‘climate’ insurance.
- 3) Expand the definition of ‘overfished’ to include more criteria such as age structure. The restoration and maintenance of healthy (i.e., un-skewed) age distributions will help to maintain important genetic variation and reduce population variation during this period of shifting environmental conditions (Berkeley et al. 2004; Anderson et al. 2008; Stenseth and Rouyer 2008).
- 4) Conduct explicit spatial management of fish stocks with either permanent or temporary closed areas to ensure the preservation of locally adapted genomes as well as a diversity of spawning locations.

5) Develop precautionary forage fish standards (e.g., catch limits below MSY to account for the fact that small, fast-growing pelagic species often respond first to low-frequency climate changes (Murawski 1993; Perry et al. 2005; Rose 2005) and these species' importance in the food web.

6. Reinstate T_{min} in the analysis of rebuilding plans and OY options

For some unknown reason, the 2009-2010 EIS contained a dearth of T_{min} figures. This represents a change from the analysis provided in the 2007-2008 DEIS. For instance, compare Table 2-3 from the 2007-2008 Specs DEIS (includes the T_{min} figure) with Table 2-3 from the 2009-2010 Specs DEIS (omits the T_{min} figure). In addition, the analysis on alternatives and rebuilding strategies in chapter 4 of the 2009-2010 DEIS also omit T_{min} figures although T_{min} data were included in the analysis of the 2007-2008 DEIS.

T_{min} is a highly important figure in evaluating the rebuilding implications of an OY choice. As the 2009-2010 DEIS explains, "A target year closer to T_{MIN} implies reducing harvests to rebuild the stock in a shorter amount of time, while a target year closer to T_{MAX} favors higher harvest levels and a longer time to rebuild." 2009-2010 DEIS at 4. Without information about T_{min} , the public cannot effectively evaluate the rebuilding plans from a longer term perspective to understand overall how quickly the species is being rebuilt and instead has only comparisons to the last biannual cycle.

Therefore, we respectfully request that T_{min} be included in the 2011-2012 EIS analysis in the same places it was in the 2007-2008 EIS analysis, in particular in Table 2-3 and in the analysis on alternatives and rebuilding strategies in chapter 4.

7. Use the framework established by the Ninth Circuit, not the "multi-tiered" one which prevents meaningful evaluation

The MSA and the Ninth Circuit's NRDC v NMFS decision are clear –the agency must rebuild overfished species as quickly as possible. This means an aggressive bycatch reduction program (which would minimize economic impacts of avoiding overfished species and allow fishermen to catch quota of healthy populations while keeping catch of overfished species low) and allowing only enough fishing of the overfished species to avert a disaster for fishing communities.

Instead of complying with this directive, however, the agency has instead created a "multi-tiered" framework. The agency has described this framework as follows: "Consistent with Amendment 16-4, NMFS took a programmatic perspective for 2009 and 2010 and examined all rebuilding plans, and their impacts on communities, simultaneously." 2009-2010 FEIS at 607.

This "multi-tiered" framework is deficient in a number of regards and should not be used in the 2011-2012 specifications cycle. First, this framework impermissibly functions as a shield which is then used to try to deflect any meaningful evaluation of the agency's decisions. Consider the following FEIS statements made in response to our observation

that lower OYs of certain species (e.g., darkblotched, canary) had not caused disastrous impacts in the past and so were therefore a viable option for the 2009-2010 Specifications period. “Alternative rebuilding OYs need to be considered on a case by case basis and need to consider much more than how the OY changes from one management period to the next.” FEIS at 611. “This multi-tiered analytical approach is designed to appropriately address the Magnuson-Stevens Act mandate to rebuild in as short a time as possible while taking into account the status and biology of the depleted stock, the needs of fishing communities, and the interaction of the depleted stock within the marine environment.” FEIS at 610. The agency’s decisions for each species should be capable of evaluation and should not be shrouded in a mysterious black-box of balancing economic tradeoffs between various communities.

Second, this “multi-tiered approach” essentially results in a moving target; any attempt to pin down the soundness of the agency’s OY choices leads to the response that no individual part can be evaluated. See 2009-2010 FEIS at 607 (“We cannot look at darkblotched rockfish in isolation when considering community impacts, and therefore the commenters have taken a limited perspective on the darkblotched rebuilding plan. Consistent with Amendment 16-4, NMFS took a programmatic perspective for 2009 and 2010 and examined all rebuilding plans, and their impacts on communities, simultaneously. In doing so, NMFS and the Council considered both time to rebuild and needs of communities in adopting their final preferred alternative.”). With this approach the agency essentially demands (impermissibly) that all of its OY decisions be taken on faith as complying with the MSA.

Similarly, the agency uses its framework to suggest that the calculations involved in determining impacts on communities are so complex that no OY decision can be evaluated. “Under this framework, impacts to west coast fishing communities associated with rebuilding alternatives are analyzed based on each community’s dependence on the groundfish fishery and the general economic resilience of that community to changes in fishing opportunities. . . . Each community is differentially affected by an individual species rebuilding plan based on that species distribution and the way that species rebuilding plan affects the fisheries that contribute to the community’s economic infrastructure. This is a more realistic approach for assessing impacts on communities since different communities suffer such different impacts.” 2009-2010 FEIS at 609-10.

We therefore respectfully request that the Council not use this “multi-tiered” framework in this specification cycle as it does not comply with the direction provided by the Ninth Circuit under the MSA and, moreover, appears to be an attempt to shield its decisions from evaluation.

8. List the sector allocations for each species and analyze the environmental impacts

As part of the groundfish specifications process, allocations of groundfish are made between the different groundfish gear sectors and analyzed for their environmental impacts in the DEIS. See 2009-2010 DEIS at 12 (“Alternative management measures adopted for analysis are designed to illustrate the potential efficacy and tradeoffs of management strategies and allocations considered for the next biennial management period by the Council.”).

Fixed gear and trawl gear have different impacts on bycatch and habitat. According to a recent study done on sablefish, trawl gear catches orders of magnitude more bycatch than fixed gear in the sablefish fishery. Lekelia Jenkins, *Gear Conversion as a Means to Reduce Bycatch and Habitat Impacts in the U.S. West Coast Sablefish Fishery* (2008). Trawling also wreaks more bottom habitat destruction than fixed gear. See National Research Council, *Effects of Trawling & Dredging on Seafloor Habitat* (2002); Korie A. Johnson, *A Review of National and International Literature on the Effects of Fishing on Benthic Habitats* (2002); Eleanor M. Dorsey and Judith Pederson (Eds.), *Effects of Fishing Gear on the Sea Floor of New England* (1998); Peter W. Barnes and James P. Thomas (Eds.), *Benthic Habitats and the Effects of Fishing* (2005); Christian Nellemann, Stefan Hain, and Jackie Alder, *In Dead Water, Merging of Climate Change with Pollution, Over-Harvest, and Infestations in the World’s Fishing Grounds* (2008).

To allow decision-makers to make a rational choice about allocating groundfish between trawl and fixed gear (and the public to provide input), the EIS should first list each groundfish species and the percentage being allocated between gears types for the proposed 2009-2010 action.

The EIS should then analyze the impacts of allocating different percentages of groundfish species between trawl and fixed gear (including pots) to overfished species’ habitat and bycatch. According to the 2009-2010 DEIS, “groundfish trawlers landed 96 percent of total groundfish harvest by weight” which means that the “trawlers take the vast majority of the groundfish harvest.” 2009-2010 DEIS at 414. Given the enormous adverse environmental impacts from the trawling gear, the agency should analyze alternatives to giving the vast majority of groundfish to trawl, including higher allocations to gears with lower environmental impact such as fixed gear. We suggest analyzing an alternative which increases the allocation of fish that is shared between trawl and fixed gears by 25-30% over the status quo.

Not only does NEPA require analysis of the environmental impacts of allocating the vast amount of groundfish to the gear that generally has the most bycatch and causes the most habitat destruction, but so do the MSA and FMP. “The entire resource, or a portion, may be allocated to a particular group, although the Magnuson-Stevens Act requires that allocation among user groups be fair and equitable, **reasonably calculated to promote conservation**, and determined in such a way that no group, person, or entity receives an undue excessive share of the resource. The socioeconomic framework described in

Section 6.2.3 provides criteria for direct allocation. **Allocative impacts of all proposed management measures should be analyzed and discussed in the Council’s decision-making process.**” Groundfish FMP § 6.3 at 73 (emphasis added).

In addition, the FMP further requires consideration of the following factors (including ones with conservation implications bolded below) “when intending to recommend direct allocation of the resource.

1. Present participation in and dependence on the fishery, including alternative fisheries.
2. Historical fishing practices in and historical dependence on the fishery.
3. The economics of the fishery.
4. Any consensus harvest sharing agreement or negotiated settlement between the affected participants in the fishery.
- 5. Potential biological yield of any species or species complex affected by the allocation.**
- 6. Consistency with the Magnuson-Stevens Act national standards.**
- 7. Consistency with the goals and objectives of the FMP.”**

Id. (emphasis added)

Analyzing the intersector allocation amendment process (FMP Amendment 21) is simply not a substitute for analyzing the intersector allocation implications of the 2009-2010 specifications. Amendment 21 is a companion amendment to Amendment 20 for the trawl individual quota program. As such, its focus will likely be on ensuring that the quota share program functions appropriately, not necessarily the effect of allocation on the resource from the 2011-2012 specification process. As an example, two of the leading alternatives in the Amendment 21 make an intersector allocation to the trawl gear and simply lump the rest of the sectors together (fixed gear, open access, recreational). See Intersector Allocation EA at 12 (Alt. 1 and Alt. 3). Thus, the environmental implications of which sectors get different allocations of fish in 2009-2010 is unlikely to be adequately analyzed. In addition, Amendment 21 focuses on a specific list of species based on their suitability for the ITQ process –the species implicated in Amendment 21 do not necessarily have complete overlap with the species at issue in the specifications process.

Conclusion

We appreciate this opportunity to comment on the proposed action. Thank you.

Sincerely,



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APPENDIX

to comments submitted on June 8, 2009 by Natural
Resources Defense Council on the Proposed Process and
Schedule for Developing 2011-2012 Biennial Harvest
Specifications and Management Measures

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Exhibit 1: Appendix C, Description and Results of Analytical Tools

This document is not included in the printed materials. It is available from the Council web site at http://www.pcouncil.org/groundfish/gffmp/gfa20/App_C_Analytical_tools.pdf