# GROUNDFISH MANAGEMENT TEAM STATEMENT
# ON THE INCIDENTAL CATCH OF ROCKFISH IN THE WHITING FISHERY

The GMT shares the Council's concern regarding the level of yellowtail rockfish taken in the whiting fishery since it limits the amount available for non-whiting fishers targeting on yellowtail rockfish. In particular, the tribal mothership and catcher/processor fisheries saw increases in the catch and catch rates of yellowtail rockfish in 1999 compared to 1998, with higher rates occurring further to the north. The GMT notes that if abundance of yellowtail rockfish increases, it may not be surprising that interception rates also increase. Yellowtail rockfish was more abundant in the 1999 triennial survey, but there is no assurance the OY will increase in 2001. The next assessment and the review of the harvest rate policy are both scheduled for 2000.

Shore-based fishery. There is concern that there may be targeting on yellowtail rockfish during the shore-based whiting fishery even though the exempted fishing permit (EFP) governing that fishery explicitly states: "Target fishing on any species other than whiting (particularly yellowtail and widow rockfish) is contrary to the intent of this program and may result in unrealistically high estimates of bycatch. This ... could result in additional restrictions."

The EFP, which was designed to monitor the incidental harvest of salmon and groundfish in the shore-based whiting fishery, requires full retention of codends brought on board. The catch then is sampled when the fish are delivered shoreside. Consequently, vessels are authorized to exceed the cumulative trip limits for incidentally caught species because they are not allowed to sort at sea. The most abundant incidental rockfish species in the whiting fishery are yellowtail and widow rockfish, both which are managed under cumulative trip limits for the limited entry fishery.

Currently nothing precludes a participating vessel from retaining its cumulative trip limits of yellowtail and widow rockfish. Overage amounts are counted and subtracted from the OY and therefore are not available to the nonwhiting fishery that targets on yellowtail rockfish. The value of the overage is forfeited to the States, and the fish then enter the market through normal channels. Shore-based processors sell, and consequently benefit from, the overages, and some, arguably, may have an incentive to encourage vessels to harvest, or not avoid, yellowtail rockfish.

Part of the difficulty in achieving the EFPs purpose of monitoring incidental catch is the basic difficulty in determining whether a trip targeted on a species other than whiting. The Council has stated its intent that incidental catch of rockfish and salmon in the whiting fishery should be discouraged. Both yellowtail and widow rockfish can be encountered incidentally to whiting in large amounts, sometimes in excess of the whiting. However, if this occurs frequently, it could indicate targeting or an unwillingness to avoid incidental species.

GMT Recommendations:

1. Processor provisions: The GMT recommends that a provision be added to the EFP that a written agreement with the sponsoring state must be signed by a processor before listing it as a "designated processor" in the shore-based whiting fishery. The language in the EFP may also need to be strengthened to emphasize that the State has the authority to revoke the designated processor status.

2. Reinstatement of at-sea observers: The EFP already provides for this and at-sea observers were deployed in the early years of the program. The time may have come to redeploy observers, at the vessels' expense, to reevaluate why some vessels have higher incidental rates than others.

3. Reporting vessel performance: Peer pressure can be more effective than regulations. The States should continue monitoring and announcing incidental rates (and/or deviation from the norm) for individual vessels operating under the shore-based whiting EFP, cumulatively for the season and by landing, week, or other appropriate unit so that changes in the rates could be detected.

4. Avoiding areas: Vessels on the grounds have the most recent information on areas of high incidental

catch. The GMT encourages the industry to communicate with each other about areas that should be avoided, and recommends that issuance of EFPs in the shore-based fishery off Oregon and Washington should be delayed until an acceptable catch-avoidance plan is presented to the Council at or before its April 2000 meeting. (California is not included because yellowtail and widow rockfish are not taken in great quantities as incidental catch in the whiting fishery.) Area closures (possibly by depth or latitude) remain a possibility if voluntary avoidance is not effective.

Other potential options:

- Cap on individual vessel overages. This would provide a greater incentive to avoid incidental species but also could compromise the ability to measure true incidental catch since occasional high amounts of incidental species are expected in the whiting fishery. At-sea sorting and discarding could be encouraged.

- Cap on fleet overages. This would close the shore-based whiting fishery when the cap is reached to provide opportunities for the target rockfish fishery. This would have allocation and economic implications. Although this would have a significant deterrent effect, it also could encourage some pre-sorting and discarding at sea. Vessels with low incidental catches would be penalized for the performance of vessels with high incidental catches.

- Area closures. Areas with high incidental catch rates change from year to year and during a fishing season, making it difficult to apply time/area closures. However, permanent area closures by latitude or depth may need further consideration if voluntary efforts to reduce incidental harvest of yellowtail rockfish are not effective. Such closures would reduce the area available to the whiting fishery and would not assure reductions in incidental catch.

- Change the purpose of the EFP. Change the purpose of the EFP so that it does not attempt to collect information on incidental groundfish, but instead only monitors salmon interception. Although this would eliminate the problem of identifying when a vessel is targeting on incidental groundfish, it would not discourage targeting on incidental species, which was the Council's intent.

- Gear changes. Require rockfish and salmon excluders in midwater trawl nets used in the shore-based whiting fishery. Very little information was currently available to the GMT but it deserves further discussion for the fishery in the future.

- Discontinue the EFP program. Vessels would either resort to sorting and discarding incidental species at sea or would not sort at sea and risk a violation if salmon are found in the landing.

- Discontinue the EFP program and replace with regulations allowing retention of salmon; authorized overages of groundfish cumulative limits would be discontinued. The Groundfish and Salmon FMP's were amended to authorize retention of salmon in trawl fisheries, but only when an approved monitoring and disposition program is established. Such programs are not in place.

At-sea processing fishery. This fishery does not operate under EFPs. NMFS-certified observers on board each processor monitor the incidental catch of salmon and non-whiting species. Rockfish generally are not retained except for use as meal, and so do not enter or compete in the same markets as the targeted rockfish fishery. The GMT is not concerned that the at-sea processing fleet is targeting on rockfish in the whiting fishery, because most rockfish harvested by the at-sea processing sector is ground into meal or discarded. Nonetheless, the GMT is concerned that all vessels in the fleet may not have been equally committed to avoiding incidental harvest of yellowtail rockfish in 1999. The GMT supports the industry's efforts to involve SeaState to monitor areas of high incidental catch and to notify the fleet of areas to be avoided. Area closures remain an option if voluntary avoidance is not effective. The GMT also supports a provision that would enable the at-sea processing fleet to retain trip limit overages if the vessel carries two observers and if the overages are made into meal or donated to a foodbank, but do not otherwise compete in the rockfish market. As for the shore-based fleet, the GMT endorses preparation of a yellowtail rockfish catch-avoidance plan by the at-sea processing sector, both tribal and non-tribal, to be presented to the Council by the April 2000 meeting.

# STATUS OF REGULATIONS, NMFS ACTIVITIES, AND EXEMPTED FISHING PERMITS

Situation: The National Marine Fisheries Service (NMFS) will report on the management and research activities at this time. NMFS has prepared a report on incidental catch and bycatch in the 1999 Pacific whiting fisheries (NMFS Report G.1.).

We anticipate an exempted fishing permit (EFP) application for the shore-side whiting fishery will be presented for Council review. The Groundfish Management Team (GMT) has prepared comments and suggestions regarding incidental catch of yellowtail rockfish (GMT Report G.1.). The Council should comment on landing allowances and other permit conditions.

**Council Action:**

**1. Comment on EFPs, proposed rules, and other issues, if any.**

Reference Materials:

1. Annual catches of yellowtail rockfish, widow rockfish, salmon, halibut and miscellaneous groundfish in the Pacific whiting fishery, 1999 (NMFS Report G.1.).
2. GMT Statement on the Incidental Catch of Rockfish in the Whiting Fishery (GMT Report G.1.).

PFMC
02/23/00

# 1999 PACIFIC WHITING FISHERY
# FOR NON-TRIBAL MOTHERSHIPS AND CATCHER/PROCESSORS
## (Based on Preliminary Observer Data)

**TABLE 1. SUMMARY - CUMULATIVE NON-TRIBAL CATCH OF ALL SPECIES**

| Groundfish | Retention (mt) | Discard (mt) | Total (mt) |
|---|---|---|---|
| Pacific whiting | 114,274.57 | 984.57 | 115,259.14 |
| Rockfish | 26.73 | 855.76 | 882.48 |
| Flatfish | 1.19 | 2.07 | 3.26 |
| All other groundfish | 33.66 | 222.60 | 256.26 |
| TOTAL | 114,336.15 | 2,065.00 | 116,401.15 |
| Prohibited Species | | Number of fish | |
| Halibut | | 47 | |
| Salmon | | 5,193 | |

**TABLE 2. NON-TRIBAL ROCKFISH CATCH AND RATIO BY AREA (in metric tons)**

| ROCKFISH | VANCOUVER - 670 | | | COLUMBIA - 710 | | | TOTAL WOC | | |
|---|---|---|---|---|---|---|---|---|---|
| | Ret | Dis | Tot | Ret | Dis | Tot | RET | DIS | TOT |
| Bocaccio | 0.03 | 0.23 | 0.27 | 0.00 | 0.05 | 0.05 | 0.03 | 0.29 | 0.32 |
| Other rockfish | 1.63 | 22.69 | 24.32 | 0.62 | 8.20 | 8.82 | 2.26 | 30.89 | 33.15 |
| POP | 1.22 | 7.48 | 8.70 | 0.62 | 4.83 | 5.45 | 1.84 | 12.31 | 14.15 |
| Thornyhead | 0.00 | 0.00 | 0.00 | 0.01 | 0.01 | 0.02 | 0.01 | 0.02 | 0.02 |
| Canary | 0.05 | 0.60 | 0.64 | 0.16 | 0.41 | 0.57 | 0.21 | 1.01 | 1.22 |
| Yellowtail | 11.09 | 456.61 | 467.71 | 8.94 | 207.49 | 216.43 | 20.03 | 664.10 | 684.13 |
| Widow | 0.50 | 47.92 | 48.42 | 1.85 | 98.68 | 100.54 | 2.35 | 146.60 | 148.95 |
| Chili-pepper | 0.00 | 0.54 | 0.54 | 0.00 | 0.00 | 0.00 | 0.00 | 0.54 | 0.54 |
| Shortbelly | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| TOTAL ROCKFISH | 14.52 | 538.07 | 550.60 | 12.20 | 319.69 | 331.89 | 26.73 | 855.76 | 882.48 |
| TOTAL WHITING | 62,930.46 | 652.54 | 63,583.01 | 51,344.11 | 332.03 | 51,676.14 | 114,274.57 | 984.57 | 115,259.14 |
| Rockfish /Whiting (mt/mt) | 0.0087 | | | 0.0064 | | | 0.0077* | | |

* Joint venture 11-year average coastwide was 0.007.

Trace = less than 0.5 mt. Slight discrepancies occur due to rounding.

## TABLE 3. NON-TRIBAL SALMON CATCH AND RATIO BY AREA

| | VANCOUVER - 670 | COLUMBIA - 710 | EUREKA - 720* | TOTAL |
|---|---|---|---|---|
| Chinook (no.) | 3,651 | 740 | NO FISHING | 4,391 |
| Other salmon (no.) | 270 | 532 | | 802 |
| TOTAL salmon (no.) | 3,922 | 1,271 | | 5,193 |
| Whiting (mt) | 63,583.01 | 51,676.14 | | 115,259.14 |
| No. chinook/mt whiting | 0.0574 | 0.0143 | | 0.0381 |
| JV average 1981-90 (# all sal/mt whiting) | 0.16 | 0.09 | 0.15 | 0.11** |

* At-sea processing could occur only north of 42°; JV could operate down to 39°.
**Monterey area north of 39° rate was 0.03 salmon per mt whiting.

### TABLE 4. CATCH BY NON-TRIBAL MOTHERSHIPS AND CATCHER/PROCESSORS

| SPECIES | MOTHERSHIP | | | | | CATCHER/PROCESSOR | | | | | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | RETAIN (mt) | (%) | DISCARD (mt) | (%) | TOTAL (mt) | RETAIN (mt) | (%) | DISCARD (mt) | (%) | TOTAL (mt) | WOC |
| Whiting | 46959.74 | 99 | 620.51 | 1 | 47580.25 | 67314.84 | 99 | 364.06 | 1 | 67678.89 | 115259.14 |
| Rockfish | 6.09 | 2 | 314.42 | 98 | 320.51 | 20.64 | 4 | 541.33 | 96 | 561.97 | 882.48 |
| Flatfish | 0.00 | 0 | 0.64 | 100 | 0.64 | 1.19 | 46 | 1.43 | 54 | 2.62 | 3.26 |
| * All other groundfish | 0.34 | 0 | 128.68 | 100 | 129.03 | 33.31 | 26 | 93.92 | 74 | 127.23 | 256.26 |
| TOTAL | 46966.17 | 98 | 1064.26 | 2 | 48030.43 | 67369.98 | 99 | 1000.73 | 1 | 68370.71 | 116401.15 |
| SALMON | | | | % | No. | | | | % | No. | |
| Chinook | | | | 77 | 1687 | | | | 90 | 2704 | 4391 |
| Other | | | | 23 | 506 | | | | 10 | 296 | 802 |
| Total | | | | 100 | 2193 | | | | 100 | 3000 | 5193 |
| No. chinook/mt whiting | | | | | 0.0355 | | | | | 0.0400 | **0.0381** |

* does not include jack mackerel

### TABLE 5. CATCH OF ROCKFISH BY NON-TRIBAL MOTHERSHIPS AND CATCHER/PROCESSORS (metric tons)

| ROCKFISH SPECIES | MOTHERSHIP | CATCHER/PROCESSOR | TOTAL |
|---|---|---|---|
| Bocaccio | 0.07 | 0.25 | 0.32 |
| Other rockfish | 14.32 | 18.83 | 33.15 |
| POP | 4.44 | 9.71 | 14.15 |
| Thornyheads | 0.00 | 0.02 | 0.02 |
| Canary | 0.19 | 1.03 | 1.22 |
| Yellowtail | 253.26 | 430.87 | 684.13 |
| Widow | 47.70 | 101.25 | 148.95 |
| Chilipepper | 0.54 | 0.00 | 0.54 |
| Shortbelly | 0.00 | 0.00 | 0.00 |
| TOTAL ROCKFISH | 320.51 | 561.97 | 882.48 |
| Mt whiting | 47,580.25 | 67,679.89 | 115,259.14 |
| Mt rockfish/mt whiting | 0.0067 | 0.0083 | 0.0077 |

Trace = less than 0.5 mt. Slight discrepancies occur due to rounding.

**Table 6. 1992-1999 PACIFIC WHITING NON-TRIBAL AT-SEA PROCESSING VESSELS (NMFS Observer Data)**

| | | WEIGHT (mt) | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | COMMON NAME | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
| R | Pacific whiting | 152448 4 | 99102 9 | 179072 | 102158 0 | 112776 1 | 121172 2 | 120452 1 | 115259 1 |
| O | Pacific cod | 0.068 | 0.039 | 0.069 | 0.02 | 0.00 | 0.01 | 0.00 | 0.04 |
| U | Lingcod | 0.470 | 0.035 | 0.177 | 0.02 | 0.07 | 0.14 | 0.11 | 0.06 |
| N | Jack mackerel | 854.986 | 6.226 | 62.180 | 0.05 | 60.19 | 13.18 | 229.14 | |
| D | Sablefish | 72.815 | 11.434 | 0.598 | 9.17 | 6.57 | 0.81 | 27.83 | 2.10 |
| F | Arrowtooth | 2 574 | 0 117 | 2 768 | 1 44 | 0 57 | 0 16 | 1 04 | 3 21 |
| L | Dover sole | 0.116 | 0.026 | 0.009 | 0.00 | 0.09 | 0.00 | 0.01 | 0.00 |
| A | English sole | 0.036 | 0.047 | 0.044 | 0.00 | 0.01 | 0.00 | 0.00 | 0.02 |
| T | Petrale sole | 0.006 | 0.00 | 0.002 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| F | Rex sole | 1.487 | 0.192 | 0.341 | 0.39 | 0.22 | 0.04 | 0.36 | 0.02 |
| I | Rock sole | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.01 | 0.00 | 0.00 |
| S | Starry flounder | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| H | All other flatfish | 0.413 | 0.005 | 0.253 | 0.01 | 0.00 | 0.05 | 0.01 | 0.01 |
| R | Bocaccio | 7.319 | 1.091 | 1.488 | 0.38 | 0.15 | 0.21 | 1.21 | 0.32 |
| O | Canary rockfish | 1.806 | 0.720 | 4.831 | 0.31 | 1.22 | 1.81 | 2.72 | 1.22 |
| C | Chilipepper | 2.423 | 0.017 | 5.856 | 28.17 | 0.00 | 0.01 | 0.01 | 0.54 |
| K | Pacific oc. perch | 341.028 | 1.823 | 61.557 | 43.79 | 5.99 | 3.28 | 21.28 | 14.15 |
| F | Shortbelly | 51.519 | 0.043 | 1.908 | 10.16 | 6.15 | 0.76 | 0.02 | 0.00 |
| I | Thornyhead | 9.660 | 0.413 | 0.212 | 5.78 | 1.93 | 0.46 | 2.51 | 0.02 |
| S | Widow rockfish | 410.050 | 184.269 | 377.171 | 240.53 | 266.57 | 207.21 | 292.76 | 148.95 |
| H | Yellowtail | 638.520 | 307.625 | 619.823 | 792.92 | 630.95 | 290.15 | 376.98 | 684.13 |
| | Other rockfish spp | 89.620 | 16.087 | 42.862 | 91.72 | 35.5 | 81.56 | 62.36 | 33.15 |
| Other groundfish 2/ | | 399.783 | 64.748 | 106.722 | 211.73 | 98.30 | 217.27 | 218.07 | 254.05 |
| TOTAL GROUNDFISH | | 155,333 | 99,698 | 180,361 | 103,595 | 113,891 | 121,989 | 121,689 | 116,401 |
| N | Pacific mackerel 3/ | 853.979 | 46.584 | 51.889 | 0.00 | 244.34 | 54.15 | 458.78 | 1.47 |
| O | Jack mackerel | | | | | | | | 53.84 |
| N | Pacific sardine | 30.576 | 0.615 | 1.564 | 0.220 | 0.37 | 0.31 | 1.94 | 0.18 |
| | | NUMBER OF FISH INCIDENTALLY CAUGHT | | | | | | | |
| PROHIBITED SPECIES | | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
| Chinook Salmon | | 4,867 | 4,843 | 3,626 | 11,578 | 1,446 | 1,398 | 1,477 | 4,391 |
| Other Salmon 3/ | | 204 | 3/ 3,530 | 375 | 4,414 | 279 | 924 | 27 | 802 |
| TOTAL SALMON | | 5,071 | 8,373 | 4,001 | 15992 | 1,725 | 2,322 | 1,504 | 5,193 |
| *Percent Chinook Salmon* | | 96.0 | 57.8 | *90.6* | 72.4 | 83.8 | 60.2 | 98.2 | 84.6 |
| No. Chinook/MT whiting | | 0.0319 | 0.0489 | 0.0202 | 0.1133 | 0.0128 | 0.0115 | 0.0123 | 0.0381 |
| Pacific Halibut | | 17 | 32 | 54 | 9 | 42 | 9 | 7 | 47 |

1/ Defined as sharks, skates, kelp greenling, cabezon, ratfish, morids, and grenadiers.
2/ Non-groundfish species that are incidental to the whiting fishery, but which are not prohibited.
3/ In 1995, approximately 1,575 were pink salmon.
Trace = less than 0.5 mt. Slight discrepancies occur due to rounding.

## 1999 PACIFIC WHITING FISHERY
## ALL SECTORS

**TABLE 1 - Comparative Annual Catches of Yellowtail Rockfish, Widow rockfish, Salmon, Halibut and Miscellaneous Groundfish in the Pacific Whiting Fishery, 1999.**

| SPECIES | MOTHERSHIPS PROCESSORS | | | | | | CATCHER/ PROCESSORS | | SHORE-BASED PROCESSORS | | TOTAL WOC | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | TRIBAL MOTHERSHIPS | | NON-TRIBAL MOTHERSHIPS | | All * MOTHERSHIPS | | | | | | | |
| | mt | Rate | mt | Rate | mt | Rate | mt | Rate | mt | Rate | mt | Rate |
| Whiting Allocation | 32,500 | | 47,900 | | 80,400 | | 67,800 | | 83,800 | | 232,000 | |
| WHITING | 25,844 | | 47,580 | | 73,424 | | 67,679 | | 83,350 | | 224,453 | |
| Yellowtail Rockfish | 451 | 0.0175 | 253 | 0.0053 | 704 | 0.0096 | 431 | 0.0064 | 481 | 0.0058 | 1,616 | 0.0072 |
| Widow Rockfish | 37 | 0.0014 | 48 | 0.0010 | 85 | 0.0011 | 101 | 0.0015 | 192 | 0.0023 | 378 | 0.0017 |
| All other groundfish | 216 | | 149 | | 365 | | 160 | | 1,026 | | 1,551 | |
| TOTAL GROUNDFISH | 26,548 | | 48,030 | | 74,578 | | 68,371 | | 85,049 | | 227,998 | |
| *Percent over/under Whiting Allocation* | -20.5 | | -0.7 | | -8.7 | | -0.2 | | -0.5 | | -3.2 | |
| | | | | | | | | | | | | |
| | Number | Rate | Number | Rate | Number | Rate | Number | Rate | Number | Rate | Number | Rate |
| Chinook | 4,497 | 0.1740 | 1,687 | 0.0355 | 6,184 | 0.084 | 2,704 | 0.0400 | 1,696 | 0.0203 | 10,584 | 0.0472 |
| Non-Chinook | 278 | | 506 | | 784 | | 296 | | 16 | | 1,096 | |
| Total Salmon | 4,775 | | 2,193 | | 6,968 | | 3,000 | | 1,712 | | 11,680 | |
| Halibut | 22 | | 25 | | 47 | | 22 | | 35 | | 104 | |

Data sources: Catcher/processor and mothership data is total catch data (retained plus discard) from Alaska Fisheries Science Center Observer Program. Shore-based data from Oregon Department of Fish and Wildlife, 1998 Pacific whiting shoreside observation program report (12/18/98).

*Sum of tribal and non-tribal data.

# NOAA Fisheries Service
## Office of Law Enforcement
## Southwest Region
# NEWS RELEASE

501 W. Ocean Blvd, Suite 4200, Long Beach, CA 90802

**Contact**: Mike Fergus (562) 980-4022 (pager: 888-472-5680)
Mike Gonzales (562) 980-4049 (pager: 800-876-2406)

**FOR IMMEDIATE RELEASE**
January 20, 2000

## Highest Assessed Penalty on West Coast Levied on Sea Food Processor

***( Federal Fisheries agency cites Monterey processor with 299 counts of violations to Magnuson-Stevens Fishery Conservation & Management Act)***

In a civil penalty assessment that sets a record for the west coast under the Magnuson-Stevenson Fishery Conservation and Management Act, NOAA Fisheries has issued a Notice of Violation and Assessment (NOVA) to Consolidated Factors, Inc.(CFI..does business as: Sea Products Company) of Monterey, California citing 299 counts of violations along with a $539,000.00 fine.

Between September 1996 and June 1997, CFI falsified reports of actual volume of groundfish landings, used bogus vessel names, and traded in the illegal catch.

During that time, cooperative surveillance and investigation by NOAA Fisheries special agents and the California Department of Fish and Game revealed an illegal excess volume of Sablefish (black cod) being landed and sold to Sea Products Company. Current regulations set a 300 lbs-per- vessel limit for black cod.

Relying on an illegal fishing operation involving three vessels, two of which were inoperable, Sea Products Company documented receipt of numerous catches, falsifying records to indicate 300 lbs per vessel. This activity took place on numerous occasions between September 1996 and June 1997. Previously this year, the owner and operator of the vessel were also charged and the vessel seized.

"At a time when the groundfish fishery is experiencing severe quota cutbacks and closures, ..putting many fishermen at risk of going out of business, we're gratified to be able to bring justice to those who apparently care so little about their fellow fishermen, let alone the fishery," said Mike Gonzales, Special Agent In Charge for the fisheries agency in the Southwest region.

Black cod or sablefish are one of the west coast's most valuable fishery resources. The purpose of the 300 lb daily limit is to allow small catches of black cod when fishing for other species. However, because of the value, some fishermen are targeting black cod. "We're not about to let this kind of blatant violation get by without serious consequences. Hopefully this action will send a strong signal and wake up call to those who are engaged in or thinking about illegal fishing," said Gonzales.

# # #

# Pacific Marine Conservation Council

*"Dedicated to the health and diversity of our marine life and habitat"*

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March 1, 2000

Public comment on agenda item G.1
March 2000

Jim Lone, Chair
Pacific Fishery Management Council
2130 SW Fifth Avenue, Suite 224
Portland, OR 97201

Dear Chairman Lone,

RE: Support for needed changes in yellowtail bycatch of the on-shore whiting fleet

The Pacific Marine Conservation Council, whose 260 members have backgrounds including commercial, recreational and charterboat fishing, marine science and environmental activism is concerned about the increases in yellowtail bycatch in the on-shore whiting fishery.

We believe changes need to be made and suggest the Council enact as a minimum the following:

1) a yellowtail TAC reduction that is equitably distributed among the fleets; and
1) as a condition of approval of the exempted fishing permit, the Council initiate a vessel trip and vessel cumulative cap for yellowtail bycatch that would be based on an on-shore whiting fleet cap of 375 mt., and reestablishing observers as necessary to monitor bycatch;

In addition, we would also support:

1) mandating rockfish and salmon excluders in whiting nets;
1) creating sanctions against vessels which exceed vessel caps;
1) establishing an on-shore whiting fleet bycatch cap of 375 mt;
1) delaying approval of the EFP until April 2000 to allow time for further actions to be brought before the industry and the Council
1) eliminating the exempted fishing permit.

This is an issue that has been before the Council for at least two years now. PMCC testified in April of '99 and again in November '99 about its concerns. The industry has acknowledged the problem and has successfully sought

from the Council the authority to fashion its own plan. A report is to be made at the March 2000 meeting. The Groundfish Management Team has also prepared options for Council consideration.

Last year, other fisheries had to be closed because the on-shore whiting fleet, unconstrained by vessel or fleet caps, took too many yellowtail. In addition, there have been rumors that some processors, using less than ethical tactics, have "requested" that some vessels bring in larger loads of yellowtail. The intimation has been that this was a cost of that vessel's doing business with that processor, or that the processor offered some kind of incentive if that "request" was honored, and some vessel operators felt compelled to honor the "request". Instituting vessel bycatch caps would eliminate any pressure being placed on a vessel by a processor.

PMCC believes the problem is not fleet-wide and supports the industry attempt to fashion its own plan. However, if that plan is too difficult to craft, or if it does not address the fundamental concern of increased and unnecessary bycatch of yellowtail, then PMCC asks the Council to take the actions noted above.

Thank you for your consideration of these comments and for doing what is necessary to protect yellowtail rockfish and other fisheries which rely on their harvest, and mandated in the Sustainable Fisheries Act.

Sincerely,

Bob Eaton

Bob Eaton
Executive Director

**Agenda Item G. 1**
**March, 2000**

# PACIFIC FISHERIES MANAGEMENT COUNCIL

## Preseason meeting between the State, Processors and Fishermen That Intend to Process or Harvest Unsorted Whiting In The Shoreside Whiting Fishery

Last year there was a preseason meeting for the shoreside whiting participants, this meeting was held by ODF&W. I don't know if this same type of meeting was held by the other States or not. This year industry proposes a different approach to this meeting.

1. Preseason meeting, States will meet with fishermen and Processors that intend to process or harvest unsorted whiting .

2. States will explain by-catch rates, State and Processor permits, Processor vessel agreements and EFP'S

3. States will explain how the whiting fishery will be conducted at this meeting. The State will have an explanation page, this will show fishermen how to calculate catch and overages to come up with overage rate. Also an explanation on where trip limits stop and overages begin.

4. For a Processor to get a processing permit to process unsorted whiting, a whiting coordinator for the processor must attend the meeting.

5. For a fishing vessel to receive an EFP the captain or captains if two, must attend this meeting to receive an EFP.

6. Since EFP's and permits are not usually available until a few days before the season starts a State prepared form could be used. This form would be signed by the Processors and vessel captains at the preseason meeting. This form would then be used as the list to issue permits and EFP'S from.

7. If a Processor or vessel enters the fishery late. They must go to the State and receive the same instructions as was given at the preseason meeting

8. Before a processor can process unsorted whiting they have to have a signed processing permit with the State they are processing in.

9. Before a vessel can fish whiting they have to have a signed processor vessel agreement

I see these as very simple steps to follow. I don't see them as being very time consuming to any of the participants. I see this as another precautionary layer in a fishery that the participants seem to be continually changing slightly every year. If all three States could come together with identical plans and act on them the same it would be a good educational tool for all involved.

# Processor Vessel By-Catch Agreement

## Mandatory Agreement Between Processors That Process Unsorted Whiting. And Vessels That Deliver Unsorted Whiting With Experimental Fishing Permits

1) Processors will conduct a pre-season meeting with vessel owner and captains to discuss by-catch controls. If a vessel has two captains they are both required to attend the meeting and sign agreements. At the pre-season meeting Processors and fishermen will discuss this agreement. Also both parties will discuss different ways they can work together to keep overages at a minimum. Both Processors and Fishermen acknowledge the need to reduce overages.

2) Agreement will identify rate cap per vessel. This will be the same rate identified in the State processor permit. All vessels coast wide will have a 12 Kg/mt whiting rate. All Processors and Fishermen recognize the need to stay well below this rate. For the shoreside whiting fishery to remain a viable fishery for all, we need to all work together to keep overages at a minimum.

Yellowtail RF only

3) Processors will give vessels by-catch information ( yellowtail, widow, salmon, sablefish and halibut). This information will be available to the vessel within 4 – 6 hours of offload. This will give the vessel adequate time to react to by-catch before next day fishing begins. This will give the captain real time information and he will be able to adjust his fishing strategies. Captains will inform their Processor how they want to receive their by-catch information ( cell phone, fax, radio, TLX ). Processor by-catch coordinator will log date, time, vessel name and person receiving information. The person receiving the information onboard the vessel will also log the by-catch information in the same manner. This will assure both parties that the information was given and received. With daily by-catch information and delivery weights. A vessel captain will be able to determine overages on a daily basis.

Page 2.
Processor Vessel
By-Catch Agreement

4) Vessels at the time of offload will give the processor tow information from the day that the offloaded fish was caught. This information will consist of (date, set time, latitude and longitude, bottom depth, trawl depth and the same information for hauling the trawl). The coordinator will take the tow information along with by-catch information and compile it for real time information. This information can be posted at the plant in a common area that fishermen have access to. ( Some sort of mechanism needs to be put in place that allows access to this information by all fishers and processors.)

5) There will be two checkpoints during the whiting season. One when 50% of the shoreside allocation has been caught, and one with 10% of the shoreside whiting allocation remaining.

6) If a vessel is over his rate at either checkpoint he will be removed from the delivery schedule for one day for every Kg/mt of whiting over the vessels overage rate. Rate check points will be coordinated with State and Processor assigned coordinator.

Processing Plant _____

Processor Coordinator _____ Date _____

Fishing Vessel _____

Fishing Vessel Captain _____ Date _____

AT-SEA BYCATCH CONTROL PLAN

Historical Bycatch

The bycatch of other species has historically been a very small part of the at-sea Pacific whiting fishery catch, averaging about 1 percent of the total catch. However, with the reduction in TAC for non-whiting groundfish species, and the endangered species status of salmon species there is interest in further minimizing bycatch in the whiting fishery. In the whiting fishery, there are three species of special concern regarding bycatch. These are Chinook salmon, yellowtail rockfish and widow rockfish.

The following table shows the catch of whiting, yellowtail, and widow rockfish in tonnes, and the bycatch rates for these species expressed as kg per tonn of whiting, in the sectors of fishery since 1993 (Table 1.). In general, the bycatch has been lowest in the catcher-processor sector, followed by the mothership fishery, and then the Tribal mothership fishery. In the non-tribal fishery, the bycatch rate has been trending downward, however, in 1999 the bycatch rate of yellowtail rockfish increased.

Table 1. Catch of Pacific whiting, yellowtail and widow rockfish in tonns by sector and the bycatch rate for yellowtail and widow rockfish in kg/t.

| | CATCHER-PROCESSOR | | | MOTHERSHIP | | | TRIBAL MOTHERSHIP | | | ONSHORE | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Whiting | yellowtail | widow | Whiting | yellowtail | widow | Whiting | yellowtail | widow | Whiting | yellowtail | widow |
| 1993 | 81,302 | 172 | 113 | 14,506 | 136 | 71 | | | | 42,119 | 114 | |
| 1994 | 85,172 | 211 | 186 | 90,476 | 409 | 192 | | | | 73,656 | 210 | |
| 1995 | 60,472 | 85 | 85 | 39,850 | 708 | 155 | | | | 74,965 | 225 | |
| 1996 | 64,070 | 252 | 125 | 42,136 | 379 | 142 | 15,000 | 95 | 11 | 85,731 | 522 | 601 |
| 1997 | 68,796 | 116 | 73 | 49,460 | 174 | 134 | 24,805 | 113 | 9 | 87,499 | 230 | 159 |
| 1998 | 70,365 | 64 | 121 | 50,087 | 313 | 172 | 24,509 | 159 | 14 | 87,862 | 518 | 366 |
| 1999 | 67,679 | 431 | 101 | 47,580 | 253 | 48 | 25,519 | 451 | 37 | 83,800 | 481 | 192 |
| | | | | | | | | | | | | |
| Bycatch Rates (kg/t) | | | | | | | | | | | | |
| 1993 | | 2.1 | 1.4 | | 9.4 | 4.9 | | | | | 2.7 | n/a |
| 1994 | | 2.5 | 2.2 | | 4.5 | 2.1 | | | | | 2.9 | n/a |
| 1995 | | 1.4 | 1.4 | | 17.8 | 3.9 | | | | | 3.0 | n/a |
| 1996 | | 3.9 | 1.9 | | 9 | 3.4 | | 6.3 | 0.4 | | 6.1 | 7.0 |
| 1997 | | 1.7 | 1.1 | | 3.5 | 2.7 | | 4.6 | 0.4 | | 2.6 | 1.8 |
| 1998 | | 0.9 | 1.7 | | 6.2 | 3.4 | | 6.5 | 0.6 | | 5.9 | 4.2 |
| 1999 | | 6.4 | 1.5 | | 5.3 | 1.0 | | 17.7 | 1.4 | | 5.7 | 2.3 |
| Mean | | 2.7 | 1.6 | | 8.0 | 3.1 | | 8.8 | 0.7 | | 4.1 | 2.2 |

## Distribution of bycatch

Bycatch of yellowtail rockfish occurs in the whiting fishery from southern Oregon to the U.S.-Canadian border. However, the greatest amount of bycatch occurs off the Washington coast from 46° N northward. Hauls from catcher-processors containing high bycatch (>50 kg/t) are shown in Figure 2. for 1997, 1998 and 1999. Yellowtail bycatch was low in 1997, extremely low in 1998, and extremely high in 1999. No clear pattern is evident in the distribution of high bycatch hauls between 1997 and 1999 other than the number of hauls with high bycatch increased in hauls deeper than 100 fa. increased in 1999.

The At-sea sector has been conducting operations in a manner that reduces the bycatch of non-whiting species to the minimum extend possible. In 1999, the bycatch controls that have been successfully employed in prior years were ineffective. It is likely that the higher than normal bycatch experienced in 1999 was the result of unique oceanographic conditions resulting from the recent strong el Nino and la Nina events. The strong variation in ocean conditions appears to have altered the spatial distribution of whiting and bycatch species. Whiting were distributed further to the north than usual, and yellowtail rockfish were encountered further offshore than usual.

Widow rockfish bycatch is not as widespread and more localized than yellowtail rockfish in the at-sea whiting fishery (Figure 2).

Regardless of the underlying cause of the increased bycatch in 1999, the at-sea sector is taking steps to monitor and improve bycatch control in the 2000 fishery. Bycatch control in the at-sea whiting fishery rests with the captain or fishing masters of individual vessels. They are aided by reports from SeaState which compiles catch data and report back to the fleet with information on areas of high bycatch. To assist the vessels in minimizing bycatch we plan to make better use of the available information, and provide clear bycatch avoidance criteria and instructions to at-sea vessels for the 2000 fishing season.

## Bycatch Control Measures

The focus of the at-sea bycatch control program is to:

1. Avoid areas of known concentrations of rockfish and salmon.
2. Utilize threshold bycatch rates to stop fishing an area of high bycatch.
3. Improve communication between the fleet on bycatch avoidance.
4. Continue research on potential bycatch reducing gear modifications and physical factors associated with bycatch.

### Identification of areas of yellowtail and widow rockfish concentrations. and other areas of special concern.

The at-sea sector met with Washington and Oregon coastal fishermen to identify areas of high yellowtail and widow rockfish concentrations. The identified areas were marked on charts, and the boundaries delineated. Copies of these charts will be provided to all at-sea vessels along with a list of the latitude and longitude of the areas (Figure 2, Table 2.).

At-sea whiting vessels will avoid these areas while engaged in whiting trawling.

### Concentrate whiting fishing to areas deeper than 100 fa.

The highest incidence of rockfish bycatch is in waters shallower than 100 fa. Concentrating fishing effort in areas deeper than 100 fathoms will also avoid most of the areas identified as areas of potentially high rockfish bycatch. Vessels fishing over deeper water have generally experienced a lower bycatch of pelagic rockfish. However, as pointed out previously, this was not as effective in 1999.

### Establishment of Threshold bycatch rates

Threshold bycatch rates have been established to provide guidance to at-sea whiting vessel masters. These values, based on past performance, are intended to alert them to being in an area of potentially high bycatch and to relocate to an area of lower bycatch.

The various sectors of the at-sea fleet have different operational characteristics and experience differing rockfish bycatch rates. To establish a threshold bycatch rate the mean bycatch rates for each sector are used as preliminary guidelines.

| SECTOR | CATCHER-PROCESSOR | MOTHERSHIP | TRIBAL MOTHERSHIP |
|---|---|---|---|
| Yellowtail rockfish kg/t | 2.7 | 8.0 | 8.8 |
| Widow rockfish kg/t | 1.6 | 3.1 | 0.8 |

The goal is to maintain bycatch at or below the historic average. If the overall bycatch in 2000 is at the threshold level, the yellowtail bycatch in the at-sea whiting fishery will be about half of what it was in 1999.

### Improve communications within the fleet.

The Mothership fleet has agreed to institute daily communication among the fleet of bycatch rates and location of high bycatch areas. The Catcher-processor fleet communicates on a regular basis to inform vessels of areas of high levels of bycatch, which has helped to control bycatch.

Also to improve communication with other fishing vessels the at-sea whiting fleet is providing contact information to other fishers on the grounds. The contact information consists of the vessel name, call sign, bridge cell phone, company contact and their phone number. This will allow any vessel that wishes to communicate in-season problems on the grounds directly to the vessel or company.

**Bycatch Research**

Research is ongoing to devise methods or gear to reduce bycatch. This year five vessels will be equipped with recording conductivity, temperature and depth (CTD) meters to determine if there are relationships between bycatch rates and oceanographic conditions. Morphometric data will be collected from whiting and yellowtail and widow rockfish to determine if there are significant differences in body forms that would allow for the use of in trawl bycatch reduction devices. Lastly, some research will be conducted to determine if yellowtail rockfish are located above whiting schools and taken as the net is deployed.

Catch data indicate that early morning hours before dawn may be a period of higher than average bycatch. It may be possible to curtail fishing for a 2 to 3 hour period without disrupting factory operations. This option will be analyzed to assess its feasibility as a potential additional bycatch control mechanism.

**Operational Plans**

The above summarizes the bycatch problem in the at-sea whiting fishery and means of controlling bycatch. The at-sea fishery is composed of three sectors: catcher-processors, motherships, and the Tribal mothership fishery. It is apparent that there is a great deal of variability in bycatch, both spatially and temporally, and it is difficult to predetermine means of bycatch control.

Each sector has unique operational characteristics. Due to the differences in circumstances, it is not possible to develop a unified bycatch reduction plan for all sectors. It is likely that each sector will use different bycatch control methodologies to achieve the lowest bycatch level attainable.

The control of bycatch rests with each individual vessel. What we have set forth in this plan is a guideline threshold and a suite of tools that may be used to hold bycatch to the lowest level possible.

In discussions among catcher-processors and non-tribal motherships it was agreed that the identified "rockfish avoidance areas" are areas that vessels would only fish if it is demonstrated that whiting can be harvested without exceeding bycatch thresholds. The Tribal mothership sector may not be able to avoid these areas due to spatial limitations in the fishery.

Catcher-processors, as in passed years, will confine their operations to areas outside of 100 fa. to the greatest degree possible. The mothership sector will also attempt to fish to the greatest degree possible outside of 100 m.

The agreement to communicate bycatch information among motherships is a major step for this sector, which will likely improve bycatch control in the coming year.

The at-sea sector is committed to bycatch control, and will actively monitor fleet performance in the whiting fishery to initiate measures to insure that rockfish bycatch does not exceed acceptable levels.

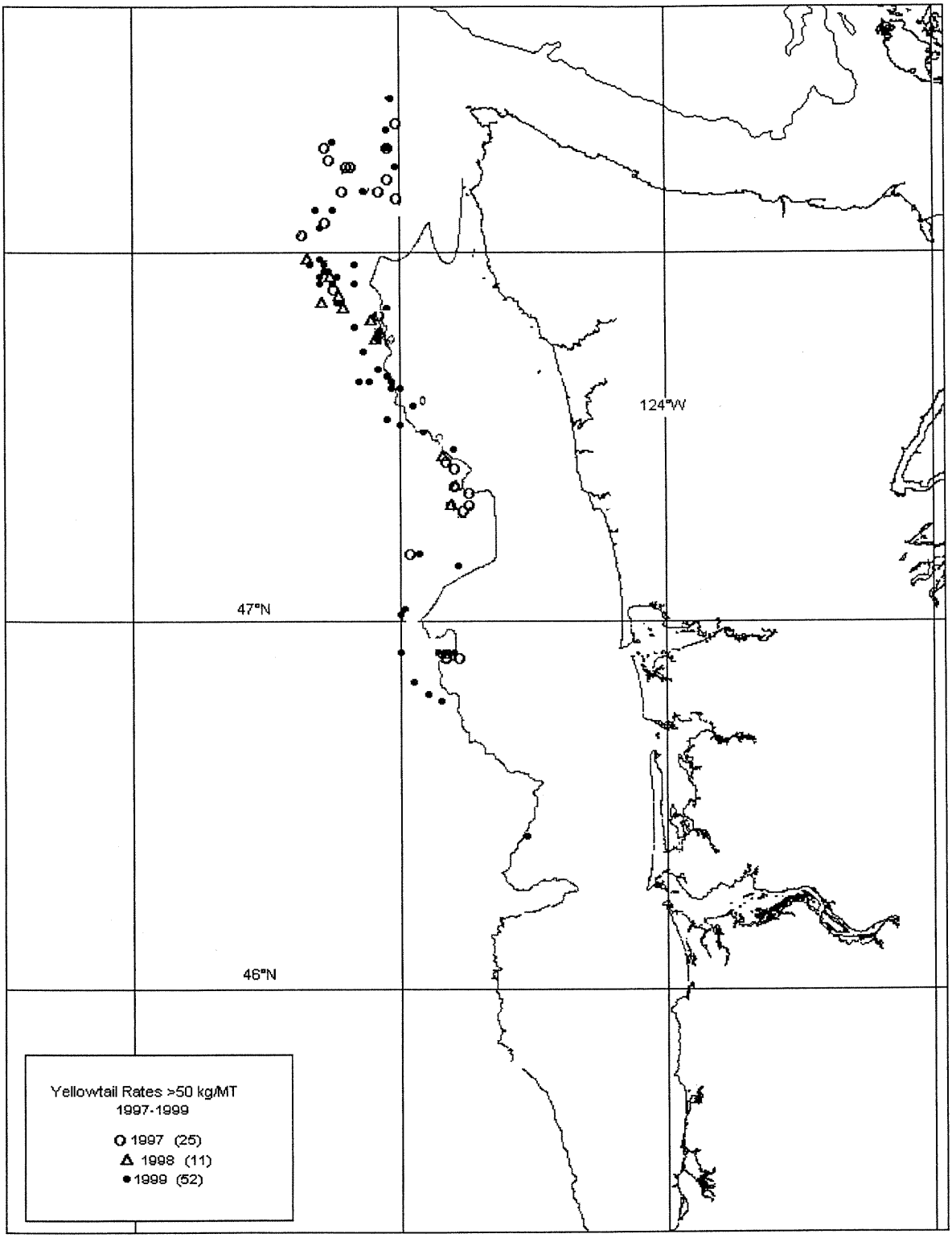


Figure 1. Distribution of hauls with high (> 50 kg/t) yellowtail rockfish bycatch in the at-sea whiting fishery.

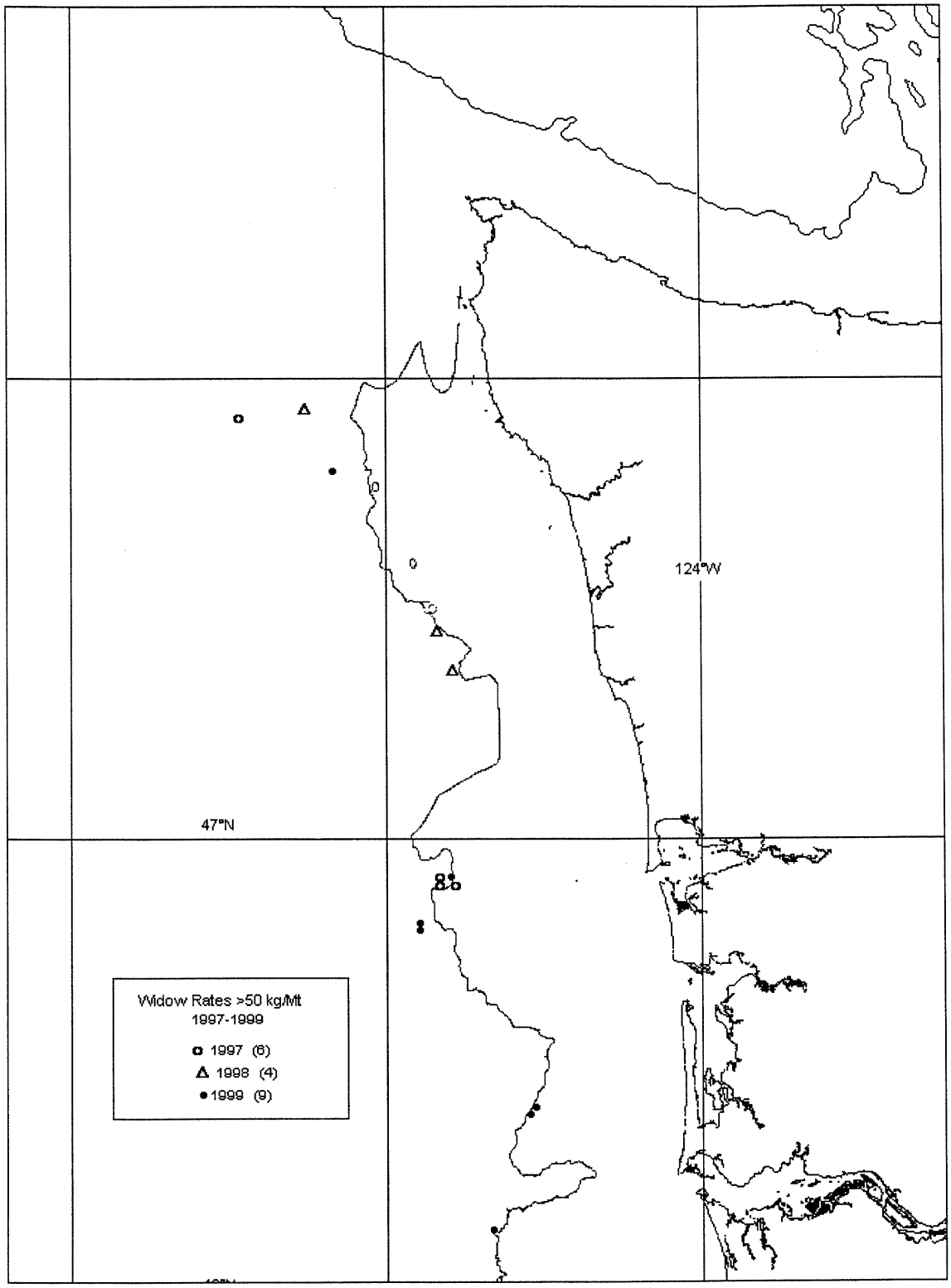


Figure 2. Distribution of high bycatch hauls of widow rockfish in the at-sea whiting fishery.

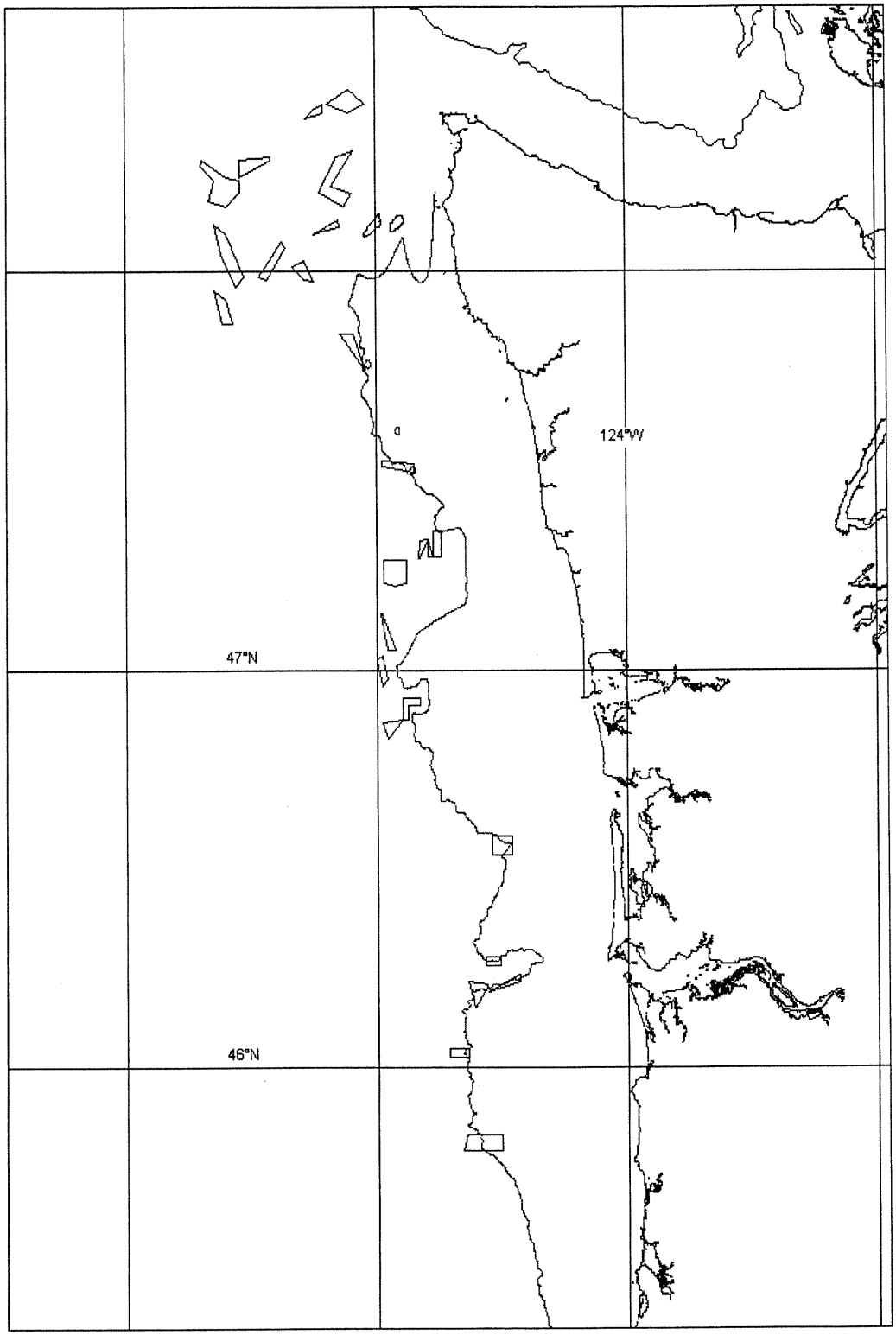


Figure 3. Distribution of rockfish avoidance areas.

# STATUS REPORT ON STRATEGIC PLAN

Situation: The Ad-Hoc Groundfish Strategic Plan Development Committee (GSPDC) has met four times since the November 1999 Council meeting and made substantial progress towards development of the draft plan. However, the GSPDC is not ready to present a detailed report at this time. Rather, the GSPDC requests the Council revise the schedule to delay initial action and release for public comment at the June 2000 Council meeting. Final adoption of the plan would be rescheduled for September. A brief oral report will be provided at this time.

**Council Action:**

**1. Comment guidance.**

Reference Materials:

1. Revised schedule for development of the groundfish strategic plan (Attachment G.2.a.).

PFMC
02/23/00

# Pacific Fishery Management Council Ad-Hoc Committee
# Pacific Groundfish Fishery Strategic Plan
# Timeline & Schedule

*(updated 2/16/00)*

| SEPTEMBER 1999 | | OCTOBER 1999 | | NOVEMBER 1999 | | DECEMBER 1999 | |
|---|---|---|---|---|---|---|---|
| **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** |
| **13-16** | Facilitator conducts convening meetings with PFMC and Council Committee members | **14** | Convening summary document to Committee | **1-5** | Council meeting – provide update and status report regarding proposed framework; receive guidance and direction | **14-15** | Meeting to continue preparation of draft Strategic Plan including brainstorming a range of options for addressing issues |
| **17** | Ad-Hoc Committee meets to review convening process | **18-19** | Committee meeting to discuss results of convening process and begin developing strategic plan framework | **16-17** | Committee meeting to begin preparation of draft Strategic Plan- discuss issues, key questions, obstacles and barriers | | |

| JANUARY 2000 | | FEBRUARY 2000 | | MARCH 2000 | | APRIL 2000 | |
|---|---|---|---|---|---|---|---|
| **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** |
| **17-18** | Committee meeting to review, discuss, and revise proposed options and strategies | **14-16** | Committee meeting to continue development of proposed range of strategies; start to bring together the overall draft framework | **6-10** | Brief update at Council meeting | **3-7** | Update and Status Report at Council meeting |
| | | | | **21** | Conference call to discuss strategies and prepare for April meeting | **18-19** | Committee meeting to finalize proposed range of options and strategies and review overall draft plan |

*(over please)*

# Pacific Fishery Management Council Ad-Hoc Committee
# Pacific Groundfish Fishery Strategic Plan
# Timeline & Schedule

*(updated 2/16/00)*

| MAY 2000 | | JUNE 2000 | | JULY 2000 | | AUGUST 2000 | |
|---|---|---|---|---|---|---|---|
| **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** |
| **22-24** | Committee meeting | **14-15** | Committee meeting | | Conduct public involvement activities to encourage broad constituent review and comment of draft strategic plan | | Conduct public involvement activities to encourage broad constituent review and comment of draft strategic plan |
| | | **26-30** | Request Council approval of Draft Strategic Plan (plan amendment scoping process: Council advisory review and comment)<br><br>Release for public review and comment | | | **TBD** | Committee meeting for review of comments; revise and finalize strategic plan |

| SEPTEMBER 2000 | | OCTOBER 2000 | | NOVEMBER 2000 | | DECEMBER 2000 | |
|---|---|---|---|---|---|---|---|
| **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** | **DATE** | **TASK** |
| **11-15** | Seek final Council approval for Strategic Plan (Identify alternatives and select preferred FMP amendment alternatives) | | Council submits Strategic Plan to NMFS | | Tasks to be determined | | Tasks to be determined |

# AMERICAN FISHERIES ACT MEASURES

Situation: The American Fisheries Act (AFA) mandates that, "by not later than July 1, 2000, the Pacific Fishery Management Council... shall recommend for approval by the Secretary [of Commerce], conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act, or by any fishery cooperatives in the directed pollock fishery." If the Council does not recommend conservation or management measures to the Secretary, the AFA authorizes the Secretary to "implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish."

At the September 1999 meeting, the Council reviewed proposals from the Midwater Trawlers Cooperative and West Coast Seafood Processor's Association for management measures to address impacts of the AFA. These proposals seek to protect existing participants in West Coast fisheries, including harvesters and processors.

The Council requested analysis of the proposed management measures and also requested the National Marine Fisheries Service (NMFS) to publish notice of the rules under consideration and a control date of September 16, 1999. The control date applies to participation by catcher vessels in mothership and inshore Pacific whiting fisheries, and in the inshore groundfish fishery for non-whiting species. On November 24, 1999, NMFS published an advance notice of proposed rulemaking and notice of a control date in the *Federal Register* (Attachment G.3.a.). Staff has prepared a draft discussion paper of the issues involved in developing recommended measures to protect West Coast groundfish fisheries from impacts caused by the AFA (Attachment G.3.b.).

It is important to note the Council's recommendations will need to specify the vessels and/or processors that would be excluded, and include justification for the management measures. That is, restrictions on participation in the whiting or other groundfish fisheries would have to be directly related to entities benefitting from the AFA. Moreover, it may be necessary to (1) establish that the management measures comply with National Standard 4 (*i.e.*, are fair and equitable) and (2) perform Regulatory Impact Review and Regulatory Flexibility Act analyses to assess whether economic impacts that may result from the management measures are justified.

At this time, to facilitate analysis, it would be helpful if the Council would (1) review the suite of alternatives to ensure they reflect the Council's intent; (2) specify whether restrictions apply to all AFA-qualified vessels or only those AFA-qualified vessels that join cooperatives; (3) specify how processors or processing companies that benefitted from the AFA are to be identified; (4) explain the rationale for the participation requirements (*e.g.*, 50 tons of whiting rather than some other quantity; 1994 through 1999 rather than other years); and (5) define "benefitting from the AFA."

**Council Action**: **Direction to staff and advisory entities.**

Reference Materials:

1. *Federal Register*, vol. 64, no. 226, pp. 66158-66159, November 24, 1999 (Attachment G.3.a.).
2. Measures to protect West Coast groundfish fisheries from adverse impacts as a result of the AFA (Attachment G.3.b.).

PFMC
02/23/00

**SUPPLEMENTARY INFORMATION:** In a notice of proposed rulemaking (NPR) served July 13, 1992 (published in the **Federal Register** on July 14, 1992, at 57 FR 31165), the Interstate Commerce Commission (Commission) proposed to expand the scope of its 49 CFR 1180.2(d)(2) class exemption. That exemption, as it existed in 1992 and as it continues to exist today, exempts from the otherwise applicable prior approval requirements the acquisition or continuance in control of a nonconnecting railroad or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I railroad. In the NPR, the Commission proposed to expand the 49 CFR 1180.2(d)(2) exemption so that it would embrace any transaction that required approval and authorization under former 49 U.S.C. 11343, provided that the transaction did not involve (i) the merger or control of at least two Class I railroads, (ii) a reduction in the number of noncommonly-controlled railroads conducting operations between any two points, or (iii) a reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point.

The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted (with certain changes not presently of consequence) the relevant statutory provision, and transferred to the Board responsibility for the performance of functions respecting that statutory provision. *See* ICCTA section 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA section 201(a) (establishment of the Board); new 49 U.S.C. 11323, as enacted by ICCTA section 102(a) (this is the post-1995 version, as respects railroads, of what had been 49 U.S.C. 11343); new 49 U.S.C. 702, as enacted by ICCTA section 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA section 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the Board). In accordance with the mandate of ICCTA section 204(b)(1), the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding, which had been instituted by the Commission in the 1992 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1992 NPR and to discontinue the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding. Our experience with the administration of cases handled under new 49 U.S.C. 11323 has led us to conclude that there is no pressing necessity for the expansion of the 49 CFR 1180.2(d)(2) class exemption. Any 49 U.S.C. 11323 transaction that is not embraced by any of the existing 49 CFR 1180.2(d) class exemptions but that would be embraced by the expanded 49 CFR 1180.2(d)(2) class exemption proposed by the Commission can be handled under the individualized exemption procedures now codified at 49 CFR part 1121, and appropriate determinations can be made on a case-by-case basis.

### Small Entities

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

### Environmental and Energy Considerations

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

### Board Releases Available Via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's website at ''WWW.STB.DOT.GOV.''

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99–30542 Filed 11–23–99; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 991118308–9308–01; I.D. 101899C]**

**RIN 0648–AN33**

## Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Control Date

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; notice of control date for the Pacific Coast groundfish fishery; request for comments.

**SUMMARY:** This document announces a control date of September 16, 1999, after which vessels eligible for benefits under the American Fisheries Act (AFA) may be subject to restrictions on participation in the Pacific Coast groundfish fisheries. The intended effect of announcing this control date is to discourage speculative entry into the Pacific coast groundfish fisheries by AFA-qualified vessels while the Pacific Fishery Management Council (Council) develops recommendations to protect the Pacific Coast groundfish fisheries from adverse impacts caused by the AFA.

**DATES:** Comments may be submitted in writing by December 27, 1999.

**ADDRESSES:** Comments may be mailed to Jerry Mallet, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** The Pacific Fishery Management Council at 503–326–6352; or Bill Robinson at 206–526–6140; or Svein Fougner at 562–980–4000.

**SUPPLEMENTARY INFORMATION:** The Pacific Fishery Management Council (Council) established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)) is considering recommendations for approval by NMFS of conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by the AFA (Pub.L. 105-277, Div. C, Title II, October 21, 1998, 112 Stat. 2681-616; 16 U.S.C. 1851 note; 46 U.S.C. 101 note, 12102, 31322; 46 App. 1274 note), or by any

fishery cooperatives in the Alaska pollock fishery, as required by section 211(c)(3)(A) of the AFA. Pursuant to the AFA, the Council's recommendations are due to NMFS not later than July 1, 2000. The AFA at section 211(b)(5) also provides that catcher/processors and motherships eligible under the AFA are prohibited from harvesting or processing fish in any U.S. fishery outside Alaska, except the Pacific whiting fishery, unless harvesting or processing by those catcher-processor motherships is specifically authorized under a fishery management plan. Pacific whiting is a major component of the species aggregate in the Pacific Coast groundfish fisheries.

Conservation and management measures under consideration by the Council to offset adverse impacts of the AFA include possible restrictions on participation in the Pacific coast groundfish fisheries by vessels eligible for benefits under the AFA (AFA-qualified vessels). During its September 13-17, 1999, meeting in Portland, Oregon, the Council adopted September 16, 1999, as a control date to be used in placing restrictions on participation in the Pacific Coast groundfish fisheries by AFA-qualified vessels. In making this announcement, NMFS and the Council intend to prevent speculative entry into the fisheries after the control date by AFA-qualified vessels, while the Council develops and analyzes its recommendations. The control date applies to catcher vessels in the mothership and shore-based sectors of the Pacific whiting fishery, and to all other non-whiting groundfish fisheries in which catch is landed shoreside. The control date provides notice to AFA-qualified vessels that might seek to participate in the Pacific Coast groundfish fisheries that current requirements for accessing these fisheries may change. Vessels entering the fisheries after the control date may be subject to new restrictions that do not currently exist, and they may not receive credit for fishing after the control date.

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and has been amended 10 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR part 660, Subpart G.

The AFA, enacted in 1998, reduced the harvest capacity in the Alaska pollock fishery by retiring nine Bering Sea catcher/processors. It also redistributed pollock allocations between the inshore and offshore sectors, and defined conditions for creating fishery cooperatives in the pollock fleet. Vessels that participate in such cooperatives are likely to have increased flexibility in arranging their fishing schedules and could consider entering additional fisheries.

At its September 13–17, 1999, meeting, the Council and its Groundfish Advisory Panel heard proposals from West Coast fishers and processors concerned that some AFA-qualified vessels with no previous or low levels of participation in the Pacific groundfish fishery will increase their fishing effort in the Pacific Coast groundfish fishery. A particular problem is posed if AFA-qualified vessels participating in pollock fishing cooperatives rearrange their pollock fishing schedules to allow them time to fish in non-pollock fisheries such as the Pacific Coast groundfish fishery. To participate in most limited entry groundfish fisheries vessels only need to purchase a general limited entry permit. No permit is required to participate in the open access fisheries. Because new permit holders and entrants into the open access fishery currently have access rights that are equal to those who have historically participated in the fishery, speculative entry may be encouraged. Additional effort could exacerbate existing management problems and erode the effectiveness of future measures recommended by the Council.

The Council unanimously voted to establish a control date of September 16, 1999, and to initiate the development of recommendations to restrict AFA-qualified vessels from participating in the Pacific Coast groundfish fishery if, during a qualifying period between January 1, 1994, and September 16, 1999, the vessel: (1) did not harvest at least 50 metric tons (mt) of Pacific whiting in the mothership sector; (2) did not land at least 50 mt of Pacific whiting in the shore-based sector; or (3) did not land groundfish shoreside in the Pacific Coast groundfish fishery (not including fish landed in the Pacific whiting fishery).

Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP and may also require amendment of the FMP itself. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**. If catch history is used as basis for participation, it is likely that AFA-qualified vessel participation in the fishery after the control date will receive little or no credit. Fishers are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or level of participation in the fishery.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*; Pub. L. 105–277, Div. C, Title II, October 21, 1988.

Dated: November 18, 1999.

**William Fox,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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## REVIEW DRAFT

**Measures to protect West Coast groundfish fisheries from adverse impacts as a result of the AFA**

1.0 Introduction

The American Fisheries Act of 1998 (AFA) contains several provisions specific to the Bering Sea and Aleutian Islands (BSAI) pollock fishery and requirements for the Pacific Fisheries Management Council (Council) to recommend measures to protect against adverse impacts resulting from the AFA. Among the provisions of the AFA that affect vessels and processors in North Pacific fisheries are (1) allocation of the walleye pollock directed fishery allowance among the catcher vessels of the inshore component, catcher/processors of the offshore component, and catcher vessels harvesting pollock for motherships in the offshore component; (2) declaration of eligible vessels and processors – specifically naming catcher vessels, catcher/processors, and motherships eligible to participate in the offshore component; and (3) specific eligibility requirements for catcher vessels and shoreside processors in the inshore component.

The AFA also contains guidelines for "cooperatives" within each component of the fishery. Through these cooperative arrangements, harvesters and processors may arrange fishing and processing to optimally utilize their respective allocations. The AFA anticipates that, because these AFA-qualified entities can arrange their pollock fishery opportunities, these entities may be empowered to increase their participation in non-pollock fisheries (including West Coast fisheries) where they had previously participated only marginally or not at all. At issue is the concern that traditional West Coast groundfish fishery participants could be displaced by AFA-qualified harvesters and processors that do not have prior fishing history in West Coast groundfish fisheries.

Section 208 of the AFA (Eligible Vessels and Processors) is scheduled to sunset on December 31, 2004. Because vessel or processor eligibility could affect whether or not these entities benefit from the AFA, the Council should state the expected duration of the recommended measures.

2.0 Need for Action

To protect against spill over effects into the West Coast groundfish fishery, the AFA requires the Pacific Council to "recommend for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery" (Section 211.c.3). These side-board recommendations are due no later than July 1, 2000.

Protective management measures may be needed because participants in cooperatives are likely to have increased flexibility to arrange fishing schedules, enabling entry into other fisheries. Specifically, historic West Coast groundfish fishery participants could be harmed if AFA-qualified vessels and/or processors participating in pollock fishing cooperatives rearrange their pollock fishing schedules to increase participation in non-pollock fisheries such as the West Coast groundfish fishery. To participate in most limited entry groundfish fisheries, vessels only need to purchase a general limited entry permit, and a permit is not is required to participate in the open access fisheries. Because new limited entry permit holders and entrants into the open access fishery would have access rights that are equal to those who have historically participated in the fishery, speculative entry by AFA-qualified entities may occur. To prevent harm to current participants in West Coast fisheries, the Council is required to recommend protective management measures. Moreover, additional effort entering the groundfish fishery could exacerbate existing management problems and erode the effectiveness of measures recommended by the Council.

The AFA states:

SEC. 211. Protections for other fisheries; conservation measures.

(b) Catcher/processor restrictions.

(5) Fisheries other than the North Pacific.

> The [AFA eligible] catcher/processors... and motherships... are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management Council... other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management Council other than the North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a fishery management plan recommended by the regional fishery management Council of jurisdiction and approved by the Secretary.

The AFA explicitly prohibits catcher/processors and motherships named in the law from participating in fisheries other than North Pacific fisheries and the Pacific whiting fishery. The catcher/processor and motherships will be unable to use their AFA-eligibility to increase participation in West Coast groundfish fisheries. However, AFA-eligible catcher/processors and motherships could increase or optimize their participation in the Pacific whiting fishery.

The AFA also states:

SEC. 211. Protections for other fisheries; conservation measures.

(c) Catcher vessel and shoreside processor restrictions.

(3) Fisheries other than the North Pacific.

> (A) By not later than July 1, 2000, the Pacific Fishery Management Council... shall recommend for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery.
>
> (B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.

As stated previously, the rationale for establishing protective measures is to restrict harvesters and processors from using the operational advantage provided by the AFA (and cooperatives) to increase participation in other fisheries. In their analysis, the North Pacific Fisheryies Management Council (NPFMC) lists, 91 catcher vessels eligible in the inshore categories; 14 catcher vessels eligible in both the inshore and mothership sectors; 7 catcher vessels eligible in th mothership sector; and 7 catcher vessels eligible in the catcher/processor sector (Attachment 1). Their analysis also indicates that 8 plants, owned by 7 companies qualify under the AFA. Based on these estimates, there are 119 catcher vessels and 7 companies eligible to participate in cooperatives under the AFA.

## 3.0 Alternatives, Including Status Quo

### 3.1 Previous Council Action

In September 1999, the Council adopted a control date of September 16, 1999[1] and directed staff to

[1] *Federal Register* / Vol. 64, No. 226 / Wednesday, November 24, 1999 / Proposed Rules. [NMFS] announces a control date of September 16, 1999, after which vessels eligible for benefits under the

develop an amendment to the groundfish FMP based on two industry-sponsored proposals. Measures in the Midwater Trawlers Cooperative proposal would restrict participation of AFA-qualified vessels in whiting and groundfish fisheries. Measures in the West Coast Seafood Processor's Association proposal speak to restricting participation in the whiting fishery and the West Coast groundfish fishery by processors that do not meet stated criteria.

### 3.2 Alternatives

Alternative 1 – Status Quo: Do not recommend to the Secretary of Commerce conservation or management measures to protect fisheries and the participants in those fisheries from adverse impacts caused by the AFA or by any fishery cooperatives in the directed pollock fishery. It is possible the Secretary of Commerce, through NMFS, may determine that protective measures are warranted and implement, through regulation, such measures.

Alternative 2: Adopt for recommendation to the Secretary of Commerce the following management measures for harvesters:

A) AFA qualified catcher vessels that have not harvested at least 50 tons of whiting in the mothership fishery in the years 1994 through September 16, 1999 will be ineligible to participate in the mothership fishery for whiting in the future.

B) AFA qualified vessels that have not landed at least 50 tons in the shore-based whiting fishery in the years 1994 through September 16, 1999 will be ineligible to participate in the shore-based whiting fishery in the future.

C) AFA qualified vessels that do not have shore-based landings of groundfish other than whiting in the years 1994 through September 16, 1999 will be prohibited from participating in those fisheries in the future. Bycatch amounts of other groundfish in the Pacific whiting fishery shall not be eligible for qualifying a vessel under these provisions.

Note that, as proposed in September 1999, Alternative 2.A would prohibit shore-based vessels that are AFA qualified, but did not harvest 50 tons of whiting in the mothership fishery during the qualifying period, from entering the mothership fishery in the future.

Additionally, the proposed restrictions in Alternative 2 would not apply to AFA-eligible catcher/processors or motherships, as they specify catcher vessels in the whiting mothership fishery and vessels participating in shore-based fisheries.

Alternative 3: Processor options.

**Suboption 3.A**. Adopt for recommendation to the Secretary of Commerce the proposal submitted by the West Coast Seafood Processors' Association, modified to restrict only processors that benefitted under the AFA.

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American Fisheries Act (AFA) may be subject to restrictions on participation in the Pacific Coast groundfish fisheries. The intended effect of announcing this control date is to discourage speculative entry into the Pacific coast groundfish fisheries by AFA-qualified vessels while the Pacific Fishery Management Council (Council) develops recommendations to protect the Pacific Coast groundfish fisheries from adverse impacts caused by the AFA.

(i) WHITING PROCESSORS: An AFA processor (or receiving station[2]) may receive unsorted whiting during the shore-based whiting season only if it:

(a) received at least 1000 mt of whiting during the regular whiting season in 1998 and 1999; or held state or federal authorization to receive or process unsorted whiting in 1998 and 1999.

(b) Once during the calendar year, a company that owns or controls a processor or receiving station listed under paragraph (a) may substitute a listed facility with an [unlisted] facility owned or controlled by the same company.

Clarification requested: This provision in Alternative 3, sub-option A.i.b, as proposed by the WCSPA, appears to pertain to a limited entry system for whiting processors. In deliberating these alternatives, the Council required these restrictions to apply specifically to those processors that benefitted from the AFA. It is not clear whether the Council intended to include establishing a groundfish processor permit system as a management alternative.

Clarification requested: By including 1998 in the history for participation in the whiting fishery, it appears that one AFA-qualified shore-based processor that processed whiting only in 1999 may be precluded from processing whiting in the future. The Council may want to modify the options to consider 1999 only, or may want to change the qualifying periods from "1998 and 1999" to "1998 or 1999."

**Changes from the original WCSPA proposal** (for reference, the original motion is in Attachment 2):.

The WCSPA proposal stated which processors could receive "unsorted" landings of whiting in the future. The exemption against sorting whiting currently applies to vessels that are issued an EFP. It is not clear how making this sorting exemption permanent and applying it to processors relates to providing protection from AFA processors. Therefore, the word "unsorted" has been deleted in (i)(a), with regards to receiving unsorted whiting in the future. The original WSPCA proposal also stated that "No restrictions will be placed on landing whiting outside of the regular season." This is not included for analysis since it is beyond the scope of protection from AFA processors. The original WCSPA proposal also included a processor permit system that would limit issuance of permits to groundfish processors with a history of participation in the Pacific coast groundfish fishery before 2000, and could be expanded to include whiting processors and receiving stations authorized through paragraph (i). This proposal was not limited to AFA processors and would have precluded participation by non-AFA processors that did not have a history. Consequently, this part of the WCSPA proposal is deleted, and is replaced with the following alternative 3 that is intended to address protection from AFA processors.

**Suboption 3.B**. Restrict processors that benefitted under AFA from entering the Pacific coast groundfish fishery. This means that AFA-benefitted processors with history in the Pacific groundfish fishery would be allowed to remain. Criteria to define "history in the Pacific groundfish fishery" have not been established, but the same years applied to the whiting fishery in Suboption 3A could be a starting point. The original WCSPA proposal stated "No attempt is being made to exclude legitimate participants who are already involved in the processing sector of these fisheries," therefore, staff will not evaluate the impacts of preventing AFA processors from operating in the Pacific coast groundfish fishery, regardless of history in the Pacific groundfish fishery.

**Suboption 3.C**. Status quo. No AFA restriction on processors operating in the Pacific coast groundfish fishery. Although some processors would benefit from less competition, it might be detrimental to remove the option for other processors who might want to be bought-out or otherwise acquired by AFA-benefitted processors.

[2]"Receiving station," in reference to the whiting fishery, is defined as "a facility receiving unprocessed whiting from a vessel where the whiting will be transported to another location for processing."

Additional issues pertaining to Alternative 3:

- The proposals for processor restrictions appear to limit future entry of processing companies (including companies that benefitted from the AFA), however, NMFS has not published advance notice of a proposed rulemaking relative to a control date for processors.

- Should consider that restrictions on AFA-benefitting processors could harm current West Coast processors who may choose to sell their operations in the future. That is, under the proposed restrictions West Coast processors would be unable to sell their operations to processors that benefitted from the AFA.

- Need to clarify what benefit is gained by restricting participation of AFA-eligible processors or processing companies and what harm do these measures protected against.

- Identify the AFA-eligible processors or processing companies and specify what they can and cannot do in terms of participation in West Coast groundfish fisheries.

## 4.0 Discussion

As noted above, the purpose of these proposed management measures is to protect West Coast groundfish fisheries from potential harm that might result from the AFA or by any fishery cooperatives in the directed pollock fishery. At issue is the potential displacement of traditional West Coast groundfish participants by AFA-qualified vessels/processors, who may time their participation in the BSAI pollock fishery to maximize participation in West Coast groundfish fisheries where they had marginally (if at all) participated in the past. Thus, an important consideration in developing the Council's recommendations is the need to demonstrate a direct relationship between the proposed restrictions and the AFA.

Proposed Alternative 2 and Alternative 3-sub-option3.A.i.a appear to relate to protecting against impacts caused by the AFA or by any fishery cooperatives in the directed pollock fishery, as they relate directly to limiting the participation of AFA qualified vessels and protecting the participation of traditional West Coast groundfish harvesters and processors. As noted previously, it is not apparent from Alternative 3-sub-option3.B how creating a groundfish processor permit system relates to protecting against harm caused by the AFA.

In the North Pacific, the NPFMC has requested NMFS establish a series of new permit requirements to fulfill the statutory requirements of the AFA:

> "... this action would establish new permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives. Any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI, and any processor that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI would be required to maintain a valid AFA permit onboard the vessel or at the plant location at all times that non-CDQ pollock is harvested or processed."

Unless otherwise advised, staff currently is assuming that a vessel or processor that is AFA-qualified is assumed to ultimately become AFA-permitted, which is assumed to be equivalent to benefitting under the AFA. The lists of AFA-qualified or permitted vessels or processors are prepared by the Alaska Region NMFS or the NPFMC. For purposes of analyzing this rule, we will use the best available information: AFA-permitted entities, if available, and otherwise AFA-qualified entities.

However, not all AFA-permitted vessels or processors may chose to join cooperatives.[3] Thus, depending on how "benefitting from the AFA" is defined, the Council might need to specify whether management

[3]The NPFMC defines participation in a cooperative as "any use of a vessel's catch history by a cooperative, whether by direct harvest, lease, sale, or stacking of quota."

restrictions apply to all AFA-permitted catcher vessels and processors or only those that join cooperatives. If restrictions only apply to AFA-permit holders that join cooperatives, the permit system being developed for NPFMC managed fisheries may provide the necessary information for analyzing who would be qualified to participate in West Coast groundfish fisheries. It may be necessary for the Council to specify vessels and/or processing companies that are ineligible to participate in West Coast groundfish fisheries.

In its recommendations to the Secretary, the Council will need to explain the rationale underlying the various qualifying criteria. For example, for catcher vessels – why is 50 tons of previous landings the appropriate threshold?; is there a significant reason for specifying 1994 through September 16, 1999 as the qualifying time period? Similarly, for processors – why receipt of 1,000 tons in the specific years 1998 **and** 1999?

As management measures are implemented it will be necessary to quantify the harvesting and processing history required for future participation in West Coast groundfish fisheries. NMFS may need to establish procedures to determine past participation and a process for participants to appeal the determinations.

In sum, as the Council proceeds with developing these management measures, it will be important to note that the Council's recommendations will need to specify the vessels and/or processors that would be excluded, and include justification for the management measures. That is, restrictions on participation in the whiting or other groundfish fisheries would have to be directly related to entities benefitting from the AFA. Moreover, it may be necessary to (1) establish that the management measures comply with National Standard 4 (i.e., are fair and equitable) and (2) perform Regulatory Impact Review and Regulatory Flexibility Act analyses to assess whether economic impacts that may result from the management measures are justified.

At this time, to facilitate analysis, it would be helpful if the Council would (1) review the suite of alternatives to ensure they reflect the Council's intent; (2) specify whether restrictions apply to all AFA-qualified vessels or only those AFA-qualified vessels that join cooperatives; (3) specify how processors or processing companies that benefitted from the AFA are to be identified; (4) explain the rationale for the participation requirements (e.g., 50 tons of whiting rather than some other quantity; 1994 through 1999 rather than other years); and (5) define "benefitting form the AFA."

Analysis could include:

1. list the anticipated harmful effects that recommended measures aim to prevent;

2. quantify how the management measures will protect the non-AFA harvester and/or processor from harm;

3. determine whether anticipated harmful effects have a high probability of occurrence versus perception of problem, before protective measures are implemented;

4. explain the significance of the qualifications necessary for participation (e.g., 50 tons landed); and

5. specify how the recommended management measures target vessels or processors that "benefitted" from the AFA (i.e., define linkages between restrictions and protection of existing participants).

As stated in Alternative 1 (status quo), if the Council does not recommend conservation or management measures to the Secretary of Commerce, the AFA authorizes the Secretary of Commerce to "implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish."

5.0 Timeline for Council action

Progress report to the Council in March 2000; preliminary action in April 2000; final action in June 2000; Council recommendations forwarded to NMFS July 1, 2000.

Attachment 1

Attachment 2

Alternative 3: Adopt for recommendation to the Secretary of Commerce the following management measures for processors (the Council amended this proposal such that *restrictions apply only to those processors that benefitted from the AFA*):

Pacific whiting fishery

i) As part of the of the annual groundfish specification/regulations for 2000, NMFS will publish a list of processors and receiving stations that: a) received at least 1000 tons of whiting during the regular whiting season in 1998 and 1999; or b) held state or federal authorization to receive or process unsorted whiting in 1998 and 1999.

ii) Beginning with the shore-based whiting season in 2000, vessels may land unsorted whiting during the shore-based whiting season only at processors or receiving stations included in the list under (1).

iii) During the course of any shore-based whiting season, NMFS will allow a company that owns or controls a processor or receiving station listed under paragraph (1) one opportunity to substitute a listed facility with another owned or controlled by the same company.

iv) No restrictions will be placed on landing whiting outside of the regular whiting season.

v) "Processor" is defined under Pacific groundfish FMP to include motherships; "receiving station" will be defined as "a facility receiving unprocessed whiting from a vessel where the whiting will be transported to another location for processing."

West Coast groundfish fishery

The Council will commit to initiating a process in 2000 to establish a groundfish processor permit system, to go into effect in 2001. The system will include limiting issuance of permits to those groundfish processors with a history of participation in the processing sector though 1999. Issues such as enforcement, need for data collection, protection of public health and safety, transferability, and identification of appropriate permit holders (individuals/companies/facilities) will be considered as part of the Council process. The permit system may incorporate whiting processors and receiving stations included in the Pacific whiting fishery provisions above.

# STATUS OF FEDERAL SETNET REGULATIONS

Situation: The Pacific Coast Groundfish Fishery Management Plan (FMP) prohibits the use of setnets in the exclusive economic zone (EEZ) north of 38° N latitude (Point Reyes, California) and allows California's state setnet laws involving the take of groundfish to apply in the EEZ south of 38° N latitude, as long as state provisions remain consistent with the FMP and the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act. However, the implementing regulations for the FMP do not specifically authorize California to regulate setnets in the EEZ south of 38° N latitude.

In 1990, California voters approved the Marine Resources Protection Act (MRPA), which prohibits the use of setnets to take rockfish in the EEZ. It also prohibits the use of setnets to take all species of fish in state waters along the mainland shore, within one mile of the offshore Channel Islands south of Point Arguello and in an area of the EEZ less than 35 fathoms deep at the Huntington Flats between the ports of San Pedro, Los Angeles County and Newport Beach, Orange County.

The absence of federal groundfish regulations that specifically address California laws resulted in a federal district court challenge on the legality of California's enforcement of setnet prohibitions on the take of groundfish in the EEZ in the Huntington Flats area. On November 22, 1996, a court order prohibited the California Department of Fish and Game from enforcing the MRPA prohibition on the use of setnets at Huntington Flats, and authorized setnet permittees to fish for **all** commercial species of fish (not just groundfish) with setnets in the EEZ at Huntington Flats in waters less than 70 fathoms deep. This temporary restraining order was extended by a preliminary injunction issued March 20, 1997.

In April 1997, to resolve the unintended conflict between federal and California law, the Council adopted a management option to "implement federal regulations that are the same as California state laws prohibiting the use of set nets to take groundfish species in four areas of federal waters (the most controversial of which is inside 35 fathoms in the Huntington Flats area between Point Fermin and the Newport jetty)." The Council proposed the National Marine Fisheries Service (NMFS) implement federal regulations consistent with California state regulations; the reasons for this were to decrease the potential for unenforceable regulations, reduce the possible catch and discard mortality of state-managed species, and reduce the potential for interactions with protected species.

At this meeting, NMFS will provide a progress report on development of federal regulations for the Huntington Flats setnet closure.

**Council Action**: **None.**

Reference Materials: None.

PFMC
02/22/00

# GROUNDFISH MANAGEMENT TEAM STATEMENT ON BYCATCH AND INCIDENTAL CATCH OF ROCKFISH

During the Council's discussion of management measures for the year 2000 fisheries, the Groundfish Management Team (GMT) pointed out it had not adjusted some of the rockfish optimum yields to account for discard. The Council directed the GMT to provide an evaluation or estimation of discard rates that might be applied during 2000 in order to account for total fishing mortality of some rockfish categories. The GMT would like to provide such an analysis, but must again point out we lack the tools to estimate bycatch/discard. Therefore, the GMT cannot advise the Council whether the management measures implemented for 2000 will achieve the desired reduction in total mortality. This is especially true with respect to catches of rockfish, since harvest opportunities are now constrained by both new rockfish assemblages and by additional trawl gear restrictions. The rockfish discard information we are using today applies only to trawl gear and is based on information collected in the 1980s. Fishermen and others have already questioned the applicability of this information to current fisheries, and the substantial management changes for 2000 make its continued use even more suspect. For some of the new minor rockfish limits implemented this year, we have no discard estimate at all. The continued absence of a comprehensive, total catch monitoring program is a serious defect in the current management program.

The GMT believes even a qualitative estimate of current incidental catch and discard rates might be an improvement and discussed possible approaches to develop some insight into potential rockfish bycatch. The Washington Department of Fish and Wildlife (WDFW) is currently doing a tow-by-tow logbook analysis to see if any species associations are apparent. If so, it may provide insight about incidental rockfish catch rates by vessels targeting other species. At best, this analysis may be useful for slope fisheries, where fewer changes were made for 2000. (Due to the new gear and species restrictions for year 2000 shelf fishing, comparison of historical logbook information to 2000 fisheries is questionable.) The new differential trip limits for slope and shelf rockfish may cause fishers to change from their previous rockfish fishing strategies that harvested fish from both subgroups. This would compromise our ability to compare historical and new information even on the slope where new gear requirements were not imposed. The WDFW analysis will be presented to the Groundfish Advisory Subpanel and the Council at the April Council meeting.

Since the hard data being collected in 2000 is for landed catch only, the GMT also discussed a means to capture qualitative data on discard currently available only from the at-sea operation of the fishing fleet. A serendipitous event occurred earlier this year, the result of confusion about the "all other flatfish" trip limit (i.e., all other than Dover, arrowtooth, petrale and rex sole). Some fishers interpreted the trawl trip limit table in the November 1999 newsletter to allow "other flatfish" to be harvested with large roller gear and delivered their incidental catch of English sole taken while fishing on the slope during the first part of the year. This provided an unexpected look at the incidence of English sole in slope fisheries. Had it not been for the confusion with the regulation, the English sole would have been discarded with no record of the mortality. The GMT plans to use this information to tailor regulations which more closely reflect reality. However, the point remains it is unlikely English sole is the only species for which the current landed catch opportunity doesn't match the actual catch occurring, or at least for landed catch where no discard is assumed. In fact, the GMT has also received "anecdotal" information from the fleet that redbanded rockfish, currently included in the minor shelf rockfish group, are regularly occurring in the slope trawl fishery. Since no allowance for shelf rockfish is provided for roller-gear fisheries on the slope, all redbanded rockfish caught in that fishery must be discarded, again without being accounted for.

The Council may wish to consider a selected group of industry and managers to provide further perspective on situations where regulations may not be consistent with the way catch is actually occurring. While the GMT believes this approach may be a poor substitute at best for empirical measurement of total mortality, it may be worth considering when weighed against having no information at all. In such a situation, the utility of anecdotal data may increase if fishers have complementary perceptions.

Lacking a comprehensive observer program, the team discussed other possible approaches to quantify total catch mortality. Such approaches could include:

1. Recording of discard in mandatory trawl logbooks (and implementation of logbooks in other fisheries).

2. Chartering vessels to conduct discard work similar to that done by Pikitch, et al. or the Oregon Enhanced Data Collection Program.

3. Collect information via “ride-alongs” by state sampling personnel.

4. Provide for full retention substantiated by observer or video camera validation.

5. Some combination of the above.

None of the above approaches would provide the statistically representative information that would result from a comprehensive observer program. However, they perhaps should not be contrasted with an observer program, but rather with no information at all. The GMT discussed the potential implementation of one or more of the above options under the authority of an exempted fishing permit (EFP), but did not fully explore the permit mechanism or what the EFP would specifically allow.

The GMT will also be monitoring the fishery inseason. The frequency with which fishers routinely achieve trip limits may also provide some insight into potential discard.

# BYCATCH MORTALITY FOR ROCKFISH

Situation: For the year 2000, optimum yields (OYs) were established for the new minor rockfish categories in the Monterey/Conception area and the Eureka/Columbia/Vancouver area. These were specified as total catch OYs, with no adjustment to account for anticipated discard (see Attachment G.5.a.). The Council directed the Groundfish Management Team (GMT) to determine whether to assign a bycatch mortality rate, recognizing there will be mortality for minor shelf, nearshore, and slope rockfish. Likewise, no discard was assigned for bocaccio. In addition, the Council asked the GMT to analyze the setnet rockfish species composition data to determine if additional rockfish management measures would be appropriate.

**Council Action:**

**1. Preliminary recommendations for bycatch mortality adjustments.**

Reference Materials:

1. GMT Report G.5.(1).
2. Minor rockfish and bocaccio acceptable biological catches and OYs for 2000 (Attachment G.5.a.).

PFMC
02/23/00

# SCIENTIFIC AND STATISTICAL COMMITTEE COMMENTS ON BYCATCH MORTALITY FOR ROCKFISH

The Scientific and Statistical Committee (SSC) reviewed Groundfish Management Team (GMT) Report G.5.(1). on bycatch and incidental catch of rockfish. SSC discussion focused, in particular, on the GMT's difficulty in estimating rockfish discards for the year 2000. The SSC recognizes the difficulties in estimating discards generally and the additional complications arising from creation of the new minor rockfish management categories prior to the 2000 fishery.

The GMT Report G.5. suggests a number of ad-hoc approaches designed to provide rough estimates of discards for the 2000 fishery. The SSC encourages the GMT to further explore these approaches. Although all such approaches are less than ideal, they may result in discard estimates preferable to the default assumption that no discarding occurred. The SSC is willing to review these estimates if adequate documentation of the methods can be provided. The GMT's opinion of the strengths and weaknesses of the various approaches would also be helpful. However, the Council should recognize that such ad-hoc estimates cannot be supported over the long term. The SSC endorses the GMT statement that "... continued absence of a comprehensive, total catch monitoring program is a serious defect in the current management program."

PFMC
03/08/00

**Acceptable biological catches, optimum yields, and allocations for several rockfish categories in 2000 (all amounts in metric tons).**

| | 2000 Total ABC | Optimum Yield | | | | | | Open Access | | | Limited Entry | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | | | | | Non-Trib. | | Landed | Total | At-Sea | |
| | | Catch | Landed | Tribal | Rec. | Comp | Comm. | % | Catch | Catch | Bycatch | Landed |
| Bocaccio | 164 | 100 | 100 | | 45 | | 55 | 44.3% | 24 | 31 | | 31 |
| **Minor Rockfish** | | | | | | | | | | | | |
| Low Recreational Catch | | | | | | | | | | | | |
| North | 5,693 | 3,814 | | | 766 | | 3,048 | 8.3% | 253 | 2,795 | | |
| Near-Shore | | 1,072 | | | 707 | | 365 | | 193 | 172 | | |
| Shelf | | 1,242 | | | 59 | | 1,183 | | 50 | 1,133 | | |
| Slope | | 1,500 | | | | | 1,500 | | 10 | 1,490 | | |
| High Recreational Catch | | | | | | | | | | | | |
| South | 3,814 | 1,899 | | | 571 | | 1,328 | | 588 | 740 | | |
| Near-Shore | | 680 | | | 379 | | 301 | | 233 | 68 | | |
| Shelf | | 787 | | | 192 | | 595 | | 258 | 337 | | |
| Slope | | 432 | | | | | 432 | | 97 | 335 | | |

EXHIBIT G.6.
March 2000

GROUNDFISH TRIP LIMIT FOR PINK SHRIMP FISHERY

Situation: At the November 1999 meeting, the Council wished to delay decision on the groundfish trip limit for vessels operating in the 2000 pink shrimp fishery, but needed to establish a "placeholder" regulation to be included in the *Federal Register* notice. There was an announced intent that this placeholder be reviewed at the March 2000 meeting. This interim measure is similar to the measure that was in effect during the 1999 shrimp season. The 1999 regulation stated that, beginning April 1, 1999, vessels participating in the pink shrimp fishery were restricted to 500 pounds of groundfish per day, not to exceed 2,000 pounds per trip, and most open access trip limits applied toward the groundfish "per trip" limit. Exceptions were made for Dover sole and whiting, which were constrained only by the overall groundfish limit. The *Federal Register* notice for 2000 specifies a trip limit is 500 lb per day, not to exceed 2,000 lb per trip, and states that for open access vessels participating in the shrimp fishery, no other open access limits apply. However, regulations in other sections of the *Federal Register* notice appear to restrict limited entry vessels to not more than any limited entry trip limit, creating a situation where limited entry vessels operating in the shrimp fishery would be constrained to tighter incidental catch controls than open access vessels operating in the shrimp fishery.

The Groundfish Management Team (GMT) discussed trip limit amounts and this issue of two different classes of shrimp fishing vessels at its February meeting. GMT members expressed their belief that 500 pounds of groundfish per day would not be constraining on most shrimp fishing activities, given the trip frequency information from 1999. They also noted that in previous years, most open access limits also applied, but limits are so reduced in 2000 they may result in discard of some groundfish species taken in the shrimp fishery. The GMT also noted that the placeholder language may not sufficiently share the conservation burden for such stocks as canary rockfish, which is currently in a rebuilding phase and limited elsewhere to 50 pounds per month.

As anticipated in November, the Council should now confirm or revise the placeholder limits. Staff recommends that final action consider the following questions that have been posed since November:

1. Is 500 pounds of all groundfish per day, not to exceed 2,000 pounds per trip, an appropriate limit for both open access and limited entry vessels?
2. Should other open access or limited entry poundage limits also apply for such stocks as canary rockfish, and should they apply to both open and limited access vessels?
3. Should any minimum size limits apply (currently, there are minimum size limits for sablefish, lingcod, and various California rockfish)?

Finally, the GMT made a point of not endorsing different limits for vessels with and without groundfish limited entry permits.

Council Action:

**1. Consider revisions to shrimp trawl trip limit.**

PFMC
02/23/00

In November 1999, the Council clarified its intent about which limit applies if a vessel fishes in both the limited entry and open access fisheries in the same cumulative period: If the limited entry limit is larger, the open access limit may be taken with open access gear and is counted toward the limited entry limit. If the open access limit is larger, the limited entry limit applies, but may be taken entirely with open access gear. This clarification was included in the annual specifications for 2000. Also at the November 1999 meeting, the Council adopted a placeholder trip limit for groundfish taken in the pink shrimp fishery, stating the intention to review the placeholder prior to the opening of the shrimp season. The Groundfish Management Team (GMT) suggests the January limits not be used for reference; the measures are similar but not identical to the 1999 limits, which were constrained by the open access limits for individual groundfish species or groups. The issue of trip limits, and how to apply them when a vessel conducts both limited entry and open access fishing during a cumulative period, needs to be resolved at the March Council meeting.

GMT recommendations

1. Regarding operating in both limited entry and open access fisheries: The GMT wants the same trip limits to apply to all vessels participating in the pink shrimp fishery, regardless of whether a vessel has a limited entry permit or not. In addition, the GMT believes pink shrimp vessels should not be constrained by the open access individual species limits. However, this raises the issue of what to do if a vessel then fishes other species during the cumulative period (either in another open access fishery or the limited entry groundfish fishery). Vessels trip limits can' t be duplicate, since they are per vessel per cumulative period.

[reg changes: if we adopt #1 above, vessels in the pink shrimp fishery would be exempted from Paragraph IV.A.(11) that states limited entry vessels are constrained by the limited entry limit if it is smaller than the open access limit, and there was language in paragraph IV.C. that Dave Thomas didn't like...I think it was "Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery." but I cant remember what the issue was. Dave...help?]

2. Groundfish trip limits for pink shrimp vessels: The GMT supports the overall groundfish per trip limit of 500 pounds/day, not to exceed 2,000 pounds per trip. However, shrimp vessels must not be allowed to thwart the conservation efforts by other fishing sectors for overfished and depleted stocks. Therefore, the GMT recommends the following individual species limits.

a. Canary rockfish: the GMT believes a monthly limit of 300 pounds to 500 pounds should apply to pink shrimp vessels. Limited entry vessels are currently restricted to 300 lb/month May-Oct (the time period that covers the shrimp fishery).

b. Lingcod: the GMT recommends there should be no retention of lingcod in April, and 400 lb/mo beginning May 1. This is the same as for other open access gear from May-Oct. (Open access lingcod is closed in April coastwide so it would be closed for the shrimp fishery too)

With respect to the lingcod size limit, GMT forgot to discuss but should have. I'd say: n of 40°10'N, 24" for sure, but not sure if there is a pink shrimp fishery s of 40°10'N. If there is a pink shrimp fishery s of 40°10'N, the size limit could be increased to 26" (consistent with other open access gear) or could be kept at 24" (same as north and consistent with limited entry trawl size limit). Defer to CDFG as to which makes the most sense???

c. Sablefish: the GMT recommends pink shrimp vessels should not exceed 2,000 lb/month. no size limit? ( GMT didn't discuss) The limited entry trawl fishery can keep 500 lbs per trip smaller than 22 inches total length. The open access regulations (Table 5) say there is not size limit for sable taken with NONTRAWL gear in the open access fishery. There is no mention of a sable size limit in current regulations for other exempted open access trawl gear.

d. Thornyhead and lingcod are closed (may not be retained) in the pink shrimp fishery during the same months when these species are closed to the rest of the open access fishery. This means that

lingcod may not be retained in a pink shrimp fishery coastwide in April (lingcod is closed Jan-April, Nov.-Dec) and thornyheads may not be retained in all open access fisheries north of Pt. Conception all year.

note..revisiting the which trip limit applies issue: the limited entry trip limit is < or = to the GMT's recommended open access shrimp limits for sable, lingcod, and canary except for April in which the canary limited entry trip limit is 100 lb/mo...so what do we do for a vessel with a limited entry permit who fishes both groundfish and shrimp in April? Is his new limit now 100 lb canary in both the groundfish and shrimp fisheries? remember, these are not additive--they are per vessel per month. he does not get 100 lb while limited entry plus 300 lb while shrimping. or does he get 300 lb, of which no more than 100 lb may be taken with limited entry gear? (I guess I would vote for that right now) or does he get just 300 lb no matter which fishery he participates in? (nah, then you'd get boats landing shrimp so they could get the higher canary limit, no?) This is FAR too complicated!!! How do we keep it simple?????

# STATUS OF BYCATCH AND MANAGEMENT MEASURES AMENDMENT

Situation: In September 1998, the Council amended its Pacific Coast Groundfish Fishery Management Plan (FMP) with Amendment 11 to bring the FMP into compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). National Marine Fisheries Service (NMFS) approved all of the amendment except for those provisions addressing bycatch, which were sent back to the Council for new development and more thorough analysis. The Council now must reconsider how to amend the FMP to meet the bycatch-related requirements of the Magnuson-Stevens Act. A discussion paper has been drafted (Attachment G.7.a.) for initial Council consideration and comment. Preliminary Council action on the FMP amendment is scheduled for April 2000.

In addition to the bycatch provisions, we are using this amendment to address the provisions of the emergency rule the Council recommended at its November 1999 meeting. In order to immediately implement rebuilding measures for the five overfished species, the Council had to develop management measures that were consistent with the FMP but outside the scope of the current regulatory authority. In order to make the necessary changes, NMFS used its emergency authority and incorporated the emergency regulatory changes into the 2000 annual specifications and management measures; however, those emergency regulations are only effective for six months. Emergency regulations may be renewed for a second six-month period, but only if the Council begins the necessary FMP and/or regulatory amendment to resolve the issues for the long term. We need to build flexibility into the FMP and regulations to manage both overfished and healthy groundfish stocks in 2001 and beyond. Part of this is revising the FMP language concerning routine management measures, so the Council may meet some of the overfishing and bycatch requirements of its FMP during the annual specifications and management measures process.

Council and NMFS staff also suggest using this FMP amendment as an opportunity to remove unused and unnecessary portions of the FMP. This amendment could update the FMP to remove provisions for limited entry permits with provisional "A" endorsements, "B" endorsements, and designated species "B" endorsements. These gear endorsements were used to smooth the transition from an open access system to the limited entry program, but all current limited entry permit holders now have "A" endorsements and the three lesser endorsements have either expired or are no longer useful. Removing these gear endorsements from the FMP's limited entry provisions would be a "housekeeping" measure.

According to the Council's current work schedule, the draft bycatch and management measures amendment would be reviewed by the Council at its April 2000 meeting and adopted for public comment. Final action is scheduled for the June 2000 meeting. At this time, the drafters are seeking any initial guidance the Council may want to offer.

**Council Action: Provide guidance on plan amendment as needed.**

Reference Materials:

1. Draft discussion paper for Groundfish FMP amendment issues (Attachment G.7.a.).
2. Letter to Mr. Will Stelle and Dr. Don McIsaac regarding Magnuson-Stevens Act bycatch requirements and response (Public Comment G.7.).

PFMC
02/23/00

CENTER FOR MARINE CONSERVATION

ENVIRONMENTAL DEFENSE FUND

NATURAL RESOURCES DEFENSE COUNCIL

Pacific Marine Conservation Council

February 16, 2000

William Stelle, Jr.
Regional Administrator
National Marine Fisheries Service
7800 Sand Point Way N.E., Bldg. #1
Seattle, WA 98115-0070

Donald O. McIsaac
Executive Director
Pacific Fishery Management Council
2130 SW Fifth Avenue, Suite 224
Portland, OR 97201

Dear Mr. Stelle and Dr. McIsaac:

Last March, the National Marine Fisheries Service (NMFS) properly rejected the bycatch provisions of Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (FMP). As NMFS pointed out in its decision letter to the Pacific Fishery Management Council (PFMC or the Council), the Magnuson-Stevens Fishery and Conservation Management Act (FCMA) specifically mandates that all FMPs (a) establish a standardized reporting methodology to assess bycatch and (b) include specific measures in the FMP to minimize bycatch and bycatch mortality. 16 U.S.C. § 1853(a)(11). As NMFS correctly pointed out in its rejection letter, Amendment 11 failed to meet this statutory standard. Letter from William Stelle, NMFS, to Jerry Mallet, PFMC, March 3, 1999, at 2.

We are aware that NMFS and the Council have been occupied with a variety of important activities over the past year, a substantial portion of which have been aimed at addressing the current troubling trends in the groundfish fishery. Without taking anything away from these efforts by your two organizations, we are writing to express our concern that nearly a full year has passed since the disapproval of Amendment 11's bycatch provisions without the emergence of any proposed new revisions to the FMP to address bycatch issues. We ask you to place the highest priority on expeditiously preparing a bycatch amendment to the groundfish FMP that mandates an aggressive bycatch data-gathering and evaluation program and a fully protective set of measures (for immediate implementation) designed to minimize bycatch and bycatch mortality.

There is considerable evidence not only that bycatch is a substantial problem in the groundfish fishery but that fishery managers are not taking advantage of the best available data concerning bycatch to design and implement adequate measures that will prevent and minimize bycatch. For example, in the groundfish fishery specifications and management measures that were published last month, NMFS admitted that "[b]ycatch ... information in the groundfish fishery is scarce" and that "there is no exact measure of bycatch amounts in most fisheries ..." 65 Fed. Reg. 221, 236 (Jan. 4, 2000). NMFS also acknowledged that the assumed discard rates it used for many species in calculating allowable harvests were based on "limited studies" conducted roughly fifteen years ago, id., facts that raise the clear risk that these data are inadequate for purposes of preparing adequately protective measures to minimize bycatch as required by FCMA. See also 65 Fed. Reg. at 233 ("The lack of current discard information ... makes it difficult to assess the success or failure of the proposed management measures.").

As things stand right now, bycatch results in undocumented mortality and probable adverse impacts on marine populations and marine ecosystems. To allow bycatch to continue with so little understanding of its impacts on total mortality of target and bycatch species and on marine ecosystems risks undermining FMCA mandates to avoid overfishing and rebuild overfished species. Moreover, bycatch constrains the productivity of some fisheries that could otherwise generate higher yields and more stable economic opportunity. This is a violation of FMCA mandates to optimize yield and sustain participation of fishing communities.

At the same time, managers have access to information sources such as triennial trawl survey data and recent trawl logbook data that provide some indication of the co-occurance rates of various species, and may reveal places where bycatch rates are highest for certain species. Yet these sources have not so far been tapped to improve the outdated assumptions used in developing optimum yields, or to develop strategies to minimize bycatch and discards.

FCMA's explicit requirements for bycatch data-gathering plainly were enacted to address the precise situation currently faced in the groundfish fishery, where it is clear that bycatch is a problem but managers lack the specific data necessary to fully account for total fish mortality, set sustainable catch levels, and avoid overfishing. The lack of bycatch information also severely limits the ability to design fully effective approaches to minimizing bycatch. Thus, given the current state of bycatch information concerning the groundfish fishery, it is especially important that the Council and NMFS act expeditiously to establish the bycatch monitoring and analysis requirements mandated by the law.

NMFS' regulations make clear the mandatory nature of the Council's duty to collect detailed data on bycatch and bycatch mortality. Those regulations provide:

> A review and, where necessary, improvement of data collection methods, data sources, and applications of data must be initiated for each fishery to determine the amount, type,

# PACIFIC FISHERY MANAGEMENT COUNCIL

**2130 SW Fifth Avenue, Suite 224**
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February 23, 2000

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Dear Environmental and Conservation Group Representatives:

Thank you for your letter of February 16, 2000 regarding the bycatch provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). I appreciate your continued attention, your patience, and your positive suggestions regarding this important issue. As you have pointed out, reduction in bycatch waste entails significant benefits to the resource, the industry, and fishing communities.

The Pacific Fishery Management Council (Council) is making progress towards development of an amendment to the Groundfish Fishery Management Plan (FMP) that can meet the requirements of law. The amendment drafters will present a status report on the bycatch amendment at the Council's upcoming March 7-10 meeting. At the April 3-6 meeting, the Council will review the draft amendment package and, if it is ready, will release it for public review and comment. The Council is scheduled to take final action on the amendment at its June meeting. By this scheduling, the Council has placed a high priority on bringing this FMP into conformance with the bycatch mandate of the Magnuson-Stevens Act.

I am including copies of your letter in the March briefing books for each of the Council members, and I will also provide a copy to the staff members who are drafting the amendment package. I encourage you to attend the upcoming Council meetings and express your concerns and suggestions directly to the Council. Copies of the draft amendment documents will be available at the meetings. If you are unable to attend and would like copies of the documents, please contact this office and we will mail copies to you.

Sincerely,

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

cc: Mr. Jim Lone
Mr. Jim Glock

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> disposition, and other characteristics of bycatch and bycatch mortality in each fishery for purposes of [National Standard 9] and of section 303(a)(11) and (12) of the Magnuson-Stevens Act.

50 C.F.R. § 600.350(d)(1) (emphasis added). In promulgating these regulations, NMFS further specified the mandatory nature and the importance of improved bycatch monitoring programs: "It is clear that, in order to be able to assess the amount and type of bycatch occurring in various fisheries, monitoring programs must be established." 63 Fed. Reg. at 24,227 (May 1, 1998) (emphasis added).

We are aware of the resource limitations under which NMFS and the Council operate. FCMA, however, does not recognize resource limitations as an excuse for failing to implement its mandate. As NMFS has specifically said in connection with FCMA's bycatch monitoring requirements, in response to a comment that such monitoring requirements might be costly and burdensome to implement: "The FCMA makes no allowance for the financial or administrative burden of establishing such [bycatch] reporting programs. ... [M]onitoring programs must be established." Id.

Furthermore, cost-effective studies may be possible through cooperate research with academic institutions and fishermen; such studies should be planned and implemented if they are determined to be the best way to reduce uncertainty about bycatch and discard mortality. In any case, the need for more studies or for an observer program should not be used as an excuse for inaction.

In the meantime, the requirement to review *existing* data sources to determine bycatch mortality in each fishery has not, to our knowledge, been met. The Council and NMFS must use the available data to establish bycatch minimization measures, taking a more precautionary approach than might otherwise be needed to account for the uncertainty inherent in these less-than-complete sources. Until the Council implements measures to minimize bycatch and concomitant mechanisms to account for uncertainty, we believe it will fall short of the requirements of FCMA. And until such action is taken, NMFS' efforts to secure funding for bycatch assessment programs will continue to be undermined by those who benefit in the short term from inadequate bycatch reduction measures.

In light of the mandatory nature of FCMA's requirements to establish bycatch monitoring programs and adequate measures designed to minimize bycatch and bycatch mortality, we urge NMFS and the Council to take expeditious action on a bycatch amendment to the groundfish FMP that complies with all requirements of the law. We also urge that you take steps immediately to incorporate the best available information on bycatch and species co-occurance into the determination of optimum yields, and to consider in-season adjustments for specific species based on that determination.

Other immediate measures could include action to: (1) close areas where co-occurance of depleted species with productive stocks is high; (2) allocate larger shares of the resource to fishing sectors with demonstrably lower bycatch rates, either through a harvest priority policy (explicitly allowed in FMCA) or other means; (3) set a bycatch performance standard based on the most selective gear types and mandate that all fishing sectors meet it; and (4) implement monitoring of the bycatch of overfished species through an appropriately validated full-retention program or its functional equivalent.

We recognize that the Council recently took several steps that may reduce bycatch relative to recent years. Examples include the prohibition on landings of shelf groundfish species by trawl vessels using rollers larger than 8 inches in diameter, and a reduction in the optimum yield of chilipepper to reduce bocaccio bycatch. We view these actions as steps in the right direction, but cannot consider them sufficient to meet the bycatch minimization mandates of FMCA because they lack monitoring programs that could validate their results, and are not based on the required review of data for each fishery to determine bycatch mortality, or on a comprehensive evaluation of bycatch minimization options.

We would be pleased to discuss the issues raised in this letter at any time. Please contact Drew Caputo or Karen Garrison at (415 777-0220) if you have questions or to begin that discussion.

Sincerely,

Drew Caputo /KK

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Senior Attorney, NRDC

Karen Garrison

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Senior Policy Analyst, NRDC

Mark Powell /KK

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# DRAFT DISCUSSION FOR BYCATCH AND MANAGEMENT MEASURES AMENDMENT TO THE GROUNDFISH FISHERY MANAGEMENT PLAN

## ISSUE 1. DEFINITION OF BYCATCH

Alternative 1 (status quo - no action). The FMP defines "bycatch" as follows: "Bycatch means fish which are harvested in a fishery, but which are not sold or kept for personal use and includes economic discards and regulatory discards."

Alternative 2 (Magnuson-Stevens Act definition). The Magnuson-Stevens Act defines "bycatch" as follows: "The term 'bycatch' means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program."

DISCUSSION. When the Council first addressed the 1996 Sustainable Fisheries Act requirements, the Council recommended amending the FMP's definition of bycatch to read as follows: "Bycatch means fish which are harvested in a fishery, but which are not sold or kept for personal use *or donated to a charitable organization* and includes economic discards and regulatory discards." NMFS rejected this definition because it went beyond the scope of the Magnuson-Stevens definition of "bycatch" to include fish donated to a charitable organization.

The status quo FMP definition conforms with but does not exactly match the definition of "bycatch" in the Magnuson-Stevens Act, as it does not include the reference to a recreational catch and release fishery management program. The Council may not wish to include such reference in its FMP definition of "bycatch," as the Pacific coast groundfish FMP does not include a recreational catch and release fishery management program. Maintaining the status quo definition would keep the FMP in compliance with the Magnuson-Stevens Act without adding text that would be confusing in its reference to a program not used by the FMP.

## ISSUE 2. BYCATCH PROVISIONS

DISCUSSION. In September 1996, Congress adopted the Sustainable Fisheries Act to significantly amend the then-named Magnuson Fishery Conservation and Management Act. Changes to the Magnuson-Stevens Act included the addition of three new national standards for fishery conservation and management. National standard (9) now reads,

> "Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."

Bycatch is additionally addressed under Section 303 of the Magnuson-Stevens Act, "Contents of Fishery Management Plans," at "Required Provisions," paragraph (11), such that any fishery management plan that is prepared by any council, or by the Secretary, shall --

> "(11) 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."

At "Discretionary Provisions" in that same section, paragraph (10) allows that FMPs may --

> "(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch."

The Council adopted Amendment 11 to bring the FMP into compliance with the revised Magnuson-Stevens Act. Among other things, Amendment 11 included a bycatch management objective

and a framework for bycatch reduction measures. The bycatch management objective was essentially a revision of one of the FMP's management objectives, listed under "Utilization," at Objective 11. Prior to Amendment 11, this objective read, "Strive to reduce the economic incentives and regulatory measures that lead to wastage of fish." Amendment 11 proposed revising this objective to read as follows:

> "Strive to reduce the economic incentives and regulatory measures that lead to wastage of fish. Also, develop management measures that minimize bycatch to the extent practicable and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. In addition, promote and support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those to improve other information necessary to determine the extent to which it is practicable to reduce bycatch and bycatch mortality."

The framework for bycatch reduction measures stated that the Council would,

> "identify and prioritize the bycatch problems in the fishery, based on the benefits to the U.S. expected to accrue from addressing these problems and the practicality of these problems. The Council will develop measures to reduce bycatch and bycatch mortality in accordance with the points of concern or socioeconomic framework provisions of the FMP."

Once the Council had adopted Amendment 11, NMFS made the amendment and its implementing regulations available for public review and comment. Following the public review period for Amendment 11, NMFS approved all of the FMP amendment except for those provisions addressing bycatch. NMFS rejected Amendment 11's bycatch provisions as failing to meaningfully respond to the bycatch requirements of the Magnuson-Stevens Act. NMFS further requested that developmental documents for the FMP's bycatch provisions fully analyze the bycatch implications of the FMP's management measures and describe the Council's past efforts and planned future efforts to reduce bycatch and to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the groundfish fishery. The agency requested that the analysis include: a discussion of how bycatch is reduced to the maximum extent practicable under current management measures, an evaluation of standardized reporting methodologies that might be used to assess bycatch rates in the groundfish fishery, and an analysis of all practicable alternatives to the current year-round landings limit management system that could be expected to result in a reduction of bycatch rates.

BACKGROUND -- MANAGING TO ACCOUNT FOR AND MINIMIZE BYCATCH.

When the FMP went into effect in 1982, winter weather was the only obstacle to a year-round groundfish fishery, and the FMP set the fishing year at January 1 through December 31. One of the original objectives of the FMP was to, "Provide a favorable climate for existing domestic commercial and recreational groundfish fisheries within the limitations of other objectives and guidelines. When change is necessary, institute the regulation which accomplishes the change while minimizing disruption of current domestic fishing practices, marketing procedures and environment." This objective of "minimizing disruption of current domestic fishing practices" has remained a management objective through various iterations of the FMP, and has been combined with current objectives to ". . . promote year round availability of quality seafood to the consumer," and ". . . promote year round marketing opportunities and establish management policies that extend those sectors (for which year round marketing is beneficial) fishing and marketing opportunities as long as practicable during the fishing year". Taken together, these objectives have resulted in the Council's enduring policy of year-round trip limit management for most groundfish fisheries.

Active groundfish management essentially began in 1983, when the Council introduced the first numerical OYs for several managed species, and trip limits for widow rockfish, the *Sebastes* complex, and sablefish. The first landings limits the Council used were "per trip" limits, which were intended to slow landings somewhat so that the fleet would not achieve species' annual harvest guidelines early in the year. Almost all domestic discards in the early years of groundfish management were market-induced discards, where fishers were throwing away unmarketable species or unmarketable sizes of targeted species. For the foreign and joint venture fisheries, the Council set incidental catch allowances for non-target species.

Incidental catch allowances for foreign and joint venture fisheries, as percentages of target species harvested, through 1993

| Sablefish | POP | rockfish excluding POP | flatfish | jack mackerel | other |
|---|---|---|---|---|---|
| 0.173% | 0.062% | 0.738% | 0.1% | 3.0% | 0.5% |

Over time, foreign and joint venture fisheries dwindled, and the Council introduced trip limits for a greater number of species taken in the domestic fisheries. Effort increased in the domestic fishery, and trip limits became more restrictive to control harvest rates. The Council realized that managing a variety of species under trip limits could lead to increased rates of discards for some species. Bycatch and discards can result from a regime of multiple trip limits because a fisher might target gear on a complex of species, and then find that in order to catch the full limit on one species, he has to exceed the limit on other species, and then discard that excess. To address this issue, the Council shifted away from per trip limits for most species and towards monthly cumulative limits. Cumulative limits were preferable to per trip limits because a fisher could accumulate species at different rates over different trips, without having to discard fish each trip because of exceeding per trip limits. Once the Council had seen that monthly landings limits would continue to allow a year-round fishery, it introduced two-month cumulative limits to again decrease the likelihood that fishermen would have to discard overages of particular species within a multi-species complex fishery.

In addition to these efforts to craft the cumulative landings limit regime to reduce discards, the Council used several regulatory measures to reduce bycatch of juvenile fish that would be discarded as unmarketable, and to reduce bycatch of protected salmon species. In the early 1990s, the Council experimented with different combinations of gear regulations, first requiring larger trawl mesh sizes in net codends, and then moving to requirements for larger mesh sizes throughout trawl nets. By 1995, bottom trawl nets were required to have a minimum of 4.5 inch mesh, double-walled (lined) codends were prohibited, and the use of chafing gear was restricted. All of these measures were intended to give smaller-size fish the opportunity to escape from the trawl net, reducing the likelihood that those fish would be caught and then discarded unused.

Beyond measures to protect small and juvenile groundfish, the Council brought salmon and whiting fishers together to address salmon bycatch in the whiting fishery. Reducing bycatch of threatened and endangered salmon species was particularly important to the Council as it looked for ways to reduce at sea catch and interception of protected salmon stocks that could soften management restrictions for the directed salmon fisheries. In 1993, the Council established Klamath River and Columbia River salmon conservation zones and Eureka area trip limit restrictions to prohibit or reduce whiting fishing in areas of high interception rates for protected salmon stocks. The whiting fleets work to keep their chinook salmon interception below a voluntary threshold of 0.05 chinook salmon per metric ton of whiting.

At the same time that the Council was experimenting with more flexible cumulative landings limit regimes, gear restrictions, and closed areas to reduce bycatch, domestic fishing capacity in the groundfish fleet was growing and outstripping resource productivity. We now also know that stock assessment information in the 1980s and early 1990s was not adequate to draw a clear picture of west coast rockfish productivity. Harvest rates that had seemed reasonable given then-current scientific information are now proving to have been too vigorous for sustainable harvest on the very low productivity west coast rockfish stocks. The combination of increasing fishing capacity and decreasing OYs led to ever more restrictive cumulative landings limits. The Council's Groundfish Management Team (GMT) became concerned about the effects of a restrictive cumulative landings limit regime on rates of bycatch and discard, and announced in April 1990 its plans to begin to factor discards into setting Acceptable Biological Catches (ABCs) for the 1991 fishing year.

In 1991 and 1992, the Council's bycatch policies took shape. For 1991, the Council recommended ABCs that accounted for discards for sablefish, Dover sole, and widow rockfish. The widow rockfish coastwide ABC of 7,000 mt was set equal to the landed catch OY, but in setting the ABC, 1,000-1,200 mt discard was assumed above the 7,000 mt landed catch. The sablefish coastwide ABC was reduced by 12.7% to account for discards, and the OY was set equal to landed catch. Although Dover sole was managed under a coastwide ABC in 1991, only the contributing ABCs for the Eureka and Columbia areas were reduced for discards, with Eureka's ABC reduced by 5.7% and Columbia's ABC reduced by 13%.

In 1992, the Council expanded its list of species with ABCs set to account for discard to include yellowtail rockfish. Widow rockfish again had a coastwide ABC/landed catch of 7,000 mt, with a 1,000-1,200 mt discard assumed above the ABC (14-17%). Similarly, the 1991 sablefish landed catch was the same amount that it had been in 1991 (8,900 mt), with no change to the 12.7% reduction for discards. Dover sole in the Eureka area was reassessed in 1991, resulting in a change in the Eureka area ABC, and a change in the discard reduction for Eureka area Dover sole from 5.7% in 1991 to 9.6% in 1992. Dover sole ABCs for other statistical areas were unchanged. Yellowtail rockfish discards were assumed to be 16% of the ABC, and were factored inseason, as the fisheries progressed. The assumption that yellowtail rockfish was discarded at a rate of 16% of the ABC was based on a 1988 study (Pikitch, et al, "An evaluation of the effectiveness of trip limits as a management tool,") which had estimated the widow rockfish discard rate at 16%.

Discard rates for the years 1993-2000 are described in a table, below. In addition to the discard reductions described in the table, discarded bycatch in the at-sea Pacific whiting fishery is measured by observers and is counted towards the harvest guidelines of the incidentally-caught species inseason. Inseason accounting for groundfish discards in the whiting fishery began in 1994.

| | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 | 1993 |
|---|---|---|---|---|---|---|---|---|
| Widow rockfish | 300 mt subtracted from LE allocation for bycatch in whiting fishery, then 16% subtracted from what remains | 16% of LE allocation | 16% of total catch HG | 16% of ABC | 16% of ABC | 16% of ABC | Discards factored into setting ABC, ABC=landed catch | Discards factored into setting ABC, ABC=landed catch |
| Yellowtail rockfish | 600 mt subtracted from LE allocation for bycatch in whiting fishery, then 16% subtracted from what remains | 600 mt subtracted from LE allocation for bycatch in whiting fishery, then 16% subtracted from what remains | 16% of total catch HG | 16% factored inseason | 16% of ABC from north of Cape Lookout | HG = TC, discards factored inseason, 16% assumed | HG = TC, discards factored inseason, 16% assumed | HG = TC, discards factored inseason, 16% assumed |
| Canary rockfish | **Entire ABC/ OY lowered to rebuild depleted stock.** | 16% of LE allocation | 16% of total catch HG | 220 mt subtracted from Van/Col ABC (~18%) | 150 mt subtracted from Van/Col ABC (~15%) | 150 mt subtracted from Van/Col ABC (~15%) | HG = TC, discards factored inseason, 16% assumed | N/A |
| Bocaccio rockfish | **Entire ABC/ OY lowered to rebuild overfished stock.** | N/A -- After 1994, the policy of assuming discards of bocaccio was discontinued. | | | | | Discards factored into setting ABC, ABC=landed catch, 16% assumed | Discards factored into setting ABC, ABC=landed catch, 16% assumed |
| Pacific ocean perch | 16% of total catch OY | 16% of total catch OY | ABC = 0, LC=TC-16% LC=650 mt | ABC = 0, LC=TC-16% LC=750 mt | ABC = 0, LC=TC-16% LC=750 mt | ABC = 0, LC=TC-16% LC=1300 mt | ABC = 0, LC=TC-16% LC=1300 mt | ABC = 0 LC = 1,550 mt, discards factored inseason |
| Splitnose rockfish | **Entire ABC/ OY lowered to account for less rigorous stock assessment.** | 16% of total catch OY | N/A -- Before 1999, the splitnose rockfish ABC and HG/OY were included in the overall *Sebastes* ABC and HG/OY | | | | | |

| | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 | 1993 |
|---|---|---|---|---|---|---|---|---|
| Longspine thorny-heads | 9% of OY | 9% of total catch HG | 9% of total catch HG | HG(LC) = ABC -1000 mt, to reduce SSTH bycatch | HG(LC) = ABC -1000 mt, to reduce SSTH bycatch | HG(LC) = ABC -1000 mt, to reduce SSTH bycatch | Both thornyhead spp. in one LC HG, 1994 HG derived by subtracting 8% from 1993 HG for discards | Both thornyhead spp. in one LC HG, expecting that SSTH landings will exceed ABC and that LSTH landings will fall short of ABC |
| Shortspine thorny-heads | 30% of LE allocation | 30% of LE allocation | 30% of total catch HG | 8% of total catch HG, but landed catch HG exceeded ABC by 38% | HG(LC) exceeds ABC by 50%, to allow greater harvest of LSTH | HG(LC) exceeds ABC by 50%, to allow greater harvest of LSTH | | |
| Dover sole | 5% of total catch OY | 5% of total catch OY | 5% of total catch HG | 5% of total catch HG | 5% of ABC | 5% of Col. ABC | Discards factored into setting ABC, ABC=landed catch | Discards factored into setting ABC, ABC=landed catch |
| Sablefish | 10% of ABC, north of 36° | 10% of ABC, north of 36° | 10% of ABC, north of 36° | 10% of ABC, north of 36° | 10% of ABC, north of 36° | 10% of ABC, north of 36° | Discards factored into setting ABC, ABC=landed catch | Discards factored into setting ABC, ABC=landed catch |
| Lingcod | **Entire ABC/ OY lowered to rebuild overfished stock.** | 19% of LE allocation | 25% of assumed trawl catch, applied inseason | N/A -- Discard reduction not applied for lingcod before 1998 | | | | |

In addition to measures taken to account for bycatch and discards in the setting of ABCs and OYs, annual management measures have incorporated a variety of strategies to reduce bycatch in the groundfish fishery. For trawl vessels, cumulative landings limits for the "DTS complex" have been based on catch ratios between the four species in the complex -- Dover sole, thornyheads (shortspine and longspine), and sablefish. Often, harvest of the more abundant species in the DTS complex, like Dover sole, is curtailed to prevent overharvest of the less abundant species, like shortspine thornyhead. Similar species complex management was used for *Sebastes* complex species prior to 2000, with some particular *Sebastes* species managed by harvest and trip limits within the overall *Sebastes* complex harvest and trip limits. Additionally, by setting two-month cumulative landings limit periods for some species, the number of cumulative limit periods in the year is reduced, and consequently the number of opportunities for meeting and exceeding limits.

Management measures for 2000 include new and creative ways of particularly reducing the interception of overfished species. The Council has acknowledged that simply lowering the overall harvest limits of overfished and depleted species is not adequate to protect and rebuild those species. Landings of lingcod, are prohibited for the months of January through April and November through December. These closures are expected to incorporate the spawning and nesting period for lingcod. When lingcod are caught by hook-and-line methods, they can often be released alive. Complete prohibition of landings is a reasonable management measure for lingcod, because it discourages directed targeting and requires release of fish that may still be viable despite having been caught.

Other overfished and depleted species are rockfish, which generally cannot be released alive, regardless of the method of catch. Thus, the Council's challenge with these species has been to reduce fisher incentives to target these species, but allow small landings of these species in cases where they may be caught incidentally. Rockfish landings limits were set to minimize discards by distributing species cumulative landings limits at levels that encourage fishers to direct fishing effort on healthy species when those species are most concentrated, or when bycatch of other species is expected to be relatively low. In particular, cumulative landings limits are set to move fishing effort away from the continental shelf, where several of the overfished species congregate. Rockfish cumulative landings limits have also been set higher in the summer months, when directed targeting on healthy stocks is less likely to result in incidental harvest of depleted and overfished stocks.

In addition to crafting rockfish harvest to reduce bycatch and discard of overfished species, the 2000 management measures introduce differential landings limits for limited entry trawlers operating with different trawl gear configurations (bottom trawling with footropes greater than 8 inches in diameter, bottom trawling with footropes smaller than 8 inches in diameter, and midwater or pelagic trawling.) Trawling with footropes that have roller gear or other large gear designed to bounce over rough rockpiles tends to allow those vessels greater access to areas where several of the overfished species congregate. Therefore, landings of shelf rockfish have been prohibited if large footrope trawls (roller gear) are used; small amounts of shelf rockfish bycatch are allowed to be landed if small footrope trawls are used, and; targeting healthy shelf rockfish stocks is encouraged only if midwater trawls are used.

Finally, at the GMT's recommendation, the Council revised its historical practice of managing *Sebastes* complex species as simply northern and southern units. In recent years, rockfish species without assessments and those with less rigorous assessments were managed under generic *Sebastes* complex landings limits. The GMT had been concerned about the opportunity for lower-abundance, higher-valued species to be harvested at unsustainable rates within this framework. In response to these concerns, the Council separated the ABCs/OYs for the more abundant chilipepper and splitnose rockfishes from the Southern *Sebastes* complex for the 1999 fishery. Conversely, concerns also developed that rebuilding plans for overfished species could result in unnecessarily severe restrictions for the entire complex than would be the case if sub-groups of these species could be developed. For 2000, the GMT developed species lists for three sub-groups of rockfish -- Nearshore, Shelf, and Slope--for the Northern (U.S. Vancouver, Columbia and Eureka subareas combined) and Southern (Monterey and Conception subareas combined) areas. Organizing *Sebastes* species into groups based on the most common catch associations is expected to reduce the likelihood of overharvesting both overfished and depleted species as well as species for which there is relatively little stock assessment information.

All of the new measures taken in 2000, and measures taken in prior years to manage for multi-species interactions, illustrate that regulatory efforts to reduce bycatch tend to have multiple management goals -- from protecting overfished and depleted species, to preventing overharvest of species of unknown abundance, to acknowledging that vessels using different gear types require different harvest strategies, to matching within-year harvest rates to within-year abundance and congregation habits of managed species. For a multi-species fishery, the catching of species other than the particularly targeted species is not necessarily a problem. Discard of non-targeted species, whether for economic or regulatory reasons, is a problem, and one that the Council has worked to reduce in its ongoing efforts to address a wide range of management issues.

STANDARDIZED REPORTING METHODOLOGIES CURRENTLY IN USE. Most of the standardized reporting methodologies that are or have been in use in the Pacific coast groundfish fishery are used in the whiting fisheries. Whiting fisheries are generally considered distinct from fishing activities targeting other species of groundfish within the cumulative landings limit management program. Whiting form dense aggregations that are nearly pure whiting; however, because these are very high volume fisheries, bycatch monitoring has been relatively rigorous. In 1998, whiting accounted for over 80% of all groundfish harvested, by weight, from the FMP management area.

There are three fairly distinct sectors in the whiting fishery: the shoreside sector, composed of catcher vessels that deliver their whiting catch to shorebased processing plants; the mothership sector, composed of catcher vessels that deliver their whiting catch to at-sea processing ships, as well as the processing ships themselves; and, the catcher/processor sector, composed of large vessels that both catch and process whiting at-sea. The catcher/processor and mothership sectors are together referred to as the "at-sea fleet." In addition to these sectors, there is also a treaty tribal fishery for whiting off the coast of Washington State, which harvests and processes with catcher boats and a mothership. Whiting fishing, whether by small catcher vessels or by large catcher/processors, is a mid-water fishery.

Standardized reporting methodologies used in West coast fisheries for whiting and other groundfish are described by program, below.

At-Sea Whiting Fishery Observer Program. Since 1991, the domestic at-sea whiting processors have voluntarily carried NMFS-trained observers to provide data for estimating total landed catch and discards; monitoring the attainment of annual groundfish allocations; estimating catch rates of prohibited species; and assessing stock conditions. Under this voluntary system, vessel owners work directly with an Alaskan certified observer contracting company of their choice and enter into private negotiations for observer services. In 1999, each processing vessel voluntarily carried at least one NMFS-trained observer while participating in the whiting fishery. Observer data is used by NMFS and the industry for inseason catch monitoring, by scientists for stock assessments of whiting and other groundfish, and by the industry to monitor and avoid areas of high bycatch while fishing, particularly to avoid salmon stocks listed as threatened or endangered under the Endangered Species Act. This program provides observer monitoring of 43% of the whiting hauls delivered to mothership processors, and 98% of the hauls of catcher-processors.

Maintaining voluntary observer coverage in the domestic at-sea whiting fishery has been the result of shared efforts between the NMFS Northwest Region, the North Pacific Groundfish Observer Program (NPGOP), a division of the NMFS Alaska Fisheries Science Center, independent observer contractors, and the fishing industry. The Northwest Region monitors the fishery and interacts with the industry; the NPGOP provides for the pre-hire screening, field training, debriefing interviews, at-sea support, sampling equipment, and data management services; companies that are certified as observer contractors for the Alaskan program provide hiring and support services; and individual processing vessels pay the direct costs associated with carrying the observers.

For the most part, the at-sea whiting fishery has been satisfactorily managed as a voluntary program. However, NMFS's ability to assure the integrity and availability of observer data in the future is constrained by the lack of regulatory requirements defining the needs of an observer program and mandatory coverage levels. Under the current voluntary observer system, there are no regulatory requirements

defining the roles and responsibilities of observers, of observer contracting companies, or of industry vessels participating in an observer-covered fleet. Participants in the voluntary program use regulations pertaining to observer-covered fisheries in Alaska as guidelines for behavior, but the voluntary program hampers the agency's ability to respond to actions taken in the West Coast fleet that may be contrary to Alaska-based policies. The voluntary nature of the program also risks loss of data essential to a variety of scientific and management efforts, from inseason fishery monitoring to stock assessments of whiting and other species. For these reasons, NMFS presented a draft proposed rule to the Council in April 1999, in which the agency planned to propose making observer coverage of the at-sea whiting fleet mandatory. The Council took action to express its support for mandatory observer coverage of the at-sea whiting fleet, requiring at least one observer per vessel.

Because of the logistical difficulties of managing the observer program within the agency, the proposed rule drafted by NMFS and supported by the Council has not yet been published. Nonetheless, NMFS will continue to work toward mandatory observer coverage for the at-sea whiting fleet, and regulatory standards for all parties participating in the observer-covered fishery. During the process of proposing and eventually codifying these observer regulations, the at-sea whiting industry has indicated its intent to continue with the voluntary observer program. NMFS anticipates that this program will continue to support the fishery's very precise inseason management efforts, as well as the inseason and post-season bycatch monitoring efforts. (A summary report on the 1999 non-tribal whiting fishery is attached as an appendix to this document to provide an example of bycatch monitoring within the whiting fishery.)

At-Sea Whiting Fishery Logbook Program. This logbook program is also a voluntary program used in the at-sea whiting fleet to monitor catch rates inseason. Logbooks are used in conjunction with observers and provide real-time information to NMFS and to fleet participants for starting and ending the seasons for each sector of the at-sea fleet. Logbooks primarily serve to verify information collected by observers, and to fill in data gaps where observers were unable to collect information.

Under this voluntary program, catcher/processors maintain a Daily Fishing and Cumulative Production Log (DFCPL,) and motherships maintain a Daily Report of Fish Received and Cumulative Production Log (DRCPL.) These logs are identical, except that the DFCPL combines the production log with a fishing log, and the DRCPL combines the production log with a record of fish received from other vessels. Harvesting vessels delivering to processing vessels maintain the fishing log section of the DFCPL.

The daily fishing portion of the logbooks include: 1) vessel and gear specifications; 2) haul-by-haul information; 3) daily information on discards; and 4) information on daily vessel activity. Haul-by-haul information includes the date, time, location, sea depth, trawl depth, hail weight, duration of haul. Discard information logs Pacific whiting, other groundfish, and prohibited species (salmon, halibut, Dungeness crab) discards, with estimated daily discards of prohibited species recorded in numbers of individuals. All other species discard estimates are recorded by weight. Catch and effort information is used for inseason monitoring and for biological and economic evaluations of existing and proposed fishery management measures. Fishing log information is available to observers as it is recorded, and observers collect effort data and use other information in the logs to meet their data collection responsibilities.

Shoreside Whiting Fishery Exempted Fishing Permits. Since 1992, NMFS has been issuing Experimental/Exempted Fishing Permits (EFPs) to whiting catcher vessels delivering their landings to shorebased processing plants. The intent of the 1992 pilot EFPs was to allow catcher vessels to bring their whiting catch to shore without having to sort out and discard incidentally-caught salmon. A percentage of the participating vessels carried observers to monitor bycatch rates at sea, with catch offloading monitored by a separate contingent of shorebased observers. This EFP program was formalized in 1993 as an ongoing salmon bycatch monitoring program. Also in 1993, NMFS implemented regulations to prohibit or restrict fishing for whiting in times and areas where the whiting fleet was most likely to incidentally catch depleted salmon stocks.

In addition to allowing landings of incidentally-caught salmon, the 1993 EFP program introduced provisions to allow whiting catcher boats to land incidentally-caught groundfish in excess of groundfish landings limits. As with salmon bycatch, the bycatch of non-whiting groundfish was monitored when

participating catcher vessels offloaded their whiting catch to shorebased processing plants. Results from the 1992 through 1994 EFP programs indicated that salmon bycatch rates on observed and unobserved vessels were the same, and that those rates had been lowered through the time/area salmon conservation closures. The program was revised for 1995, shifting the monitoring focus from at-sea salmon bycatch monitoring to shoreside groundfish overages monitoring. Bycatch of salmon and other prohibited species continues to be monitored through the EFP program, but sampling efforts on incidentally caught groundfish have increased. In this program, 13% of the whiting shoreside landings are monitored by observers. This EFP program has continued, with occasional refinements, until today.

| | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
|---|---|---|---|---|---|---|---|---|
| Catcher vessels delivering whiting to shoreside processing plants | 29 | 25 | 33 | 34 | 39 | 40 | 38 | 36 |
| Catcher vessels with EFPs delivering whiting to shoreside processing plants | 18 | 21 | 31 | 35 | 40 | 45 | 38 | 50 |

In the early years of the EFP program, not all vessels delivering whiting to shoreside processing plants took advantage of the EFPs. By 1995, however, the number of EFPs issued was exceeding the number of vessels participating in the fishery. Vessel owners might apply for and receive EFPs in anticipation of participating in the whiting fishery, but then might decide to forego the whiting season for other opportunities and leave the issued EFP unused.

ODFW manages and monitors the shoreside observation program for the three states, because the majority of whiting delivered to shoreside processing plants is landed in Oregon. During and after the season, ODFW tracks rates and quantities of prohibited species and non-whiting groundfish bycatch by vessel. In 1999, dockside observers monitored whiting deliveries in 7 ports, observing 10-30% of deliveries in those ports.

Enhanced Data Collection Project (EDCP) During the 1995 through 1998 fishing years, ODFW organized the EDCP in cooperation with the Washington Department of Fish and Wildlife, California Department of Fish and Game, Pacific States Maine Fisheries Commission, and Northwest Food Strategies, to conduct an expanded logbook program and an observer program for West Coast groundfish non-whiting trawl fisheries. The EDCP's original goal was to establish accurate rates of total catch and discard in the groundfish fishery, and to provide this information in usable form for fishery scientists and management analysts. Funding for this project was provided by ODFW, the Oregon Trawl Commission, the NMFS Northwest Fisheries Science Center, and the West Coast Seafood Processors Association.

EDCP goals included:

- Estimate trip limit induced discard rates for primary groundfish species.
- Estimate discard rates for other groundfish species.
- Estimate bycatch rates of prohibited species (salmon, Pacific halibut).
- Estimate Pacific halibut survival rate.
- Allow salmon to be distributed to hunger-relief agencies.
- Allow utilization of fish otherwise discarded.

Trawl catcher vessels participated in this program on a voluntary basis, carrying observers and/or logbooks, as well as NMFS EFPs. Two types of EFPs were used in this program: a "Class A" EFP that required permit holders to collect discard information in an enhanced logbook while continuing to record landed catch, and allowed permit holders to retain prohibited salmon species for distribution to hunger relief agencies; and a "Class B" EFP with the same responsibilities as the "Class A" permit, but with a requirement to carry an observer. EDCP observers were charged with monitoring quantities and rates of discards, species composition of discards, halibut viability information, and with conducting some biological sampling. A third class of permits had been planned for the EDCP that would have required permit holders to retain all of the groundfish taken above groundfish cumulative landings limits (overages,) but no vessels volunteered for this permit class.

The EDCP was a limited-duration project, and there are currently no standardized reporting methodologies in use within the non-whiting groundfish fleet. Many of the assumed discard rates in the groundfish cumulative landings limit fishery are based on the 1988 Pikitch study mentioned above. At its April 1999 meeting, the Council indicated its support for an observer program in the non-whiting groundfish fisheries, and the expectation that such a program could provide updated and improved bycatch and discard estimates for those fisheries.

STANDARDIZED REPORTING METHODOLOGIES IN DEVELOPMENT, OR AVAILABLE FOR FUTURE CONSIDERATION. (Primarily for non-whiting groundfish fisheries.)

Observer Program and Draft Observer Rules Framework. Observers are a uniformly trained group of scientists who gather independent data necessary for conservation and management of fisheries. They are stationed aboard vessels to observe fishing activities, and to gather data that is too burdensome for vessel personnel to collect, and which would otherwise not be available to fishery managers and scientists. Since the early 1990s, the Council has regarded at-sea observers as a viable means to collect much-needed data on at-sea discards. The GMT has continually stressed the need for an on-board observer program to accurately assess total catch.

To address deficiencies in total catch data for catcher vessels that deliver to shoreside processing plants, the Council proposed development of an on-board observer program at its April 1999 meeting. At that time, the Council's goal was to have the regulatory structure necessary to implement an observer program ready for implementation in 2000, in anticipation of NMFS receiving a $2 million Congressional allocation to fund an observer program for the West Coast groundfish fishery. The Council created an Observer Program Implementation Committee to design a statistically sound sampling program, to be consistent with the Council's goals for a total catch data gathering program. At its June 1999 meeting, the Council received a committee report, which included a list of total catch data collection goals:

- Estimate total annual groundfish catch for all west coast fisheries that take groundfish.
- Estimate discard rates by species (for all species, including prohibited species).
- Collect biological information on depressed species and on the primary species needed to define harvest populations for stock assessments.
- Establish a system for efficient collection, storage, and use of information.

This committee met again in June and September 1999 to discuss program design, coverage strategies, data priorities, program infrastructure, and the supporting regulatory package. At the Council's September and November 1999 meeting, NMFS distributed early draft regulations designed to support observer placement in accordance with a statistically sound coverage plan, to permit observers to collect data according to scientific sampling protocols, and to promote observer safety.

Although NMFS did not receive the anticipated Congressional funding for a West Coast observer program in 2000, NMFS and the Council have agreed upon the efficiency benefits of providing a regulatory framework to support an observer program, should future funding mechanisms for such a program become available. To this end, the agency and the Council are continuing to design a statistically valid observer sampling program, and planning to establish the general regulations necessary to support an at-sea sampling program. These regulations would not specify observer coverage requirements for individual vessels, but instead provide the regulatory support necessary to start up an observer program.

Mandatory Bycatch Reporting in Logbooks. The current state logbooks require that trawl vessels report their retained catch, not their total catch. Retained catch reporting can be checked against fish tickets, which provide accounting of landed catch. An alternative to this system might be a logbook program that requires all vessels landing groundfish to report total catch. Under such a program, fish tickets would no longer provide a useful comparison because fish tickets cannot account for discarded catch. Historically, the most effective comparison agent for mandatory logbook requirements has been a simultaneous observer program. A combined logbook/observer program relies on the observer program to provide a point of comparison for information collected on unobserved trips, and uses the logbook program to fill in observer program data gaps.

One challenge with expanding the current logbook program is that it depends on paper, rather than electronic reporting. Under a paper reporting system, the vessel operator fills out the paper logbook, which is then collected by the state of landing. The state of landing must then employ data entry personnel to enter logbook information into a computerized database before that information can be used and compared with information from other vessels. Vessel operators who participate in the trawl logbook program sometimes complain that their logbook information is not used by fishery managers. This cumbersome information-transfer process might be made more efficient, and the resulting data more useful, by an electronic logbook program.

NMFS Northwest Fisheries Science Center (NWFSC) has been developing an Electronic Fish Catch Logbook (EFCL), and has plans to demonstrate a prototype in the coming year. In September 1997, the NWFSC began Stage I of the project by hiring a contractor to review existing fish catch data collection systems, identify the users' needs for an electronic logbook, review technology available on commercial vessels and in the marketplace, and determine the attributes of the prototype EFCL.

Through research and interviews with fishers, processors, and scientists, the NWFSC found a common interest among these groups for sharing logbook data across communities, and identified the following objectives for an EFCL system:

- Allow electronic logbook data reporting.
- Allow electronic reconciliation of logbook data with fish ticket information.
- Allow electronic reporting of observer data.

Stage II of the EFCL project began in April 1998. For Stage II, the NWFSC analyzed available technology to create a field-ready prototype electronic logbook. Designing the prototype included consultations with West Coast fishing communities, to ensure that the prototype logbook would meet the needs of both scientists and fishers.

NWFSC is now in Stage III of the EFCL project. In this stage, the NWFSC will build field-ready prototypes, for testing in the fisheries. The NWFSC anticipates that the prototype electronic logbooks will be ready for testing in the first half of 2000. Once the prototype testing is finished, the NWFSC will analyze the efficacy of the prototype and the usefulness of data gathered. Test results and analysis will be made available to the Council, so that the Council may determine whether electronic logbooks would be useful to the management of West Coast groundfish fisheries. As with any logbook system, an electronic logbook system should be coupled with observer coverage for comparison of data gathered on observed and unobserved fishing trips.

Catch Monitoring by Camera. In the blackcod seamount fishery off British Columbia, fishers have been working with new video technology to test the use of cameras in lieu of human observers. Participation in groundfish fisheries off the coast of British Columbia requires strong observer coverage, and fishers are searching for ways to reduce the cost of carrying observers by proposing technological alternatives. The video-surveillance system tested in the blackcod longline fishery consists of a Global Positioning System (GPS) indicator, a camera positioned to view the fishing deck, and a battery/back-up power source to provide power to the camera system even when the vessel's electronic system fails. These camera systems have been provided to participating vessels by an independent contractor (Archipelago Marine

Research,) which sets up the video surveillance systems on contracting vessels, collects the tape recordings of retrieved longline sets, and monitors the tapes once the vessel has returned to shore.

Video surveillance systems connected to GPS indicators are useful in tracking catch by area fished, and new digital camera technology is improving resolution to provide some species-specific catch information. These systems might be most useful in fisheries that target particular species (like fixed gear sablefish fisheries), rather than in multi-species fisheries. Similar to electronic logbooks, data from a video-surveillance system could best provide bycatch information if it were used simultaneously with human observer coverage.

VMS. Vessel Monitoring Systems (VMS) use GPS technology to track vessel locations for a variety of fishing fleets around the world. In the U.S., VMS is used in U.S. fisheries that are managed in part by areal restrictions. For example, in the Hawaiian pelagic longline fishery, VMS is used to monitor vessel locations to ensure that pelagic longliners are not fishing in areas that have been closed to longlining to protect Hawaiian monk seals and to prevent gear conflicts with nearshore fisheries. While VMS cannot by itself provide bycatch monitoring, it can allow fishery managers to enforce closed area regulations designed to reduce bycatch rates, and can provide information about where and when individual vessels fish for groundfish.

ALTERNATIVES TO THE CURRENT GROUNDFISH FISHERY MANAGEMENT REGIME. As described above in the background discussion, the current cumulative landings limit management regime is based on the Council's desire to maintain a year round groundfish fishery. The priority of managing for a year round fishery is described in one of the overall goals of the FMP, and in one of the FMP's economic objectives:

> Goal -- Utilization. Achieve the maximum biological yield of the overall groundfish fishery, promote year-round availability of quality seafood to the consumer, and promote recreational fishing opportunities.
>
> Economic Objective. Identify those sectors of the groundfish fishery for which it is beneficial to promote year-round marketing opportunities and establish management policies that extend those sectors fishing and marketing opportunities as long as practicable during the fishing year.

Because groundfish fisheries are managed for year round landings, fishers and processors can use groundfish to remain operational during times when fisheries for other species are closed. Alternatives to groundfish, such as salmon, crab, shrimp, and tuna, are shorter seasonal fisheries. Fishing vessel owners rely on year round fishing opportunities to keep their vessels staffed with experienced captains and crew, and to keep markets open for their catch. Processing plants rely on receiving year round fish landings to keep their trained staff employed, and to keep marketing opportunities open for their products. If the vessels or plants must cease operation for a significant period, they will lose their trained workers and then need to hire and train new workers when the fishery reopens.

This management practice of using landings limits to maintain a year round fishery probably seemed reasonable and prudent when it was first used in 1983. However, since that time, the coastal fleet's fishing capacity has increased, stock viability for many managed species has decreased, and the classic phrase, "too many boats chasing after too few fish," has come to describe the West Coast groundfish fishery. With overcapacity and lower overall harvest levels, cumulative period limits have also dropped. For some vessels participating in the fishery, fishing at levels lower than or consistent with current cumulative period limits may be impossible. While low landings limits are needed to ensure both a year round fishery and sustainable harvest rates, low landings limits may also induce regulatory discards.

Fish stocks and cumulative landings limits have reached levels low enough to cause economic hardship in many fishing communities. There are alternatives to the cumulative landings limit management regime, and the Council faces the challenge of considering whether shifting to one of those alternatives would result in a more economically and biologically stable fishery. Depending on the management alternative chosen, the Council may be able to convert the fishery to a management regime that protects overfished and depleted fish stocks, improves the economic situation of its participants, and reduces bycatch and

bycatch mortality. Alternatives to the current management regime that could be expected to address bycatch concerns fall into three categories:

1. Management alternatives that revise cumulative landings limits regime to reduce bycatch.

2. Management alternatives *to* the cumulative landings limit regime that could be expected to reduce bycatch over current management system.

3. Management tools that could be expected to reduce bycatch under any management regime.

A discussion between the GMT and the public at the February 7-9, 2000 GMT meeting resulted in the following list of management options for reducing bycatch in the groundfish fisheries:

| |
|---|
| **Management alternatives that revise cumulative landings limits regime to reduce bycatch.** |
| Shorten fishing season and raise cumulative landings limits |
| Permit stacking and associate cumulative landings limits with permits, not boats |
| Full retention requirement or allow retention of overages (voluntary forfeiture? observers?) |
| **Management alternatives to the cumulative landings limit regime that could be expected to reduce bycatch over current management system.** |
| Derby fisheries for some/all species |
| IFQ program (possibly with individual bycatch quotas for non-target species?) |
| **Management tools that could be expected to reduce bycatch under any management regime.** |
| Gear modification requirements |
| Vessel/permit buyback |
| Incentives for bycatch reduction, such as higher landings limits or fishing in certain areas available to vessels with lowest bycatch rates -- would require observer verification |
| Catch allocation to gear types with lower bycatch rates |
| Discard caps -- entire fishery closes when discard cap of particular species is achieved |
| Re-examine/improve species-to-species landings limit ratios within stock complexes |
| Time/area closures -- like closed "hot spots" to reduce bycatch of species with known areas of aggregation, or like 2000 lingcod spawning closure |
| Complete closures (marine reserves) for areas of interception of species designated for protection |

Options to address these possible management revisions will be fully developed for the April 2000 Council meeting.

ISSUE 3. ANNUAL MANAGEMENT MEASURES FRAMEWORK PROVISIONS

Alternative 1 (status quo - no action). Under this alternative, the current list of frameworked "routine" management measures would not change. The Council asked NMFS to use its emergency management authority to take management actions outside of the current routine framework for 2000. Emergency measures are viable for six months, and may be renewed for the second half of 2000. However, emergency regulatory measures may not be renewed more than once, which would mean that, for 2001 and beyond, the status quo option would leave the Council with only the frameworked routine management measures that were available for the 1999 fishery.

Alternative 2 (amend federal groundfish regulations and the FMP to incorporate the emergency measures taken in 2000 as "routine" management measures -- listed at 6.2.1 in the FMP, and at §660.323(b) in the federal groundfish regulations.)

- List of frameworked "routine" management measures for the commercial fisheries would include: limited entry cumulative landings limits that may be different based on type of gear used, and closed seasons for lingcod and rockfish.

- List of frameworked "routine" management measures for the recreational fisheries would include: size limits for canary rockfish, bocaccio, cabezon, kelp greenling, sculpin; closures for rockfish and lingcod; boat limits for cowcod; a requirement to keep the skin on rockfish; a prohibition on filleting cabezon; and hook limits.

Alternative 3 (variation [*recreational*] on Alternative 2 , with the same changes to commercial routine management measures, but with more broad provisions for recreational routine management measures.)

- List of frameworked "routine" management measures for the commercial fisheries would include: limited entry cumulative landings limits that may be different based on type of gear used, and closed seasons for lingcod and rockfish. (Same as Alternative 2.)

- List of frameworked "routine" management measures for the recreational fisheries would model the more broad framework for open access fisheries, so that all recreational fisheries for groundfish could be managed with bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements.

Alternative 4 (variation [*commercial*] on either Alternative 2 or 3, with more broad provisions for commercial routine management measures.)

- List of frameworked "routine management measures for the commercial fisheries would include: limited entry cumulative landings limits that may be different based on type of gear used, and closed seasons for all groundfish species in cases where protection of an overfished or depleted stock is required.

- Recreational option could be taken from either Alternative 2 or 3.

Alternative 5 (frameworking variation) Under this option, any of the above combinations of commercial and recreational management measures could be chosen. However, this option would amend Section 6.2 of the FMP to distinguish between routine management measures that could be taken at any single Council meeting (primarily inseason changes to cumulative landings limits) and with a single *Federal Register* notice and routine management measures that could only be taken with the two-meeting-one-notice procedure used annually to set specifications and management measures. Routine management measures that would only be part of the annual specifications and management measures process and not the inseason adjustment process might include:

- Size limits for all species in recreational and commercial fisheries.

- Time/area closures for recreational and commercial fisheries.

- Setting a differential cumulative landings limit framework for limited entry fisheries.

- Boat limits, hook limits, and dressing requirements in recreational fisheries.

** The purposes of any of the Alternatives 2 - 5 would include: achieving the rebuilding plans, reducing bycatch, preventing overfishing, allowing the harvest of healthy stocks as much as possible while protecting and rebuilding overfished and depleted stocks, and equitably distributing the burdens of rebuilding among the sectors.

DISCUSSION. The FMP specifies how changes to groundfish management policies and regulations are to be made in Section 6.0, "Management Measures." Policy-making processes are tiered, with some policy and regulatory changes requiring at least two Council meetings and an FMP amendment, and other regulatory changes requiring discussion at just a single meeting followed by notification in the *Federal Register*. Major policy changes usually require FMP amendments, while the shortest rulemaking process is generally only available for inseason changes to cumulative landings limits. In between the two extremes of the FMP amendment and the single meeting and notice action lies the abbreviated rulemaking process. The abbreviated rulemaking process allows the Council to take certain actions that have already been classified by the FMP as "routine" by discussing those actions with the public and with their advisory entities over two Council meetings, with the results recommended for publication by NMFS in the *Federal Register*.
Each year at its September and November meetings, the Council uses the abbreviated rulemaking process to develop its recommendations for groundfish specifications and management measures. Once the Council has formalized its recommendations, NMFS evaluates and publishes the recommendations as the "annual specifications and management measures." These measures are published in a single *Federal Register* notice at the beginning of every January. Annual specifications provide ABCs, OYs, and harvest guidelines for managed species, and management measures are the specific landings limits, size limits, and time/area closures that are set in place for one calendar year. As the fishing year progresses, the Council tracks harvest rates for each sector of the fishery, and may recommend adjusting management measures to either allow more access to, or to restrict harvest of, a particular species or species group.

While a framework of routine management measures allows the Council to publish annual specifications and management measures through a two-meeting process and a single *Federal Register* notice, adjusting the list of measures that are considered "routine" requires a longer process of consideration and development. Management measures are designated as routine in the federal groundfish regulations through the federal rulemaking process, which requires two or more Council meetings, and publication of proposed and final rules. The list of routine management measures in the FMP is a reflection of federal groundfish regulations.

In the federal regulations, routine management measures are divided into those affecting the commercial fisheries (both limited entry and open access) and those affecting the recreational fisheries. For both commercial and recreational fisheries, routine management measures are intended to keep groundfish landings within annual harvest levels. In the commercial fisheries, trip landing and frequency limits may also be applied as routine management measures for the following reasons: to extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to keep landings at the historical proportions from the 1984-88 window period. Size limits may also be applied as routine management measures in the commercial fisheries, either to protect juvenile fish or to extend the fishing season.

Routine management measures for commercial fisheries include (by species and gear):

(A) Widow rockfish--all gear--trip landing and frequency limits.
(B) Sebastes complex--all gear--trip landing and frequency limits.
(C) Yellowtail rockfish--all gear--trip landing and frequency limits.
(D) Pacific ocean perch--all gear--trip landing and frequency limits.
(E) Sablefish--all gear--trip landing, frequency, and size limits.
(F) Dover sole--all gear--trip landing and frequency limits.
(G) Thornyheads (shortspine thornyheads or longspine thornyheads, separately or combined)--all gear--trip landing and frequency limits.
(H) Bocaccio--all gear--trip landing and frequency limits.
(I) Pacific whiting--all gear--trip landing and frequency limits.
(J) Lingcod--all gear--trip landing and frequency limits; size limits.
(K) Canary rockfish--all gear--trip landing and frequency limits.

(L) All groundfish, separately or in any combination--any legal open access gear (including non-groundfish trawl gear used to harvest pink shrimp, spot or ridgeback prawns, California halibut or sea cucumbers in accordance with the regulations in this subpart)--trip landing and frequency limits.

For the recreational fisheries, bag limits may be applied as routine management measures to spread the available catch over a large number of anglers, to avoid waste, or for consistency with state regulations. Size limits may also be applied as routine management measures in the recreational fisheries, either to protect juvenile fish, to enhance the quality of the recreational fishing experience, or for consistency with state regulations.

Routine management measures for recreational fisheries (by species and gear):

(A) Lingcod -- all gear -- bag and size limits.
(B) Rockfish -- all gear -- bag limits.

In September and November 1999, the Council faced the challenge of crafting the 2000 management measures to incorporate protective regulations for harvest activities affecting overfished and depleted fish stocks. While the Council does not usually need to work outside of the management measures already designated as "routine" in federal groundfish regulations, protecting overfished and depleted stocks spurred some creative thinking on the parts of the Council, its advisory entities, and the public. To protect overfished and depleted stocks, the Council recommended several measures for 2000 that were not part of the established list of "routine" management measures, and asked NMFS to use its emergency rulemaking authority to implement those recommendations. Because the new measures were in keeping with the goals and objectives of the FMP, NMFS agreed to authorize the emergency use of these new measures for six months from the date of the publication of the *Federal Register* notice of 2000 specifications and management measures (January 4 through July 3, 2000.) Measures set in place under emergency authority for the commercial fisheries include limited entry cumulative landings limits that may be different based on type of gear used and closed seasons for lingcod and rockfish. Measures set in place under emergency authority for the recreational fisheries include: size limits for canary rockfish, bocaccio, cabezon, kelp greenling, sculpin; closures for rockfish and lingcod; boat limits for cowcod; a requirement to keep the skin on rockfish; and a prohibition on filleting cabezon; and hook limits. Regulatory measures implemented through emergency authority may be used for a single six-month period, and reauthorized for a second six-month period. Federal agencies may not indefinitely renew actions taken on an "emergency" basis.

In addition to the three species that have been designated as overfished, and for which the Council has prepared rebuilding plans (lingcod, POP, bocaccio,) NMFS has notified the Council that canary rockfish and cowcod also meet the FMP definition of overfished species. Given the need to protect these five species, and the further possibility of other groundfish species being designated as overfished, the Council may wish to recommend amending its list of routine management measures to include the measures that NMFS set in place under emergency authority for 2000. If the list of routine management measures were so amended, the reasons for using those measures would include: for the purposes of achieving the rebuilding plans, reducing bycatch, preventing overfishing, allowing the harvest of healthy stocks as much as possible while protecting and rebuilding overfished and depleted stocks, and equitably distributing the burdens of rebuilding among the sectors.

ISSUE 4. REMOVING LIMITED ENTRY PERMIT GEAR ENDORSEMENTS OTHER THAN "A" ENDORSEMENT -- HOUSEKEEPING MEASURE

Alternative 1 (status quo - no action). The FMP provides for four different gear endorsements, the "A" endorsement, the provisional "A" endorsement, the "B" endorsement, and the designated species "B" endorsement. Of those, only the "A" endorsement is currently in use.

Alternative 2 ( remove all of the limited entry permit endorsements other than the "A" endorsement from FMP). Under this alternative, the three unused gear endorsements (provisional "A," "B," and designated species "B") would be removed from the FMP.

Alternative 3 (remove one or more, but not all, of the limited entry permit gear endorsements other than the "A" endorsement from FMP). Under this alternative, one or two gear endorsements would be removed from the FMP, with the expectation that any retained gear endorsements might be reserved for future use.

Alternative 4 (regardless of whether the "B" and designated species "B" endorsements are removed, update provisional "A" endorsement without removing it). Under this alternative, the provisional "A" endorsement would be updated so that it is only available in the future to vessels that used gear during the window period that is now prohibited by either a state or the federal government and with that gear, made sufficient landings to meet the minimum landing requirements for legal gears.

** None of the above alternatives would preclude the design of future gear or other permit endorsements, or of other access limitation programs.

DISCUSSION. Amendment 6 was adopted by the Council in 1991 to introduce a limited entry permit program for the Pacific coast groundfish fishery. In order to smooth the controversial transition from an entirely open access fishery to the restrictions of limited entry, the Council recommended creation of four different permit endorsements to provide four different levels of fishery access. Only one of those permit endorsements is in use today, the "A" endorsement; and this FMP amendment offers an opportunity for the Council to examine the necessity of keeping the other three endorsements in the FMP. Removing these endorsements from the FMP would save staff time for both the Council and NMFS, as staff currently must meet the annual regulatory requirements of maintaining these endorsements. However, the Council may also see benefit in retaining for possible future use one or more of the three currently unused endorsements.

"A" Endorsements. All 499 current limited entry permits have "A" endorsements. "A" endorsements were originally intended for those vessel owners with a significant level of historical participation in and dependence on the fishery. When the limited entry program began, vessel owners qualified for "A" endorsements by ownership of vessels that met the minimum landing requirements (MLRs) during the window period, or that qualified for and upgraded a provisional "A" endorsement, or that were incorporated into the limited entry program under small fleet provisions.

| Gear | Minimum Landing Requirement (for window period 7/11/84 through 8/1/88) |
|---|---|
| Trawl | At least 9 days in which over 500 lb of any groundfish species caught with groundfish trawl gear except Pacific whiting are landed or delivered, or 450 mt of landings or deliveries of any groundfish species caught with groundfish trawl gear except Pacific whiting, or 17 days in which over 500 lb of Pacific whiting caught with groundfish trawl gear are landed or delivered, or 3,750 mt of landings or deliveries of Pacific whiting caught with groundfish trawl gear. |
| Longline | At least 6 days in which over 500 lb of any groundfish species caught with longline gear are landed or delivered, or 37.5 mt of landings or deliveries of any groundfish species caught with longline gear. |
| Fishpot | At least 5 days in which over 500 lb of any groundfish species caught with fishpot gear are landed or delivered, or 150 mt of landings or deliveries of any groundfish species caught with fishpot gear. |

"A" endorsements were designed to be long-term endorsements, integral to the permit, and transferable upon any transfer of the permit by sale, lease, or other agreement. By the time that the limited entry program was implemented for the 1994 fishing season, approximately 660 vessels had received limited entry permits. That number has been reduced over the 6-year life of the program through permit combinations by permit buyers.

Provisional "A" Endorsements. There are no current provisional "A" endorsement holders. Provisional "A" endorsements were developed for vessel owners who had purchased a vessel part way through the window period, or who had a vessel under construction or conversion during the window period. The provisional "A" endorsement required that, for the first three years after the new vessel purchase or after the initiation of the vessel upgrade, vessel owners meet minimum groundfish landings requirements. If in any of the years in the three year trial period the vessel did not meet the landings requirements, the provisional "A" endorsement permit would be terminated. Provisional "A" endorsement permits had a maximum duration of 3 years. However, if the landings requirements were met for all three years, the provisional "A" endorsement could be converted to an "A" endorsement. The annual minimum landings requirements for the provisional "A" endorsements were equal to the annualized MLR for vessels receiving "A" endorsements. Vessels with provisional "A" endorsement limited entry permits operated under the same management measures and specifications as the "A" endorsed limited entry fleet. Provisional "A" endorsement permits were not transferable.

When the limited entry program went into effect, three vessels qualified for and were issued provisional "A" endorsements. All three vessels met the annualized landing requirements and were issued "A" endorsements by 1997. NMFS has received no further applications for provisional "A" endorsed limited entry permits.

Provisional "A" endorsements have also been available to owners of vessels that landed sufficient groundfish during the window period, but that used a gear type that has been subsequently prohibited by a state (Washington, Oregon, or California) or the Secretary of Commerce. NMFS has never received applications for provisional "A" endorsed permits under this provision. However, the Council may wish to either retain provisional "A" endorsements altogether, or revise the qualifications for provisional "A" endorsements so that only vessels qualifying under this prohibited gear provision would qualify for provisional "A" limited entry permits.

"B" Endorsements. "B" endorsements were developed to allow vessel owners who had participated in the fishery at a low level during the window period to continue in the fishery for a three-year adjustment period before being required to have an "A" endorsed limited entry permit for participation in the limited entry fishery. To qualify for a "B" endorsement, a vessel needed at least 500 lb of groundfish landings on at least three separate days at any time before August 1, 1988. The vessel owner had to have continuously owned the vessel since the date of the first of the three qualifying landings. "B" endorsements could not be upgraded to "A" endorsements, and permits with "B" endorsements were not transferable. Vessels with "B" endorsement limited entry permits operated under the same management measures and specifications as the "A" endorsed limited entry fleet.

Twenty vessels initially qualified for and received "B" endorsed limited entry permits. In accordance with the FMP, those permits and the "B" endorsement opportunity expired on December 31, 1996. Of those vessels initially issued "B" endorsements, two are now participating in the fishery with "A" endorsement permits.

Designated Species "B" Endorsements. These endorsements were developed to allow domestic harvesters to particularly target species that were "underutilized." When Amendment 6 was approved, the three species designated as underutilized were Pacific whiting, shortbelly rockfish, and jack mackerel.

When the FMP was approved in 1982, Pacific coast domestic harvesters and processors did not have the capacity to fully utilize the harvestable surplus of all managed species. The Fishery Conservation and Management Act of 1976 provided for foreign fishing in U.S. waters for " . . . that portion of the optimum yield of [any] fishery which will not be harvested by vessels of the United States . . ." (201(d)) In its groundfish FMP, the Council divided groundfish species into two categories, those species that could not be discretely harvested without bycatch of other species, and those species that could be harvested with the expectation of minimal bycatch of other managed species. The FMP acknowledged that there were several species that were harvested at rates below maximum sustainable yield (MSY), but determined that most of those species could not be selectively harvested without bycatch of other species that were already fully utilized by domestic fisheries. Pacific whiting, sablefish, shortbelly rockfish, widow rockfish, and jack mackerel were categorized as harvestable without significant bycatch of other species, and

therefore were subject to annual evaluations of domestic harvest needs and availability for foreign utilization.

By 1991, when the limited entry program was approved, only Pacific whiting, shortbelly rockfish, and jack mackerel were considered harvestable without significant bycatch and subject to evaluation of availability for foreign harvest and/or processing. Pacific whiting was fully used by the domestic fleet in 1991, and small joint venture processing levels were allowed for shortbelly rockfish and jack mackerel, as well as a small amount of directed foreign fishing for jack mackerel. From 1992 onward, all Council-managed species were considered fully utilized and there were no allocations to either the joint-venture processing interests or to directed foreign fishing.

The limited entry program and designated species "B" permits were implemented for the 1994 fishing year. Under the designated species "B" program, any Pacific whiting, shortbelly rockfish, and jack mackerel that would not be used by the limited entry fleet could be made available to vessels outside of the limited entry fleet by providing those vessels with designated species "B" endorsed permits. NMFS conducted annual surveys of the limited entry fleet to determine whether limited entry permit holders would fully use those species. After 1998, NMFS no longer surveyed the fleet about its Pacific whiting harvest, as that species was clearly fully utilized by the limited entry fleet. With the approval of Amendment 8 to the Coastal Pelagic Species FMP, jack mackerel was formally removed from the list of groundfish species managed under the groundfish FMP. Shortbelly rockfish are part of the shelf rockfish complex and as such, is associated with overfished and depleted species under the protection of rebuilding measures. Furthermore, since shortbelly rockfish are taken predominantly with trawl gear, there is little reason to expect future interest in harvesting shortbelly rockfish by vessels outside of the limited entry fleet.

NMFS has never issued any designated species "B" endorsed permits. NMFS has also never received any requests or applications for designated species "B" permits.