

## FLEXIBLE MANAGEMENT OF SET-ASIDES

The current groundfish management framework is responsive to the Magnuson-Stevens Act mandate to end overfishing and, to that end, the Pacific Coast Groundfish Fishery Management Plan (FMP) has incorporated the National Standard 1 guideline to count all sources of fishing-related mortality against specified annual catch limits (ACLs). Before allocation of the harvestable surplus of any managed groundfish stock or stock complex to the commercial and recreational sectors may occur, fixed yields called set-asides, are taken “off the top” of the ACL for apportionment to tribes, to accommodate bycatch in non-groundfish fisheries (i.e., incidental open access fisheries), to cover specified bycatch caps in approved exempted fishing permit (EFP) activities, and to cover anticipated scientific research catch. If a set-aside is not used, the remainder could be allocated during the season to another sector or would otherwise remain unused. Set-asides do not necessarily ensure that the fisheries and activities for which set-asides are specified would not go over their set-aside amounts. Therefore, specified set-asides are typically set large enough to reduce the risk of overfishing a stock.

The Council scheduled an emergency Council meeting in October 2014 to consider allocating more yield of darkblotched rockfish to the Pacific whiting mothership cooperative. The mothership cooperative had exceeded their darkblotched rockfish allocation by 1 mt and the fishery was shut down stranding approximately 30% of the cooperative’s Pacific whiting allocation. Council staff explored what the National Marine Fisheries Service (NMFS) could do as an automatic action to release available darkblotched yield and keep the fishery open. At that time, despite the fact there was available yield in unused set-asides, NMFS did not believe they had clear authority to reallocate any of that yield to keep the fishery open and avoid the economic impact of a disruption of the mothership fishery. Therefore, the emergency Council meeting was hastily scheduled to release that yield and avoid the economic impact of closing the fishery. One consequence of that experience was to explore a regulatory amendment that would give NMFS some authority to automatically release some set-aside yield to avoid such fishery disruptions in the future as long as there is minimal risk of overfishing.

The concept of flexible management of set-asides was explored in the Council process to consider long term allocations of the harvestable surplus of many of the currently managed groundfish stocks and complexes under Amendment 21. However, no decision was made to give NMFS authority to use available yields from set-asides to apportion inseason to avoid serious fishery disruptions. Such a consideration is posited here to avoid having the Council meet in future emergency sessions to reallocate available yields from set-asides to prevent an early fishery closure.

There are limits to consider in developing a regulation that would implement a flexible management strategy involving set-asides. It is envisioned that such a flexible management strategy would involve a limited number of stocks, which tend to constrain access to target stocks and would only be implemented at the end of the year (most likely in the last quarter of the year)

in cases where there are minimal conservation risks. Constraining stocks, such as the overfished rockfish stocks and widow rockfish in whiting fisheries, can limit access to target fisheries when incidental bycatch approaches a sector's allocation or a specified harvest guideline. Often there is available yield of a constraining stock's harvestable surplus for sectors in need of a little more yield to prosecute their fisheries at the end of the year. In some cases, the Council can address an affected sector's need for more yield at the end of the year in a scheduled September or November inseason action. In other cases, such as the one that arose last October for the mothership sector, waiting for the next Council meeting would result in a fishery disruption since crews could not be maintained through the hiatus and a late re-start to the fishery would not have allowed enough time for the fleet to harvest their Pacific whiting quota. A flexible management strategy of set-asides would be most helpful in these situations where delayed action has undesirable costs.

There is also an effective limit on which sources of set-aside yield could be available for an inseason reallocation. For instance, tribal fisheries tend to be year-round. While set-asides to accommodate tribal fisheries may have what appears to be surplus yield in excess of their fishery needs at the end of the year, they may be one or two "disaster tows" away from needing all their specified set-aside yield. It would be risky to consider tribal set-asides in a flexible management strategy. Similarly, set-asides to accommodate groundfish bycatch in non-groundfish fisheries may be needed at the end of the year since many of those fisheries are year-round; reallocating those yields at the end of the year may be risky. On the other hand, set-asides specified to accommodate EFP or research activities may be available at the end of the year after the research or EFP activities have been completed. If an inseason evaluation of total catch against a constraining specie's ACL indicates low risk of exceeding the ACL, then the set-asides available for any EFPs or research activities that have been completed may provide enough yield to a sector in need to prevent an early closure of the fishery.

There are also set-asides specified for directed groundfish fisheries. These set-asides are usually considered for a sector where the catch of the set-aside species is truly incidental for that sector even though it may be a target stock in another sector. For example, sablefish is a target stock for all the directed commercial groundfish sectors but are incidentally caught in recreational groundfish fisheries. A sablefish set-aside is typically specified for the recreational fishery to cover the anticipated bycatch of sablefish in recreational fisheries. Flexible management of sector set-asides that would consider an inseason reallocation of those yields between sectors could also be considered. If the fisheries for which such set-asides have been specified are year-round fisheries, then there is the same risk of reallocating a set-aside that may be needed at the end of the year as there is for set-asides specified to accommodate tribal and non-groundfish fisheries. It is likely the conservation risks of exceeding an ACL by reallocating a set-aside for a year-round fishery would need to be considered on a case-by-case basis.

There are also equity issues to be considered. There could be circumstances where more than one sector needs a little extra yield for a constraining bycatch stock at the end of the year. If there is available yield to cover each sector's need, then a flexible strategy that gives NMFS authority to reallocate that yield may work well. However, if there is not enough yield to cover all the sectors in need, then an inseason allocation decision would need to be made, which is best made by the Council where all affected entities can be part of the decision process. It would be untenable for NMFS to work out allocations without clear guidance a priorities from the Council on the rules for

making that decision. It is unlikely that all the circumstances for setting allocation rules could be worked out satisfactorily in advance; therefore, this is a likely process limit.

If the Council decides at this meeting to pursue a regulatory amendment that would consider giving NMFS the discretion to automatically reallocate unused set-aside yields to sectors in need at the end of the year, then it is recommended this could be done as part of the 2017-18 specifications process since it is an action directly connected to biennial specifications and management measures. If the Council prefers to advance consideration for a regulatory amendment to be implemented by 2016, then it is recommended this be considered in future workload planning so that this initiative can be prioritized relative to other workload priorities this year.

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