

PROCEDURAL CONSIDERATIONS FOR EMERGENCY COUNCIL ACTION FOR
CHANGES TO THE 2014-15 PACIFIC SARDINE FISHERY

The Council should consider language contained in the Council Operating Procedure 1, the Statement of Organization, Practices, and Procedures (SOPP), and Federal regulatory guidance on emergency actions.

COP 1

Voting: For a vote on a Council finding that an emergency exists in a fishery, the exact number of votes (for, against, and abstaining) must be preserved as part of the record of the meeting.

SOPP

- A motion on an emergency must be provided in writing prior to voting
- The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under Section 305(c) of the MSA, in which case public notice will be given immediately.
- Drafts of emergency public notices must be transmitted to the NMFS Washington, D.C. office at last five working days prior to the first day of the emergency meeting whenever possible.

Federal Regulatory Guidance for Regional Fishery Management Councils and NMFS on Emergency Actions (50 CFR Chapter IV) (Agenda Item D.1 Attachment 2)

The preparation or approval of management actions under the emergency provisions of section 305(c-) of the Magnuson-Stevens Act should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures.

Emergency Criteria

For the purposes of section 305(c-) of the MSA, the phrase “an emergency exists involving any fishery” is defined as a situation that:

1. Results from recent, unforeseen events or recently discovered circumstances; and
2. Presents serious conservation or management problems in the fishery; and
3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Emergency Justification

If the time it would take to complete notice-and-comment rulemaking would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants, or communities; or substantial adverse effect to the public health, emergency action might be justified under one or more of the following situations:

1. Ecological – to prevent overfishing...or to prevent other serious damage to the fishery resource or habitat; or

2. Economic – to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or
3. Social – to prevent significant community impacts or conflict between user groups; or
4. Public health impacts – to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.

CPS FMP Excerpt Regarding Incidental Take Amounts

FMP section 5.1: Incidental Catch Allowances

Incidental catch allowances will be set by the Council, based on recommendation from the CPSMT, and consistent with Sections 5.1.1 through 5.1.6 of this FMP. Estimates of total incidental catch expected under the incidental catch allowances will be factored into HG, quota, or other ACT recommendations. As described in Section 4.8, estimates of total incidental catch will normally be combined with the directed fishery HG to arrive at a total OY. The purpose of this adjustment is to ensure that overfishing does not occur due to incidental catch.

FMP section 5.1.6.2: Incidental Harvest When Stocks Are Not Overfished

Incidental catch allowances for stocks that are not overfished are enforced once a directed fishery HG has been reached, and the directed fishery has been closed. Goals in setting incidental catch allowances for stocks that are not overfished should be to (1) avoid unnecessary discard, (2) ensure that HG is taken, but not exceeded, and (3) promote efficiency and profitability in the fishery. Estimates of total incidental catch (based on past or current incidental catch rates, incidental catch allowances, HGs and other conditions in the fishery) are normally considered when HGs are set. Thus, incidental catch allowances should be set at the same time and in concert with HGs.

Incidental catch allowances are meant to accommodate catches that are difficult to avoid during normal fishing directed at other species. Therefore, incidental catch allowances should be set at levels that approximate incidental catch rates during normal fishing activities and do not result in landings in excess of an ACL or ABC.