



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Sustainable Fisheries Division F/NWR2  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115-0070

MAY 27 2010

Mr. David Ortmann, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, OR 97220

Dear Mr. Ortmann:

On April 23, 2010, in response to the latest in a series of complaints filed in Natural Resources Defense Council v. Locke, Civil Action No. C 01-0421 JL, challenging the rebuilding provisions in the groundfish fishery management plan (FMP), the U.S. District Court for the Northern District of California vacated the 2010 harvest specifications for darkblotched rockfish, cowcod, and yelloweye rockfish. The Court stated that “for the remainder of 2010, the most recent annual harvest levels (also known as optimum yields, or ‘OYs’) that National Marine Fisheries Service (NMFS) specified for darkblotched rockfish, cowcod, and yelloweye rockfish in its 2007-2008 Biennial Specifications and Managements for the Pacific Coast Groundfish Fishery are in effect. For yelloweye rockfish, the OY in 2010 is 14 metric tons.”

To implement the Court’s Order, NMFS is taking the following actions with respect to the 2010 groundfish regulations and management. NMFS will issue a final rule specifying that the 2010 OYs for three species are: darkblotched rockfish, 330 metric tons (mt); cowcod, 4 mt; and yelloweye rockfish, 14 mt. At the June, 2010 Council meeting under the inseason agenda item, the agency requests that the Council, through its inseason management process, recommend to the agency the appropriate management measures necessary to ensure that fishery impacts to these overfished species remain within these OY levels, consistent with the following guidance.

These OY amounts are based on a strict reading of the Court’s Opinion and the subsequent Order on Remedy, Dkt. No. 342 (April 29, 2010). For darkblotched rockfish, NMFS notes that modifying the current 2010 OY of 291 mt by increasing it to the 2008 OY of 330 mt, as required by the Order, does not appear to be consistent with the Court’s underlying reasoning in its Opinion. Thus, although NMFS is modifying the 2010 OY to be consistent with the Court’s Order (an OY of 330 mt), NMFS is recommending that the Council’s management measures be designed to keep the fishery within the 290 mt, which is equivalent to the 2007 OY level for darkblotched rockfish. According to the inseason scorecard prepared by the Groundfish Management Team during the April, 2010 Council meeting, fisheries are currently projected to harvest approximately 285 mt of darkblotched rockfish through the end of 2010, so restrictions to keep the fishery within the 290 mt OY may require little or no additional action.

The 2010 OY for cowcod remains 4 mt, which is the same OY specified in 2008. According to the inseason scorecard prepared by the Groundfish Management Team during the April, 2010

Council meeting, fisheries are currently projected to harvest approximately 2.2 mt of cowcod through the end of 2010, so restrictions to keep the fishery within the 4 mt OY may not require additional action.

The 2010 OY for yelloweye rockfish is reduced from 17 mt to 14 mt. Since this court order, Council staff worked diligently with NMFS and the states to identify areas where incidental bycatch of yelloweye rockfish can be minimized. The States of Washington and Oregon have indicated they are suspending the enhanced rockfish surveys planned for 2010 due to the Court Order affecting yelloweye rockfish. The estimated yelloweye harvests associated with these research programs was 2 mt, so there remains, as a bare minimum for the Council to address through proposed management measures, 1 mt of yelloweye rockfish.

Following the June Council meeting, NMFS will publish an inseason action, effective July 1, 2010, to implement the management measures and take any other actions necessary to keep the fisheries within the necessary OY levels.

If you have any questions on these matters, contact me at your convenience.

Sincerely,



Frank Lockhart

Assistant Regional Administrator

cc: Dr. Don McIsaac  
Eileen Cooney  
Mariam McCall  
M. Nickerson  
R. Schumacher