

1.0 HISTORY OF THE LIMITED ENTRY AMENDMENT

The domestic and foreign groundfish fisheries in the EEZ of the United States (3 to 200 miles offshore) in the Pacific Ocean off the coasts of California, Washington and Oregon are managed under the "Pacific Coast Groundfish Fishery Management Plan and Environmental Impact Statement for the California, Oregon, and Washington Groundfish Fishery". The FMP was developed by the Council under the MFCMA. It was approved by the Assistant Administrator for Fisheries, NOAA on January 4, 1982 and became effective on September 30, 1982. Implementing regulations were published in the Federal Register on October 5, 1982 (at 47 FR 43964) and appear at 50 CFR 663 and Part 620. Five amendments to the FMP have been implemented. This document describes the license limitation alternative which the Council has recommended for implementation under the sixth FMP amendment. The license limitation alternative would be incorporated as Chapter 14 in the groundfish FMP. Under a license limitation program, the Council would continue to use the management measures available under the current groundfish FMP.

The Council's decision to consider license limited entry was a response to requests by members of industry on the Council's Groundfish Advisory Subpanel who were concerned about the future of the West Coast groundfish fishery. In April 1987, the Council appointed the LEC (a group composed of individuals both for and against limited entry) to study the issue. At the July 1987 Council meeting, the LEC recommended, and the Council adopted, a limited entry cut-off date of July 11, 1987, after which individuals entering the fishery would be considered on notice that they were at risk of not receiving a permit. Over the next year, the LEC worked to develop specific proposals for a viable license limitation system. In July 1988, the LEC presented two proposals to the Council which were adopted for the purpose of obtaining public comment. At that time, because the previously adopted cut-off date had not been published in the Federal Register, the cut-off date was changed to August 1, 1988. In the same action, July 11, 1984 was established as the opening date for the qualifying window. After these actions, the Council appointed a workshop committee to develop a public information program. This committee recommended the Council sponsor a series of public information workshops and a scientific survey of various segments of industry. The workshops served as the scoping session for the issues and alternatives to be included in the supplemental EIS. Additionally, the proposals which had been developed by the LEC were presented and participants were asked to identify ways the proposals might be improved. The workshops were held in the winter of 1989 and the survey commenced shortly thereafter. The Survey Research Center at Oregon State University was contracted to conduct the survey. In November 1989, after considering survey results and hearing testimony from the public and Council advisory entities, the Council voted to proceed with the development of a limited entry amendment. Representatives from each state, the Council's enforcement advisors, industry, NMFS and NOAA General Counsel were appointed to a committee to oversee the drafting of the limited entry amendment package. During the drafting of the amendment, this committee considered all suggestions on improving the LEC's original proposals received during the workshops and through other public comment. The draft limited entry amendment was approved for public review at the November 1990 Council meeting, the draft supplemental EIS/RIR mailed out in January 1991, and hearings held the following month. In March 1991, after reviewing public comments and the draft supplemental EIS/RIR, the Council made several revisions to the license limitation alternative and gave its tentative approval of the revised alternative pending the outcome of further analysis and public comment. Subsequently, in response to advisory committee and public comments, additional options were developed within the license limitation alternative. Preferred options within the license limitation alternative were selected at the July Council meeting after which the revised alternative and additional analysis were distributed for public

review (over 45 days prior to the close of the public comment period). The public comment period was closed September 13 and reopened for testimony to the Council September 18 and 19. In its final vote September 19, 1991, the Council was unanimous in recommending the license limitation alternative for implementation by the Secretary of Commerce.

1.1 Purpose of the Document

This document analyzes the limited entry alternatives being considered by the Council as part of Amendment 6 to the groundfish FMP and provides the background and assessments necessary for the Secretary of Commerce to determine if the management measures are consistent with the MFCMA, other applicable law and the FMP. Specific statutory and administrative requirements fulfilled by this document include those of the NEPA, RFA, Executive Order 12291, CZMA, ESA and MMPA.

Specifically, this document is an FMP amendment including supplemental EIS and RIR.

1.1.1 Final Supplemental EIS

In order to analyze the potential impacts of the proposed action on the quality of the human environment, compliance with NEPA requires that an environmental assessment or impact statement be prepared. According to NOAA directive, an EIS must be prepared if the proposed action may reasonably be expected to:

1. jeopardize the productive capability of the target resource species or any related stocks that may be affected by the action,
2. allow substantial damage to the ocean or coastal habitats,
3. have substantial adverse impact on public health or safety,
4. affect adversely an endangered or threatened species or a marine mammal population, or
5. result in cumulative effects that could have a substantial adverse effect on the target resource species or any related stocks that may be affected by the action.

Additionally, controversy and socio-economic effects should also be considered in any determination of significance.

The decision to prepare a supplemental EIS was made because of the generally controversial nature of a limited entry system, and the effects of such a system on the future configuration of vessel sizes and gears and on the effectiveness of future conservation measures.

The determination requiring a supplemental EIS was not intended to prejudice any decision by the Council or Secretary of Commerce, but instead was designed to provide the best information on which to base any such decisions.

1.1.2 RIR and Regulatory Flexibility Act Determination

In compliance with Executive Order 12291 and the RFA, NMFS requires the preparation of an RIR and analysis of impacts under the Regulatory Flexibility Act for all regulatory actions or for significant policy changes that are of public interest. The RIR:

1. provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action,
2. provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternative that could be used to solve the problems, and
3. ensures that the regulatory agency or Council systematically and comprehensively considers all available alternatives so that public welfare can be enhanced in the most efficient and cost-effective way.

The RIR also serves as the basis for determining whether any proposed regulations are major under criteria provided in Executive Order 12291 and whether or not proposed regulations will have a significant economic impact on a substantial number of small entities, in compliance with the RFA (Public Law 96-354). The primary purpose of the RFA is to relieve small businesses, organizations and governmental jurisdictions (collectively, "small entities") of burdensome regulatory and record keeping requirements. The RFA requires that if regulatory and record keeping requirements are not burdensome, then the head of an agency must certify that the regulation, if promulgated, will not have a significant effect on a substantial number of small entities.

1.2 Purpose and Need for Action

Council consideration of limited entry is motivated by a number of problems which arise from a single underlying cause; overcapacity in the fishery (discussed in Section 1.2.1). How the identified problems impede achievement of goals and objectives established by the Council in the interest of the public is discussed in Section 1.2.2.

1.2.1 Statement of the Problem

The Council adopted the following problem statement in April 1990.

Nearly all groundfish stocks are now fully harvested by domestic fishermen in the Pacific coast groundfish fishery. While fleet harvesting capacity has increased, harvests are declining as stocks are fished down to MSY levels. Further, there is a general level of excess harvest capacity existing in most West Coast and North Pacific fishing fleets (e.g., shrimp, crab, halibut, salmon, etc.). As these other fisheries grow increasingly overcrowded, relative to available harvest, it becomes more likely that capacity will be redirected to the West Coast groundfish fishery when downturns occur elsewhere. In addition, the implementation of more restrictive management regulations in other fisheries, including ITQ limited entry systems,

may result in increased effort during season openings in the West Coast groundfish fishery.

In the Pacific coast groundfish fishery, declining stocks and the presence of harvest capacity in excess of that necessary to catch the resource result in increasing number and complexity of regulations. Accordingly, the Council faces increased pressure to balance the conflicting need to adopt more restrictive regulations for protecting the resource with the need to provide sufficient allowable catch to sustain the fleet.

Increased number and complexity of regulations have many adverse impacts in such areas as fleet costs, resource utilization, safety, and enforcement costs and effectiveness. Additionally, there is a point beyond which added regulations that interfere with day to day vessel operations (e.g., trip limits or mesh size regulations) will not improve the Council's ability to accomplish its goals. Pressures on industry arise not only from management measures which restrict operations, but also the division of the allowable catch among larger numbers of vessels.

Two components comprise fleet harvest capacity: vessel fishing power and number of vessels. As harvesting capacity in the fisheries continues to increase, problems arising from the need for more restrictive management measures and resolution of allocation issues become more acute. It is apparent that no relief from these problems will occur if management actions continue to allow increased harvest capacity.

1.2.2 Related Groundfish FMP Goals and Objectives

The Council goals and objectives for the groundfish FMP are discussed in Section 2.1 of groundfish FMP Amendment 4. The following discussion covers the goals and objectives affected by this FMP amendment.

1.2.2.1 Related Groundfish Goals

Achievement of all three of the Council's goals is impeded by the problems discussed in Section 1.2.1. Exactly how achievement of these goals is impeded will be discussed in the following section under the related objectives.

Goal 1. Conservation – Prevent overfishing by managing for appropriate harvest levels, and prevent any net loss of the habitat of living marine resources.

Goal 2. Economic – Maximize the value of the groundfish resource as a whole.

Goal 3. 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.

1.2.2.2 Related Groundfish Objectives

Conservation.

Objective 2. Adopt harvest specifications and management measures consistent with resource stewardship responsibilities for each groundfish species or species group.

Increased fleet harvest rates are related to increasing amounts of active harvest capacity. As harvest rates increase, more restrictive management measures are required to avoid excessive mortality. Landing limits and closures are two of the primary management tools used by the Council. When limits become more restrictive or longer closures occur, there are increases in mortality due to discard of by-catch, highgrading to maximize the value of allowed catch and unreported landings. These unmeasured sources of mortality may drive biomass levels below optimum levels and decrease the accuracy of stock assessments. Additionally, there is a point beyond which a decrease in the trip limit only decreases landed catch, with no decrease in targeting and thus no decrease in actual fishing mortality. At the November 1990 Council meeting, the SSC commented to the Council:

In discussing proposed 1991 management measures for the groundfish fisheries, several general observations became evident. The period of "fishing down" West Coast groundfish stocks is over. Most stocks are now reduced to the level that produces MSY and restraint is needed to maintain current population sizes. The harvest capacity of the fleet is many times greater than the combined ABCs. Management tools traditionally used by the Council (landing limits, trip frequency limits, ratios and quotas) have reached the limits of their usefulness in achieving the Council's conservation goals

Thus, new types of management measures are required. Each new tool considered will have different sets of social and economic consequences. Limited entry is one of the new tools being considered.

Economic.

Objective 4. Attempt to achieve the greatest possible net economic benefit to the nation from the managed fisheries.

As fleet capacity and harvest rates increase, more harvest, management and enforcement resources are used to harvest the same amount of fish. Additional use of regulations which interfere with the optimal day to day operations of a fishing enterprise, impose burdens on the enterprise, decrease efficiency and reduce profits for both the vessel and the fishery as a whole. NOAA guidelines state:

In theory, an efficient fishery would harvest OY with the minimum use of economic inputs such as labor, capital, interest and fuel. Efficiency in terms of aggregate costs then becomes a conservation

objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks. (50 CFR 602.15[b][2])

As the SSC statement cited above points out, the management tools traditionally used by the Council to achieve conservation goals have "reached the limits of their usefulness in achieving Council conservation goals." Limited entry, in combination with whatever other management measures are necessary, has been proposed as a tool which will result in greater net benefits than alternative measures applied in an open access fishery.

Objective 5. 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.

Trip limits have been the primary tool used in the Council's attempt to maintain a long season for purposes of market and community stability. As discussed, with reference to the conservation objective, trip limits or season closures (whether a single closure is used or a series of openings and closures are used to maintain a longer season) result in unreported mortality. Thus, as numbers of vessels and, hence, fleet harvest rates increase (requiring more restrictive trip limits), it becomes more difficult to achieve this objective while still meeting the conservation objective.

Utilization.

Objective 9. Strive to reduce the economic incentives and regulatory measures that lead to wastage of fish.

The discard of by-catch discussed with respect to conservation and economic objectives is in effect wastage of fish which might otherwise be landed and consumed by the public. A management system which reduces the future need for discard inducing management measures will likely increase fishery resource utilization.

Social Factors.

Objective 11. When conservation actions are necessary to protect a stock or stock assemblage, attempts are made to develop management measures that will affect users equitably.

Commenting to the Council on the 1991 management measures, the SSC stated:

The SSC examined the range of alternatives for the various proposals and recognized that the most important differences among the alternatives were in their social implications. In these considerations, the Council will be asked to choose between big and small boats, directed and incidental fisheries [and] vessels delivering to onshore or offshore processors.

As conservation measures become more restrictive, equitable distribution of the conservation burden becomes more difficult and decisions become more allocative in nature. Every allocation and means of allocating (whether they be direct or indirect allocations resulting from efforts to control harvest rates) will have different social and economic consequences. Limited entry presents yet another

allocation alternative for consideration by the Council and public both in terms of the allocation of fishing rights and the allocation effects of the mix of management measures used in the future.

Objective 13. When considering alternative management measures to resolve an issue, choose the measure that best accomplishes the change with least disruption of current domestic fishing practices, marketing procedures and environment.

Current management measures conserve the resource, but as the measures become more restrictive disruption of domestic fishing practices and marketing increase. This FMP amendment analysis is part of the Council's attempt to determine whether other management measures (i.e., a limited entry program) might provide a more stable, less disrupted fishery over the longer term.

1.2.3 Goals and Objectives for Limited Entry

The following are the goals and objectives for limited entry adopted by the Council in April 1990. The primary objective addresses the overcapacity problem directly, and the secondary objectives address the ways in which the Council hopes limited entry will promote achievement of Council goals and objectives for the groundfish fishery.

Goals. The goals for the West Coast groundfish fishery limited entry program are to improve stability and economic viability of the industry while recognizing historic participation, meet groundfish management objectives and provide for enforceable laws.

Primary Objective. The primary objective of a limited entry program will be to limit or reduce harvest capacity in the West Coast groundfish fishery.

Secondary Objectives. In pursuit of the primary objective, the following secondary objectives will be addressed:

Economic

- Promote long-term economic stability
- Increase net returns from the fishery
- Allow flexibility for combination vessels

Management

- Stabilize management regimes by reducing need for frequent inseason changes
- Reduce the cost of management
- Reduce by-catch and waste
- Encourage effort in underutilized species fisheries

Enforcement

- Promote cost-effective enforcement by reducing need for frequent changes and tight trip limits
- Promote logistically viable enforcement by minimizing need to use regulations such as trip limits or subarea closures which are more difficult to enforce

Social

- Recognize and accommodate historical participation of those investing their life and resources in the fishery
- Maintain a mechanism for fishery entrance/exit and flexibility for change in the fleet
- Reduce conflicts between user groups by limiting or reducing effort competition for the same resource
- Provide stable supply of groundfish to the public at a reasonable price