

## 9.0 RELATIONSHIP OF THIS FMP TO EXISTING LAWS AND POLICIES

### 9.1 Other FMPs

Salmon. The "Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coast of Washington, Oregon, and California Commencing in 1978" was approved by the Secretary of Commerce on March 2, 1978 and subsequently has been amended several times. The FMP, as well as implementing regulations, prohibits net fishing for salmon in the EEZ. Current federal fishery policies discourage salmon fishing using nets as do state regulations in California, Oregon and Washington. Consistent with these laws and policies, retention of trawl caught salmon is not allowed by the groundfish FMP (see Sections 6.3.2.2, 6.3.5.4 and 6.3.6.4). Some salmon are taken incidentally by normal groundfish fishing operations. The amount of incidental catch by domestic groundfish fishing vessels is unknown. This amendment is not expected to change total catch for the fishery as a whole or cause a significant shift in the catch by net gear, therefore no increase in salmon mortalities resulting from the groundfish fishery is expected.

Anchovy. Regulations implementing the "Northern Anchovy Fishery Management Plan" were published in the Federal Register on September 13, 1978. The FMP has been amended six times. A coastal pelagic species FMP currently under development would incorporate anchovy along with other coastal pelagic stocks. While there is no direct interaction between groundfish fishing operations and either the anchovy resource or fishery, many groundfish species are predators on anchovy. This amendment is not expected to change the groundfish biomass levels.

### 9.2 Corps of Engineers (COE) Port Waterway Dredging Projects

COE dredging projects are federally authorized navigation projects. The purpose of individually authorized projects vary. Some projects maintain deep draft navigation and others maintain specific port functions, such as the support of commercial fishing activity.

While congressional authorization exists for dredging of many ports along the coast, funding is not sufficient for the COE to meet all of its mandated obligations. Therefore, the COE has been forced to prioritize its dredging activities. For a while, these priorities were based primarily on total commercial tonnage. Ports with less than 25,000 mt of commercial tonnage were put on a low priority for dredging. Subsequently, more consideration has been given to the number and type of vessels active in a port. A higher priority is given to commercial activities than recreational activities.

Total tonnage of groundfish landings under a license limitation system is not expected to change. A license limitation system will reduce the number of vessels able to participate in the groundfish fishery. The vessels which have some record of activity in the groundfish fishery, but do not receive permits, have been shown to have only marginal dependence on the fishery and are likely to remain active in other fisheries or in the groundfish fishery using other gears. Therefore, relative to current numbers there is not likely to be a significant reduction in the total number of fishing vessels active along the coast in all fisheries, and priorities for dredging based on numbers of commercial fishing vessels are not likely to be affected relative to current priority levels. However, an effective license limitation system will prevent future increases in numbers of groundfish vessels. This will limit one source the ports have for increasing their activity (in terms of numbers of vessels) and increasing their priority for dredging.

While the coastwide total number of vessels active in all fisheries may not be significantly reduced from present levels, there is concern that vessels in one port may be disproportionately affected. Two factors need to be considered in addressing this concern: (1) the amount of groundfish fishing activity by excluded vessels (those with some landings of groundfish but not meeting the MLRs) is expected to be very low, therefore it is likely that these vessels will continue to be active in other fisheries; and (2) the permits issued will be transferable and vessels are mobile up and down the coast. Therefore, evenness or lack of evenness in the initial distribution of permits along the coast is not an indicator of how permits will be distributed in the future. Section 7.5.3.2 addresses the geographic distribution of harvest.

Conclusion. The affect of the license limitation system on port dredging priorities, relative to current priorities, is expected to be minor, but there may be some effect relative to future dredging priorities due to reduced opportunities for expansion of the fleet. Initial geographic effects are expected to be minor and any geographic redistribution of permits after initial issuance cannot be predicted.

### 9.3 Capital Construction Fund Program and Fishing Vessel Obligation Guarantee Program

The Capital Construction Fund Program is authorized under Section 607 of the Merchant Marine Act of 1936 as amended, Public Law 91-469 (46 U.S. Code Section 1177). The purpose of the program is to improve the U.S. fishing fleet, particularly in terms of safety and efficiency. The program allows vessel owners and lease holders to defer taxes on income set aside for the purpose of construction, reconstruction and/or acquisition of a used vessel. The deferred taxes are paid through a reduction in the cost basis used for calculating depreciation expenses after construction. Over the past 20 years close to \$1 billion have been deposited into the fund and between \$650 and \$700 million withdrawn. Over the past 5 years, 75 to 76 percent of the agreements between participants and the program have been with fishermen in Oregon, Washington and Alaska. Before that time, the proportion was 53 to 55 percent, however, downturns on the East Coast and Gulf of Mexico fisheries have reduced the portion of participation from these regions. In order to be financed through the capital construction fund, an item must be depreciable. Since permits do not depreciate they would not be subject to purchase through the program. (Personal Communication: Dorothy Bostic, Office of Trade and Industry Service, NMFS, Washington, DC., 1990)

The Fishing Vessel Obligation Guarantee Program is authorized under Title 11 of the Merchant Marine Act of 1936 (46 Appendix U.S. Code Section 1271 *et. seq.*) The program provides vessel owners access to private investment markets (municipal funds, retirement funds, etc.). Of a borrower's claim qualifies for a title eleven guarantee, then an auction is then held for the federally guaranteed note. A separate collateralized note between the borrower and the federal government is executed which remains inactive unless the borrower defaults on the federally guaranteed note. Through the access provided to private investment markets, fishermen gain access to long-term fixed interest rate financing generally at an interest rate slightly below that which might be available from banks. Currently, the program is primarily involved in refinancing vessels and rarely finances new construction. Permits which are transferable and may be used as collateral. (Personal Communication: Shawn Barry, Office of Trade and Industry Service, NMFS, Washington, DC.)

These two programs increase the access of vessel owners and lease holders to capital, either through increasing the speed at which financial resources may be accumulated or by providing access to financial markets which would otherwise be unaccessible. Some capital investment may be related to safety or increasing the cost effectiveness of vessel operations, other capital investment may

increase the capacity of the vessel or add new vessels to the fleet. License limitation is an attempt to slow and limit the increase in fleet capacity. To the degree that the capital accessed through these programs is used for creation of new capacity in the fishery, they are at odds with the license limitation program.

Fleet capacity is increased either by increases in the number of vessels or capacity of existing vessels. License limitation directly limits the number of vessels in the fishery. With this limitation on vessel numbers, it would be impossible for either program to result in an increase in the number of vessels permitted into the limited access fishery. In addition to the number of vessels, the license limitation program also attempts to limit the capacity of each vessel through controls on length; however, it is expected that restrictions on length will only be partially effective in limiting individual vessel capacity. It is in this area that the Capital Construction Fund and Fishing Vessel Obligation Guarantee program may have a particular adverse impact on license limitation in that they support fishermen's efforts to increase vessel capacity and so further decrease the effectiveness of the attempted limit.

The license limitation program may have an adverse impact on the Fishing Vessel Owner Guarantee Program mortgages by reducing the value of collateral for currently existing mortgages. It is conceivable that a vessel owner receiving a permit might sell it thereby reducing the value of the vessel as collateral for the loan (see Section 7.2.4.2 on cost of a vessel).

#### 9.4 Marine Mammal Protection Act of 1972

The status of groundfish fishing under the MMPA is discussed in Section 11.7.6 of the FMP. While implementation of a limited entry system may result in fewer active vessels in the fishery, a significant change in total effort (total catch) or relative amounts of different gear used to take the harvest is not expected. Therefore, it is unlikely there will be any significant change in the interactions with marine mammals under this amendment.

#### 9.5 Indian Treaty Rights

Treaties with a number of Pacific Northwest Indian tribes secure to certain treaty tribes certain rights to take fish at their usual and accustomed fishing grounds, which have been defined for salmon to include:

Makah Tribe. Marine waters extending from the Strait of Juan de Fuca "out into the ocean to an area known as Swiftsure and then south along the Pacific Coast to an area intermediate to Ozette Village and the Quileute Reservation." [384 F. Supp. at 312, 364 (W.D. Wash., 1974)]

Quileute and Hoh Tribes. Tidewater and saltwater areas adjacent to the coastal area that includes the Hoh, Quillayute, Queets, and Quinault rivers and Lake Ozette. [384 F. Supp. at 359, 372].

Quinault Tribe. "Ocean fisheries . . . in waters adjacent to their territory" which for fishing purposes includes the area from the Clearwater/Queets River system to Grays Harbor. [384 F. Supp. at 374].

The only active tribal fisheries by the above tribes for species covered by the groundfish FMP of which the Council is aware are the sablefish and rockfish fisheries. At some time in the future, the

Council may have to consider amending the regulations or the FMP to better address these and other tribal fisheries that might develop.

This amendment will not affect rights between treaty and nontreaty fishermen. Certain amounts of groundfish used by tribal fishermen are set aside annually for tribal fisheries, which are regulated by the tribes. Those tribal fisheries are outside the scope of the limited entry plan.