



Natural Resources Defense Council
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May 31, 2012

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

RE: Agenda Item D.5, Biennial Harvest Specifications for 2013-14 Groundfish Fishery

Dear Chairman Wolford and Council Members:

The Natural Resources Defense Council (NRDC) would like to take this final opportunity to advise the Pacific Fishery Management Council against further increases in the canary rockfish Annual Catch Limits (ACLs) for 2013 and 2014.

At its April meeting, the Council adopted preferred harvest specifications for the groundfish fishery for 2013 and 2014. See April 2012 Decision Document, at 4. The preferred harvest specifications included ACLs of 116 and 119 metric tons of canary rockfish for 2013 and 2014, respectively.

As noted by NRDC in previous comment letters,¹ these catch levels already represent an increase both in tons harvested and in harvest rate, when compared to the 2011-12 catch levels. In particular, the 2011-12 ACLs of 102 and 107 metric tons correspond to a SPR of approximately 90%, see John R. Wallace, *Rebuilding Analysis for Canary Rockfish Based on the 2011 Updated Stock Assessment*, at 8, whereas the preferred 2013-14 ACLs of 116 and 119 metric tons correspond to a SPR of 88.7%, see April 2012 Briefing Book, Agenda Item I.3.a Attachment 5, at 38.

Despite the increases in both catch level and harvest rate contained in the preferred ACLs, industry is pushing for even higher canary ACLs. In April, the Council heard repeated requests to raise canary ACLs

¹ See April 2012 Briefing Book, Agenda Item I.3.c Supplemental Public Comment 3, at 4 (Letter from NRDC dated April 2, 2012); April 2012 Briefing Book, Agenda Item I.8.c Supplemental Public Comment (Letter from NRDC dated April 5, 2012).

to 147 and 151 metric tons for 2013-14, based on the fact that canary bycatch is a limiting factor in access to other stocks, and that less than the full ACL of canary was caught in 2011.

Canary rockfish is a rebuilding species. Accordingly, it is subject to the strict legal requirement that catch levels allow rebuilding in as short a time as possible, with flexibility only to avoid “disastrous short-term consequences for fishing communities.” *NRDC v. NMFS*, 421 F.3d 872, 880 (9th Cir. 2005); *see also* 16 U.S.C. § 1854(e)(4)(A); *NRDC v. Locke*, No. 01-cv-421, Slip Op. at 9 (N.D. Cal. Apr. 23, 2010). Increasing the ACLs to 147 and 151 metric tons would increase canary’s rebuilding time—albeit less than a year—so it must be justified legally by the need to avoid disastrous short-term consequences for fishing communities.

No new information suggests that higher canary ACLs are necessary in 2013-14 to avoid disaster for fishing communities. It is true that canary was a constraining stock in 2011, and it is true that the full canary quota was not actually caught in 2011. However, nobody has argued that 2011 was an economic disaster for the fishing industry. So even if these same things hold true in 2013-14, there is no particular reason to believe disaster will befall fishing communities.² Phrased differently, the needs of fishing communities have not *changed* since the last specs cycle, and therefore there is no cognizable reason under the Magnuson-Stevens Act for increasing canary harvest rates. *See NRDC v. NMFS*, 421 F.3d at 880.

By contrast, the conservation outlook for canary rockfish is different today than it was during the last specs cycle. The 2011 assessment indicates there is less canary biomass in the ocean today than would have been projected by the prior assessment, and that canary has farther to go before it reaches fully-rebuilt status.³

Because canary rockfish has less biomass in the water and is farther from rebuilding than previously believed, while the needs of the community apparently have not changed, NRDC would have serious doubts about the legality of raising catch levels beyond the preferred ACLs of 116 and 119 metric tons for 2013-14. *See NRDC v. NMFS*, 421 F.3d at 880; *NRDC v. Locke*, Slip Op. at 9. Indeed, the preferred

² If the Council is concerned with canary being a constraining stock, or with fishermen not having caught the full canary quota in 2011, these issues should be dealt with by working within the ITQ system and not by undercutting the scientifically- and legally-based rebuilding ACLs.

In terms of canary being a constraining stock, part of the purpose of the ITQ system was to facilitate innovation in gear and fishing techniques, to improve bycatch rates and reduce this very problem. Moreover, the ITQ system allows quota pounds to be traded to the cleanest operators, so that—working within the rebuilding ACL—the largest possible amount of healthy stocks can be harvested. The Council should give the ITQ system time to shake out the kinks and start showing these benefits, before taking any hasty action

In terms of fishermen catching less than the full 2011 canary ACL, the same logic holds true: the problem will likely diminish in 2013 and 2014 as fishermen get accustomed to doing business under the ITQ system and liquidity increases in the market for quota pounds. If the issue remains a problem after a few years have passed, there remain various types of modifications the Council can make within the ITQ system, to help fishermen catch more of the allocated quota—such as trailing actions to promote trading, facilitate risk pools, and so forth. All of this can be done without changing ACLs.

³ For further detail, see April 2012 Briefing Book, Agenda Item I.3.c Supplemental Public Comment 3, at 3-4 (Letter from NRDC dated April 2, 2012). *See also* John R. Wallace, *Rebuilding Analysis for Canary Rockfish Based on the 2011 Updated Stock Assessment*; June 2011 Briefing Book, Agenda Item E.2.b Supplemental SSC Report, at 5.

ACLs already represent an increase over 2011-12 ACLs, in both absolute and relative terms, and this may already make them too high under the rebuilding requirements of the Magnuson-Stevens Act.⁴

Finally, NRDC would like to point out that it is simply bad policy to consider raising catch levels, upon learning that a stock has farther to go to rebuild than previously believed. If a rebuilding plan has to be revised because a stock can no longer meet its goals, the situation calls for increased conservation, not increased exploitation. This is a matter of common sense, in addition to being well-established by the past ten years of litigation.

NRDC urges the Council to avoid creating serious legal infirmities in the 2013-14 groundfish harvest specifications—as well as avoid bad policymaking—and take the 147/151 metric ton canary ACL option off the table.

We hope these comments are helpful, and we thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Seth Atkinson". The signature is written in a cursive, flowing style.

Seth Atkinson
Oceans Program Attorney
Natural Resources Defense Council

⁴ See April 2012 Briefing Book, Agenda Item I.3.c Supplemental Public Comment 3, at 3-4 (Letter from NRDC dated April 2, 2012)..