



State of Washington

Department of Fish and Wildlife

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William Stelle, Administrator
Northwest Region, National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070
Attn: Sarah Williams.

Re: RIN No. 0648-BA01

Dear Regional Administrator Stelle:

The Washington Department of Fish and Wildlife (WDFW) submits the following comments on the proposed rule to implement the 2011-2012 Biennial Specifications and Management Measures and Amendments 16-5 and Amendment 23 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). We urge approval of the Council's final preferred harvest specifications and management measures for 2011-12, including the 17 mt annual catch target (ACT) and 20 mt annual catch limit (ACL) for yelloweye rockfish.

As to Amendment 23, we received notice of the partial disapproval of yesterday. We support Amendment 23 as a solid first step in addressing the ACL amendments to the Magnuson-Stevens Act that we can build upon in coming cycles to better address scientific and management uncertainty in the conservation and management of the groundfish fisheries. We do not view the disapproval of removing dusky and dwarf red rockfish from the PCGFMP as a significant conservation or management issue. Our expectation is that the Council will examine the vulnerability of all fish stocks encountered by the groundfish fishery using the Groundfish Management Team's (GMT) productivity and susceptibility approach in preparation for the 2013-14 biennial cycle.

The remainder of this letter focuses on Amendment 16-5 and the 2011-12 harvest specifications and management measures. In November, NMFS informed the Council that the Draft Environmental Impact Statement (DEIS) supporting these actions was inadequate in their judgment to warrant approval. As an initial matter, we see these differing views on the adequacy of the DEIS as concerning given the time and effort that was put into the DEIS and see the situation as cause to re-examine many aspects of the Amendment 16-4 analysis framework. We support the Council's Groundfish Process Improvement Committee as the appropriate forum to begin such an evaluation and hope that improvements can be made in time for the 2013-14 biennial process. We include a few areas of suggested focus for this evaluation in our comments below.

At the November meeting, NMFS and NOAA General Counsel expressed particular concern to the Council about the harvest specifications for yelloweye. We therefore focus this comment letter on addressing what we understand of those concerns. As maker of the motion setting the yelloweye ACT and ACL, we also wish to make clear our view of how the ACT and ACL achieve consistency with the Council's authority to set rebuilding times under the Magnuson-Stevens Act and represent an improvement over the course set by the Council with Amendment 16-4 to the Groundfish Fishery Management Plan.

NMFS specifically requested comments on how impacts to fishing communities differ between the Council's final preferred ACT and ACL for 2011-12 and the 13 mt and 14 mt ACL alternatives. We provide our perspective on those differences to fishing communities in Washington and stress the importance of maintaining the management uncertainty buffer between the ACT and ACL. This buffer represents an important innovation this cycle. If NMFS finds cause that the Council's preferred buffer is too large to be consistent with law, then we suggest that the buffer be adjusted to a level that NMFS determines would be reasonable. We include a discussion of the important advantages of the management uncertainty buffer below, not the least of which is increased flexibility for research activities.

Importantly however, as underscored in the white paper and cover letter that we submitted to the Council in September, the economic impact to fishing communities is only one piece of the underlying rationale for the rebuilding plans.¹ The courts have instructed the Council to examine the broader context—i.e. the long-term conservation purposes that rebuilding is meant to achieve—and to ensure that the weight given to short-term concerns doesn't come at too high of a cost to that purpose. Although not intuitive to most, the yelloweye harvest specifications remain weighted heavily toward conservation despite the lengthy rebuilding period.

The Groundfish Management Team (GMT) gave us a basic approach for analyzing the long-term conservation performance of a rebuilding plan, first for petrale sole and then in response to findings in the court order that the yelloweye, darkblotched, and cowcod rebuilding plans were overemphasizing short-term economics over long-term economic return and the marine environment. Using the GMT's suggested metrics of conservation, it is difficult to see how a 14 mt ACL in 2011-12 performs significantly better than the Council's final preferred ACT and ACL. The difference to fishing communities for 2011-12, in contrast, seems clear.

With Amendment 16-4 the Council began a very complicated approach to analyzing rebuilding plans. This approach has been effective at minimizing bycatch, at recognizing the interconnectedness of the fishery sectors, and at achieving equitable sharing of rebuilding restrictions among states, fishing communities, and fishery sectors. It has not been so successful, however, in communicating the larger conservation picture. We urge NMFS and the Council to give closer attention to that conservation picture and to how rebuilding serves National Standard 1 and National Standard 8.

¹ PFMC September 2010 Briefing Book, Agenda Item I.4.c, WDFW Report: Washington Department of Fish and Wildlife White Paper on the Setting of 2011-2012 Harvest Specifications for Stocks Managed Under a Rebuilding Plan.

I. Adjusting the course set by Amendment 16-4

Before discussing the impact of yelloweye rebuilding to Washington fishing communities, we connect the 2011-12 harvest specifications back to the Council's original rationale in Amendment 16-4. The 2009 stock assessment and rebuilding analysis affected that rationale with a changed understanding of stock status and biology. The court order in April also gave us guidance and further insight with which to revisit and evaluate the course the Council set with Amendment 16-4.

A. Revisiting the Rationale for the Amendment 16-4 Ramp-Down

The Council receives new information on its rebuilding plans each biennial cycle, from the updated estimates of status and biology provided by the stock assessments and rebuilding analyses and from feedback on the efficacy and impact of management measures. New information on either end can bring cause for the Council to revisit a rebuilding plan. Rebuilding plans are designed around three quantities:

- a) the *year targeted for rebuilding* (T_{Target});
- b) the *SPR harvest rate* under which the stock is expected to reach that T_{Target} ; and,
- c) *annual catch amount*, in metric tons, corresponding to that SPR rate, demarcated by the optimum yield (OY) in past cycles and the ACL or ACT beginning with 2011-12.

The way that each ties to the Council's rationale for why a particular rebuilding plan best meets the requirement to rebuild stocks in as short a time as possible while taking into account the needs of fishing communities can be difficult to track across management cycles

For yelloweye, Amendment 16-4 established transition to a constant SPR harvest rate of 71.3%, with the transition scheduled for completion in 2011. The 14 mt OY for 2010 was the last step in this ramp-down to the SPR harvest rate. The Council revised this last step to 17 mt as part of the 2009-10 biennial harvest specifications, yet the court order restored it to 14 mt in April. The SPR harvest rate of 71.3% was associated with a T_{Target} of 2084. This SPR harvest rates described a trajectory of increasing catches over that full rebuilding period, with that trajectory starting at an annual catch of 13 mt in 2011.

The latest stock assessment changed the estimates of yelloweye stock status and biology considerably. The SPR harvest rate of 71.3% now corresponds to a T_{Target} that is slightly farther out than 2084. The Council reacted to this change by decreasing the harvest rate slightly to an SPR of 71.9% so as to maintain the T_{Target} of 2084. The harvest rate was decreased and the T_{Target} maintained, yet the annual harvest amount corresponding to that rate increased with the 2011 ACL being 20 mt.

In other words, the best available scientific estimates of yelloweye status and biology now show that the stock can rebuild on the Amendment 16-4 timeframe with slightly higher catches. We explain why this is so in more detail below. The point we wish to emphasize here is that Amendment 16-4 was not a determination from the Council that a 13 mt or 14 mt ACL would best rebuild the stock in as short a

time as possible while taking into account the needs of fishing communities. The ramp-down to 13 mt was recognized as severe yet the Council thought it necessary for reaching the T_{Target} . The new stock assessment changed the Council's view of the necessity and changed the very conservation dynamic at the center of the rebuilding law. It is the relationships between the annual catch, SPR harvest rate, and T_{Target} estimates that determines the Council's policy judgment for a particular rebuilding plan, not the annual catch alone.

The enclosed WDFW report articulates our view in June 2006 that the ramp-down was necessary.² It also still accurately captures the community impacts we expect if management measures are restricted further.

B. Changes in Estimates of Yelloweye Status and Biology

In June, the GMT advised the Council that estimates of stock status and biology can change in three fundamental ways from stock assessment to assessment:

- (1) **Status** or abundance *relative* to unfished abundance: the current stock size relative to unfished stock size, which describes how far the stock has to rebuild;
- (2) **Productivity**: the stock's inherent capacity to grow, which describes how quickly the stock can rebuild; and,
- (3) **Scale** or *absolute* abundance: which describes the overall size of the stock typically expressed in biomass.³

A rebuilding plan's T_{Target} , SPR harvest rate, and stream of expected annual allowable catches that result from the SPR rate are all functions of these three fundamental estimates. They change as the estimates change. As the GMT advised the Council, estimates of a stock's status and biology can change from the previous assessment in ways that cannot simply be described as "worse off" or "better off" than previously thought. Given that these changes arise as much, if not more, from scientific uncertainty than from true changes in the stock, it is important that the Council rely on the most recent assessment and rebuilding analysis as the best available estimates of a stock's status, biology, and progress in rebuilding.

The most recent yelloweye stock assessment changed our understanding of the stock's status and biology in all three dimensions. We compare the 2009 and 2007 assessments to illustrate exactly how our perception has changed. Such comparisons are not always straightforward because of differences between stock assessment models. We therefore suggest that NMFS verify the following analysis for the record.

With respect to status, the yelloweye stock looks improved based both on changed estimates of relative abundance and estimated progress in rebuilding (i.e. the stock started rebuilding at a higher

² Also available at: PFMC June 2006 Briefing Book, Agenda Item F.2.b, Supplemental WDFW Report.

³ PFMC June 2010 Briefing Book, Agenda Item B.3.b, Supplemental GMT Report 2.

starting point than we thought and also increased in total biomass by more than 17% since rebuilding began). This means that the stock has less far to rebuild than we thought in 2007.

The stock's productivity, in contrast, is now estimated to be slightly lower. The 2009 rebuilding analysis projections show the stock increasing at an expected 1.7% per year to T_{Target} under zero fishing mortality (i.e. the maximum rebuilding rate possible). The 2007 projections showed an expected 1.9% growth per year under zero fishing.⁴ This change explains how the Amendment 16-4 SPR harvest rate of 71.9% no longer corresponded to the same T_{Target} despite the higher estimate of relative abundance. Although the stock doesn't have as far to rebuild, the rebuilding projections expect the stock to grow at a slightly lower rate.

The most substantial change in the new assessment comes in the scale of the stock. The new assessment estimates the stock to be roughly 35 percent larger in recent years and larger in the past as well (Figure 1). To clarify, this difference is not from a change in the stock but from scientific uncertainty in the stock's true overall size. This change in scale is the source of the somewhat counterintuitive fact that the new, more conservative SPR rate produces a larger ACL. Although counterintuitive for many, the principle is simple: larger populations produce a larger annual harvest amount for a given rate of harvest. This is why the ACL corresponding to the Amendment 16-4 SPR harvest rate of 71.9% is now 21 mt instead of the 13 mt anticipated in the 2007 stock assessment and rebuilding analysis. This increase in scale is central to our view that the drop to a 13 mt or 14 mt or ACL is no longer warranted.

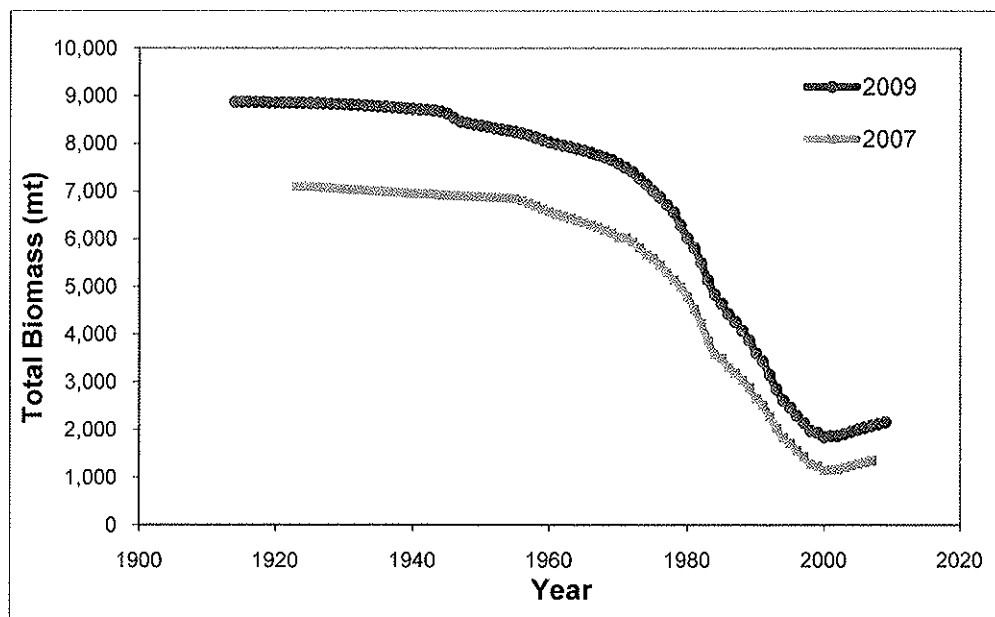


Figure 1. Trend in yelloweye stock biomass from the 2009 (top) and 2007 (bottom) stock assessments. The estimate of overall biomass in the 2009 assessment is larger than in the 2007 assessment.

⁴ These estimates of the annual rate of increase are based on the formula: $r = (\text{BMSY target}/\text{Current stock status})^{1/n} - 1$, where n is the number of years to T_{Target} .

C. Considering Estimated Times to Rebuild

Part of the feedback NMFS gave the Council in November focused on the T_{Target} of 2084 for the 20 mt ACL. Describing the T_{Target} in this manner is in step with the Council's standard practice yet does not describe the complete picture. To get that complete picture, the effect of the ACT must be considered.

To elaborate, the 2084 T_{Target} estimate assumes that catch exceeds the ACT by the full management buffer every year, or at least on average, over the full rebuilding period. Such a result would be entirely contrary to the Council's intent of the ACT. That intent is to keep catch *below* the ACT using the same management approach that the Council has taken with OYs in the past. The main advantage of the ACT buffer comes in years in which catches exceed what was expected. We discuss this point in more detail below. The point we emphasize here is that based on recent experience with the rebuilding plans, we should expect that years in which the ACT is exceeded to be the exception, not the norm. If this expectation bears out, then the T_{Target} associated with the ACT would more accurately describes the projections from the rebuilding analysis.

This point also relates to another fundamental—and perhaps overlooked—aspect of rebuilding estimates. In short, the pace of rebuilding is set by the catches that actually occur, not by the catches that are planned for. At the same time, rebuilding projections are based on planned catches. With the management uncertainty involved with a bycatch species like yelloweye, the planned and actual catches are often different.

As reported in the 2009 rebuilding analysis, yelloweye catches have only been 65 percent of the planned catch since 2002. The catch in 2009 was right at that average, with catch coming in at 11 mt instead of the planned for 17 mt. This performance has not been unexpected because the Council takes a precautionary approach to management uncertainty and plans high for many fishery sectors, especially with yelloweye. The Council is very risk-averse to exceeding the annual catch limit. Yelloweye catch is particular rare and variable and requires more risk-aversion than a stock where catches are larger and more steady.

Although the track record to date is that yelloweye catch will come in less, and in some years substantially less, than what was planned for, the Council still estimates T_{Targets} based on the assumption that the full catch is taken every year, or on average, throughout the rebuilding period. This decades-long stream of assumed and increasing catch heavily influences the T_{Target} estimates. There are a few important implications to consider related to this practice. For one thing, the decrease in rebuilding time from the better than expected catches since 2002 goes mostly unnoticed. Their impact on the T_{Target} is hardly noticeable compared to the decades of catches assumed for the future and the way in which estimates of status and biology can jump around.

Perhaps more significantly, we are becoming concerned that this stream of increasing catches is overshadowing the importance of catches to communities now. In other words the difference between 17

mt and 14 mt in 2011-12 becomes greatly amplified by the differences in the stream of future catches. The T_{Target} for 14 mt becomes 2067, 17 mt becomes 2074, and 20 mt becomes another “decade later” at 2084. Yet as the Groundfish Management Team noted to the Council in June, if catch averages 20 mt over rebuilding then the T_{Target} projection is 2067 is as well. To us, this suggests we may be over-reading the science and not paying enough attention to the T_{Target} estimates as probabilistic estimates.

The Council assumes a stream of future catches based on the presumption that the needs of fishing communities—i.e. the encounter rate with rebuilding stocks—will grow directly proportionally to the abundance of the stock. This may be a reasonable approach, yet it must be recognized for what it is. The reality is that several adjustments to the rebuilding parameters will be necessary over the course of rebuilding. The options that future Councils will have for such adjustments are bound only by the catches that have occurred. It may be that current management measures will suffice to adequately control bycatch for the foreseeable future and that automatic increases in the ACL are not needed.

The evaluation of our rebuilding policies and analyses should take a close look at how we represent the estimates of times and probabilities of rebuilding. For now, we request that NMFS be mindful of the assumption underlying T_{Targets} when reviewing whether the Council’s preferred ACT or ACL give appropriate weight to the needs of fishing communities during this 2011-12 biennial management period.

4. The Broader Perspective: Consistency with National Standard 1 and National Standard 8.

Whether yelloweye rebuilds in the 2060s, 70s, or 80s the rebuilding timeframe cannot be described as anything but long. And the first impression of many is that it is simply too long to be conservation-oriented. This is an understandable perception. Yet when examined under the best available scientific estimates of the stock’s status and biology and evaluated against the standards and principles embodied by the Magnuson-Stevens Act’s National Standard 1, National Standard 8, and definition of the terms optimum and conservation and management; the reasonable basis for the long rebuilding time becomes clear.

We quickly highlight some of the inconsistencies that became apparent to us over the past few years of experience with the Council’s rebuilding and harvest policies that call into question the overall coherency of these policies. First, consider that the purpose of the minimum stock size threshold (MSST) used to delineate overfished status is to prevent the stock from dropping below levels that jeopardize the stock’s capacity to produce MSY on a continuing basis. This is a yield-based objective. The National Standard 1 (NS1) guidelines advise that the MSST can be set as low as half of the abundance expected to produce maximum sustainable yield (B_{MSY}). Had the Council done so, the overfished threshold for rockfish would be $B_{20\%}$.

The current status of yelloweye puts the stock above this mark. Assume that the stock had never dropped below $B_{20\%}$ and therefore never been declared overfished. In such a hypothetical, the Council would set the ACL based on the FMP’s 40:10 adjustment to the allowable biological catch (ABC) control

rule and the ACL for 2011 would be set somewhere in the lower-to-mid 30 mt range. The 40:10 harvest policy would be expected to increase stock biomass gradually yet the stock's status would not be expected to reach $B_{40\%}$ until at least the year 2182. Despite not rebuilding, the cumulative yield provided by the stock would exceed any of the harvest rates expected to rebuild the stock by the T_{MAX} outer limit on rebuilding.⁵

This hypothetical piece about never being declared overfished may seem improbable yet it represents the very situation the Council faces with widow rockfish, although the estimate of widow rockfish status puts the stock on the brink of reaching the $B_{40\%}$ rebuilding target. The widow rockfish ACLs for 2011-12 are not set according to the 40:10 policy but instead sits at somewhere around 7% of the harvest rate that would normally be used for a stock of its status that had never been declared overfished. We must recognize that our rebuilding policies lead the Council to treat widow much differently from stocks like sablefish and whiting that are both currently at lower status than widow yet have never been declared overfished.

The last aspect of yelloweye we will highlight here focuses on the estimates showing the overfishing limit (OFL) for yelloweye in 2011—i.e., the best available estimate of the harvest rate that prevents overfishing and maximizes long-term yield from the stock—to be 48 mt. The objective of rebuilding is to rebuild the stock back to $B_{40\%}$, to the point at which the annual yield is expected to be maximized. The estimated OFL at $B_{40\%}$ is estimated to be 56 mt, a mere 8 mt more. In other words, the annual yield that can be sustainably harvested from the stock is already more than 80 percent of what can be expected after successful rebuilding.

We do not raise these issues to challenge the merits of rebuilding. WDFW remains committed to rebuilding yelloweye and will continue to advocate for keeping rebuilding plans weighted toward higher degrees of success and stocks at higher abundances. We have advocated and will continue to advocate for minimizing bycatch of rebuilding rockfish. With cowcod, yelloweye, and darkblotched, however, the Council has reached a point where the question of how far to minimize and at what cost to fishing communities has to be confronted directly. And the answer to that question must be grounded in long-term conservation to be meaningful. Otherwise we cannot know whether the weight given to the needs of fishing communities is disproportionate in comparison to conservation or if it is perhaps the opposite. The question is not simply how much harvest to fishing communities need now. Fishing communities will have to adjust to what long-term conservation can support. We must look at benefit to fishing communities now against the cost of that benefit to the future.

To close this section, we read the instruction to “take into account the needs of fishing communities” to say that the Council does not need to rebuild stocks as quickly as possible without regard to the cost of doing so. We also read that instruction in the light of National Standard 8, which requires the Council to achieve the conservation objectives of rebuilding while providing for the sustained participation of fishing communities and with the aim of minimizing negative economic impact of rebuilding measures. Put another way, we read it to say that the Council should take care to ensure that

⁵ We refer NMFS to the white paper and Appendix G in the DEIS for more explanation of this statement.

the cost of conservation is not disproportionate to the benefits that conservation is expected to produce. We believe that the 17 mt ACT and the 20 mt ACL for 2011-12 appear very reasonable in this light. We also view pushing harvest lower as raising risks to fishing communities in a way that is unjustified by the conservation benefits. With the stock stable and increasing in abundance and already producing 80 percent of the estimated maximum sustainable yield, the basis for pushing fishing communities any closer to some critical economic threshold is not well grounded in conservation policy.

II. Assessment of Need and Impact to Fishing Communities

The analyses in the DEIS serve many purposes. The Council is rebuilding multiple stocks and the rebuilding plans affect several fishery sectors and fishing communities that dependent differently on the groundfish fisheries. The Council uses these analyses to assess how far bycatch can be minimized for each stock and at what consequence to fishing opportunity. The Council must also consider how to equitably distribute rebuilding restrictions among fishing communities, fishery participants, and the three states while also providing for research, tribal fishing, and bycatch in fisheries not managed under the PCGFMP. It all amounts to a very complicated set of decisions with many moving parts. The Council could not have formulated rebuilding plans without these analyses, yet their complexity can obscure some of the finer points of management. We focus below on what see as some of the finer points relevant to the Council's rationale for the 17 mt ACT and 20 mt ACL for yelloweye.

A. The Difference between 14 mt and 17 mt

As we understand it, a major concern of NMFS on the Draft EIS is that it does not make clear the differences in management measures and impact between the Council's final preferred ACT and ACL and the 14 mt OY for 2010 or the 13 mt ACL also analyzed in the DEIS. Those differences are, again, clear to us. We are at a point where the projections of catch and effort used by the Council—and in turn, the economic analyses that are based on these projections—are just not capable of capturing many of the nuances involved with management. Although these nuances do not lend themselves to quantification, they are nonetheless significant and essential the underlying rationale for the 17 mt ACT and 20 mt ACL.

The major benefits of the 17 mt ACT and 20 mt ACL that we see are related to management uncertainty and the risk that bycatch will exceed our projections. The ramp-down, true to its rationale, was a learning experience for the Council. The effectiveness of various management measures was unknown when the ramp-down was begun. As described above, the Council approached this uncertainty with precautionary projections of catch. Actual catches bore this out by coming in substantially lower in many sectors than had been planned for.

The ramp-down should be recognized as successful in many regards. In addition to achieving reductions in bycatch rates, the Council has also become more confident in the effectiveness of certain management measures and in the reliability of catch projections. In the analysis of the 2011-12 harvest specifications and management measures, it turned out that many sectors could be managed with less restrictive management measures or less bycatch than anticipated in Amendment 16-4.

It is also important to recognize that the ramp-down was occurring within the holistic, integrated approach where the needs of fishing communities have been examined with respect to all rebuilding stocks. Yelloweye is more important to certain fishery sectors more than others and so the Council has treated some sectors preferentially. The Washington recreational fishery, for example, isn't much affected different between a 14 mt and a 17 mt ACL because the Council was able to achieve reductions in sectors that are less dependent on yelloweye.

Yet key to understanding the Council's rationale is the fact that reductions in the ACL decrease the margin of error for management uncertainty across several sectors. The lessons learned during the ramp-down have not eliminated the variability and uncertainty in catch and fishing effort, and the ramp-down provides us with only a short-time series to be used for predicting catch. Again, the 2009 catch was telling, with management measures set to an OY of 17 mt and actual catch 11 mt. The uncertainty and variability in catch means that 2010 will likely be different with catch possibly even exceeding 17 mt.

With smaller margins for error, the Council sees an increased risk that catch will exceed the projections and necessitate inseason adjustment. Drastic inseason changes are undesirable for several reasons, which we touch on in the following section.

B. The Significance of the ACT

As explained above and during Council discussion on this matter, the intent of the ACT was to limit harvest to stay within the 17 mt ACT. The purpose of the 3 mt difference between the ACL and ACT is to provide a buffer for management uncertainty associated with all harvest sources, including commercial, recreational, tribal, and research catches. This buffer provides a greater level of comfort to fishery managers that the measures they have adopted, and upon which the needs of fishing communities were evaluated, will effectively keep catch at the planned levels.

When unexpected catches occur and the Council must make adjustments to reduce projected catch inseason, options are often limited. Options are limited by catch that has already occurred and by the different management controls available in the various fishery sectors. For example, when the court order required the Council to reduce the yelloweye OY from 17 mt to 14 mt mid-year, there were few options for doing so. The elective research projects of WDFW and the Oregon Dept of Fish and Wildlife were consequently cancelled. The Council may not have made that same decisions had the full set of options been available.

Inseason adjustments also involve inequities that arise from the different timing and inseason management capabilities of each sector. When the inseason adjustments arise for yelloweye, the Council has little choice but to look to recreational fisheries first, not out of preference, yet because the recreational fisheries can be managed inseason and often track low against their respective harvest guidelines. The Council has factored this in somewhat to the recreational harvest guidelines, but again, margins for error have decreased during the ramp-down and decrease further as the ACL decreases. The non-nearshore fixed gear fisheries, in contrast to the recreational fisheries, cannot be managed very

effectively for yelloweye bycatch inseason and the impact of any inseason management change would largely be speculative.

The other point to recognize is that the Council evaluates the needs of fishing community based on projections of fishing opportunity available under a set of management measures and the catch and effort that might occur under that opportunity. In some years catch is lower based on a number of reasons, such as fishing opportunity elsewhere, global and national economic conditions, lower than average bycatch encounters, etc. In other years, the effort and catch might be higher than expected and require inseason change in the sector, and often, in other sectors as well. Many times these changes occur and eliminate the very benefit the fishing opportunity it was meant to provide. In other words, the Council can choose a rebuilding plan based on an assessment of the needs of fishing communities with that assessment then going out the window in light of actual events inseason.

The non-nearshore fixed gear fisheries provide an impending example of this. The Council went through discussion on the 2011-12 management measures believing that this fishery sector would be accommodated by even the lowest yelloweye ACLs analyzed. Projections showed the sector needing only 0.9 mt of yelloweye to fully harvest the 2011-12 sablefish ACLs. In June the Council, planned for a 1.3 mt harvest guideline under the 17 mt ACT to accommodate some risk of unexpected catch. When the 2009 catch projections were released in November, that sector was estimated to have caught that 1.3 mt with bycatch rates double what was projected in the open access and non-primary limited entry portions of the fishery. If the ACL is left at 14 mt for 2010, the Council will face a much different decision than was contemplated during the development of the 2011-12 management measures. The 125 fm line remains in place off Oregon instead of being moved back to 100 fm, and the assessment of need faced by the fishing communities affected by that RCA is now different, as are questions about equitable sharing of management restrictions between states and communities.

Fishery sectors and fishing communities are all connected. Catch in one sector can cascade into the rest. The 3 mt buffer between the ACT and ACL lessens these complications. The buffer improves the likelihood that the Council's assessment of fishing opportunity will hold true throughout the fishing season and that major adjustments can be handled during development of the biennial management measures. This buffer is a significant improvement over the way yelloweye has been managed to date, where the approach to management uncertainty has been different in every sector. It should not be overlooked that these different approaches have complicated the assessment of fishing community needs by mixing in questions of the equitable sharing of rebuilding restrictions. It is preferable to keep the two issues as distinct as possible.

We have so far discussed how the ACT buffer improves management. We close this section by emphasizing how the greater uncertainty given by management buffer benefits fishery participants. Like any business, fishing business prefer certainty for planning. And those dependent on fishing for their livelihoods would prefer more certainty that fishing income will be available as contemplated at the beginning of the season. Recreational anglers would likewise prefer to make travel and vacation plans knowing with reasonable certainty that they will enjoy the experience they expected. Uncertainty, on the

other hand, creates perverse incentives to fish early instead of when most beneficial. Under uncertainty businesses are less likely to make investment in infrastructure and jobs that fishing communities depend on, and anglers reluctant to spend their recreational dollars in fishing communities where there is a chance the fishery may close suddenly.

The ACT buffer not only makes inseason action less likely, it also signals the Council's risk tolerance for taking inseason management action. Inseason action cannot be avoided completely, yet the buffer would mean major adjustments could be held off to the biennial management when there is more time for planning and public input. And as explained above, we expect these benefits to come at little to no cost to long-term conservation because we fully expect the Council's management measures to keep catches below the ACT.

C. The Trawl Fishery under Rationalization

We see the trawl sector as a key difference between the 17 mt ACT and 14 mt ACL scenarios. The trawl sector is not as dependent on yelloweye as other sectors and so the Council has held it to very low levels under the trip limit system. The shoreward closure north of Cape Alava remains in place largely because of yelloweye bycatch in that area. And in 2009, the catch estimate for the non-whiting trawl sector was a mere 0.1 mt of yelloweye.

The trawl rationalization program is set to go into effect one week from today. Under the ACT of 17 mt, the shoreside trawl sector is set to receive 0.6 mt, or roughly 200 fish. Many recipients of trawl quota pounds (QP) won't even receive enough to cover the catch of one fish. Under a 14 mt ACL, that number is cut in half to 0.3 mt. This 0.3 mt is based on the trawl bycatch projection model, where the dynamic is much different than will be seen in the IFQ program.

In the shoreside IFQ program, the impact of bycatch becomes individualized and the risk of experiencing a catch that exceeds an individual's quota holding is high. The Council's best judgment was to double the current best estimate of bycatch in light of this new dynamic. Yelloweye do tend to congregate in rocky areas; however, fishermen have also been known to catch them in muddy flat areas or over gravel or sandy bottom, which makes catching them unpredictable and avoidance not completely within the trawlers' control. Those that do exceed their individual quota of yelloweye may find it difficult, if not impossible, to find yelloweye quota pounds available on the market for sale or lease at a reasonable price. Some individuals may choose to not participate at all rather than face the risk.

The reality is that we do not know what the impact to fishing communities will be until we gain experience with the program. The program would undoubtedly benefit from higher catches, the Council fully recognizes this. Yet the 0.6 mt was what the Council saw as available given the needs of other sectors.

D. The Importance of Research

Research is another key difference between the ACT of 17 mt and an ACL of 14 mt. The additional 3 mt allows us to implement research projects to collect much needed data on yelloweye rockfish for inclusion in the stock assessment. The fact is that we have little information now to monitor actual progress in rebuilding.

The decision to conduct research projects is also tied to management uncertainty. Research catches have been highly variable for yelloweye. Because of the standardized survey designs, research surveys cannot simply be stopped when large catches do occur. The 3 mt buffer between the Council's final preferred ACT and ACL was intended to address research as well and to give management agencies more confidence that research projects could be carried out in full.

The low yelloweye ACL does not affect just the PCGFMP. There has been interest for a number of years in expanding the International Pacific Halibut Commission (IPHC) survey to address uncertainty in the stock assessment for halibut. However, the low amount of yelloweye available for research has made IPHC staff and the states of Washington and Oregon reluctant to add additional stations to the halibut survey because of the additional yelloweye rockfish mortality.

E. How Yelloweye Rebuilding Has Already Affected Washington

When discussing whether to increase restrictions further, it is important to remember the restrictions that have already been imposed and the reductions in catch that have been achieved. As reported in the 2009 rebuilding analysis, yelloweye catch has been reduced by 95% from historical levels.

Along these lines, we would like to reiterate comments we made to the Council regarding the needs of Washington's fishing communities in June 2006. As mentioned above, the original comments can be found in the report attached to this letter.

Since 2006, these coastal fishing communities have been adversely affected by conservation measures to ensure our commercial and recreational harvests stay within the rebuilding parameters for yelloweye rockfish. We have implemented large area closures for commercial groundfish fisheries including a year-round non-trawl rockfish conservation area (RCA) that extends from the shore to 100 fm, a trawl RCA that extends from the shore to 150 fms north of Cape Alava and from 75 fm to 150 fm south of Cape Alava, and a year-round bottom contact gear closure off Cape Flattery commonly known as the "Tabletop" (Olympic 2). Forcing fishermen to fish further offshore is not only costly in terms of fuel and time, but poses safety concerns, particularly in adverse weather conditions typical off the northern Washington coast. With fewer fishing grounds available, gear competition becomes an issue as well.

Our recreational fisheries have been the most affected with a bottomfish fishing closure extending seaward of 20 fm off the north coast from mid-May through the end of September and a year-round offshore closure (C-shaped closure) that eliminates productive halibut fishing grounds for recreational

January 4, 2011

Page 14

fishers. Keeping our recreational fisheries close to shore in shallower waters against a shoreline with hundreds of islands and rocks also poses a safety risk to those who continue to fish.

Further south, we also adopted two, year-round area closures off Westport that were historically known to produce yelloweye rockfish catch, thereby forgoing targeted trips for healthy species such as lingcod and yellowtail rockfish that are abundant in these areas.

In close, the Washington coast is remote with communities sparsely populated and difficult to access. Fishing has been central to their local economies and alternative sources of employment are not widely available. Again, we see the Magnuson-Stevens Act build on the principles of conservation and sustainability. These principles are principally about the relationship between our activities today and the consequences for the future. Our rebuilding plans must be grounded in those principles and recognize that the well-being of fishing communities in the future cannot be separated from the well-being of those communities today. We believe the yelloweye stock should be rebuilt in a manner than remains tilted toward successful rebuilding without disproportionately impacting fishing communities now. And again, we view the 17 mt ACT and 20 mt ACL for 2011-12 as highly reasonable next steps toward doing so.

III. Conclusion

The above letter has attempted to capture the core of our reasoning for proposing the 17 mt ACT and 20 mt ACL to the Council in June. We hope the discussion has been useful and informative for your review. The past few years have been very challenging for all involved with management of the PCGFMP. Council and NMFS staff in particular have undertaken extraordinary workloads in developing, coordinating, and reviewing the analyses and activities that have guided the Council in development of Amendments 20, 21, 23, 16-5 and the 2011-12 biennial harvest specifications and management measures. We thank you for those efforts and look forward to continued dialogue and partnership in the stewardship of the fisheries of the west coast.

Sincerely,



Michele Culver, Regional Director
Region 6

Enclosures (1)

cc: Philip Anderson, Director
Donald McIssac, Executive Director, Pacific Fishery Management Council