

ENFORCEMENT CONSULTANTS REPORT ON
TRAWL RATIONALIZATION TRAILING ACTIONS AND ALLOCATION AMENDMENTS

The Enforcement Consultants (EC) have reviewed *Agenda Item H.5, Situation Summary, March 2011, Trawl Renationalization Trailing Actions and Allocation Amendments* and have the following comments. The EC strongly recommends the Pacific Fishery Management Council (Council) make the proposed National Marine Fisheries Service (NMFS) Program Improvement and Enhancement Rule (PIE) a top priority for Council action in calendar year 2011.

The West Coast groundfish regulations have undergone a dramatic transformation over the past twelve months to include implementation of the Trawl Rationalization Program (TRat), and a complete reorganization of the commercial and recreational groundfish regulations. As a result, there are still aspects of basic TRat Program and its supporting regulation package that need further attention. Within 50 CFR 660 there were some inevitable errors. These include, inconsistencies in the crossover provisions, and unclear, confusing regulatory language that needs to be corrected.

Further revisions of the TRat Program components may be needed to address items that did not get thoroughly addressed last year as a result of the tight timeline and/or to address areas where the fishery could be more flexible or efficient. Some items affect all sectors: trawl, limited entry fixed gear, open access (OA), and recreational.

Examples include:

- Review requirements/limitations on switching between limited entry (LE)/OA fisheries
- Revisit removing LE permit for California halibut/ridgeback/sea cucumber, etc.) (affects all commercial fisheries)
- Address whether first receiver must complete/submit a Federal e ticket before fish leaves the offload site. (affects individual fishing quota)
- Address emerging issues coming from industry, including: observer/offload issues, gear modifications, and processing at-sea.

Noted Physiologist, Dr. Karl Weick, a professor at Cornell University wrote a book entitled, *The Social Psychology of Organizing*. In it, Professor Weick's academic thesis or "theme" can be summed as follows: "I don't know what I want until I see what I have done."

The fact that we find ourselves in this situation regarding regulatory development should not alarm or suggest that egregious errors have been made by the Council or NMFS in this process, but rather per Professor Weick, this situation is an expected outcome. "I don't know what I want until I see what I have done."

The EC believes that existing errors, inconsistencies, and unclear intent relating to certain aspects of the regulation package creates an environment where the industry can unwittingly make erroneous assumptions and put them in harm's way. Conversely, these errors and/or inconsistencies create an affirmative defense for those knowingly breaking the law. Either way, the situation erodes the enforceability of the regulations, and therefore needs to be corrected in a timely manner.

With this recognition the EC reiterates our opening statement: The Council should make the proposed NMFS PIE a top priority for Council action in calendar year 2011.

PFMC
03/08/11