

## ISSUE NUMBER 2 - GEAR REGULATIONS FLEXIBILITY

Gear specifications for groundfish in the Washington, Oregon, and California region were established after substantial deliberation by the Council, GMT, GAP, and industry working groups. Except under the "Point of Concern" mechanism (50 CFR 663.22[a]), major changes in gear specifications require FMP amendment. Since the amendment process is cumbersome, time consuming, and expensive, the Council is recommending a framework mechanism to enable gear changes to be made without FMP amendment.

### Background

During development of the FMP, two major concepts evolved to deal with the management of west coast groundfish fisheries. These were numerical OY (quota) designation for six species which required special consideration and a non-numerical OY designation for all other species. The non-numerical OY approach was developed by the Council as a means of managing interrelated species of the demersal finfish complex. The goal of the Council in multi-species management is to preserve the mix of species at sufficient abundance to assure adequate spawning productivity of the group as a whole.

Non-numerical OY, which applies to most groundfish species, is defined as all fish which are harvested under regulations adopted by the Council. It is not a predetermined numerical value. This OY provides flexibility in harvesting various species while taking into account established conservation principles. Gear regulations were formulated with the goals of protecting juveniles and maximizing yield per recruit as well as to minimize operational difficulties in the fishery. It was believed that gear regulations provided sufficient control of the fishery on non-numeric OY species, particularly flatfish, to meet conservation objectives. Gear regulations are also a component for the control of fisheries on OY species.

Gear regulations (50 CFR 611.70, 50 CFR 663.2, and 50 CFR 663.26) are specified for commercial and recreational groundfish fishing. Gear regulations include, but are not limited to, definitions of legal gear, mesh size specifications, codend specifications, and marking requirements for fixed gear.

Gear regulations currently may be modified under the framework mechanism (50 CFR 663.22, 50 CFR 663.23) which allows various management measures to be applied without FMP amendment in order to minimize biological stress on a stock without undue delay. (Gear changes have not yet been used for this purpose, but strong interest has been expressed in examining the effects of changes on mesh size in hope of reducing trip limits and discards.)

There also are sound reasons for modifying gear regulations that are not related only to biological stress. For example, gear marking requirements for some fixed gears were imposed by the first amendment to the FMP in order to reduce gear conflicts and enhance retrieval of lost gear; Issue 3 in this amendment also examines surface gear marking requirements for the same reasons. Another example is changes in gear technology which render current regulations unnecessarily burdensome on the industry. The FMP initially required a 1.75-inch diameter footrope on midwater trawls (which would make that gear more susceptible to damage if dragged on the sea floor) to

discourage use of small mesh midwater trawls on juvenile, bottom-dwelling flatfish. However, the configuration of midwater trawls changed over the years since FMP implementation, providing space for juvenile fish to escape, so that dragging the net on the sea floor would not be detrimental to the stocks. Moreover, catch records showed that midwater gear was not used to harvest significant amounts of bottom-dwelling fish. Deletion of the footrope requirement had to be made by FMP amendment, forcing fishermen to continue using unnecessarily expensive and fragile gear until the amendment could be implemented. Another reason for modifying gear could be to change the catch composition of species, encouraging more selective harvest of desired species while minimizing the need to sort and discard unwanted species. Although there are biological implications to these changes, they are not necessarily related to biological stress. Thus, there clearly are valid reasons for modifying gear requirements more quickly than the FMP amendment process would allow and for reasons including but not limited to reducing biological stress.

### Options

#### Option 1 - Status quo

Except under the "Point of Concern" mechanism, only minor changes in gear regulations can be made without plan amendment.

#### Option 2 - Framework Process for Changes in Gear Regulations

Gear regulations may be changed at any time during the year, not only for conservation purposes according to the following procedures.

The framework process may be initiated by members of the general public, fishing industry, Council advisory entities, or government agencies petitioning the Council to consider a change in gear regulations. The petition must be accompanied with documentation that the proposed changes in gear regulations are consistent with the objectives in the groundfish FMP and would result in substantial improvements in the groundfish fishery. Substantial improvements may exist when:

- sustainable landings are increased
- the value of landings is increased
- gear conflicts are reduced
- fishing efficiency is increased

The Council, after gathering information on the petition including consultation with the GMT, GAP, and SSC, will decide if the petition merits further study. If meriting further consideration, the Council will publicly announce its intent to consider the change and will direct the GMT to prepare a report on the proposed change.

The report will contain an evaluation of the factors presented in the petition and consider whether the change would promote achievement of FMP objectives which may include consideration of changes in catch composition, yield per recruit, cost to the fishing industry, impacts on any other management

measures and other fisheries, and any other relevant biological or socio-economic information. In addition, it will consider biological and socio-economic implications of items listed above and will include a recommended schedule of implementation.

The Council will consider the GMT's report and other information brought forth from written comments and at public hearings and determine whether or not the change would result in substantial improvements to the groundfish fishery and is consistent with objectives of the FMP. Any changes in gear regulations would be scheduled so as to minimize costs to the fishing industry, insofar as this is consistent with achieving the goals of the change.

The regional director of NMFS (under a delegation of authority from the assistant administrator for fisheries, NOAA) will review the Council's recommendation, supporting rationale, public comments, and other relevant information and, if he concurs in the recommendation, will develop regulations in accordance with the recommendations. He also may reject the recommendation providing written reason for the rejection.

If the regional director concurs in the Council's recommendation, he shall publish a notice in the Federal Register as specified in the regulations at 50 CFR 663.23, affording a reasonable period for public comment which is consistent with the urgency (if any) of the need to implement the change. (These actions by the regional director are the same as those authorized by the FMP for the "Point of Concern" mechanism.)

Changes authorized to be made by the framework procedure include, but are not limited to, definitions of legal gear, mesh size specifications, codend specifications, marking requirements, and other gear specifications included in 50 CFR 663, 50 CFR 611.70, and the FMP.

#### Impacts

Under Option 2, it is expected that savings in administrative costs will occur by avoiding the amendment process. Savings are estimated to range between \$30,000 and \$50,000 depending on the number of GMT meetings and locations, associated expenses, salaries of the GMT and Council staff (seven man months), and Council meetings relating to the amendment process. Up to a year or more is required for amending the FMP. Under the framework procedure, it is expected that a change could be made as quickly as two months after the Council recommends making the change. It is anticipated that, on the average, one gear change per year will be affected by this amendment.

Changes implemented using the framework procedure could have biological impacts. Such biological impacts are likely to be favorable or minor since gear changes would be aimed at meeting the needs of the industry without producing significant adverse biological impacts. Any positive biological impacts are apt to occur faster under the proposed framework process because of quicker implementation than by amending the FMP.

Changes implemented using the framework procedure could result in some cost to the industry. An extreme example of a high cost would be to implement an increase in mesh size requirements without allowing the change to be phased-in. About 400 trawl vessels could be involved. If each vessel were required

to purchase new codends for an average of three trawl nets at \$2,000 per codend, the cost to the industry would be \$2,400,000. However, in order to minimize the cost to the industry, it is likely that such a change would be phased-in over a period of time that would allow codends to be replaced as old ones wear out due to normal wear and tear. In this case, there could be no incremental cost associated with the changes. The framework procedure requires that a time schedule be developed that minimizes cost to the industry while achieving the goals of the change.

It is not inconsistent to have a framework provision which allows relatively rapid implementation, and yet stipulate that a one or two year phase-in period could be used. The rate of implementing a particular change in gear regulations would depend upon the type of action being taken, cost to the industry, and urgency of the change, as considered in the Council's proposed schedule for implementation. A phase-in period could be applied only after the framework action was approved and announced. An FMP amendment would take at least one year longer to approve than would a framework action.

There are no impacts to the physical environment associated with either option.

Similarly, no impacts on enforcement are expected. Examination of gear for compliance with the regulations currently occurs.

#### Interaction With Other Amendment Issues

This issue interacts with Issue 3 (Marking Fixed Gear) of this amendment. If Option 2 of this amendment issue already had been implemented, i.e., establish a framework procedure for changes in gear regulations, there would have been no need to implement Issue 3. However, deletion of Issue 3 at this time would cause an unnecessary delay in requiring consistent coastwide marking of fixed gear.

#### Recommendation

The Council adopted Option 2.

#### FMP References

Section 12.3.2.1. Mesh Size, Pages 12-20 through 12-25  
Section 12.3.2.2. Setnets, Page 12-25  
Section 12.3.2.3. Commercial Hook-and-Line Fisheries, Page 12-26  
Section 12.3.2.4. Recreational Fisheries, Page 12-26

#### Regulations

##### Gear Regulations

50 CFR 611.70, 50 CFR 663.2, 50 CFR 663.23, and 50 CFR 663.26.