



October 14, 2009

Mr. David Ortmann
Chairman, Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

RE: Agenda Item G.2. Stock Assessments and Rebuilding Analyses, Petrale Sole Reference Points

Dear Chairman Ortmann and Council Members:

Oceana is deeply concerned by both the most recent stock assessment for petrale sole showing this species is overfished and the Pacific Fishery Management Council's (PFMC) management response thus far. Rather than changing reference points to allow for continued unsustainable fishing, the Council must recognize that this stock is overfished, institute a recovery program immediately to rebuild the petrale sole population, move forward with a point of concern framework, greatly reduce trip limits for periods 5 and 6, and close the petrale cutouts in the Groundfish Rockfish Conservation Area (RCA). In addition, coast-wide petrale sole catch levels for the remainder of 2009 and 2010 should be reduced and a management strategy evaluation undertaken.

The Magnuson Stevens Fishery Conservation and Management Act (MSA) clearly requires that, "[c]onservation and management measures shall prevent overfishing...[.]" 16 U.S.C. § 1851(a)(1). In addition, the MSA requires fishery management plans to "contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery." 16 U.S.C. § 1853(a)(10). Furthermore, for a fishery that is overfished, the agency must rebuild the fishery in a time, "as short as possible, taking into account the status and biology of any overfished stocks of fish, needs of fishing communities ... and the interaction of the overfished stock of fish within the marine ecosystem." 16 U.S.C. § 1854(e)(4)(A)(i).

The 2009 NMFS stock assessment states petrale sole is at 11.6 percent of its unfished biomass. The Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) sets the overfished threshold at 25 percent of unfished biomass, which places petrale sole clearly below the overfished threshold. However, now that petrale sole is overfished, the PFMC is considering revising its management targets for petrale sole. The NMFS Stock Assessment suggests adopting a stock specific estimate of B_{MSY} at 19 percent of unfished biomass, an F_{MSY} equivalent to $F_{20\%}$, and an overfished threshold theoretically as low as 10% of unfished biomass. In June 2009, the PFMC's Scientific and Statistical Committee (SSC) specifically chose not to endorse this approach, stating, "[t]he SSC does not consider that a strong enough case has been made that the estimate of B_{MSY} is sufficiently reliable to be used for fisheries management." Supplemental SSC Report, at 2 (June 2009).

In addition, the SSC groundfish subcommittee stated, "it is usually quite difficult to obtain reliable stock-specific estimates of B_{MSY} and F_{MSY} in any particular assessment." Supplemental SSC Report, at 13 (Sept. 2009). They go on to state, "the use of proxies has a stabilizing influence on stock reference points, which is beneficial to the management process." *Id.* The SSC instead recommended using proxies for West Coast flatfish, albeit greatly reduced from the current management proxies. Specifically, the SSC recommended, "that proxies of $B_{25\%}$ for B_{MSY} and $F_{30\%}$ from F_{MSY} be established for west coast flatfish." *Id.* at 1. Moreover, the SSC reiterated its concern with the species-specific estimates from the NMFS

stock assessment stating it, “does not at this time endorse the use of species-specific estimates of B_{MSY} and F_{MSY} for petrale sole because of high variability in these estimates between repeat assessments for other stocks and the sensitivity of these estimates to assumptions concerning stock structure.” *Id.* at 2. The SSC instead identified a potential overfished threshold at 15% unfished biomass, or 60% of the target stock size ($B_{25\%}$), consistent with the ratio between target biomass and the overfished threshold used in the current harvest policy for groundfish.

Changing the biological reference point to avoid hitting the overfishing threshold is irresponsible and inappropriate. Further, the MSA requires that that biological reference points be set forth in an FMP. Specifically, Section 303(a)(3) requires that an FMP “assess and identify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery ...” and Section 303(a)(10) requires that an FMP:

specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished ... and, in the case of a fishery which the Council or Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery[.]

16 U.S.C. § 1853(a)(3), (10). Therefore, as the MSA requires these reference points be established by FMP, it follows that they cannot be modified except by an FMP amendment. For example, in *Oceana v. Evans*, the court determined that NMFS could not utilize a framework action to establish new essential fish habitat (EFH) measures, different from those established by an earlier FMP amendment. *See Oceana v. Evans*, 384 F.Supp.2d 203, 255-56 (D.D.C. 2005). The court stated that its “conclusion does not affect the agency’s ability to implement this change under its authority pursuant to § 1853(c), which allows the Secretary to make ‘modifications’ to an FMP after its approval.” *Id.* at 256. Part of the court’s rationale that framework actions are not always appropriate included identification that “Congress’ desire that fisheries be managed on a continuing basis cannot be read to eviscerate the legislature’s ... mandate that certain features of fisheries management regimes must be specified by FMP.” *Id.* at 252. It follows then that similar to EFH measures, where MSA requires biological reference points be specified in FMPs, modifying the biological reference points must be done by FMP amendment. In addition, changing the reference points would be a major action that has major cumulative impacts with regard to a rebuilding plan and future catch levels. *Oceana* therefore expects the Council to undertake an amendment to the Groundfish FMP and the in-depth analysis required by such an amendment, should it decide to change the reference points for petrale sole.

Oceana is deeply concerned by any policy of reducing reference points as a management response to the discovery that a stock is overfished. Constantly shifting management reference points makes targets and thresholds meaningless. We specifically do not support using the B_{MSY} and F_{MSY} targets suggested in the NMFS stock assessment for management. While the SSC’s September 2009 recommendation may be somewhat more cautious, if the suggested MSY proxies are not correct, the PFMC risks further depleting this species to dangerously low population levels only to find in coming years that it made the wrong decision. The SSC even cautioned that the process for addressing these types of recommendations, “with potentially broad ramifications has been less than ideal.” Supplemental SSC Report, at 2 (Sept. 2009). As neither recommendation put forward to the PFMC is precautionary enough, we strongly urge the Council not recommend any action that would reduce the reference points for petrale sole.

Furthermore, precaution and the need to account for ecosystem requirements are being overlooked in an effort to minimize the short-term impacts to the fishing industry. The Council should not lower B_{MSY} and the overfished threshold for petrale sole given the risk this poses for stock collapse. In a recent paper of

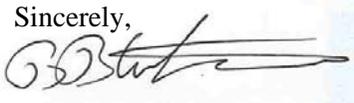
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global marine fisheries, an international, cross-disciplinary team of fisheries scientists and marine ecologists considered $B_{10\%}$ to be the point of collapse, noting that at “such low abundance, recruitment may be severely limited, and species may cease to play a substantial ecological role.” B. Worm et al., *Rebuilding Global Fisheries*, 325 Sci. 578 (2009). That study highlights the need for precaution when considering target biomass levels at such low levels. Our concerns are compounded by the apparent disregard for the ecological impacts and for precautionary approaches to long-term sustainable management. Removing 75 to 80 percent of the biomass of petrale sole, as a target, is clearly a move away from an ecosystem-based fishery management approach, and makes essentially no provision for predator populations that rely on petrale sole.

Under the provisions of the MSA and the current Groundfish FMP management directives, petrale sole are clearly overfished. Even under the proposed reduced MSY proxies and management thresholds suggested by the SSC, petrale sole are overfished. Given the fact that the petrale sole population is at the edge of collapse, actions must be taken to rebuild the population as quickly as possible. Oceana urges the Council to institute a recovery program immediately to rebuild the petrale sole population to healthy levels. For the 2009-2010 management measures, we support moving forward with a point of concern framework, greatly reduce trip limits for periods 5 and 6, and close the petrale cutouts in the Groundfish Rockfish Conservation Area (RCA). We further support reducing coast-wide petrale sole catch levels for the remainder of 2009 and 2010. In addition to taking immediate action to reduce harvest rates and total catch levels, we recommend freezing the current management targets and thresholds until the Council can perform a full management strategy evaluation in a focused and deliberate process, including accounting for precaution in scientific estimates and accounting for the interaction of the population within the ecosystem.

We look forward to working with the Council on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Enticknap", is written over a light blue rectangular background.

Ben Enticknap
Pacific Project Manager