

G4 public comment 1.txt

Subject:
Sablefish
From:
wdiller@sbcglobal.net
Date:
Sat, 03 Oct 2009 07:56:52 -0700
To:
pfmc.comments@noaa.gov
CC:
Brett Cunningham <morrobayfish@att.net>

Dear Council Members, By allowing an increased rate of harvest of sablefish for the remainder of 2009, you have effectively created another "derby" fishery. Dozens of new entrants into the open access fishery have already begun to drive down the prices of sablefish while creating a processing nightmare. The majority of the long time, "open access" participants and all of the "limited entry" participants in Morro Bay, California believe that this move is proving to be a disaster. We believe it would have been a better move to leave the fishery at the level it was already at and allow the fish to spawn and allow the markets to remain stable. We desire stable fisheries, not a series of peaks and valleys over the years. One of the best things that you could do is to go back to the cut off date for open access, shut the door, and bring that fishery under control. It is not being managed and it's time to do what the law requires. Another big step in protecting our resources would be to eliminate the "daily" catch system and go to a weekly or better yet, a bi-monthly limit system. The trawl fishery has been managed effectively for years with a bi-monthly system. The daily maximum limit is a huge waste system of the resource. Thank you for your consideration of these suggestions.
William Diller

Subject:
Fw: Open access sable fish/Limited entry daily trip limits.
From:
brett cunningham <morrobayfish@att.net>
Date:
Tue, 06 Oct 2009 09:50:48 -0700 (PDT)
To:
pfmc.comments@noaa.gov

To whom it may concern,

Regarding getting rid of the daily trip limits for limited entry fixed gear in the conception area. To my surprise council took action and suspended the daily trip limit. On that issue I am in complete agreement with council. Council also doubled the weekly limit to 3000#, I was very happy to have the extra fish, but little uneasy about the interest it might create in the conception area. Then the phone started ringing. Every one wanted to know if I had heard the news on open access. I was shocked to hear that , open access had increased to 2500# per week with no bi-monthly cap! In my opinion this is disastrous for the conception area. One week after the news of the increase. The price of sable fish dropped .20 per pound in San Francisco, and the word is, that as many as 30 displaced salmon and crab boats are planning to fish the conception area. This will impact the area terribly. We already have gear conflict with open access trap fisherman ignoring the law and leaving unserviced & unmarked traps all over the fishing grounds.

I do not understand the councils logic on this issue. I thought we might have learned from past mistakes. This is nothing short of history repeating it self. Council gives fisherman too much access, fisherman over capitalize on the fisheries, Council makes harsh cut to reverse impact, the fisheries and market dies from lack of fish. From my view, regulating open access should be the top groundfish issue not increasing it. Not to mention the law requires a management plan for every fisheries. Please tell me if I have somehow missed the councils objective is on this issue.
Sincerely,
Brett Cunningham
805-469-6211

October 13, 2009

Mr. Barry Thom
Acting Regional Administrator, Northwest Region
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

RE: 2009-2010 Biennial Specification and Management Measures (RIN 0648-AY07)

Dear Mr. Thom:

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 and National Marine Fisheries Service (NMFS) 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 National Marine Fisheries Service (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)m 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 and NMFS 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 Council 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. NMFS 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 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

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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 NMFS 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 NFMS and the Council on this important matter.

Sincerely,

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

Ben Enticknap
Pacific Project Manager