

previously closed within the previously announced harvest specifications for 2003. The fish that are harvested in this area represent an irretrievable resource commitment, as do the inputs in terms of capital and labor (including energy and resources) needed to harvest and market these fish.

5 DETERMINATION OF A PREFERRED ALTERNATIVE

NMFS has chosen the "34°27' N. lat. to Mexico" alternative as the preferred alternative by examining which alternative would provide some economic relief to the commercial non-trawl and recreational fleets, with minimal impacts to overfished species prevalent in this area, namely bocaccio and canary rockfish. The agency has reviewed how additional harvest of overfished species would change depending on which alternative was selected (this analysis appears in Section 4.1). Because of the new science for bocaccio that indicates a modest increase in bocaccio harvest in 2003 should not interfere with stock rebuilding and because of the severe restrictions commercial non-trawl and recreational fisheries in southern California are experiencing, the Pacific Council recommended to NMFS to use the knowledge of the improved bocaccio forecast as a means to relieve restrictions on southern California fisheries without additional risk to the status of the stock. NMFS contemplated all of the alternatives for this EA. For bocaccio, there was not a large difference between the "34°27' N. lat. to Mexico" alternative and the "36° N. lat. to Mexico" alternative. While the "36° N. lat. to 34°27' N. lat." alternative has the least biological impact on bocaccio, the agency concurred with CDFG's preference to provide economic relief to commercial non-trawl and recreational fishers in the southern end of the area. Opening the area between 20 and 30 fm in the more southern end of the area would provide more relief because there are more fishery participants in that area. The agency then considered what has become the more constraining species, canary rockfish, since bocaccio abundance is projected to be higher than previously expected. Between the two alternatives, the "34°27' N. lat. to Mexico" alternative and the "36° N. lat. to Mexico" alternative, the predicted take of canary from the "36° N. lat. to Mexico" alternative is too high. Thus, the agency chose the "34°27' N. lat. to Mexico" alternative as the preferred alternative. The preferred alternative meets the purpose of and need for action by providing some economic relief to southern California fishermen while keeping harvest of groundfish stocks at sustainable levels.

The environmentally preferred alternative would be the status quo alternative. The status quo alternative is more environmentally conservative because it does not open up additional area to fishing. Thus, it is more likely to protect habitat and possibly minimize interception of overfished species, like bocaccio and canary rockfish.

6 FINDING OF NO SIGNIFICANT IMPACT

To determine the significance of the action analyzed in this EA, NMFS is required by NEPA, 40 CFR 1508.27 and NOAA Administrative Order 216-6 Section 6.02 to consider the context and intensity of the proposed action. Based on the EA, review of the National Environmental Policy Act (NEPA) criteria for significant effects, and my knowledge of the predicted impacts, I have determined that the actions to be implemented would not have a significant effect upon the quality of the human environment. Therefore, preparation of an EIS on the final action is not required under Section 102(2)(c) of the NEPA, its implementing regulations (40 CFR Part 1500-1508), or NOAA/NMFS environmental review procedures (NAO 216-6). This determination is based on the following factors from CEQ's implementing regulations at 1508.27 and from NAO 216-6 Section 6.02:

- 1) In reaching my conclusion of no significant impacts, I recognize that there are both beneficial and adverse impacts of this project as discussed in Section 4.0. However, none of the impacts associated with the proposed actions were significant.
- 2) The proposed action does not significantly affect public health or safety as discussed in

Section 4.3. Fishing itself is a dangerous occupation. However, safety regulations for boat and fishing operations are mandated by state and federal agencies. Fishing regulations are developed in consultation with these agencies in order to ensure they are compatible with the safety regulations. The proposed action assumes these safety regulations will continue. In addition, the proposed action opens an additional 10 fm of ocean to fishing, thus, slightly reducing effort concentration in the nearshore and the chances of accidents.

3) There are no significant effects to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas as a result of the proposed action, including the preferred alternative. Further, this action will not cause loss or destruction of significant scientific, cultural, or historical resources.

4) The effects on the human environment detailed in Section 3.0 and 4.0 of the EA are non-controversial. As discussed in Section 1.5, NMFS and the Council conducted public scoping soliciting information from the public at the June Council meeting on the public's concerns with the proposed actions. NMFS and the Council did not receive comments indicating the public viewed the potential impacts of the proposed actions to be controversial.

5) The degree to which effects on the human environment are highly uncertain or involve unique or unknown risks is limited to the inherent uncertainties in fisheries science and management. Uncertainties and risks exist in stock assessments due to the mobile nature of fish stocks being difficult to quantify. Uncertainties and risk also exist in the rebuilding analysis for overfished species, which is tied to the uncertainties and risk in stock assessments and fisheries science, in general. Uncertainties and risk exist in fisheries management to the degree that the cumulative effects of management decisions and their socioeconomic ramifications are difficult to quantify. Uncertainties and risk are reduced by cross referencing data from different sources, including stock assessments, fish landing receipts, logbooks and observer data. In addition, uncertainties and risk are reduced in management decisions by applying precautionary adjustments to the ABCs for groundfish species, resulting in harvest levels that are risk averse. Although, uncertainty and risk exist as a part of this action, the degree to which they exist is not predicted to have a significant impact on the resource.

6) The proposed action will not establish a precedent for future actions with significant effects, nor does it represent a decision in principle about future considerations. The action implements a new management line at 30 fm in southern California, while this line may be used for management in 2004 and beyond, the line may extend beyond southern California and will be analyzed in another NEPA document (either an EA or an Environmental Impact Statement, as appropriate). The line implemented through this proposed action will only be in effect September 1 through December 31, 2003.

7) The proposed actions will not result in individually insignificant but cumulatively significant impacts on the environment, as discussed in Section 4.

8) This action will not significantly adversely affect endangered or threatened species, marine mammals or critical habitat as discussed in Sections 4.1.4, 4.2 and 7.3-7.5.

9) This action does not violate Federal, State or local law or requirements imposed for protection of the environment. The major laws identified with the implementation of the proposed action are the Endangered Species Act, Marine Mammal Protection Act, Coastal Zone Management Act, Paperwork Reduction Act, Executive Order 12866, Executive Order 13175, Migratory Bird Treaty Act and Executive Order 13186, Executive Order 12898 and Executive Order 13132. The conformance of the action with these laws is discussed in Section 7 of this EA.

10) The proposed action will not result in the introduction or spread of a non-indigenous species because most, if not all fishing activity will be from vessels local to southern California. The spread of non-indigenous species by vessels has primarily been from the ballast of larger vessels traveling from outside destinations that did not exchange their ballast water at sea or from smaller, private vessels that are moved by trailer to various lakes, rivers, estuaries, etc. and act as a pathway for non-indigenous species.

11) The proposed action is not predicted to jeopardize the sustainability of any target or non-target species that may be affected by the proposed actions, as discussed in Section 4.1.

12) The proposed action is not predicted to affect or cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs, and as discussed in Sections 4.2 of the EA.

13) The proposed action is not predicted to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., predator-prey relationships, etc) as discussed in Sections 4.1 of the EA.

14) The proposed action is not predicted to have significant social or economic impacts tied to any natural or physical environmental effects as discussed in Sections 4 and 7 of this EA or identified through public scoping.

I request your concurrence in this determination by signing below.

1. I concur. _____
Date

2. I do not concur. _____
Date

7 OTHER APPLICABLE LAW

7.1 Consistency with the Groundfish FMP

The Groundfish FMP goals and objectives are listed below. The way in which the proposed action addresses each objective is briefly described in italics below the relevant statement.

Management Goals.

Goal 1 - Conservation. Prevent overfishing by managing for appropriate harvest levels and prevent any net loss of the habitat of living marine resources.

Goal 2 - Economics. Maximize the value of the groundfish resource as a whole.

Goal 3 - Utilization. Achieve the maximum biological yield of the overall groundfish fishery, promote year-round availability of quality seafood to the consumer, and promote recreational fishing opportunities.

Objectives. To accomplish these management goals, a number of objectives will be considered and followed as closely as practicable:

Conservation.

Objective 1. Maintain an information flow on the status of the fishery and the fishery resource which allows for informed management decisions as the fishery occurs.

All alternatives, including the preferred alternative, employ the same data sources that have been used in past years to monitor groundfish fisheries, with the addition of observer data for commercial fisheries.

Objective 2. Adopt harvest specifications and management measures consistent with resource stewardship responsibilities for each groundfish species or species group.

The preferred alternative, "34°27' to Mexico" Alternative, adopts a management measure that supports rebuilding of overfished and precautionary stocks and sustainable harvest of healthy stocks. While this alternative does estimate that the OY for bocaccio, an overfished species, will be exceeded as a result of this action, a new stock assessment on bocaccio in 2003 shows a larger biomass and increased productivity of the stock than previously thought. Based on this new information, exceeded the OY by an estimated 2 mt will not have an adverse impact on the status of the stock and, therefore, complies with this objective. The other action alternatives fall within the management framework, but represent different tradeoffs between overfishing risk and socioeconomic impacts. The "36° to Mexico" Alternative would not meet this objective because it would allow the fisheries to exceed the canary rockfish OY with no new information to support that exceedance.

Objective 3. For species or species groups which are below the level necessary to produce maximum sustainable yield (MSY), consider rebuilding the stock to the MSY level and, if necessary, develop a plan to rebuild the stock.

All of the alternatives propose a management measure that is within the parameters of rebuilding for overfished stocks. Since the proposed action does not change the OY for any species, harvest levels that were analyzed in the 2003 Specs EIS are still effective. Harvest levels set in 2003 for overfished species were risk averse (in that the probability of rebuilding within the specified time frame is greater than 50%). Previously, the rebuilding analysis for bocaccio estimated that even in the absence of fishing, a "risk neutral" management strategy could not be achieved. A new stock assessment and rebuilding analysis released in May 2003 show a much larger biomass and higher productivity of bocaccio than previously expected. The result is a much shorter rebuilding time for bocaccio. The additional mortality of bocaccio from the alternatives is not predicted to pose a risk to the southern stock of bocaccio.

Objective 4. Where conservation problems have been identified for nongroundfish species and the best scientific information shows the groundfish fishery has a direct impact on the ability of that species to maintain its long-term reproductive health, the Council may consider establishing management measures to control the impacts of groundfish fishing on those species. Management measures may be imposed on the groundfish fishery to reduce fishing mortality of a nongroundfish species for documented conservation reasons. The action will be designed to minimize disruption of the groundfish fishery, in so far as consistent with the goal to minimize the bycatch of nongroundfish species, and will not preclude achievement of a quota, harvest guideline, or allocation of groundfish, if any, unless such action is required by other applicable law.

None of the alternatives include new measures intended to control the impacts of groundfish fishing on nongroundfish stocks.

Objective 5. Describe and identify essential fish habitat (EFH), adverse impacts on EFH, and other actions to conserve and enhance EFH, and adopt management measures that minimize, to the extent practicable, adverse impacts from fishing on EFH.

All alternatives, except for the status quo alternative, are likely to increase impacts on EFH to the degree that additional area of the ocean is available to groundfish fishing with non-trawl gear. However, beginning in 2003, large closed areas were adopted coastwide affecting all sectors of the groundfish fishery to protect overfished groundfish stocks and their habitat. The proposed action will only open an additional 10 fm of ocean to fishing in southern California.

Economics.

Objective 6. Attempt to achieve the greatest possible net economic benefit to the nation from the managed fisheries.

The proposed action is intended to provide some economic relief to the severely constrained southern California fisheries without posing additional risk to overfished species. Of the alternatives, all, except for the "36° to Mexico" Alternative, do not pose a risk to overfished species. Among the remaining alternatives, the preferred alternative (34°27' to Mexico) was predicted to provide the greatest possible net economic benefit to the nation because it opens up the largest area of ocean. By opening this area to fishing, there is a larger area for fishermen to access and therefore, more possible economic benefit to fishermen. Future best use of resources (in terms of economic return), which would predicate future allocation decisions, cannot be predicted. However, all of the alternatives, except for the "36° to Mexico" Alternative, fall within the management framework intended to achieve maximum sustained yield over the long term. This gives greater latitude for future decision making to achieve maximum economic net benefit.

Objective 7. Identify those sectors of the groundfish fishery for which it is beneficial to promote year-round marketing opportunities and establish management policies that extend those sectors' fishing and marketing opportunities as long as practicable during the fishing year.

All of the alternatives are intended to allow commercial fisheries year-round access, bearing in mind that individual fisheries are seasonally constrained. For the recreational sector, the fishery was constrained to 6 months in 2003 (July-December) to keep harvest within the OY for overfished species. Given low harvest specifications for some overfished species, actual harvests may result in early attainment of an OY for a species, necessitating the closure of that fishery and any fisheries for co-occurring species.

Objective 8. Gear restrictions to minimize the necessity for other management measures will be used whenever practicable.

No new gear restrictions are proposed for groundfish fisheries under any of the alternatives.

Utilization.

Objective 9. Develop management measures and policies that foster and encourage full utilization (harvesting and processing) of the Pacific Coast groundfish resources by domestic fisheries.

There has been no foreign fishing on the West Coast for more than a decade, so all of the alternatives meet this objective.

Objective 10. Recognizing the multispecies nature of the fishery and establish a concept of managing by species and gear or by groups of interrelated species.

All of the alternatives deal with depth-based management for all groundfish species by gear type and , therefore, recognize and manage based on the multispecies nature of the fishery.

Objective 11. Strive to reduce the economic incentives and regulatory measures that lead to wastage

of fish. Also, develop management measures that minimize bycatch to the extent practicable and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. In addition, promote and support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those to improve other information necessary to determine the extent to which it is practicable to reduce bycatch and bycatch mortality.

Depth-based restrictions, like those proposed in the alternatives, are meant to reduce bycatch of overfished species by prohibiting fishing that generates significant bycatch in areas where these species are most abundant. While the proposed action may increase bycatch by opening 10 fm of the ocean to fishing, large depth-based closures will remain in place that are predicted to minimize bycatch from historical levels. Among the alternatives, the status quo alternative is predicted to reduce bycatch the most among the alternatives because it does not open an additional 10 fm to fishing in southern California. In addition, the Observer Program implemented in 2001 will continue to provide better estimates of total fishing-related mortality and bycatch than currently available.

Objective 12. Provide for foreign participation in the fishery, consistent with the other goals to take that portion of the optimum yield (OY) not utilized by domestic fisheries while minimizing conflict with domestic fisheries.

This objective is no longer relevant since all stocks are fully utilized by domestic fishers.

Social Factors.

Objective 13. When conservation actions are necessary to protect a stock or stock assemblage, attempt to develop management measures that will affect users equitably.

The Council process facilitates input from resource user groups, state and federal agencies, and the general public. This promotes the formulation of equitable management measures.

Objective 14. Minimize gear conflicts among resource users.

Depth-based restrictions may increase crowding in nearshore areas, increasing gear conflicts. All of the alternatives, except the status quo alternative, will allow an additional 10 fm of ocean open to fishing in southern California. This additional 10 fm should slightly reduce any gear conflicts in the southern California nearshore.

Objective 15. When considering alternative management measures to resolve an issue, choose the measure that best accomplishes the change with the least disruption of current domestic fishing practices, marketing procedures, and the environment.

All of the alternatives will not disrupt current fishing practices, marketing procedures or the environment because they simply open an additional 10 fm of the ocean to fishing in southern California.

Objective 16. Avoid unnecessary adverse impacts on small entities.

None of the alternatives will adversely impact small entities. All alternatives, except for status quo, will allow additional area for fishing by southern California fishermen fishing with non-trawl gear. These alternatives allow additional area for fishing for small and large entities alike.

Objective 17. Consider the importance of groundfish resources to fishing communities, provide for the sustained participation of fishing communities, and minimize adverse economic impacts on fishing communities to the extent practicable.

All of the alternatives, except status quo, are intended to provide economic relief to non-trawl fishers in southern California. Of the reasonable alternatives, those that do not pose a risk to overfished groundfish species, the preferred alternative (34°27' to Mexico) provides the greatest benefit to fishing communities by opening the largest area to fishing.

Objective 18. Promote the safety of human life at sea.

The alternatives may promote safety by allowing additional area in the nearshore open to fishing, thus slightly reducing crowding of vessels.

7.2 Consistency with Magnuson-Stevens Act National Standards

An FMP or plan amendment and any pursuant regulations must be consistent with ten national standards contained in the Magnuson-Stevens Act (§301). These are:

National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

The preferred alternative, "34°27' to Mexico" Alternative, and all of the other alternatives adopt a management measure that is intended to prevent overfishing while achieving the OY on a continuing basis. The preferred alternative does estimate that the OY for bocaccio, an overfished species, will be exceeded by 2 mt as a result of this action. However, this brings the total estimated mortality of bocaccio in 2003 to 21.72 mt (1.72 mt over the ≤ 20 mt OY) which is still below the ABC of 198 mt. Therefore, this additional take of bocaccio under the preferred alternative is not expected to result in overfishing of bocaccio or any other groundfish species. In addition, a new stock assessment on bocaccio in 2003 shows a larger biomass and increased productivity of the stock, than previously thought. The other action alternatives fall within the management framework, but represent different tradeoffs between overfishing risk and socioeconomic impacts. The "36° to Mexico" Alternative is not expected to result in overfishing but runs the highest risk among the alternatives because it has the highest take of bocaccio and canary rockfish.

National Standard 2 states that conservation and management measures shall be based on the best scientific information available.

The alternatives presented are based on data presented by the California Department of Fish and Game (CDFG) on historic catch by depth profiles for overfished species in southern California and the most recent stock assessments, developed through the peer-review STAR process. Stock assessments released in 2003 are generally only used for management in 2004 and beyond. In this case, however, the new assessment and rebuilding analysis forecast are being recommended for use not to change the OY for 2003, which is done on an annual cycle, but to allow for a change in the management measures which may cause the OY for bocaccio to be exceeded. Thus, the alternatives represent the use of the best available science.

National Standard 3 states that, to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

While the management measures proposed in the alternatives do not directly address this National Standard because they deal with a small area in southern California, groundfish management in general does. Some groundfish stocks are managed as individual units with specific trip limits. However, given the multi-species nature of many groundfish fisheries, other stocks are grouped in stock complexes and

managed accordingly. This generally applies to non-target species for which no individual stock assessments have been performed. Until recently many species were not reported individually in groundfish fisheries and, nongroundfish fisheries may not report incidental groundfish catches at the species level. This limits the amount of time series data available for stock assessments on which individual stocks could be managed. Stocks are managed throughout the range of that stock (as opposed to the species), although issues do arise in the case of stocks straddling international borders. For example, allocation of the harvestable surplus of Pacific whiting between the U.S. and Canada has not been fully resolved. All alternatives are consistent with this National Standard.

National Standard 4 states that conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishers, such allocation shall be (A) fair and equitable to all such fishers; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. The proposed measures will not discriminate between residents of different states.

Management measures are developed through the Council process, which facilitates substantial participation by state representatives. Generally, state proposals are brought forward when alternatives are crafted and integrated to the degree practicable. While all of the alternatives affect commercial and recreational non-trawl fishery participants in southern California, all states and the Council were involved in the development of alternatives. None of the alternatives allocate fishing privileges in an unfair or inequitable manner. None of the management measures in the alternatives would allocate specific shares or privileges to one individual or corporation.

National Standard 5 states that conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The management measures presented in the alternatives did not consider efficiency in the utilization of resources, but rather considered where economic relief could be provided to the severely constrained southern California fisheries without posing risk to overfished groundfish species.

National Standard 6 states that conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources and catches.

Management measures reflect differences in catch, and in particular bycatch of overfished species, among the different areas detailed in the alternatives. Because of the low OYs for overfished species, especially bocaccio and canary rockfish in the south, the management measure in the preferred alternative allows for additional area open to fishing while minimizing bycatch of these species in southern California.

National Standard 7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The alternatives do not explicitly address this standard. Generally, by coordinating management, monitoring and enforcement activities between the three West Coast states, duplication, and thus cost, is minimized. Necessary monitoring and enforcement programs, such as the use of fishery observers, increase management costs. But these efforts are necessary for effective management.

National Standard 8 states that conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The preferred alternative represents the best tradeoff between the need to conserve and rebuild fish stocks and providing economic relief to fishing communities. As noted above, in discussing FMP objectives, all of the alternatives, except status quo, are intended to provide economic relief to non-trawl fishers in southern California. Of the reasonable alternatives, those that do not pose a risk to overfished groundfish species, the preferred alternative (34°27' to Mexico) provides the greatest benefit to fishing communities by opening the largest area to fishing.

National Standard 9 states that conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Minimizing bycatch, of all species and overfished species in particular, is an important component of the preferred alternative and of the other alternatives. Depth-based management measures are meant to keep fishing away from areas where overfished species are most abundant, and therefore reduce bycatch. While the proposed action may increase bycatch by opening 10 fm of the ocean to fishing, large depth-based closures will remain in place that are predicted to minimize bycatch from historical levels. Among the alternatives, the status quo alternative is predicted to reduce bycatch the most among the alternatives because it does not open an additional 10 fm to fishing in southern California. Integration of observer data into the management process allows more accurate estimates of bycatch rates, and thus total catch estimates.

National Standard 10 states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The alternatives may promote safety by allowing additional area in the nearshore open to fishing, thus slightly reducing crowding of vessels.

7.3 Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), as amended, requires that federal agencies “shall, in consultation with and with the assistance of the Secretary [of Commerce or Interior], insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species, or result in the destruction or adverse modification of habitat of such species....” Based on this section of the law (section 7), action agencies consult with NMFS (for marine species) or U.S. Fish and Wildlife Service (USFWS) (for terrestrial and freshwater species) in cases where a “major construction activity” (which is considered equivalent to the “major federal action” standard under National Environmental Policy Act [NEPA]) could “jeopardize the continued existence” of an endangered species. For fishery management actions in federal waters NMFS is both the action and consulting agency (although different divisions fulfill these two roles). Consultations can begin informally, through “phone contacts, meetings, conversations, letters, project modifications and concurrences...” (USFWS and NMFS 1998). During consultations, if the lead agency is informed that listed species or critical habitat may be present in the action area, it prepares a biological assessment to disclose the likely adverse effects. Sections 3.1 and 4.1 in this EA contain the information necessary for a biological assessment of the effects of the proposed action on ESA-listed species occurring in the action area. If the action agency determines the proposed action may affect listed species or designated critical habitat, formal consultation is required. The consulting agency (in this case, NMFS) must issue a Biological Opinions (BOs) within 135 days of the initiation of formal consultation. The BO may contain “reasonable and prudent measures” that the action agency must implement (in addition to any proposed mitigation) to ensure the proposed action does not jeopardize the continued existence of the species in question. (These may be referred to as “no jeopardy standards.” The Council manages ocean salmon fisheries in part based on such standards for listed salmon species).

NMFS has issued several BOs to assess the effects of the groundfish fishery on ESA-listed salmon. (Salmon may be listed by individual spawning runs, because these are considered evolutionarily significant units [ESUs] for the purposes of listing). The most recent BO was issued on December 15, 1999, covering the 22 ESUs listed by that time. This BO represents a re-initiation of previous consultations described in BOs issued on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, and May 14, 1996. NMFS has concluded that implementation of the groundfish FMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

Based on the information in sections 3.1 and 4.1 of this EA, the proposed action, including the preferred alternative, fall within the scope of these consultations. Further, this EA serves as a biological assessment of the likely adverse effects to other listed species. Based on best available scientific information, no adverse effects are expected.

7.4 Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972 is the principle federal legislation guiding marine mammal species protection and conservation policy in the United States. Under the MMPA, NMFS is responsible for the management and conservation of 153 stocks of whales, dolphins, porpoise, seals, sea lions, and fur seals, while the USFWS is responsible for walrus, sea otters, and the West Indian manatee.

In the Washington, Oregon and California (WOC) region, the Steller sea lion (*Eumetopias jubatus*) Eastern stock, Guadalupe fur seal (*Arctocephalus townsendi*), and Southern sea otter (*Enhydra lutris*) California stock are listed as threatened under the ESA and the sperm whale (*Physeter macrocephalus*) WOC Stock, humpback whale (*Megaptera novaeangliae*) WOC - Mexico stock, blue whale (*Balaenoptera musculus*) Eastern north Pacific stock, and Fin whale (*Balaenoptera physalus*) WOC Stock are listed as depleted under the MMPA. Any species listed as endangered or threatened under the ESA; is automatically considered depleted under the MMPA.

The West Coast groundfish fisheries are considered a Category III fishery—denoting a remote likelihood of or no known serious injuries or mortalities to marine mammals—in the annual list of fisheries published in the *Federal Register*. Based on its Category III status, the incidental take of marine mammals in the West Coast groundfish fisheries does not significantly impact marine mammal stocks.

Section 4.1.4 of this EA evaluates the impacts of the alternatives on protected species, including marine mammals. None of the proposed management alternatives are likely to affect the incidental mortality levels of species protected by the MMPA.

7.5 Migratory Bird Treaty Act and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds)

The Migratory Bird Treaty Act of 1918 (MBTA) was enacted to end the commercial trade of migratory birds and their feathers that, by the early years of the 20th century, had diminished populations of many native bird species. The MBTA states it is unlawful to take, kill, or possess migratory birds and their parts (including eggs, nests, and feathers) and is a shared agreement between the United States, Canada, Japan, Mexico, and Russia to protect a common migratory bird resource.

Executive Order (EO) 13186 supplements the MBTA by requiring federal agencies to work with the USFWS to develop memoranda of agreement to conserve migratory birds. NMFS is currently developing its memorandum of understanding. The protocols developed by this consultation will guide agency regulatory actions and policy decisions in order to address this conservation goal. The EO also directs

agencies to evaluate the effects of their actions on migratory birds in environmental documents prepared pursuant to the National Environmental Policy Act.

Section 4.1.4 in this EA evaluates the impacts of the alternatives on protected species, including seabirds covered by the MBTA and EO 13186. The proposed action is not predicted to increase the incidental take of seabirds in managed groundfish fisheries.

7.6 Paperwork Reduction Act

In response to public complaints about the burden of federal paperwork, the Paperwork Reduction Act (PRA) and its implementing regulations require federal agencies to obtain clearance from the Office of Management and Budget (OMB) if they plan to collect information from the public. Collecting facts and opinions from ten or more people, by means of a survey for example; requiring individuals to provide information to the general public or to some third party; requiring items (e.g., boxes of fish, fishing gear) or vessels to be labeled or marked; or using technological methods to monitor public compliance with government requirements, including automated collection techniques such as Vessel Monitoring System (VMS), are all covered by the law and regulations.

The PRA requires agencies to compile an Information Collection Budget (ICB), the total burden the agency will be placing on the public, and to obtain OMB clearance by submitting an OMB-831 form (Paperwork Reduction Act Submission) and a supporting statement. The ICB is submitted annually and lists all new information collecting the agency plans for the upcoming fiscal year. As part of the ICB, for each planned collection the agency must describe the purpose of the collection, the approximate number of respondents, and the estimated time taken per respondent. If a proposed rule contains an information collection requirement needing clearance under the PRA, a clearance request needs to be submitted to OMB on or before the date the proposed rule is published in the *Federal Register*. Once OMB receives the request it has 60 days to review and act on it.

The proposed action does not have a paperwork burden.

7.7 Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act (CZMA) of 1972 requires all federal activities that directly affect the coastal zone be consistent with the enforceable policies of approved state coastal zone management programs to the maximum extent practicable. The relationship of the Groundfish FMP with the CZMA is discussed in Section 11.7.3 of the Groundfish FMP. The Groundfish FMP has been found to be consistent with the Washington, Oregon, and California coastal zone management programs.

The proposed action is within the scope of the actions contemplated under the management framework described in the Groundfish FMP and will be implemented in a manner that is consistent to the maximum extent practicable with the enforceable policies of the aforementioned coastal zone management programs. This determination has been submitted to the responsible state agencies for review under section 307(c)(1) of the CZMA by forwarding a copy of this EA to each of the relevant state agencies.

7.8 Regulatory Flexibility Act and EO 12866 (Regulatory Impact Review)

In order to comply with EO 12866, this document also serves as a Regulatory Impact Review (RIR). The emergency rule tied with this proposed action is exempt from the Regulatory Flexibility Act (RFA) and associated analyses.

EO 12866, Regulatory Planning and Review, was signed on September 30, 1993, and established guidelines for promulgating new regulations and reviewing existing regulations. The EO covers a variety of regulatory policy considerations and establishes procedural requirements for analysis of the benefits and costs of regulatory actions. Section 1 of the EO deals with the regulatory philosophy and principles that are to guide agency development of regulations. It stresses that in deciding whether and how to regulate, agencies should assess all of the costs and benefits across all regulatory alternatives. Based on this analysis, NMFS should choose those approaches that maximize net benefits to society, unless a statute requires another regulatory approach.

The regulatory principles in EO 12866 emphasize careful identification of the problem to be addressed. The agency is to identify and assess alternatives to direct regulation, including economic incentives such as user fees or marketable permits, to encourage the desired behavior. Each agency is to assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only after reasoned determination of the benefits of the intended regulation justify the costs. In reaching its decision, the agency must use the best reasonably obtainable information, including scientific, technical and economic data, about the need for and consequences of the intended regulation.

NMFS requires the preparation of an RIR for all regulatory actions of public interest, including fishery management measures. The RIR provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure the regulatory agency systematically and comprehensively considers all available alternatives, so the public welfare can be enhanced in the most efficient and cost-effective way. The RIR addresses many of the items in the regulatory philosophy and principles of EO 12866.

The RIR analysis and environmental analysis required by NEPA have many common elements and they have been combined in this document. The following table shows where the elements of an RIR, as required by EO 12866, are located.

Required RIR Elements	Corresponding Sections
Description of management objectives	Sections 1.3 and 1.4
Description of the fishery ^{5/}	Chapters 3 and 4
Statement of the problem	Section 1.3
Description of each alternative considered in the analysis	Sections 2.1 through 2.4
An economic analysis of the expected effects of each selected alternative relative to the <i>No Action Alternative</i>	Sections 3.3 and 4.3

The RIR is designed to determine whether the proposed actions could be considered “significant regulatory actions” according to EO 12866. The test requirements in EO 12866 used to assess whether or not an action would be a “significant regulatory action” and identify the expected outcomes of the proposed management alternatives are as follows: 1) have a annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or

1/ In addition to the information in this document, basic economic information is provided annually in the Council’s SAFE document.

communities; 2) create a serious inconsistency or otherwise interfere with action taken or planned by another agency; 3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or 4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO. A regulatory program is "economically significant" if it is likely to result in the effects described in item 1 above. For the purposes of the EO, none of the alternatives could potentially meet the significance criteria. None of the alternatives are expected to have an effect on the economy of over \$100 million and none of the alternatives are expected to adversely affect the economy or any sector of the economy. All of the alternatives, except status quo, would provide some economic benefit to the economy by providing additional areas of the ocean open to fishing for groundfish. Depending on which area along the coast of southern California opens to fishing, the fishing communities in that area may be expected to benefit economically from increased business and draw of fishing activity into the area. Among the alternatives, the "36° to Mexico" alternative would create the greatest economic benefit by opening up the largest area to fishing, followed by the "34°27' to Mexico" alternative, the "36° to 34°27' " alternative, and, finally, the status quo alternative would provide the least economic benefit.

7.9 EO 12898 (Environmental Justice)

EO 12898 obligates federal agencies to identify and address "disproportionately high adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations in the United States" as part of any overall environmental impact analysis associated with an action. NOAA guidance, NAO 216-6, at §7.02, states that "consideration of EO 12898 should be specifically included in the NEPA documentation for decision making purposes." Agencies should also encourage public participation—especially by affected communities—during scoping as part of a broader strategy to address environmental justice issues.

The environmental justice analysis must first identify minority and low-income groups that live in the project area and may be affected by the action. Typically, census data are used to document the occurrence and distribution of these groups. Agencies should be cognizant of distinct cultural, social, economic or occupational factor that could amplify the adverse effects of the proposed action. (For example, if a particular kind of fish is an important dietary component, fishery management actions affecting the availability or price of that fish could have a disproportionate effect.) In the case of Indian tribes, pertinent treaty or other special rights should be considered. Once communities have been identified and characterized and potential adverse impacts of the alternatives are identified, the analysis must determine whether these impacts are disproportionate. Because of the context in which environmental justice developed, health effects are usually considered and three factors may be used in an evaluation: whether the effects are deemed significant, as the term is employed by NEPA; whether the rate or risk of exposure to the effect appreciably exceeds the rate for the general population or some other comparison group; and whether the group in question may be affected by cumulative or multiple sources of exposure. If disproportionately high adverse effects are identified, mitigation measures should be proposed. Community input into appropriate mitigation is encouraged.

Sections 3.3.6 of the 2003 Specs EIS describes coastal communities. In general, available demographic data show that, coastal counties where these communities are located are variable in terms of social indicators like income, employment and race and ethnic composition. Equivalent data specific to the groups directly affected by the proposed action are not available. The effects of the proposed action in this EA will be concentrated on communities and user groups in southern California. However, no disproportionate effect is expected on minority and low income groups.

7.10 EO 13132 (Federalism)

EO 13132 enumerates eight “fundamental federalism principles.” The first of these principles states “Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.” In this spirit the EO directs agencies to consider the implications of policies that may limit the scope of or preempt states’ legal authority. Preemptive action having such “federalism implications” is subject to a consultation process with the states; such actions should not create unfunded mandates for the states; and any final rule published in the *Federal Register* must be accompanied by a “federalism summary impact statement.”

The Council process offers many opportunities for states (through their agencies and Council appointees) to participate in the formulation of management measures. This process encourages states to institute complementary measures to manage fisheries under their jurisdiction that may affect federally-managed stocks. Further, §306 of the Magnuson-Stevens Act addresses state jurisdiction over fisheries. Generally, states may regulate fishing by vessels registered in that state if no federal FMP applies, or if a federal FMP delegates such authority to the states.

The proposed action does not have federalism implications.

7.11 EO 13175 (Consultation and Coordination With Indian Tribal Governments)

EO 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on Indian tribes.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with Federally recognized fishing rights from the area of the Council’s jurisdiction. While tribal representatives were present and given the opportunity to provide input while this action was developed by the Council, there were no additional tribal requests on this action. There are no treaty tribes in southern California.

7.12 Data Quality Act

Pursuant to Section 515 of Public Law 106-554 (the DQA), this information product has undergone a pre-dissemination review by the National Marine Fisheries Service, Northwest Region, completed on August 20, 2003. The signed Pre-dissemination Review and Documentation Form is on file in that office.

8 LIST OF PREPARERS

This Environmental Assessment (EA) was prepared by the National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE, Bldg. 1, Seattle, Washington 98115. A list of the people who prepared the assessment, background data, or assisted in preparing this EA are presented below.

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