

limits for co-occurring species, shorter season lengths, higher bycatch rate assumptions, and large-scale RCAs where groundfish fishing is prohibited or otherwise restricted.

In the commenter's discussion of the California set gillnet fishery, the commenter assumes higher bycatch levels than those estimated by NMFS by comparing historic fishery data (1996–1999) with those estimates. As the commenter notes, several new fishery restrictions have been implemented by California and by NMFS since those years. It is not reasonable to expect that overfished species catch and discard levels will be the same under the 2003 management regime as they were under the significantly less restrictive management regimes of the late 1990s.

In discussing the limited entry flatfish trawl fishery, the commenter compares estimates of bocaccio bycatch from a California application for an exempted fishing permit (EFP) to estimates of the bocaccio bycatch in the limited entry flatfish trawl fishery. California has decided not to pursue this EFP. Nonetheless, estimates of overfished species bycatch for EFPs are intended to be some relatively high, liberal amount that would allow the EFP to remain open for as long as possible without jeopardizing rebuilding and do not necessarily reflect expected bycatch amounts. Estimates of bycatch in directed fisheries are based on the bycatch model, which looks at historical co-occurrence rates between the more abundant targeted stocks and overfished species. Further, directed limited entry trawling would occur within a more restricted area than had been planned for the flatfish EFP, which would tend to lower bycatch rates for that directed fishery.

The commenter's concerns with the California halibut fishery are of interest to NMFS and the Council. The Council has received conflicting reports on the type and level of bycatch occurring in this fishery. NMFS notes that California halibut trawling would be under the same conservation area restrictions as limited entry trawling, which are designed to move trawlers away from areas where bocaccio commonly occur. These area restrictions are expected to result in lower incidental bocaccio take in the California halibut trawl fisheries. In its review of bycatch and discard data sources, NMFS will be looking at information on all fisheries in which groundfish are taken, including the California halibut open access trawl fisheries.

Comments on Fisheries Regulations

Comment 17: One commenter stated that the groundfish conservation areas are not closed to all fishing, providing the example that some trawling is allowed in the trawl RCAs and that some nontrawl gear fishing is allowed in the nontrawl gear RCAs. This commenter stated that NMFS has failed to justify providing these exceptions to the conservation area restrictions. Another commenter wrote to support depth-based management in general.

Response: NMFS appreciates the opportunity to clarify this situation. The State of California has created the California Rockfish Conservation Area (CRCA), which is an area south of 40°10' N. lat. that is closed to fishing for groundfish between 50 fm (91 m) and 150 fm (274 m). The CRCA has several exceptions for different gears in different areas and an additional closure in the northern portion of the CRCA to protect darkblotched rockfish north of 38° N. lat. California proposed this CRCA to the Council and the Council adopted the regulatory provisions of the CRCA for recommendation to NMFS as part of its 2003 groundfish management measures package. NMFS felt that a large closed area with several open areas inside it would be both confusing to the public and inconsistent with the Council's management recommendations for waters north of 40°10' N. lat. Thus, NMFS has implemented a trawl-specific rockfish conservation area (RCA) that is bounded between 50 and 250 fm (91 and 457 m) from 40°10' N. lat. south to 38° N. lat., between 50 fm and 150 fm (91 and 274 m) from 38° N. lat. south to 34°27' N. lat., and between 100 fm and 150 fm (183 and 274 m) from 34°27' south to the U.S. border with Mexico. Within that Federal RCA, the only trawling permitted is pink shrimp trawling with BRDs. These regulations have the same effect as the California recommendation to close all trawling south of 40°10' N. lat., except that pink shrimp trawling with BRDs would be allowed and that trawling inshore of 50 fm (91 m) would be allowed between 40°10' N. lat. and 34°27' N. lat. and inshore of 100 fm (183 m) south of 34°27' N. lat. and except that trawling would further be prohibited between 150 fm (274 m) and 250 fm (457 m) between 40°10' N. lat. and 38° N. lat. The NMFS regulations for conservation areas south of 40°10' N. lat. are consistent with those for north of 40°10' N. lat. in that the regulations implement different closed areas for trawl and nontrawl vessels.

The commenter correctly notes that some nontrawl gear fishing is permitted

in nontrawl gear conservation areas. Albacore and salmon fishing with hook-and-line gear are permitted in the conservation areas. Bottom longline fisheries like the nontreaty halibut fishery, where overfished groundfish species are more likely to be taken, will be prohibited within the nontrawl conservation areas. The conservation areas are not closed areas wherein all fishing of any type is prohibited; rather, they are conservation areas wherein fishing activities expected to take overfished species are prohibited or restricted.

Comment 18: We object to fisheries regulations that prohibit the possession of fish in excess of trip limits and that force vessels to continuously offload their catch. Prohibiting the possession of fish in excess of trip limits puts processors in jeopardy of citation. Processors must often offload fish in order to determine whether trip limits have been exceeded and how to deal with that excess fish. We suggest that possession of fish in excess of trip limits be permitted in cases where state or Federal officials are alerted to that possession within 96 hours of the start of the possession.

Response: Federal groundfish regulations have prohibited the "taking and retaining, possessing or landing" of groundfish in excess of trip limits since the 1980s. Federal regulations do not require vessels to continuously offload their catch; rather, the regulations require that once offloading is begun, all fish on board the vessel be recorded on the same landings receipt and/or fish ticket. Processors are not in any more jeopardy of prosecution for possession of trip limit overages than they ever have been. NMFS and state enforcement officers will continue to expect fishers and processors to report trip limit overages and to forfeit those overages to the state in which they are landed. Possession of trip limit overages, whether reported or not, is a violation of Federal law, but enforcement of that prohibition is dealt with far differently for those persons who are found to have possessed such overages without reporting them. NMFS and state enforcement continue to need an avenue for prosecuting fishers and processors that retain trip limit overages without reporting and forfeiting those overages. Although the agency appreciates the commenter's concern for the ability of processors to comply with Federal law, NMFS will not be loosening this Federal restriction.

Comment 19: The trawl trip limit table for north of 40°10' N. lat. lists an incorrect trip limit for yellowtail rockfish when taken as bycatch in the