

flatfish fisheries. The currently listed limit of 3,000 lb (1,361 kg) per month should be 30,000 lb (13,608 kg) per month. Trip limit tables discussed and adopted at the Council's September meeting showed incidental yellowtail rockfish catch levels of 30,000 lb (13,608 kg) per month. NMFS changed this catch limit after the Council meeting with no public scrutiny and no economic analysis of the effects of the change.

*Response:* In its motion on groundfish management measures, the Council adopted the limited entry trawl trip limits shown in the Council's Exhibit C.3.v., Supplemental GMT report, at pages 4–5. Unfortunately, that table is unclear on the trip limit for yellowtail rockfish when taken as bycatch in the flatfish fisheries. The table shows the yellowtail rockfish limit when taken in the flatfish fisheries as “3,000?” The Council never clarified this limit in its motion, but the Council's post-meeting newsletter mistakenly listed the limit as 30,000 lb (13,608 kg) per month, perhaps based on the 2002 yellowtail rockfish limit in the winter flatfish fisheries, which was 30,000 lb (13,608 kg) per 2 months.

NMFS has reviewed January–April 2002 trawl vessel-month landings of yellowtail rockfish in combination with flatfish. A vessel-month represents the landings activities of a single vessel in a single month. In 97 percent of the vessel-months in which flatfish were landed during January–April 2002, the amount of yellowtail rockfish associated with those flatfish landings was less than 3,000 lb (1,361 kg) and it was zero pounds (0 kg) over 80 percent of the time. Given the lack of clarity in the table the Council used for its recommendations and the fact that the 3,000 lb (1,361 kg) per month limit accommodated 97 percent of all yellowtail landings in association with flatfish in January–April 2002, NMFS does not believe that an increase to 30,000 lb (13,608 kg) per month is warranted at this time. The Council will have an opportunity to review groundfish trip limits and other management measures at its April 7–11, 2003 meeting in Vancouver, Washington.

*Comment 20:* The management measures authorize considerable midwater trawling, but NMFS has failed to explain which overfished species may be negatively affected by midwater trawling and what those effects might be. Apparently the agency believes that midwater trawling will not increase the mortality of overfished species beyond the levels necessary to rebuild those species as quickly as possible.

*Response:* As detailed in the Council's FEIS for this action, the vast majority of midwater trawling for groundfish off the West Coast targets Pacific whiting. Other than Pacific whiting, there are small allowances for yellowtail and widow rockfish when taken with midwater gear in association with Pacific whiting. There may also be directed yellowtail and widow rockfish fisheries with midwater gear in November–December 2003, if total catch estimates for these and associated stocks show that these fisheries may be held without risk of exceeding the OYs of any species. These fisheries will not proceed if there are not sufficient portions of the OYs remaining to accommodate expected catch. NMFS does expect that midwater trawling will result in widow rockfish, an overfished species, being caught and landed. However, NMFS does not expect that the take of widow rockfish in the midwater trawl fisheries will jeopardize the rebuilding plan for widow rockfish because management measures for 2003 have been designed to keep estimated total widow rockfish mortality in directed fisheries and as bycatch below the widow rockfish OY.

NMFS regularly documents bycatch in the midwater trawl fisheries. The total catch by species in the at-sea whiting fishery has been monitored by observers since 1991. Each vessel currently carries two observers, so virtually all hauls are directly sampled and are figured into the total catch estimates. NMFS provides an aggregation of at-sea whiting bycatch in an annual report provided to the public at the April Council meeting. EFPs are used in the shorebased whiting fishery and the vast majority of shorebased landings are landed unsorted, with a census of the catch taken upon landing. Port samplers also monitor shorebased whiting processing facilities. The State of Oregon reports on bycatch in the coastwide shorebased whiting fishery in an annual report, which is available online at <http://hmssc.oregonstate.edu/odfw/finfish/wh/index.html>. As documented in these reports, bycatch of overfished species other than widow rockfish is at trace levels (fewer than 0.01 kg per mt of whiting taken.)

*Comment 21:* NMFS failed to consider an obvious management measure to ban the use and carrying of large footrope trawl gear, rather than simply banning the landing of shelf rockfish by vessels carrying that gear. Large footrope trawl gear may affect deeper-water species, which may be low-mobility, long-lived species that are more vulnerable to the acute and chronic physical disturbance of trawling. NMFS has failed to support

its implicit conclusion that large footrope trawling will not impact deeper-water overfished species such as darkblotched rockfish.

*Response:* The commenter has incorrectly characterized NMFS regulations. Large footrope gear may be used only seaward of the trawl RCAs and vessels are prohibited from taking, retaining, possessing or landing shelf and nearshore rockfish and/or lingcod when large footrope gear is on board the vessel. While prohibiting the use of large footrope gear even seaward of the conservation areas could improve enforceability of the regulations, NMFS concluded that the benefit provided by allowing the harvest of Dover sole, sablefish, and thornyheads in areas of lowest bycatch of overfished species outweighed enforcement difficulties.

NMFS disagrees with the commenter's assertion that the agency has implicitly concluded that large footrope trawling in deeper waters will not impact deeper-water species. NMFS fully expects that fishing activities in deeper waters will result in deeper water species being harvested. This expectation is illustrated by the trip limits provided for deepwater species such as Dover sole, sablefish, and thornyheads. NMFS has been clear and open in stating its expectation that fishing activities will result in fish harvest. In fact, the series of trip limits and area management implemented by this rule are intended to control where and when that harvest occurs. NMFS has also been clear in its intent to manage deepwater fisheries so that their interaction with overfished deepwater species, darkblotched rockfish and Pacific ocean perch, is minimized. As discussed at length in the preamble to the proposed rule for this action, the northern trawl RCA in particular was designed to move fishing away from depths where these two species congregate, which is why it extends out to 250 fm (457 m) from 38° N. lat. to the U.S. border with Canada.

*Comment 22:* We oppose the new management measure that prohibits vessels from having more than one type of trawl gear on board and from having both trawl gear and nontrawl gear on board. This prohibition is costly, duplicative, and unnecessary because there are already groundfish landings limits based on the types of trawl gear on board.

*Response:* NMFS discussed this public request with representatives from the Council's Enforcement Consultants, who had originally requested the measure to restrict vessels to carrying only a single gear type on board. The Enforcement Consultants concluded