

required within biological opinions and the MMPA.

*Comment 5:* One commenter expressed the belief that limits on catch and bycatch should be set, but stated that, as long as bycatch is counted against the TAC, there is no need to close a fishery when some predetermined bycatch limit is reached. The commenter suggests that reserve measures, such as area closures, gear restrictions or similar measures, should be developed on a case-by-case basis that would be triggered when the bycatch limit is reached.

*Response:* NMFS believes the comment is reasonable and that reaching of a bycatch limit may not necessarily require the closure of the fishery, particularly when other mitigating measures such as area closures or gear restrictions are in place and can adequately address any impacts that the bycatch may be having on the marine resource. Each fishery needs to be evaluated to determine the best means to mitigate bycatch.

*Comment 6:* One commenter suggested that NMFS identify catch limits of target and non-target species for each fishery, focusing first on populations that are most overfished. The commenter expressed support for moving toward absolute limits on bycatch in select fisheries based on status of the stocks and the life histories of all species affected by the fishery.

*Response:* NMFS generally agrees with the comment and particularly agrees with the need to set catch limits for target and non-target populations that are most overfished.

*Comment 7:* One commenter expressed the belief that the forced closure of fisheries when bycatch limits are reached ignores the "to the extent practicable" limitation of MSA national standard 9, the "optimum yield" requirements of MSA national standard 1, and the fishing community protection requirements of MSA national standard 8. Instead, the commenter supports the prohibited species catch (PSC) limits approach where practicable as employed by the NPFMC and NMFS in North Pacific fisheries (i.e., NPFMC exempting certain PSC bycatch limits when bycatch is negligible - low enough to make further reduction unnecessary from a biological standpoint and impracticable from a socio-economic standpoint).

*Response:* NMFS supports the flexibility that each RFMC has in developing appropriate conservation and management measures consistent with the MSA. At the same time, RFMCs and NMFS must consider the impact of

the recommended and alternative actions on the environment.

*Comment 8:* One commenter opposed setting absolute limits on directed catch and bycatch because in many cases sufficient information is not available to even grossly estimate such limits for target species, let alone non-target species. The commenter supports incorporating such limits within FMPs once sufficient monitoring data is available to develop such limits.

*Response:* Normally NMFS does not support the incorporation of directed catch or bycatch limits for purposes of closure where sufficient monitoring data are not available. There may be instances where directed catch or bycatch limits need be imposed, based on the best available information, in order, for example, to safeguard a protected species or an overfished stock.

#### 4. Bycatch Assessment and Reduction Plans

*Comment 1:* One commenter indicated that a requirement for observer programs for fisheries in which bycatch does not occur would be an onerous and costly strain on limited management staff and resources.

*Response:* NMFS agrees that mandatory observer programs for fisheries that utilize very selective gear or that fully utilize target and nontarget catch would normally represent an inappropriate strain on management resources. However, we do not believe that the 4th component of the petition for rulemaking requests observer coverage for all fisheries. Rather, the 4th component of the petition requests a description of the level and type of observer coverage necessary to accurately characterize total mortality (including bycatch) in a fishery. Such a description could determine that no observer coverage is necessary to accurately characterize mortality for certain fisheries. The approach to standardized bycatch reporting methodology that NMFS is developing, as discussed below, will be useful in determining the needs of individual fisheries.

*Comment 2:* One commenter suggested that for fisheries in which there are very little available data on bycatch due to very low levels of bycatch in the fisheries, assessing bycatch within a 12-month period would require substantial levels of observer coverage, which would be costly and inefficient effort that would have devastating effects on fishermen.

*Response:* We believe that fisheries for which insufficient bycatch data exist should be subject to increased data collection efforts if bycatch is perceived

to be a problem. Monitoring efforts such as observer programs are very costly, and limited NMFS resources should be devoted to fisheries in which bycatch data are poor and where bycatch is perceived to be problematic. We agree that the 12-month time frame in the petition for developing, approving, and implementing bycatch assessment plans for commercial and recreational fisheries would be infeasible for most fisheries. While 12 months may be feasible for developing and seeking approval, this time frame would likely be insufficient for full (non-emergency) rulemaking.

*Comment 3:* Two commenters indicated that two RFMCs have already implemented bycatch assessment and reduction plans for almost all of their fisheries in compliance with national standard 9 in Section 301 of the Sustainable Fisheries Act (SFA).

*Response:* NMFS agrees that the efforts of various RFMCs over the past few years to address bycatch have largely accomplished the objectives of the bycatch assessment and reduction plans described in the 4th component of the petition for rulemaking. Some RFMCs have accomplished the objectives more completely than others, and this variation among RFMCs in addressing bycatch will be assessed by NMFS as part of its National Bycatch Strategy discussed below. One result of the assessment may be a checklist for the purpose of ensuring that all FMPs achieve a standard level of bycatch assessment and reduction.

*Comment 4:* Several commenters suggested that the petition's 12-month time frame for completing bycatch assessments and the rulemaking process would be virtually impossible to comply with due to time-intensive monitoring requirements and the RFMC process. Another commenter thought that implementing bycatch assessment and reduction plans for commercial and recreational fisheries was a good idea but that a 2-year or even a 5-year time frame would be more appropriate to allow a realistic amount of time to implement data collection programs and fishery management plan amendments.

*Response:* We agree that bycatch assessment and reduction plans for commercial and recreational fisheries are desirable and believe that elements of these plans are available for many fisheries in which bycatch data are abundant. Because other fisheries, especially recreational fisheries, have not been subject to long-term and rigorous bycatch assessment and reduction efforts, NMFS agrees that for many fisheries the 12-month time frame would not realistically allow for the