June 2, 2016

MEMORANDUM FOR: Eileen Sobeck
Assistant Administrator for Fisheries

FROM: Julie Morris
Chair, Marine Fisheries Advisory Committee

SUBJECT: Marine Fisheries Advisory Committee Comments on the Draft National Bycatch Reduction Strategy

The Marine Fisheries Advisory Committee (MAFAC) is submitting comments on the Draft National Bycatch Reduction Strategy. MAFAC is charged with making recommendations to NOAA and the Secretary of Commerce on the department's living marine resource responsibilities.

At our meeting in April 2016, the discussion of the Draft National Bycatch Reduction Strategy precipitated an intense discussion. Each member of MAFAC has experienced the friction between bycatch and harvest. Some members have had harvest constrained and other members noted bycatch species harmed. MAFAC's comments on the draft strategy are drawn from this broad range of experiences.

Our memorandum includes three sections: general comments; specific wording changes for several of the draft objectives; and short topical comments on improving bycatch data, balancing allowable harvest with bycatch reduction, encouraging innovation, clarifying definitions, reviewing closed areas periodically, and utilizing bycatch.

General Comments

In general, the proposed national bycatch reduction strategy objectives are well-stated and logically connected to the three key laws that govern bycatch - the Magnuson Stevens Act (MSA), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). The strategy does a good job of incorporating the different approaches to bycatch required by each of these laws.

The draft strategy could be strengthened by adding a summary of the progress already made in reducing bycatch. Two or more specific stories highlighting innovative strategies and successful partnerships would enrich the context for the draft strategy.

Ideally, the draft bycatch strategy should be consistent with the recently adopted standardized bycatch methodology guidance, and a discussion of this consistency or inconsistency would be helpful.

Balance and flexibility are important when reducing bycatch in fisheries. Bycatch reduction can be important for conservation, and in some cases may be significantly

important for rebuilding plans for some stocks. Yet, bycatch limits can limit directed harvest of target species affecting fishermen, processors, and fishing communities.

Annual Catch Limits (ACLs) should be the backstop standard for the allowable amount of bycatch. There are instances on the Pacific Coast in which individual fishing quotas (IFQ) fisheries have been restricted from harvesting the ACL of the target fish even when the bycatch ACL is below the allowable level. Gathering data and analyzing these cases would be helpful.

Our final general comment is that the draft strategy should emphasize that the national strategy is intended to help with setting priorities for science, grants, and the work of Federal fisheries managers and scientists and is not a mandate for new or different regulations.

MAFAC supports the international provisions of the draft National Bycatch Reduction Strategy.

Suggested wording changes for three objectives (wording changes underlined)

- Strengthen monitoring and data collection programs through cost-effective use of new and existing tools (e.g., observers, logbooks, study fleets, and electronic technologies) to collect bycatch data that inform agency, private sector, and NGO bycatch strategies ~~priorities~~.
- Improve management measures and regulations so that they are designed to reduce bycatch, while strengthening understanding of the economic and social factors contributing to bycatch and the effectiveness of bycatch reduction measures. (Best Management Practices)
- Improve ~~communication~~ review and coordination within NOAA fisheries and increase partner and stakeholder awareness, understanding, and engagement through open, two-way communication.

Short Topical Comments

Bycatch data need to be improved in many fisheries, including, but not limited to: mortality estimates, data quality, and timeliness of data. Improved bycatch estimates will yield better stock assessment models and may improve effectiveness of management measures.

Periodic Review of closed areas for bycatch reduction is very important. Bycatch hot spots can shift with time and reviews will illuminate these shifts. For spatial management of bycatch to be most effective, closed areas should adjust to current hot spots. Previously closed areas can reopen to harvest when the likelihood of bycatch declines.

Balance and Flexibility are needed in searching for the right balance between reduced bycatch and allowable harvest. The National Standards in the MSA call for a balance between economic goals and "practicable" levels of bycatch reduction. Determining what level of bycatch reduction is practicable in a specific fishery can be difficult and

contentious. The Strategy would be strengthened if the Agency made an effort to enunciate some of the factors that should be considered in the context of practicability.

At the outset, the draft strategy should acknowledge that it is impossible to fish without bycatch, and that there are very real economic impacts when bycatch limits also limit the ability to harvest target species. Some assert that MSA bycatch minimization was never intended to limit optimum yield while others assert that maximum sustainable yield is reduced to optimum yield by relevant economic, social, and ecological factors, including bycatch levels. The use of best science and stock assessments should always be utilized as the primary reference point for guidance in this process.

Bycatch reduction strategies that close directed fisheries when the allowable bycatch has been harvested could lead to a race for the fish in non-rationalized fisheries, i.e. trying to harvest as much as possible of the target fish before the bycatch limit closes the fishery. Rationalized programs with applicable and effective tools, (i.e. allowing individual or cooperative harvest timing and geographical fishing choices) such as fishery cooperation through Co-ops and well-designed IFQ programs, can keep bycatch levels low enough to allow the full harvest of the allowable catch of the target stocks. Guidelines and policy to reduce bycatch should be done collaboratively with Government and Industry, while adhering to the premise that one size does not fit all. Different regions, FMPs, and gear groups will have different requirements. However, if this factor is taken into account prior to inception of bycatch reduction guidelines and policies, the net result will be fisheries that achieve optimum harvest of target stocks while minimizing bycatch.

Innovation in bycatch reduction is broadly supported by MAFAC. Geography, timing, and technology can each be harnessed to reduce bycatch. Fishermen are natural innovators and great reductions in bycatch are possible in collaboration with both recreational and commercial anglers. It is important to foster a culture of continuous improvement and investigate how to mitigate risk to fishery participants. Government and non-government funding can encourage bycatch reduction innovation. Beyond funding, research permits to field-test innovations and research set-asides of a portion of the allowable harvest/bycatch can be provided in support of innovation. Even when a field test indicates a promising technique to reduce bycatch, it is often difficult to scale up a new technique across a fishery. Sometimes the innovative technique is costly or less effective than projected. At other times, communication falls short, and fishermen are not informed that the proposed technique has been field-tested in collaboration with industry for practicality as well as effectiveness.

A number of proven innovations can be encouraged and incentivized across fisheries. These examples were identified by MAFAC members:

- Cooperatives communicating across the fleet about areas to avoid.
- Rolling hot spots.
- Risk pools.
- Codes of conduct.
- Cooperative agreements to leave problematic areas.
- Catch shares for regulatory discards.

- Abundance based bycatch caps.
- Collaborative management.
- Potential biological removal (PBR) for mammals.

Including *definitions* of the various categories of bycatch would be helpful, along with the recognition that different strategies are needed for different types of bycatch. For example, there are economic discards, regulatory discards, bycatch of protected resources, managed bycatch, and unmanaged bycatch.

Utilization needs to be carefully defined in the context of different bycatch situations. Will utilized bycatch no longer be considered bycatch?

Bycatch reduction is a different goal than utilization of bycatch. There can be a moral hazard in utilizing bycatch if utilization encourages increased bycatch instead of reduced bycatch. Utilization should not be a loophole to avoid complying with bycatch reduction and minimization requirements.

There are fisheries in which allowable bycatch is wasted, thrown overboard, when it could be utilized. Utilization must be carefully considered, case by case, depending on the region and the fishery. The challenge will be to reduce waste without creating either loopholes or incentives to increase bycatch levels

Thank you for your thoughtful review of these comments from MAFAC. We would appreciate receiving a report on the final National Bycatch Reduction Strategy when it is completed.