

ENFORCEMENT SUMMARY

UNDER-REPORTING OF GROUND FISH LANDINGS IN CALIFORNIA

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PART 1. OPERATION OVERVIEW

BACKGROUND

Over the past several decades, many species of rockfish (genus *Sebastes*) have been the target of an expanding non-trawl fishery in California. This fishery consists of vessels employing a variety of gear types such as long line, troll, trap, jig, and gillnet. As a direct result of the recent decline in salmon and crab resources, and the growing demand for the high quality product that non-trawl vessels are capable of supplying, there has been a noticeable elevation in the harvest of non-trawl caught Federally regulated groundfish species. In many California ports, non-trawl landings of groundfish have surpassed that of the gillnet fishery in its prime, and now constitutes a high percentage of all rockfish landed.

The continued harvest of susceptible groundfish species is highly dependent on effective resource management and routine law enforcement. Many enforcement tools are available to assist in maintaining the economic viability of groundfish resources. One such tool is the proper implementation and enforcement of a data collection system, which is imperative for the successful management of any resource. The absence of accurate catch data creates a problem for resource management personnel assigned the task of measuring the impact of a developing fishery, consequently, the exploitation rate is unknown.

State and Federal personnel reductions, combined with an increase in non-traditional wildlife protection duties, have resulted in a diminished marine enforcement presence. Accordingly, the current marine fisheries data collection system has suffered from the lack of routine enforcement monitoring. Intelligence gathered over the past several years indicates that landings of Federally regulated groundfish, harvested by the non-trawl fleet, have been grossly under reported to the California Department of Fish and Game (CDFG).

In July 1992, National Marine Fisheries Service (NMFS) agents assigned to the Santa Rosa Office began an investigation that involved Federally regulated groundfish landed by non-trawl vessels, and suspected violations of the Pacific Coast Groundfish Management Plan (PCGMP) Regulations at 50 CFR Part 663. Evidence obtained during that investigation revealed the existence of a serious problem within the groundfish data collection system, maintained and monitored by the State of California. The

apparent problem resulted in the utilization of questionable landing data by fisheries managers to evaluate the condition of the Washington, Oregon, and California (WOC) groundfish fishery. Documentary evidence obtained during the early stages of the non-trawl investigation revealed that numerous vessels and commercial fish receivers were involved in groundfish reporting violations throughout California.

FORMATION OF TASK FORCE

The magnitude of the perceived WOC groundfish reporting problems necessitated a task force approach. On April 16, 1993, a team of investigators which consisted of three CDFG wardens, three NMFS agents, and one NOAA Staff Attorney, organized in Santa Rosa to examine enforcement problems which existed in the PCGMP, specifically, the under reporting of groundfish harvested by the non-trawl fleet. The creation of the task force provided a forum for State and Federal enforcement personnel to come together and share resources in the effort to jointly enforce compatible State and Federal commercial fish landing regulations.

TASK FORCE GOAL/OBJECTIVES

GOAL

To seek compliance with the PCGMP by documenting and prosecuting violations of regulations found in this plan which were enacted under the authority of the Magnuson Fishery Conservation and Management Act (MFCMA).

OBJECTIVES

1. To identify vessel owners and operators who failed to comply with commercial groundfish landing requirements.
2. To identify licensed and unlicensed fish receivers who failed to comply with commercial groundfish landing reporting requirements.
3. To identify and address weaknesses within the current Data Collection System.
4. To establish a constructive working relationship between Marine Enforcement and Marine Resource Management personnel which will assist in subsequent enforcement operations.

PREPARATION AND TRAINING

Task force members initially met in San Francisco to identify operational objectives and tactics necessary to accomplish them. All task force members were provided with a complete personal computer system, applicable software, and professional computer training to assist with the numerous case reports that were

generated during the operation. Additional equipment was provided to all members of the task force to aid them with their investigations.

Because of the extensive travel involved, invitational travel orders were requested and obtained for the three State wardens assigned to the task force.

RESULTS

After approximately ten months of intensive investigative work, the Operation had come to an end. Initially, it was anticipated that approximately four months would be necessary to accomplish our established objectives. The extensive amount of time required to thoroughly investigate each case, however, compelled us to extend the operation. Documentary evidence obtained during each investigation provided task force members a paper trail which often spawned additional offshoot investigations that involved commercial fish dealers and additional vessels. Consequently, a comprehensive investigation of every subsequent lead was carried out by the task force.

Approximately 6,257 investigative hours were performed during the Operation. As a result, 639 violations of the PCGMP were documented.

The most common violation detected during the operation was the failure to properly report groundfish landings to the CDFG, as required by the applicable State law. In many instances, we discovered the movement of small loads of groundfish, through commercial back channels, with little or no supporting documentation. The undocumented fish were ultimately sold to unlicensed fish receivers (markets and restaurants), or at "open-air" markets to the general public. In both cases, there was evidence that large amounts of groundfish species had not been reported to the CDFG as required by State law. By establishing their own markets and bypassing the licensed dealers, many fishermen were able to maximize their profits, avoid State fish privilege taxes imposed on commercial fish landings, and circumvent costly commercial fish receiver's licenses required by the State.

Various documents were utilized by the task force to track each unreported landing to a responsible party. Fish Transportation Receipts (FTR's), designed only to document the movement of fish by a commercial fisherman from the point of landing to the fish receiver, were widely misused. Through exhaustive interviews with countless fishermen, vessel owners, licensed dealers, restaurant owners, market owners, etc., we found that many FTR's were not submitted to the CDFG, and had no corresponding CDFG Landing Receipts (LR's). Even when submitted as required, data on the FTR do not enter the data collection system, and are not

utilized by fisheries management personnel. Therefore, without the final LR, there is no accountable documentation for a commercial landing.

A comparison of county wharfage receipts that reflected fees charged to commercial fishermen for the offloading of groundfish, to printouts of LR's received by the CDFG, confirmed the abundance of groundfish landings that had not been reported to the CDFG. Direct access into the CDFG commercial fish landing data bank (CMASTER), by all task force members, assisted immensely during the operation. The substantial number of requests for landing data generated by the task force created somewhat of a burden for the CDFG Marine Statistics Branch in Long Beach. Had it not been for the direct access to CMASTER, the number of requests for information from CDFG would have overwhelmed the small staff at the Marine Statistics Branch. By utilizing CMASTER data, task force investigators were able to make immediate queries, distinguish the precise data needed for each investigation, and significantly reduce the impact of the Operation on the Marine Statistics Branch. Upon the conclusion of the Operation, authorization of NMFS enforcement to access CMASTER was rescinded by the CDFG. Until this entitlement is reinstated, future fisheries investigations will be inhibited.

The scarce paper trail associated with groundfish landings sold in violation of State landing regulations suggests that the actual amount of unreported groundfish detected by the task force, although alarming, is a mere drop-in-the-bucket. At the conclusion of the Operation, approximately 576,862 pounds of undocumented groundfish had been discovered. Additionally, the detection of 34,278 pounds of unlawfully taken and retained species of groundfish resulted from offshoot investigations. Over \$200,000.00 in penalties have been assessed to date. There are still cases pending review by General Counsel, Southwest Region, and the amount of fines assessed is sure to escalate.

Being the first such undertaking of its kind, all involved with the task force agree that the operation was a tremendous success.

The task force conclusively identified serious problems that existed in the data collection system in California, and illustrated that Federal and State officers are able to work together and produce positive results through their combined efforts. The objectives established prior to the operation were accomplished, and a noticeable improvement in compliance with commercial fish landing regulations in California have resulted.

TASK FORCE STATISTICS

TOTAL INVESTIGATIVE HOURS:
6,257

VIOLATIONS DETECTED:
639

INVESTIGATIVE HOURS PER VIOLATION DETECTED:
9.8

TOTAL POUNDAGE OF UNREPORTED GROUND FISH DETECTED:
1991 - 162,472 LBS.
1992 - 283,064 LBS.
1993 - 131,326 LBS.
TOTAL- 576,862 LBS.

FINES ASSESSED:
\$205,614*

EXPENSES

(EXCLUDING WAGES AND TRANSPORTATION COSTS)

TRAINING:
\$5,900.00

EQUIPMENT:
\$14,850.27

TRAVEL:
\$3,974.44

TRANSLATION SERVICES:
\$2,247.27

MISCELLANEOUS:
\$500.00

TOTAL: \$27,471.98

* DOES NOT INCLUDE NUMEROUS NOVA'S STILL PENDING

PART II. LEGAL REVIEW

INTRODUCTION

The Federal regulations for the Pacific Coast Groundfish fishery implement the Pacific Fishery Management Council's groundfish management plan and are found at 50 Code of Federal Regulations Part 663. The regulations govern fishing for groundfish by fishing vessels of the United States in the Exclusive Economic Zone off the coasts of Washington, Oregon and California.

To avoid duplicating data reporting burdens on fishermen, the Federal regulations require compliance with State reporting laws. Catch data collected by State officials in the form of landing records are shared with Federal managers and scientists and are the primary source of statistical information used to manage the fishery. The Federal managers assume that the data collected by the States are complete and accurately represent fishing activity and base annual and seasonal catch limits on the State data.

In fact, the joint enforcement task force conducted by the California Department of Fish and Game and the National Marine Fisheries Service Southwest Office of Enforcement uncovered dozens of instances in which groundfish landed by commercial fishermen were not reported at all and, presumably, were not accounted for in either the State or Federal statistical data bases. Over thirty cases of this kind were prosecuted by the NOAA Office of General Counsel as violations of the Federal groundfish regulations. During the enforcement and prosecution of these cases, weaknesses in the State and Federal data collection regulations were discovered and are described below.

FEDERAL REGULATIONS

Problem: The Federal regulations do not incorporate all State requirements relating to preparation, copying and retention of landing records.

A significant problem with the NMFS regulations is that they fail to incorporate State requirements that facilitate groundfish enforcement. For example, the California law requires commercial fishermen and licensed dealers to retain copies of all landing records for four years and to make them available for inspection during that time. California Fish & Game Code § 8046.

The task force discovered that being able to request and inspect copies of landing records was an important element in enforcing the groundfish regulations. Surprisingly, it is not a

violation of the Federal regulations to fail to retain copies of State landing records.

The Federal regulation concerning State landing records is found at 50 CFR § 663.4(b) and states only that:

Any person who is required to do so by the applicable State law must make and/or file any and all reports of groundfish landings, containing all data, and in the exact manner, required by the applicable State law.

Unlike the California law, this regulation fails to require that dealers provide copies of landing receipts to commercial fishermen at the time groundfish are landed and sold and also fails to require the dealers and fishermen to retain the copies for subsequent inspection.

Recommendation: The Federal regulations should be revised to include all State requirements concerning the preparation and submission of landing records to State officials.

STATE REPORTING REQUIREMENTS

A number of cases prosecuted during the task force involved the failure by licensed fish dealers and commercial fishermen to prepare landing receipts or to submit the receipts to State officials. In the course of reviewing these cases, it was observed that several sections of the California Fish and Game Code were worded in a manner that made enforcement and prosecution difficult. These problems are described below.

Problem: The State reporting laws apply only if the fish have been sold or delivered. Unless there is evidence that a sale or transfer of fish took place, no action can be taken for failing to prepare or submit a landing receipt.

Violations of the following sections of the California Fish and Game Code were prosecuted during a number of the task force cases:

8043. Landing receipt; Form and contents
Every commercial fisherman who sells or delivers fish that he or she has taken to any person who is not licensed under Article 7 (commencing with Section 8030) [i.e., not a licensed fish receiver] and every person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver ... shall make a legible record in the form of a landing receipt on forms to be furnished by the department....

8046. Delivery and retention of landing receipt; Copies

(a) The original signed copy of the landing receipt made under Section 8043 shall be delivered to the commercial fisherman at the time of the purchase or receipt of the fish. That copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be available for inspection at any time during that period by the department. A copy of the landing receipt shall be kept by the person licensed pursuant to Article 7... who filled out the landing receipt for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be delivered to the department on or before the first and 16th day of each month.

8047. Other persons required to make landing receipt; Transportation receipt

(a) A person licensed under Article 7... who takes his or her own fish shall make a legible record in the form of the landing receipt as required by Section 8043 at the time the fish are brought ashore. The original signed copy of the landing receipt shall be retained by the licensee for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the landing receipt shall be delivered by the licensee to the department on or before the first and 16th day of each month....

(b) Every commercial fisherman who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes pursuant to Article 7... shall make a legible record in the form of the landing receipt required by Section 8043 and shall be subject to the tax imposed by Section 8041. The person taking, purchasing, or receiving the fish, whether or not licensed under Article 7... shall sign the landing receipt. The original signed copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be retained by the person taking, purchasing, or receiving the fish until they are prepared for consumption or otherwise disposed of.... A copy of the landing receipt shall be delivered by the commercial fisherman to the department on or before the first and 16th day of each month.

(c)(1) Every commercial fisherman or his or her designee, who transports, causes to be transported, or delivers to another person for transportation, any fish, except herring, taken from the waters of this state or brought into this state in fresh condition, shall fill out a transportation receipt on forms

provided by the department at the time the fish are brought ashore.

(2)

(3) The original signed copy of the transportation receipt shall be retained by the commercial fisherman who filled it out for a period of four years and shall be available for inspection at any time within that period by the department. A copy of the transportation receipt shall be given to and retained by the person transporting the fish until the fish are sold fresh, processed, or otherwise disposed of. A copy of the transportation receipt shall be delivered to the department on or before the first and 16th day of each month....

Early during the investigations, officers discovered chronic failures to report groundfish landings, based upon the following factual scenario: Fishermen involved in small-scale fishing activity would land groundfish and then deliver the fish to markets, restaurants or other buyers who were not licensed fish receivers. Under Section 8047(b), the fisherman does not have a duty to prepare a landing receipt until the fish are actually sold.

Often, the sales would involve a cash-and-carry arrangement that involved no receipts, checks or other paper trail. When interviewed by the officers, the fisherman would "forget" where the fish ended up. Without proof of a sale, there is no requirement to report the fish to the State on a landing receipt and these cases could not be prosecuted. In all cases like this, however, there was proof that groundfish had been landed, often in the form of wharfage receipts or incomplete transportation receipts but the catch data were never received by State or Federal managers.

If a primary purpose of landing receipts is to provide accurate and complete information regarding the amount of fish being landed (in addition to providing a basis of tax revenues), there should be a duty to report all fish that are landed, regardless of whether they are subsequently sold, given away, dumped, or consumed by the fisherman himself.

Problem: The status of the fish buyer determines who will have the legal duty to prepare and to submit a landing receipt. This can allow the fisherman and the buyer to evade complying with the reporting requirements.

A number of cases involved initial evidence that a fisherman had landed groundfish and had transported it to a buyer. However, no landing receipts were submitted to the State by the licensed fish receiver who was identified on the transportation receipt.

Two possible scenarios in this type of situation: either the fisherman had not sold the fish to the licensed receiver identified on the transportation receipt and was therefore in violation of the reporting requirement if the fish were sold to an unlicensed receiver, or the licensed receiver did buy the fish but had failed to prepare and submit the landing receipt.

Because the legal duty to prepare landing receipts shifts depending upon the license status of the buyer, the fisherman and the licensed receiver identified on the transportation receipt were able to "point the finger" at each other. The fisherman could claim that he had sold the fish to the dealer, and that the dealer failed to prepare the receipt; the dealer, on the other hand, could deny that he had purchased any fish and that the fisherman must have failed to prepare a receipt for a sale that he had made to an unlicensed receiver.

Again, in each of these cases, the officers had evidence that groundfish had been landed but could not establish where the fish were ultimately delivered and sold. Without more information, cases like that described above could not be prosecuted.

Recommendation: The California law should be changed to impose a reporting duty on commercial fisherman for all fish that are landed, regardless of whether the fish are sold or transferred.

Although the reporting forms in California are called "landing receipts," they really are more concerned with sales of the fish than with the landing. The need for data collection and analysis of the groundfish fishery and the ability to enforce reporting laws would be better served by a system that is triggered when fish are landed rather than when they are sold. Additionally, shifting the duty to report increases the possibility that landings of fish can go unreported.

Problem: State confidentiality laws delay the investigation of suspected violations and require burdensome closed proceedings before State landing receipts can be used as evidence in Federal prosecutions.

In order to comply with State confidentiality laws protecting landing receipt data, a procedure was developed in cooperation with State officials whereby fishery data were provided upon written assurance of confidentiality by Federal investigators and lawyers. Copies of landing records could be received and reviewed by Federal officials but the agreement precluded any public disclosure of landing records until a Federal administrative law judge determined in closed proceedings that their release was in the interests of justice. Only then could the landing records be used as evidence in NOAA

administrative hearings (prosecution cases). A sample of the official request is attached to this report.

Thanks largely to the positive response and cooperation of State officials, the system worked and the records were provided throughout the task force effort. However, the fact remains that enforcement of Federal fishery regulations could be impaired by an adverse interpretation of State confidentiality laws or by State officials who might be unwilling to support and participate in a joint effort such as the task force.

Recommendation: A data reporting system should be developed that allows enforcement of Federal regulations which is not dependent upon or subject to State fishery data confidentiality laws.