

Measure twice, cut once



By David Frulla and Shaun Gehan

Under the best circumstances, regulatory compliance costs can be overwhelming. Whether to rebuild stocks, improve economics, or minimize bycatch, compliance with federal regulations can be hugely burdensome, even to the point of eliminating long-time participants. As such, the rulemaking process should be analytically rigorous and well justified in terms of expected benefits.

Why, then, does it seem even for amendments years in development, issues that ought to have been better considered — or considered at all — arise only in the last rush of decision making or, worse, afterward, during implementation?

In June, the North Pacific Fishery Management Council voted to suspend, by emergency action, its “groundfish retention standard” (GRS) for the Bering Sea/Aleutian Islands head-and-gut fleet — trawlers that minimally process and freeze groundfish — after two and half years of operation. The GRS sought to increase H&G fleet retention from around 65 percent to 85 percent by limiting vessels’ ability to discard fish. Put another way, it required landing of valueless fish.

Before explaining further, the caveats. First, we represented two companies in litigation challenging aspects of the

GRS. This opinion is based on that experience, not the views of H&G sector participants. Second, there is no doubt that the program served an important Magnuson-Stevens Act objective.

Indeed, the problem with the North Pacific program was not the ends, but the means — means that proved to be entirely unworkable.

During the amendment process, the sector’s retention rate was calculated based on total catch, drawn from production reports, observer data, and discard estimates. The GRS took a different approach. Flow scales were mandated to weigh all catch and vessels were required to hire two full-time, industry-funded observers to sample every haul. The new system relied on basket samples to estimate total groundfish catch. The amount of groundfish retained was calculated by converting headed and gutted product to whole round weight using questionable “recovery rates.”

Thus, the simple formula found adequate to impose the rule was eschewed in favor of a complicated system necessitating costly monitoring systems. Worse, this method yields retention rates about 9 percent lower than that used to set the targets, meaning the 85 percent target became that much harder to reach. But the real rub, and the reason the council recommended scrapping the GRS, is that the program was practically unenforceable. Proving a vessel did not meet the standard involves reviewing each haul made over a year and the cooperation of every observer, and still might not succeed because of imprecision in estimates.

Recognizing both these problems and the industry’s greatly improved record,

the North Pacific council elected to jettison the GRS and provide the H&G sector a chance to propose a transparent, voluntary system to maintain and improve bycatch reduction progress made to date.

The course correction is appreciated, certainly by the sector. Our concern is that companies spent hundreds of thousands of dollars on flow-scales, observers, and operational inefficiencies to enforce a program that it took over two years to determine could not work. One company was forced to convert several vessels from a dual to single production line layout, at a cost of millions of dollars, to facilitate monitoring that is now unnecessary.

The problems that led to the demise of GRS were not unforeseeable; they just were not fully vetted *before* the program was adopted. Had they been, a lot of wasted investment could have been averted.

This would be bad enough if this were an isolated incident. But as many Atlantic groundfishermen are painfully aware, a “ready, fire, aim” approach marked a wholesale economic and management restructuring of that fishery. There was a similar lack of thought given to the monitoring costs or workability, not to mention critical gaps in catch data left unresolved prior to implementation. The South Atlantic council closed the entire EEZ to red snapper fishing on data so bad it wrote the secretary of commerce for help in fixing.

Getting things right from the start beats a *mea culpa* issued after the damage has been done. NF

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