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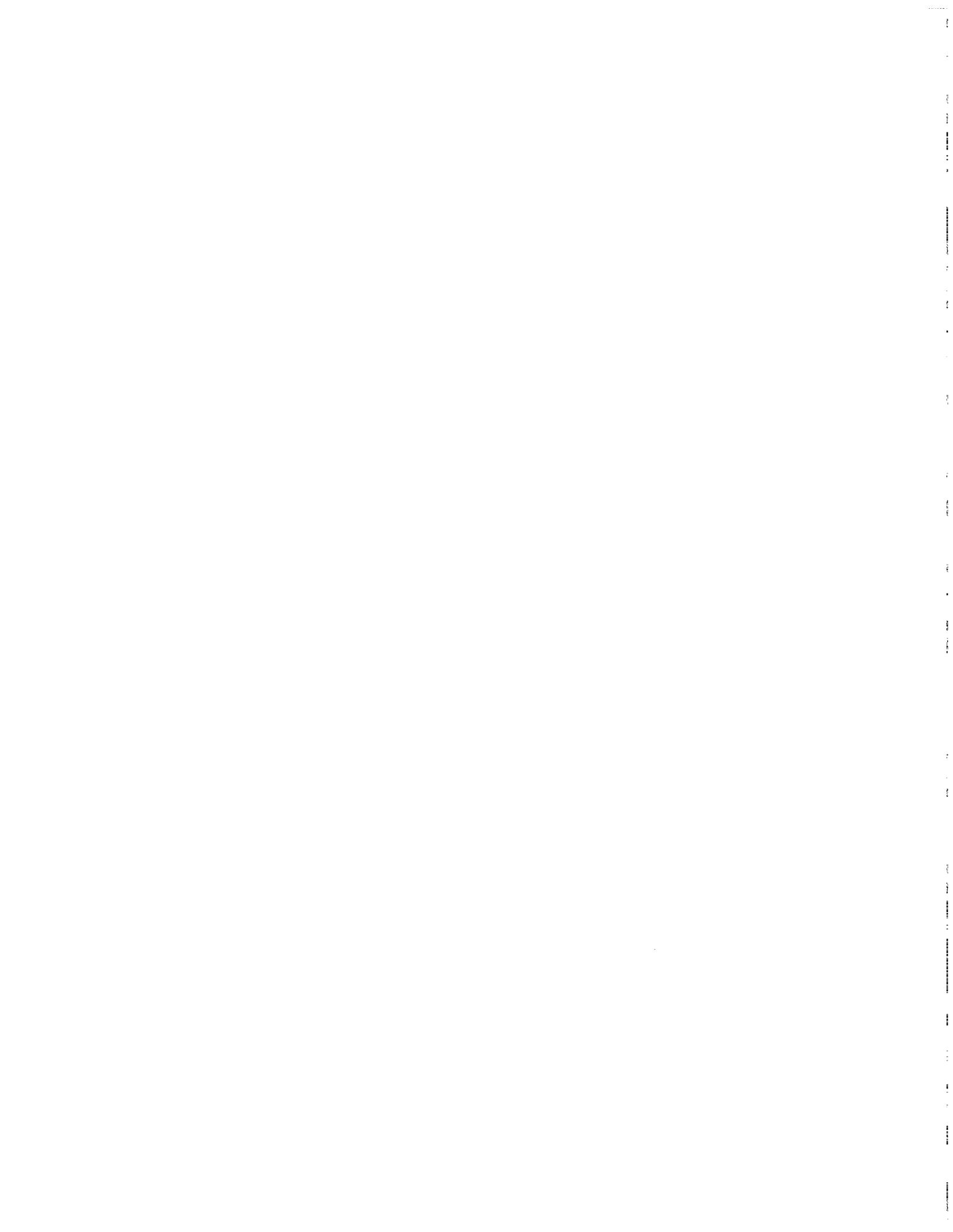
Report to the Honorable
Mark O. Hatfield,
U.S. Senate

May 1994

PACIFIC WHITING HARVEST

Controversy Surrounding 1993 Allocation Between Processing Sectors







United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-256352

May 10, 1994

The Honorable Mark O. Hatfield
United States Senate

Dear Senator Hatfield:

The 1993 Pacific whiting harvest allocation was controversial. The controversy stemmed from the Department of Commerce's rejection of the Pacific Fishery Management Council's proposed allocation of the whiting harvest between the shoreside and at-sea processing sectors.¹ The Council had proposed that up to 74 percent of the 1993 harvest of Pacific whiting be allocated to those fishing vessels delivering their catch to shoreside processors and that the remaining 26 percent be available to those vessels delivering their catch to at-sea processors. After much deliberation, the Department of Commerce—1 day before the opening of the 1993 fishing season—approved an allocation of 30 percent to the shoreside sector and 70 percent to the at-sea sector. This allocation was close to the actual harvest for the two sectors in 1992.

Concerned about whether the approved allocation was justified, you asked us to examine the events that affected the decision-making process used to allocate the 1993 harvest of Pacific whiting. Specifically, we agreed to determine (1) whether the decision-making process complied with existing procedures and regulations, (2) whether the support for the Council's allocation recommendation was adequate, and (3) why the Secretary's decision was made on the day before the allocation was to take effect, rather than earlier. In addition, we agreed to determine the extent to which nonwhiting fish species were caught during the whiting harvest.

Results in Brief

The decision for allocating the 1993 Pacific whiting harvest was made in accordance with federal agency decision-making procedures and regulations. The Secretary of Commerce rejected the Council's recommendation because of inadequate support. The timing of the Secretary's decision, which was not much different from the timing of the 1992 decision, was the result of the considerable time spent by federal officials in deliberating the Council's proposed shift in the 1993 allocation between the two processing sectors.

¹The shoreside sector includes fishing vessels that deliver their catch to processors located on shore. The at-sea sector includes vessels that either (1) catch and process fish at sea, (2) catch and deliver fish to at-sea processors, or (3) process fish at sea.

According to federal and state officials, small quantities of nonwhiting species (about 1.5 percent of the metric tons of whiting caught annually) are inadvertently being caught by the shoreside and at-sea processing sectors during the Pacific whiting harvest.

An allocation decision for the Pacific whiting harvest for 1994 through 1996 appears to have proceeded more smoothly than did the 1993 decision. Both the shoreside and at-sea sectors were involved in and agreed with the Council's recommendation. The National Marine Fisheries Service (NMFS) issued a final rule on April 8, 1994, that implements the allocation recommended by the Council.

Background

The Magnuson Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 *et seq.*), established a national policy for managing offshore fisheries. The primary purpose of the act is to conserve and manage marine resources found off the coast of the United States. The act established a set of national standards for fishery conservation and management within an "exclusive economic zone," which generally extends from 3 to 200 miles off the U.S. coast. The standards call for conservation and management measures that (1) prevent overfishing, while achieving, on a continuing basis, the optimum yield from each fishery and (2) promote, where practicable, efficiency in the utilization of the fishery. The act requires that these measures be based on the best scientific information available.

The Magnuson Act assigns general responsibility for fisheries management within the exclusive economic zone to the Secretary of Commerce. NMFS, an agency of the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), administers fishery management activities for the Secretary. The Magnuson Act also established eight regional fishery management councils, which, in turn, develop management plans for each fishery within their geographic area. These fishery management plans must be consistent with the national standards established by the Magnuson Act. The act also contains time frames for approval by the Secretary of management plans and subsequent amendments to them. No such time limits are specified for the approval of regulatory amendments made for allocating the annual Pacific whiting harvest among the shoreside and at-sea processing sectors, as has annually been the case since 1991.

One of the eight regional councils—the Pacific Fishery Management Council, located in Portland, Oregon—developed a management plan for the groundfish² fishery off the coasts of California, Oregon, and Washington, which was approved on January 4, 1982, by NMFS' Northwest Regional Director with the concurrence of NOAA's Assistant Administrator for Fisheries (who also heads NMFS). The plan covers about 80 species of groundfish, including the Pacific whiting, which makes up over 50 percent of the annual groundfish harvest for the fishery.

The management plan has been amended several times to, among other things, revise the plan's goals and objectives, establish procedures for the Council to follow when setting or changing management measures, and establish a limited entry program as a management measure. Revising a management plan or its implementing regulations begins when the Council prepares documentation concerning a given problem and recommends a number of alternatives, including a preferred alternative, for resolving the problem. The Council's recommendation is then reviewed by NMFS' Regional Director, who has responsibility for the matter. The Regional Director then forwards the recommendation to the Assistant Administrator for concurrence and publication of the proposed rule in the Federal Register. After considering the comments received, the Regional Director prepares the final rule and submits it to the Assistant Administrator for concurrence and publication in the Federal Register.

The Secretary of Commerce has the ultimate authority for approving management plans, management plan amendments, and implementing regulations. This authority has, however, been delegated to the five NMFS regional directors. Because of the controversy that the proposed 1993 Pacific whiting allocation generated, the Assistant Administrator decided that the final allocation decision should be made by the Secretary of Commerce; therefore, approval authority was withdrawn in this instance from the Northwest Regional Director.

One of the objectives of the Magnuson Act is to promote the domestic commercial fishing industry. Before 1989, the Pacific whiting fishery was primarily the domain of (1) foreign vessels that caught and/or processed fish at sea and (2) U.S. vessels that caught fish and generally delivered them to foreign processing vessels. A portion of the harvest by U.S. vessels was also delivered to a small but developing shoreside processing industry in California, Oregon, and Washington. After 1989, foreign vessels no

²Groundfish, which live at or near the bottom of the sea, include cod, haddock, pollack, flounder, rockfish, and whiting.

longer participated in the Pacific whiting fishery because of the growing number of U.S. at-sea, high-capacity catcher-processor vessels that had entered the fishery.

A survey recently conducted by NMFS indicated that these high-capacity vessels—looking for alternative resources to resolve the overcapacity existing in the Alaska groundfish harvesting and processing industries—were capable of catching and processing the entire whiting harvest. Beginning in 1991, the Council, concerned that these new vessels would quickly displace many of the smaller U.S. vessels that historically harvested whiting and preempt the developing shoreside whiting processing industry, began recommending that the annual whiting harvest be allocated between the shoreside and at-sea sectors. The annual harvest has been allocated between these two sectors over the last 3 years. Table 1.1 shows the annual Pacific whiting harvest for the shoreside and at-sea sectors for 1991 through 1993.

Table 1.1: Annual Pacific Whiting Harvest in Metric Tons, 1991-93

Year	Shoreside	At-sea	Total
1991	20,600	196,905	217,505
1992	56,127	152,448	208,575
1993 (preliminary)	41,859	99,103	140,962

Source: NMFS.

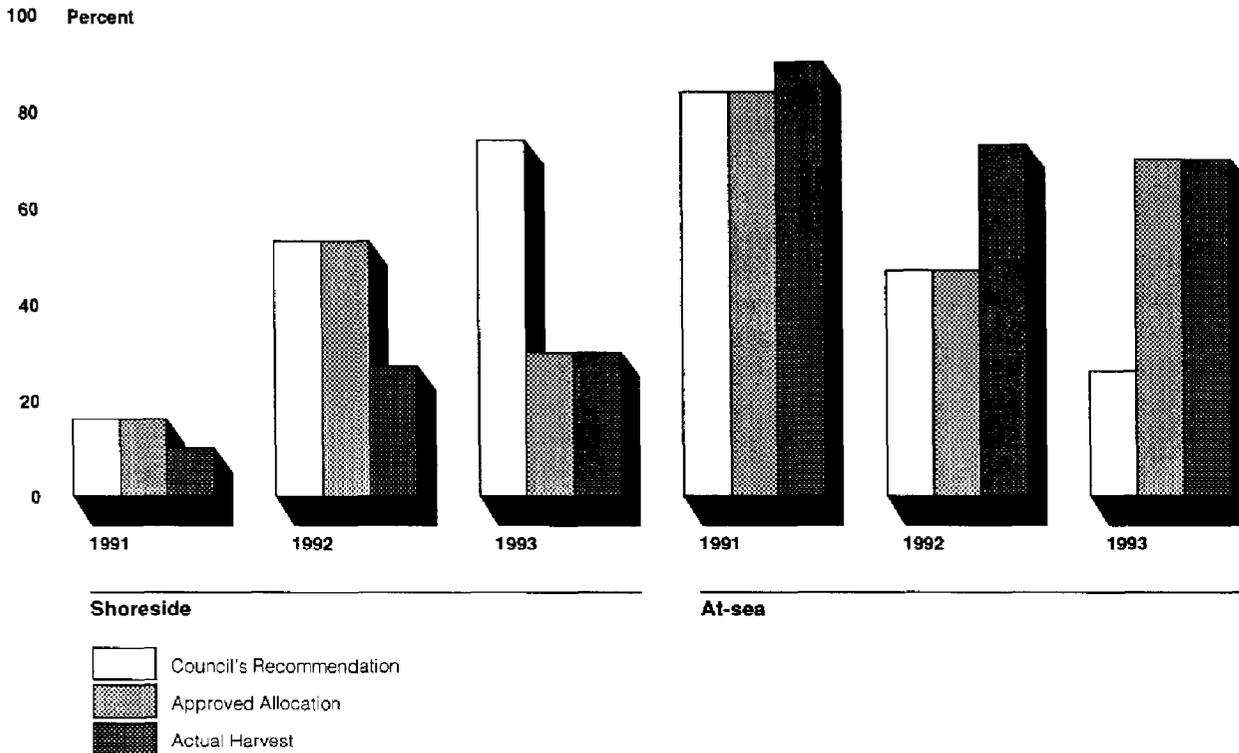
1993 Allocation Decision Was Consistent With Agency Procedures and Regulations

The process followed in allocating the 1993 Pacific whiting harvest between the shoreside and at-sea processing sectors was in accordance with federal agency procedures and Pacific Coast groundfish regulations. To illustrate, the Council used input from an industry committee to develop allocation alternatives and then, over the course of two Council meetings—the first to discuss proposed changes and hear public comment and the second to select a preferred alternative—developed its recommended 1993 Pacific whiting allocation. The Council based its recommendation on (1) its approved Pacific Groundfish Fishery Management Plan, a goal of which is to emphasize providing stability to shoreside processors, and (2) a cost-benefit analysis, which was submitted as part of the Council's recommendation. The Council's recommendation called for a permanent allocation framework that would have annually reserved 30,000 metric tons of the harvest for the shoreside sector and provided a formula for allocating the remainder of the harvest between the shoreside and at-sea sectors. As a result of the Council's recommendation

for the 1993 harvest, which was estimated to be 142,000 metric tons, the shoreside sector would have received up to 74 percent of the harvest and the at-sea sector would have received the remaining 26 percent.

The Council's recommended 1993 allocation was a significant departure from the 1992 allocation, which resulted in 53 percent of the harvest being allocated to the shoreside processing sector and 47 percent to the at-sea sector. The 1993 recommendation also directly contrasted with the actual harvest in 1992, which yielded 27 percent of the harvest for the shoreside sector and 73 percent for the at-sea sector. As can be seen in figure 1, the actual harvest in 1991 and 1992 for the shoreside sector was less than the allocation recommended by the Council and less than the approved allocation. In contrast, the actual harvest by the at-sea sector in 1991 and 1992 was greater than the allocation recommended by the Council and greater than the approved allocation.

Figure 1: Comparison of Council's Recommendation, Approved Allocation, and Actual Harvest for 1991-93



The Council's recommendation, supporting rationale, public comments, and other relevant information were forwarded to NMFS' Northwest Regional Director on December 22, 1992, for review and approval. The Regional Director questioned the adequacy of the support for the Council's recommendation, believing that it did not demonstrate economically or socially that the shoreside reserve was necessary to meet the goal of the management plan to provide stability to the shoreside sector. Consequently, he disapproved the reserve portion of the Council's recommendation. Without the reserve, the shoreside sector would end up with 63 percent of the 1993 harvest and the at-sea sector would get 37 percent. This recommendation was then forwarded to NMFS' headquarters on February 3, 1993, for review and concurrence.

NMFS' headquarters initially concurred with the Regional Director's recommendation and forwarded the recommendation to NOAA and the Department of Commerce for further review. As is customary with nearly all of NOAA's regulations, NOAA's staff also consulted with the Office of General Counsel at the Department of Commerce and the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB).³ However, significant concern about the persuasiveness of the documentation and analysis supporting the additional increment to shoreside processors resulted in the introduction by NOAA and Commerce of other allocation options for consideration during the public comment period. On March 18, 1993, a proposed rule for allocating the whiting harvest was published in the Federal Register. The rule requested public comment on five alternatives: (1) the Council's recommendation; (2) the NMFS Northwest Regional Director's proposal, which was the Council's recommendation without the shoreside reserve; (3) the allocation of 35 percent of the harvest to the shoreside sector and 65 percent to the at-sea sector, which was the Council's recommendation without the shoreside reserve and the formula for allocating the remainder of the harvest; (4) rejection of the Council's recommendation, which, in effect, would remove all constraints between the two sectors; and (5) adoption of the 1992 allocation percentages.

On April 8, 1993, after considering the public comments received on the various alternative proposals, NMFS recommended that the Secretary of Commerce approve the alternative allocating 35 percent of the harvest to the shoreside sector and 65 percent to the at-sea sector. However, NOAA, Commerce's Office of General Counsel, and OMB did not believe there was sufficient support for NMFS' recommended allocation. Consequently, NOAA and Commerce disapproved it. A revised recommendation was approved by the Secretary of Commerce on April 14, 1993, which had the effect of allocating 30 percent of the 1993 Pacific whiting harvest to the shoreside sector and 70 percent to the at-sea sector. This allocation is close to the actual harvest in 1992 for the two sectors. The final rule was published on April 20, 1993, with an effective date of April 15, 1993—the start of the fishing season.

³In accordance with Executive Order 12291, proposed and final rules are reviewed by the Office of Management and Budget. The executive order states that the purpose of the review is to reduce the burden of existing and future regulations, increase agencies' accountability for regulatory actions, and minimize duplication and conflict.

Support for the Council's Recommendation Was Inadequate

The cost-benefit analysis developed in support of the Pacific Fishery Management Council's allocation recommendation was challenged on the basis of insufficient and inaccurate data. Beginning with the development of the Council's recommendation and throughout the regional and headquarters review process, federal officials at all levels—NMFS, NOAA, Commerce, and OMB—raised concerns about the adequacy of the support for the recommendation and the fact that the cost-benefit analysis used by the Council did not support the preference given to the shoreside processing sector. The Council, in submitting its allocation recommendation and supporting documentation, recognized the inconclusiveness of the cost-benefit analysis—which was a part of the submission—primarily owing to inadequate cost and pricing information.

In developing its 1993 recommendation, one of the objectives of the Council was to provide as much stability as possible to the shoreside processing sector. This was to be accomplished by establishing a 30,000-metric-ton reserve for the shoreside sector and using a formula that would provide the majority of harvesting and processing opportunities to the shoreside sector at low harvest levels.

As noted earlier, the Regional Director questioned the adequacy of the support for the Council's recommendation. The Regional Director recommended that the 30,000-metric-ton reserve recommended by the Council be disapproved. NOAA and Department of Commerce officials also questioned the adequacy of the support for the Council's recommendation, as modified by the Regional Director. Consequently, when the proposed rule was published in the Federal Register, comments were requested on five alternatives for allocating the whiting harvest.

The proposed rule stated that NOAA was not proposing the Council's recommendation to establish a reserve because the Council did not provide documentation or analysis demonstrating that the additional increment of preference to the shoreside processing sector provided by the 30,000-metric-ton reserve was necessary to meet the goals and objectives of the management plan.

After the public comment period was closed and the comments received were considered, the Acting Assistant Administrator forwarded her recommendation to the Acting Under Secretary for Oceans and Atmosphere. She stated, however, that the Council's recommendation was not being implemented because the Council did not provide convincing documentation or analysis to justify the proposal. She further stated that

the Council did not demonstrate that the increased allocation to the shoreside sector, at the expense of the at-sea sector, would provide sufficient social or economic net benefits to the nation to justify the Council's recommendation.

Our work also suggests that there was inadequate support for the Council's recommendation to provide a significant increase in the percentage of the 1993 allocation to the shoreside processing sector. With the assistance of a fisheries economist, we reviewed the cost-benefit analysis to determine its adequacy as support for the Council's allocation recommendation. Some of the problems we found with the cost-benefit analysis are that it (1) assumed equal prices for shoreside and at-sea whiting products instead of using a higher product price for certain at-sea products that are generally recognized as having a higher quality and therefore a higher price, (2) used only variable costs and omitted financial consideration of the physical and economic deterioration of shoreside and at-sea equipment resulting from use (fixed costs), and (3) relied on minimal data to assess the financial benefits from the use of waste products by shoreside plants. These shortcomings tended to favor the shoreside processing sector at the expense of the at-sea processing sector.

Final Decision Was Delayed by Disagreement Over Recommended Changes in Allocation

The Department of Commerce's 1993 allocation decision was made on April 14, 1993, 1 day before the 1993 fishing season opened. The last-minute timing of the 1993 decision resulted, in part, from disagreements over the dramatic change recommended by the Council to establish a permanent allocation framework, in lieu of an annual allocation, that substantially reallocated the majority of the whiting harvest from the at-sea to the shoreside processing sector. Concern about this major shift and the insufficiency of economic support for it resulted in considerable time being spent discussing and evaluating the proposal at each level of the federal review-and-approval process.

The Council submitted its recommendation to NMFS' Northwest Region in December 1992. The region did not forward its recommended allocation to NMFS' headquarters until February 1993 after the region had modified the Council's proposal by eliminating the proposed shoreside reserve allocation. The whiting allocation was not published as a proposed rule in the Federal Register, as required by law to solicit public comments, until March 18, and then only after NOAA decided to present five options for consideration, including the one not to implement any allocation—meaning there would be no constraints on competition

between the two sectors. The public comment period ended on April 1, and the final decision was made 13 days later. Various parties complained that such timing left them little time to prepare for the start of the Pacific whiting fishing season. Council and NMFS officials in the Northwest complained that they were not given an opportunity to comment specifically on the decision that was ultimately made. (See app. I for a chronology of the events relative to the 1993 allocation decision.)

The 1992 Pacific whiting allocation decision was made on April 15, which was also the start of the 1992 fishing season. The lateness of the 1992 decision resulted from the additional time needed by the Council to revise its original recommendation, which had been rejected by NMFS' Regional Director. The Council developed a revised recommendation in March 1992. Since there was not sufficient time to publish a proposed rule and get comments prior to the start of the fishing season, an emergency interim rule was published establishing the allocations for the 1992 fishing season.

In 1991, the final decision was made even later than in 1992 or 1993—the final decision in 1991 was not made until September 4, 1991. This was more than 5 months after the 1991 fishing season opened in late March. The delay in making the final decision occurred because the Council substantially changed its initial allocation proposal in March 1991. The Council did not make its final recommendation to NMFS' Regional Director until April 1991 and did not complete the supporting documentation until May 1991. A proposed rule was published in the Federal Register on July 15, 1991, and the final rule was published in September.

Few Other Groundfish Species Were Caught During Whiting Harvest

NMFS and the Oregon Department of Fish and Wildlife reported that low numbers of nonwhiting species (primarily various species of rockfish) were being inadvertently caught (bycatch) by the shoreside and at-sea Pacific whiting fishing vessels. During the 3-year period 1991 through 1993, the groundfish bycatch averaged about 1.5 percent of the total 218,000, 209,000, and 141,000 metric tons of whiting caught in those years. Bycatch data are based on statistical projections from counts taken from a sampling of catches by Oregon officials from vessels delivering their catch to shoreside processors and a sampling of catches by NMFS observers aboard at-sea vessels. Some prohibited species, primarily salmon, were also caught inadvertently along with the whiting. NMFS and the state of Oregon estimated that the total number of salmon annually caught for both sectors during the 3-year period ranged from about 6,000 to 9,000 fish. Tables 1.2 and 1.3 show the annual whiting harvest and the extent of

bycatch for 1991 through 1993 for the shoreside and at-sea processing sectors.

Table 1.2: Whiting Harvest and Extent of Shoreside Bycatch

	1991	1992	1993 (preliminary)
Pacific whiting (in metric tons)	20,600	56,127	41,859
Bycatch (in metric tons)	207	1,206	826
Prohibited species			
Salmon	Not available	681	473

Note: Data compiled under state observer program in which about 16 percent of all hauls are sampled for bycatch by the Oregon Department of Fish and Wildlife.

Source: Oregon Department of Fish and Wildlife.

Table 1.3: Whiting Harvest and Extent of At-Sea Bycatch

	1991	1992	1993 (preliminary)
Pacific whiting (in metric tons)	196,905	152,448	99,103
Bycatch (in metric tons)	2,048	3,730	642
Prohibited species			
Salmon	6,330	5,071	8,373
Halibut	29	17	32

Note: Data compiled under federal observer program in which about 60 percent of all hauls are sampled for bycatch by the National Marine Fisheries Service.

Source: NMFS.

Status of 1994 Allocation Decision

The allocation decision for the Pacific groundfish fishery for 1994 through 1996 appears to have proceeded more smoothly than did the 1993 decision. In November 1993, the Council recommended an allocation for 1994 through 1996 that had been agreed to by an industry committee representing fishing vessels and both shoreside and at-sea processors. The effect of this recommendation would be to allocate approximately 40 percent of the estimated 1994 whiting harvest of 260,000 metric tons to the shoreside processing sector and 60 percent to the at-sea sector. Compared with the 1993 allocation, this represents a shift of about 10 percent of the harvest from the at-sea to the shoreside sector. A proposed rule, reflecting the Council's recommendation, was published in the Federal Register on February 24, 1994, and the comment period closed on March 21, 1994. NMFS issued a final rule on April 8, 1994, to allocate

annually the Pacific whiting harvest for 1994 through 1996. The final rule implements the recommendation of the Council.

Scope and Methodology

We met with officials of and reviewed documents from (1) the Pacific Fishery Management Council and NMFS' Northwest Regional Office in the Pacific Northwest and (2) NMFS, NOAA, the Department of Commerce's Office of General Counsel, and OMB in Washington, D.C. We also discussed the 1993 allocation decision with officials from the Pacific whiting industry. In addition, to assist us in our review of the basis of the allocation decision, we hired a fisheries economist—Dr. James A. Crutchfield⁴—to help us assess the cost-benefit analysis that was used to support the Council's 1993 allocation recommendation. We conducted our review between July 1993 and February 1994 in accordance with generally accepted government auditing standards.

Agency Comments

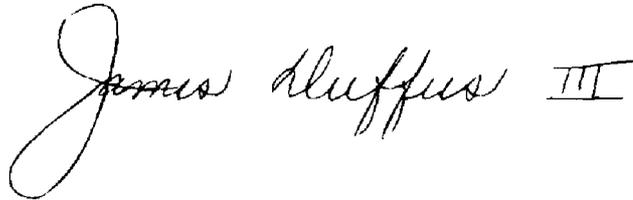
We discussed the report's contents with (1) the Director and other officials of NMFS' Conservation and Management Division, (2) officials of the Department of Commerce's Office of General Counsel, and (3) both the Executive Director and Groundfish Coordinator of the Pacific Fishery Management Council. The comments we received from these officials have been incorporated in the report as appropriate. The Council officials commented that we were correct in stating that the decision-making process was followed, but they expressed concern that we did not comment on the adequacy of the process. The officials believe that certain changes are needed in the process—chief among them is a change that would establish a time limit for action by the Secretary on regulatory amendments. We did not evaluate the adequacy of the process because that was beyond the scope of our review. We did, however, discuss the issue of time frames with an NMFS official who told us that it would be a good idea to have statutory time frames for regulatory amendments because such requirements would help ensure a greater sense of urgency. As requested, we did not obtain written agency comments on a draft of this report.

We are sending copies of this report to the Executive Director, Pacific Fishery Management Council; the Secretary of Commerce; Commerce's

⁴Dr. James Crutchfield is professor emeritus in the Department of Economics, Graduate School of Public Affairs, Institute of Marine Fisheries, University of Washington. Dr. Crutchfield has served as a consultant and adviser to a wide variety of national and international fishery agencies and associations.

Under Secretary for Oceans and Atmosphere; Commerce's Assistant Administrator for Fisheries; and the Director, OMB. We will make copies available to others on request. Please contact me at (202) 512-7756 if you or your staff have any questions. Major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in cursive script that reads "James Duffus III". The signature is written in black ink and is positioned above the typed name.

James Duffus III
Director, Natural Resource
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Abbreviations

GAO	General Accounting Office
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OMB	Office of Management and Budget

Chronology of 1993 Allocation Decision

Nov. 1992	Pacific Fishery Management Council recommends allocation.
Feb. 3, 1993	National Marine Fisheries Service's (NMFS) Northwest Region submits proposed rule, less reserve, to NMFS headquarters.
Feb. 12, 1993	NMFS headquarters concurs with the NMFS Region's proposal and forwards it to National Oceanic and Atmospheric Administration (NOAA).
Feb.-Mar. 1993	NMFS, NOAA, Commerce, and Office of Management and Budget (OMB) discuss allocation.
Mar. 18, 1993	Proposed rule published in <u>Federal Register</u> .
Mar. 26, 1993	NMFS notes that proposal favors shoreside without justification.
Apr. 1, 1993	Public comment period closes.
Apr. 8, 1993	NMFS makes recommendation to NOAA.
Apr. 12, 1993	NOAA disapproves NMFS' proposed final rule.
Apr. 1993	NMFS, NOAA, Commerce, and OMB meet.
Apr. 14, 1993	NOAA, Commerce, and OMB approve final rule.
Apr. 15, 1993	Pacific whiting fishing season opens.
Apr. 20, 1993	Final rule published.

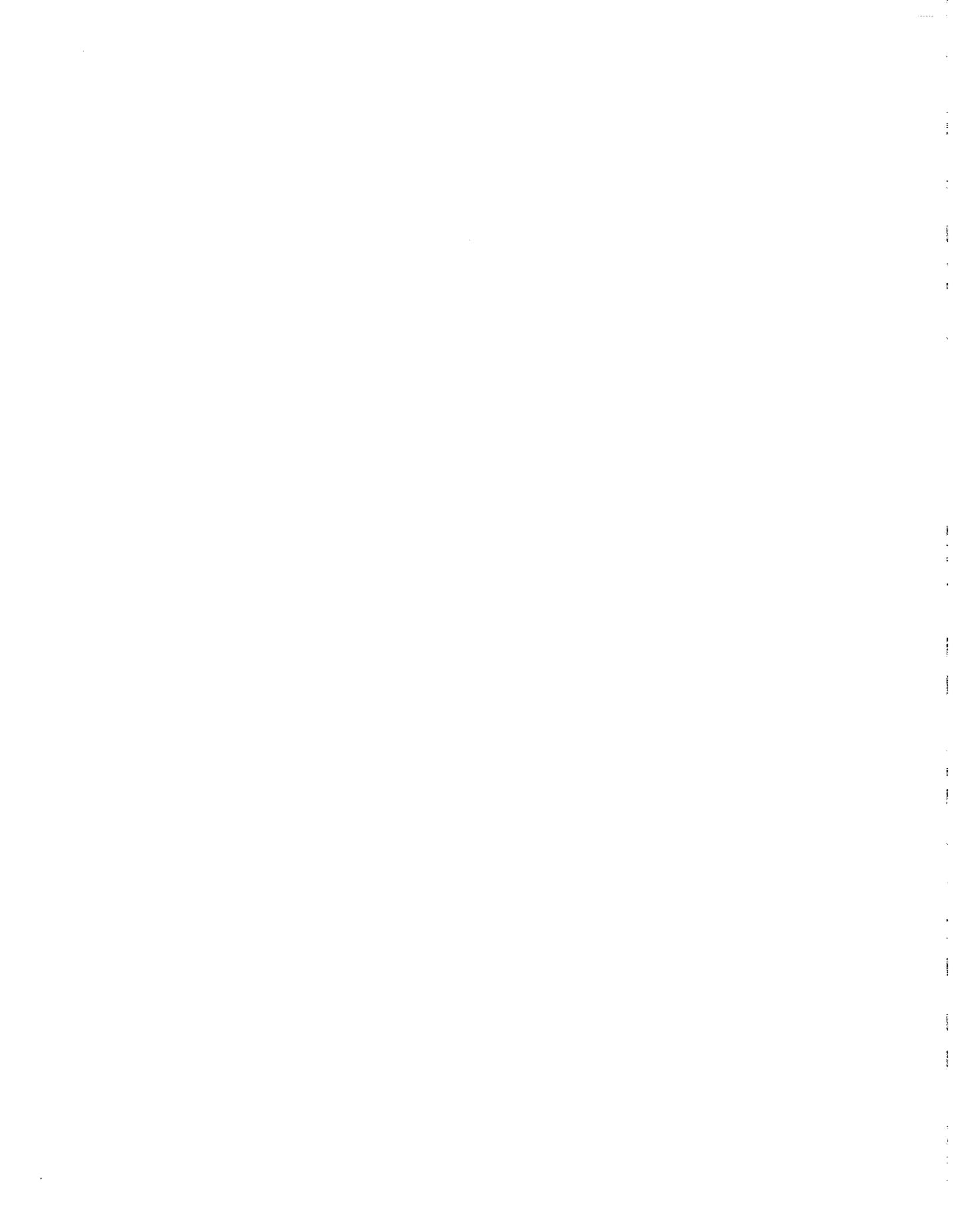
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