



175 South Franklin Street, Suite 418 +1.907.586.4050
Juneau, AK 99801 USA www.oceana.org

January 28, 2014

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 W. Fourth Avenue, Suite 306
Anchorage, AK 99501-2252

Dr. James Balsiger, Regional Administrator
NOAA Fisheries, Alaska Region
709 West Ninth Street
Juneau, AK 99802-1668

RE: Agenda Item C-5, Deep-sea Grenadier Management

Dear Mr. Olson, Dr. Balsiger, and Council members:

We commend you for moving forward to remedy the omission of deep-sea grenadiers from the Bering Sea/Aleutian Islands and Gulf of Alaska Fishery Management Plans and to reduce the unconstrained bycatch of these species. Alternative 3—including grenadiers “in the fishery” as incidental catch species in the two FMPs— best comports with the available scientific information and your requirements. We encourage you to choose and implement that Alternative.

As an initial matter, the Groundfish Plan teams, grenadier stock assessment authors, and Science and Statistical Committee have made clear and repeated appeals that the grenadier stocks in Alaska require conservation and management.¹ Managing grenadiers in the fishery is consistent with those requests.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) states the Council must prepare an FMP “for each fishery . . . that requires conservation and management.” 16 U.S.C. § 1852(h)(1). “Fishery” is defined as “one of more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic considerations.” *Id.* § 1802(13). A “stock of fish” is “a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.” *Id.* § 1802(42). Under the MSA, the Council must determine which “target stocks” (fish that are deliberately caught), and/or “non-target stocks” (fish that are incidentally caught)—to include “in the fishery,” though both kinds of stocks can be included. 50 C.F.R. § 600.310(d)(1).

Under those requirements, the Council’s decision to include a particular species or stock in an FMP boils down to two basic questions: (1) can the stock “be treated as a unit for purposes of conservation and management” and therefore should be considered a “fishery;” and (2) does the “fishery” require conservation and management. *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 51 (D.D.C. 2012) (citing 16 U.S.C. §§ 1802(13), 1852(h)(1)). If the answer to both questions is yes, then the stock must be managed “in the fishery” and is subject to annual catch limits and accountability measures, like all other managed stocks in FMPs. *Id.* at 55 (“[The MSA] requires FMPs and necessary amendments for all ‘stocks of fish which can be treated as a unit for purposes of conservation and management’ and which are in need of conservation and management.”). It is only after these threshold questions governing which species or stocks of fish must be managed “in the fishery” that the Council may turn to more particular decisions

¹ Draft EA/RIR/RFA for Amendment 100 . . . at 1 (“Grenadier stock assessment authors, the Council’s BSAI and GOA Groundfish Plan Teams, and the Council’s Scientific and Statistical Committee (SSC) have recommended in recent years that grenadiers be subject to federal conservation and management.”); *id.* at 14 (“The proposed action is focused on how best to apply federal conservation and management to grenadiers.”).

Mr. Olson
Dr. Balsiger
January 28, 2014
Page 2

regarding the types of conservation and management measures to implement consistent with the National Standards.²

Grenadiers plainly meet both statutory criteria for management “in the fishery.” It is uncontested that grenadiers can be treated as a unit for purposes of conservation and management, and indeed, the Council has done so in the past as far back as 1979 when it implemented Amendment 5 to the GOA Groundfish FMP establishing a species category for grenadiers with its own MSY/OY.³ Further, sufficient information exists to form the basis for “unofficial” grenadier stock assessments that have been regularly prepared since 2006.⁴ Stock assessment scientists have already analyzed the grenadier “stock complex” for its vulnerability to overfishing.⁵ It is clear from the purpose of the proposed amendments and the language of the draft EA that grenadiers are in need of “conservation and management,” and the Council has acknowledged as much.⁶

Giant grenadiers are long-lived and slow to mature. The estimated age at 50% maturity is 23 years; this is amongst the slowest maturing of the groundfish species.⁷ Grenadiers are not a rarely captured incidental species; grenadier bycatch amounts to an annual discard of up to 46 million pounds, exceeding the total harvest of some managed species in the North Pacific.⁸ In addition, the groundfish fisheries disproportionately catch female grenadiers.⁹ In a vulnerability analysis for North Pacific stocks, grenadiers were rated as at least “moderately” vulnerable to overfishing, a rating that was similar to the vulnerability of many target stocks and caused the authors of the analysis to conclude that grenadiers should be considered “in the fishery” for both the Bering Sea and Gulf of Alaska regions.¹⁰ The draft EA even states that potential vulnerability to overfishing is one of the primary reasons grenadiers are being considered for “conservation and management” under the FMPs. Finally, it is possible that fishery effects on the giant grenadier stocks in Alaska may only just be beginning to manifest since only two generations of giant grenadiers have passed while the targeted sablefish fisheries were developed to the current scale.

²The National Marine Fisheries Service has stated that, regardless of the general factors outlined in the National Standard 1 regulations, whether a species should be characterized as an ecosystem component (EC) species “requires consideration of the specific fishery and a determination that the EC classification will be consistent with conservation and management requirements of the MSA.” 74 Fed. Reg. 3178, 3185 (Jan. 16, 2009).

³ GOA Amendment 5 – Establish Species Category for Grenadiers, Appendix D – Final Programmatic SEIS, June 2004.

⁴ Clausen, D. M. 2006. Grenadiers in the Gulf of Alaska, eastern Bering Sea, and Aleutian Islands. *In* Stock assessment and fishery evaluation report for the groundfish resources of the Gulf of Alaska and Bering Sea/Aleutian Islands regions, Appendix F, p. 563-600.

⁵ Ormseth, O. A. and P. D. Spencer. 2009. Alaska Groundfish Vulnerability Analysis in the Gulf of Alaska, Eastern Bering Sea and Aleutian Islands. *In* Stock assessment and fishery evaluation report for the groundfish resources of the Gulf of Alaska, and Bering Sea/Aleutian Islands

⁶ *Id.* at 1 (“Grenadier stock assessment authors, the Council’s BSAI and GOA Groundfish Plan Teams, and the Council’s Scientific and Statistical Committee (SSC) have recommended in recent years that grenadiers be subject to federal conservation and management.”); *id.* at 14 (“The proposed action is focused on how best to apply federal conservation and management to grenadiers.”).

⁷ Rodgveller, C. J., D. M. Clausen, J. J. Nagler, and C. Hutchinson. 2010. Reproductive characteristics and mortality of female giant grenadiers in the northern Pacific Ocean. *Mar. Coast. Fish.: Dynamics, Management, and Ecosystem Sci.* 2:73-82.

⁸ Clausen, D.M., and C.J. Rodgveller. 2010. Assessment of Grenadier Stocks in the Gulf of Alaska, Eastern Bering Sea, and Aleutian Islands. NPFMC Gulf of Alaska, Bering Sea, and Aleutian Islands SAFE.

⁹ *Id.*

¹⁰ Draft EA/RIR/RFA for Amendment 100 at 38.

Mr. Olson
Dr. Balsiger
January 28, 2014
Page 3

Despite these conclusions, the Council has yet to elect to manage grenadiers “in the fishery” and, instead, has indicated its chosen a preliminary preferred alternative that would classify grenadiers as an “ecosystem component” (EC) species apparently on the grounds that managing grenadiers could have revenue implications in the Bering Sea by forcing catch reductions of other groundfish species to meet the optimum yield cap.¹¹ This choice reflects a fundamental misunderstanding of the clear mandates of the MSA. The Council’s own decision tree demonstrates this misunderstanding.¹² In its decision tree, if the Council answers yes to the first question (Do grenadiers need conservation and management?), the Council is required to manage grenadiers “in the fishery” in order to be consistent with the MSA, regardless of whether grenadiers are a target or non-target stock. Only if the answer to the first question is no, can the Council evaluate whether it is proper to manage grenadiers as an EC species. Classification as an EC species is best reserved for instances when a stock is not in direct need of conservation and management but may have impacts on other managed stocks. Classification as an EC species is not appropriate here, when the stock itself is in need of conservation and management. Any other conclusion almost certainly violates the MSA.

The Council’s preliminary preferred alternative to classify grenadiers as an EC species also runs afoul of the MSA requirements related to bycatch. All FMP amendments and implementing regulations must reduce bycatch “to the extent practicable.” 16 U.S.C. § 1851(a)(9). This consideration is key for grenadiers as they are taken *exclusively* as bycatch “in relatively large amounts.”¹³ All other Alaskan groundfish taken in similar or higher quantities are subject to directed fisheries governed by the FMPs.¹⁴

The Council’s preliminary preferred alternative does not reduce bycatch “to the extent practicable.” In fact, it does nothing to reduce bycatch at all. The environmental assessment offers this description of Alternative 2: “As an EC species, the catch of grenadiers would be required to be reported for monitoring purposes and directed fishing for grenadiers would be prohibited. Further, Maximum Retainable Amounts (MRAs) of grenadiers as an incidental catch species would be established and limit grenadier retained catch.”¹⁵ Prohibiting directed fishing of a species for which, “[a]t present, there is no directed fishery . . . in the waters off Alaska,”¹⁶ obviously is inconsequential. Likewise, limiting the amount of grenadiers that may be retained *after* they are taken has no effect on how many are taken as bycatch in the first instance—especially when the contemplated MRA range exceeds the current rate of retention.¹⁷

By contrast, designating grenadiers as a species “in the fishery” would reduce bycatch because it would necessitate establishing Status Determination Criteria of Overfishing Limits (OFLs), Allowable Biological Catch (ABC), and Total Allowable Catch (TAC) each year in the annual harvest specifications process.¹⁸ If a grenadier TAC were set at a level below the current bycatch level, bycatch would be

¹¹ See, e.g., *id.* at ES9-11.

¹² See *id.* at 12.

¹³ *Id.* at 9 (“Currently, grenadiers are not pursued as a target fishery.”); 50 (“At present, there is no directed fishery for grenadiers in the waters off Alaska.”).

¹⁴ *Id.* at ES-2 (noting in the Council’s “Purpose and Need Statement” that “grenadiers are taken as bycatch, especially in longline fisheries; no other Alaskan groundfish has similar levels of catches that is not included in the FMPs”).

¹⁵ *Id.* at ES-3.

¹⁶ *Id.* at 50.

¹⁷ Compare *id.* at 1 (“nearly all are discarded”) and 50 (“The giant grenadier catch is nearly all (more than 99 percent) discarded”) with (“The Council is considering an MRA range of 2 percent to 20 percent.”).

¹⁸ *Id.* at ES-3.

Mr. Olson
Dr. Balsiger
January 28, 2014
Page 4

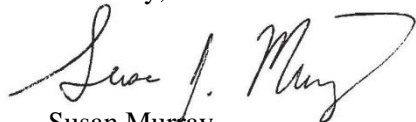
reduced. Additionally, any grenadier TAC would count in the calculation of total TAC under the Optimum Yield (OY) cap, which could incentivize bycatch reduction, particularly in the BSAI.¹⁹

The Council's preliminary preferred alternative to classify grenadiers as an EC species appears to be motivated by a desire to avoid any consequences for existing fisheries subject to the OY cap in the Bering Sea. While achieving optimum yield is an important objective, nowhere does the MSA suggest that optimum yield should be prioritized over bycatch minimization measures that are otherwise feasible. Rather, the MSA is conservation focused, and conservation standards should be prioritized when applying the National Standards. *See Natural Res. Def. Council, Inc. v. NMFS*, 421 F.3d 872, 879 (9th Cir. 2005) ("The purpose of the Act is clearly to give conservation of fisheries priority over short-term economic interests."); *Natural Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) (NMFS "must give priority to conservation measures. It is only when two different plans achieve similar conservation measures that the Service takes into consideration adverse economic consequences.").

Significantly, National Standards 1 and 9 are not at odds. As spelled out in the MSA, yield is optimum when it takes into account "protection of marine ecosystems," and "any relevant . . . ecological factor." 16 U.S.C. § 1802(33). These are the same considerations that counsel reducing the bycatch of grenadiers, which "have an important ecological role in their environment."²⁰ In other words, when read together, National Standards 1 and 9 require that necessary and practicable bycatch measures must be implemented, even if that results in a downward adjustment of optimum yield. Even so, the EA acknowledges that at least in the Gulf of Alaska, managing grenadiers 'in the fishery' is expected to enhance OY, even at incidental catch levels, and provides the potential to further enhance OY if grenadiers can be utilized in the future.²¹

Thank you for considering our letters and testimony. We continue encourage and support NMFS and the NPFMC in finding ecosystem approaches to fishery management. Misapplying the "ecosystem component" species designation, however, to characterize grenadiers is a step in the wrong direction. We urge NMFS and the NPFMC to choose Alternative 3 and include grenadiers "in the fishery" as incidental catch species in the BSAI and GOA Groundfish FMPs

Sincerely,



Susan Murray
Deputy Vice President, Pacific
Oceana

¹⁹ *Id.* at 70.

²⁰ *Id.* at ES-1.

²¹ *Id.* at 70.

PO Box 232

Petersburg, AK 99833

Phone & Fax: 907.772.9323

pvoa@gci.net • www.pvoaonline.org

January 28, 2014

Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501
npfmc.comments@noaa.gov

RE: GRENADIER MANAGEMENT- FINAL ACTION, ITEM C-5.

Dear Chairman Olson and members of the Council,

The Petersburg Vessel Owners Association (PVOA) is a diverse group of commercial fishermen that participate in a variety of fisheries statewide with our foremost interest being the commercial halibut and sablefish fisheries managed by the North Pacific Fisheries Management Council. PVOA appreciates the opportunity to comment on the **Grenadier Management-Final Action, C-5**.

PVOA is in support of Alternative 2, the Preliminary Preferred Alternative: to include grenadiers in the FMP as an Ecosystem Component species. PVOA submitted comments on December 3, 2013 on the Initial Review of Grenadier Management in conjunction with the Marine Conservation Alliance, Fishing Vessel Owners Association and the Freezer Longline Coalition. In that letter we recommended the Council place Giant grenadier in both the BSAI and GOA Groundfish FMPs and classify them as an "Ecosystem Component" (EC) species. Our recommendation was primarily due to their apparent ecological importance on the continental slope, to ensure adequate monitoring and not lead to the establishment of Annual Catch Limits. PVOA remains in support of the recommendations and analyses included in that letter, primarily because: 1) Available information shows that grenadier catch levels are a small fraction of the OFL in both the GOA and BSAI management areas; 2) Giant grenadier marketing efforts have been met with repeated failure and there is nothing on the horizon indicating that Giant grenadier can be processed in a way that is palatable and sold in a manner that is economically viable; 3) Future catch levels of grenadier are likely to remain stable and perhaps even decrease should various regulatory changes currently moving through the Council process become law and; 4) Because catch levels in the GOA and BSAI management areas and are unlikely to increase at any point in the near future, classifying grenadiers as "in the fishery" would be inappropriate.

Additionally, at the December meeting the Council discussed establishing additional species categories for Grenadier (since current designations for EC species are not appropriate) and the need to designate an appropriate Maximum Retainable Amount (MRA) for Grenadier. We have no suggestions for species designation nor are we recommending a specific MRA at this time. However, we do believe that MRAs at a 20% or greater level would be reasonable to provide an adequate amount if Grenadier were retained for personal use as bait or for product development research. Of course, if any viable potential Grenadier commercial fishery were foreseen (not currently anticipated) they would then need to be reclassified to "In the Fishery" status.

Thank you for the opportunity to comment on this issue. If we can provide further information or answer any questions please feel free to contact us.

Sincerely,



Brian Lynch
Executive Director