

Americas: California
Central Coast Groundfish Project - Use of Private Agreements

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Abstract

The Nature Conservancy has long acquired terrestrial lands in California as a protection strategy. Now, in addition to coastal land acquisition, the Conservancy is undertaking kelp leasing, the identification of underwater land holdings, and fishery buy-outs as strategies to conserve ocean and coastal resources. This case study focuses on the Conservancy's 2006 purchase of seven federal trawling permits and four trawling vessels from commercial fishermen. In doing so, the Conservancy became the first private organization to buy out Pacific fishing permits and boats for conservation purposes. The acquisitions were part of a collaborative effort with fishermen and government regulators to protect 3.8 million acres of ocean. The Conservancy has since launched the organization's first Conservation Fishing Agreement. The Agreement is with a central coast fisherman and is aimed at helping sustain fisheries, protect California's marine resources and support fishing communities. The voluntary, private agreement is a lease designed to test methods for making fishing more sustainable and economically viable, focusing on techniques to reduce by-catch and conserve habitat. In addition to this effort, the Conservancy is evaluating the benefit of using more selective gear (hook & line and traps) with its remaining permits. This document serves as a review of the private legal agreements that have been utilized to achieve the conservation objectives of the Central Coast Groundfish Project (CCGP). Background on the CCGP and the west coast groundfish fishery are included to provide necessary context.

West Coast Groundfish Fishery Background

Fishing communities of California's Central Coast have long relied on the harvest of local stocks of groundfish, such as petrale sole, black cod (sablefish) and lingcod. Although fishermen from these communities also participate in other fisheries, such as Dungeness crab, albacore, and salmon, the groundfish resource has been the most reliable source of locally harvested seafood. Decades of reliance on these local populations of groundfish helped to build the rich fishing heritage that characterizes the Central Coast of California.

Today, the west coast groundfish industry is in economic crisis as a result of resource declines, falling prices, and rising costs. Several groundfish species have been harvested down to "overfished" levels, which is inarguably associated with the industry's overcapitalization, over fishing and reliance on the non-selective and habitat damaging fishing technique of traditional bottom trawling. The west coast groundfish species is comprised of 83 species, but 12 of those species represent the bulk of the fishery's value (61%). Moreover, 5 of these 12 species are now considered "overfished." The decline of the fishery in economic terms has been drastic. In 1987, the ex vessel value of the fishery was \$110 million. By 2003, due to strict catch restrictions established to rebuild overfish species, the value of the fishery dropped to \$35 million.

Unfortunately, management has not provided the incentives for fishermen to fish more selectively and avoid the catch of depleted species. Trawl permit holders are prohibited from switching from trawl gear to more selective, less impacting gear. This means that regulations intended to protect depleted species also severely constrain fishermen's ability to harvest relatively abundant species, limit their ability to find more sustainable ways to fish, and operate viable fishing businesses. The result has been the steady decline in the economic performance of the groundfish industry that also threatens California's Central Coast fishing heritage and locks fishermen into unsustainable harvest practices.

Today, the opportunity for substantial change lies on the horizon. The Pacific Fishery Management Council (PFMC) is moving to shift the West Coast groundfish trawl fishery to a system of "individual

fishing quotas” (IFQ). Quota-based programs aim to “rationalize” fisheries by making sure that the program’s economic incentives for participants are compatible with the long-term sustainability of marine resources. Quota-based management will create a very different regulatory landscape for the west coast groundfish fishery, one that may present new challenges and opportunities for the preservation of the rich marine resources and fishing heritage of California’s Central Coast. The permits owned by TNC are among those under consideration for transition to IFQ.

Conservation Planning

In 2002, the National Academy of Sciences completed a comprehensive study on bottom trawling reported in their paper “Effects of Trawling and Dredging on Seafloor Habitat.” The paper recommends that management of the effects of bottom trawling include a combination of fishing effort reduction, modification of gear, and establishment of closed areas to bottom trawling.

In 2003, The Nature Conservancy (TNC) completed its Marine Ecoregional Assessment for Northern California. The conservation assessment identified areas of biological significance to serve as targets for marine conservation efforts and assessed the greatest threats to the habitat and marine life within those sites. The outcome of this work supported the Conservancy’s understanding that the offshore areas of California coast harbor globally significant marine biodiversity. However, the Central Coast emerged as a region of particular interest due to its rich collection of diverse marine habitats and associated wildlife. To assess the threats to this ecoregion, TNC consulted with scientists and others with intimate knowledge of California’s marine ecosystems. These experts strongly agreed that bottom trawling, a fishing technique that typically drags large weighted nets along the seafloor in a manner that results in high bycatch and habitat impacts, should be considered the greatest threat to benthic biodiversity and offshore marine ecology of the Central Coast region.

CCGP – Phase 1

At the outset of the CCGP, TNC focused on direct habitat protection and trawl effort reduction strategies to abate the threat of trawl fishing to the important marine biodiversity of the Central Coast. In 2003, TNC drafted the following goals for the project:

- To protect at least 50% of high priority seafloor habitat (ecoregional portfolio sites).
- To reduce bottom trawl effort by 50%.

To reach these goals, the organization entered into a unique partnership with regulatory agencies and fishing communities of the Central Coast to protect seafloor habitat essential for the diverse array of groundfish species. Fishermen agreed to cooperate with TNC to identify diverse marine habitats that would be off limits to trawling and jointly submit those recommendations to the (PFMC) for designation as Essential Fish Habitat (EFH). In exchange, the Conservancy agreed to purchase federal groundfish trawl permits and vessels from those who wished to sell to reduce trawling effort and to help ease the economic loss of fishing grounds should the consensus proposal be adopted.

The results of these efforts were the establishment of 3.8 million acres of No Trawl Zones, encompassing 67 percent of the high priority conservation areas between Point Conception and Point Sur (as identified in TNC’s conservation planning work) and a 100 percent trawl effort reduction in Morro Bay (TNC acquired all six locally operated federal groundfish trawl permits).

Key private agreements utilized:

1. **Option Agreements to acquire permits/vessels, contingent on establishment of EFH areas**
TNC entered into Option Agreements for the acquisition of federal trawl permits and (if necessary) vessels with those fishermen interested in selling their fishery assets. Option Agreements listed

several conditions regarding “Buyer’s obligation to close” which included agreement on design and delineation of EFH areas by TNC and fishermen, as well as the PFMC and Department of Commerce’s approval and implementation of these new “No Trawl” zones.

2. Fair Market Value / Purchase Price of permits

TNC contracted an economist of the Marine Science Institute of UCSB, familiar with the West Coast groundfish fishery and its potential transition to Individual Fishing Quota (IFQ) management, to provide a valuation of the permits which TNC would option for acquisition. The key factors used to determine permit value included the catch history of the subject permit during years 1994 – 2003 (the catch history window proposed by the PFMC to be used to determine quota allocation) and a % likelihood of the fishery transitioning to IFQ management.

3. Non Competition Agreements

Sellers of permits/vessels were also required to sign a Non Competition Agreement. The objective of the Non-Competition Agreement was to foreclose to the maximum extent permitted by law, the ability of a trawl permit seller (and persons or entities closely associated with or controlled by the permit seller) to engage in bottom trawling anywhere in U.S. federal or State waters. Non Competition Agreements were written to extend for 5 years. This was the maximum period that transaction counsel advised would be enforceable under California and other applicable law. So, after 5 years, it is understood that the fisher may reenter the bottom trawl business. It is reasonable to assume that many, if not most, fishers will, after 5 years, have either have found other livelihoods or adapted to other modes of fishing.

4. Vessel Restrictions

TNC incorporated vessel restrictions into option agreements to assure that the trawl vessels being used by fishers who sold federal groundfish permits to TNC would be permanently restricted as follows (1) the Vessel is precluded from being used in the future to bottom trawl for groundfish in federal waters of the United States or in waters of the State of California, and (2) the Vessel will not be transferred out of the United States registry or to any person or entity that is not a citizen of the United States. Where TNC acquires the vessel, it has committed, incident to any transfer of the vessel to any third party, that the title to the vessel is encumbered with the Vessel Restrictions. Imposition of the Vessel Restrictions is accomplished by the Vessel owner transferring to TNC a 1% interest through a Bill of Sale to TNC including the Vessel Restrictions. TNC, after closing, transfers the 1% interest in the Vessel back to the fisherman, reserving, however, the benefit of the Vessel Restrictions. Bill of Sale and Vessel Restrictions are recorded with the National Vessel Documentation Center.

CCGP – Phase 2

Using Our Trawling Permits for Conservation Purposes

TNC believes the best use for its West Coast groundfish fishery assets are in catalyzing a move in the fishery toward more sustainable practices. Simply holding or retiring the trawling permits would not do enough to conserve marine resources in the long-run, since current regulations allow the remaining trawlers in the West Coast groundfish fleet the right to harvest the catch previously landed by the trawlers we bought out.

TNC is currently working to use its permits in key projects, described below, that will test the environmental and economic merits of harvesting groundfish using fishing gear and methods that target desired species, avoid depleted species and do less damage to seafloor habitats.

Experimental Gear-Switching Program

We have developed a plan for leasing some of the trawling permits we have acquired to commercial fishermen, but under restrictions requiring the fishermen to use other gear in place of trawling nets. TNC and its partners believe that using alternative gear that is more selective and does less damage to seafloor habitats, such as traps or hooks and lines, will help convert this traditional trawling fishery to a more sustainable fishery. This experiment will allow us to evaluate the effectiveness of this approach. Along with our partners — Environmental Defense, the California Department of Fish and Game, the Commercial Fishing Associations of Morro Bay and Port San Luis, the City of Morro Bay, and the Port San Luis Harbor District — we submitted a proposal to the PFMC in early 2006 for an “exempted fishing permit” and permission to set up a one-year experiment off the Central Coast (with an option for extending it in the future) that will test the benefits of switching from trawl to non-trawl gear under shared harvest and bycatch caps, using the structure of a community-based association (see below). Thanks to the excellent work of the staff of our Coastal and Marine Program, the PFMC approved this permit in November 2007. We are now waiting for the final approval of NOAA Fisheries. We hope to launch the experiment early in 2008. We would like eventually to see these permits managed by a yet-to-be-created regional fishing association (see below).

In this experiment we will lease six of our seven trawling permits to commercial fishermen who will use traps, pots, hook-and-line, or long-line gear to harvest a defined allocation of fish (much like a quota). The fishermen to whom we are leasing these new permits will start fishing after the regulations are approved in early 2008. At the end of the year, we will evaluate the management, conservation achievements, and economic benefits of this approach. We hope that this experiment will provide the PFMC with critical information and practical experience on how to switch traditional trawl fisheries to more sustainable fishing methods using alternative types of gear. We also expect the experiment to test innovative management approaches that might be used to mitigate any unintended negative consequences of making the transition to a system of individual fishing quotas. If we are successful, we will not only protect fish populations and ocean habitats, but we will help preserve the unique fishing heritage of California’s Central Coast.

Conservation Fishing Agreement (Lease of Trawling Permit)

It is important to understand that we see no likely future scenario in which trawling will be entirely eliminated from West Coast fisheries. A number of still-abundant flatfish species that are important to the economics of the fishery, such as petrale and Dover sole, can be harvested only by trawling.

To test a modified approach to trawling, we have signed a “Conservation Fishing Agreement” with a local commercial fisherman. This unprecedented agreement will function as a sort of “conservation easement in the sea.” The California Coastal and Marine Program believes that this new tool holds great potential for aiding marine conservation efforts.

In this agreement we have leased our seventh trawling permit and a trawling vessel to an experienced commercial fisherman, Edwin Ewing of Morro Bay, who will be restricted to fishing only in previously trawled areas of sandy or muddy seafloors. This experimental trawling will be prohibited in areas with rocky or reef habitats, in no-trawl zones, and in areas that have never been trawled. Our hypothesis is that restricting this fishing operation to soft-bottom habitats that have already been impacted by trawling, will help us develop “best management practices” for the trawl fishery that would avoid potential damage to sensitive and relatively healthy seafloor habitats.

Moreover, by the terms of the agreement, the fisherman will use only smaller, lighter, more selective flatfish trawling gear. This modified gear, which has been tested in other waters off the West Coast with encouraging results, targets more abundant flatfish species and should do less damage to the seafloor than traditional trawling gear. As this experiment proceeds, the Conservancy will work with fishermen and experts in fishing gear on possible further modifications of the gear in order to minimize damage to the seafloor and improve the gear’s ability to catch selected target species.

Conservation Fishing Agreement II (Scottish Seine)

An additional fishing agreement is being considered that will use alternative gear types that minimize habitat disturbance. The details of this agreement were being negotiated as of the publication date of this paper.

ROV Habitat Monitoring

TNC is uniquely positioned to measure the effectiveness of these efforts to protect seafloor habitat and promote more sustainable fisheries by studying the impacts of and recovery from directed trawling in soft bottom habitats on the Morro Bay shelf. Assessing recovery of different types of soft bottom communities from trawling effort of known intensity and timing is critical to understanding the potential impact of trawling and how zoning or other measures can be used to reduce impacts to shelf communities. TNC currently owns all of the trawl permits in the Morro Bay area and has the means, through the Conservation Fishing Agreement - that can be used to conduct experimental trawling. Using a remotely operated vehicle, also owned by TNC, we have an unprecedented opportunity to monitor the recovery of seafloor habitats. We are working with partners – NOAA Fisheries, Monterey Bay National Marine Sanctuary, and California State University, Monterey Bay – to design a three to five year trawl impact recovery study.

Institutionalizing Changes in Fishery

In addition to overseeing our two experimental permit leasing programs and analyzing their performance, we will work with motivated Central Coast fishermen and other partners such as the Sustainable Fisheries Group to develop a collaborative proposal dealing with the future of the permits the Conservancy holds. Our idea is to use the trawling permits we now hold, the additional permits we intend to acquire, and the results of our experimental lease programs to help set up a local entity able to hold and manage fishing permits as well as incorporate community, conservation and industry in its fishery decision making. Such an entity could lease and manage our permits — under appropriate conservation restrictions and best management practices based on the results of our leasing experiments — for the benefit of the ocean, its species, commercial and sport fishermen, and local communities. This approach could result in a significant, quantifiable reduction in the amount of trawling that threatens high-priority habitats off the Central Coast and could serve as a model for similar efforts elsewhere.

If we succeed in establishing this new fishery entity, it could also serve as a vehicle for certifying fish as having been harvested under sustainable practices and begin to develop a viable market for certified local seafood. Such an association would be the first in the nation, and if it is successful, it could provide a model for other troubled fisheries seeking ways to move toward sustainability.

Looking Forward – Future Potential for Private Agreements in CCGP

These efforts to establish large No Trawl Zones in the Central Coast have effectively protected larger representative areas of seafloor habitats and marine biodiversity. However, TNC has realized that the manner in which the groundfish fishery is managed must be reformed if we are to protect the unique marine systems off the entire California coast, and throughout the larger region.

Although TNC's permit acquisitions were not popular in local commercial fishing circles, there was general agreement that fishery regulations and the traditional trawl business model (lots of fish sold for low prices) make trawling neither economically nor environmentally sustainable. This reality has fostered a new partnership between conservation and fishing community interests, united by the goal of reforming the local groundfish industry. This group believes it can establish a new fishery that will effectively protect marine resources, preserve California's unique fishing heritage and ensure that people can buy and eat local and sustainably harvested seafood.

This vision will be carried out by helping Central Coast fishing communities, which have long depended on bottom trawling to catch most of their groundfish seafood product, to diversify their harvest methods and shift to more selective and less habitat damaging fishing techniques. Demand for local and sustainably-harvested seafood continues to grow, providing a market stimulus for these changes in fishing behavior. A large portion of traditional trawl fishing effort can be transitioned to hook and line and trap fishing, resulting in lower volumes of higher quality and higher value product. TNC is also working with fishermen to modify and geographically restrict trawl fishing efforts in the Central Coast to reduce their impact on the environment. Trawls remain the best means of harvesting flatfish – a critical component of the groundfish economy in the project area.

TNC is now working within this new partnership to:

1. Use TNC-owned permits to test ways to transition trawl fishing to more selective, less habitat impactful hook-and-line and trap methods.
2. Use a TNC-owned permit to launch “Conservation Fishing Agreements” (conservation easement in the ocean) – incorporate conservation terms within a private fishing lease agreement.
3. Acquire trawl permits to reach our goal of a 50% trawl effort reduction in the Central Coast – and set the conditions necessary for a change in the business model of the local industry.
4. Launch a research projects to improve scientific understanding of fish stock and ecosystem health as well as fishing impacts.
5. Build a lasting fishery institution that can hold and manage fishery assets and incorporate conservation objectives into its business decision making.

Summary of key private agreements utilized:

1. All Private Agreements listed above in Phase 1 section
2. Conservation Fishing Agreement (CFA) – TNC entered into a license agreement of a federal trawl permit that is encumbered with conservation terms and restrictions. The idea of this agreement originates from conservation easements on land. In the CFA, we are leasing a permit to a fisherman subject to gear, geography, monitoring terms and restrictions aimed at exploring ways to improve the environmental performance of a fishing operation.
3. Exempted Fishing Permit (EFP)
4. Establishment of a new fishing institution