

least a 50 percent probability of rebuilding within the specified time); the probability of rebuilding within the maximum permissible time period (PMAX); and the harvest measures that are being adopted to keep the total fishing mortality (typically expressed as the fishing mortality rate) within the specified OYs that will achieve TTARGET. Policy makers only have control over three of these parameters: TTARGET, PMAX and the fishing mortality rate. NMFS disagrees that rebuilding periods have been designated as the maximum time possible. With the exception of bocaccio rockfish (see response to Comment 2 regarding need for a sustainability analysis), there are no TTARGET periods that are at or above TMAX for the overfished rockfish species.

The Council is currently preparing Amendment 16, which establishes the process and standards for rebuilding plans and incorporates rebuilding measures into the FMP. Overfished species are currently managed under interim rebuilding strategies, and it is not expected that the final rebuilding plans will differ substantially in their basic biological parameters, taking into account any changes that would be made as a result of new data on overfished stocks' parameters. Thus, overfished species are not disadvantaged by not having formal rebuilding plans at this time.

*Comment 2:* NMFS has proposed a 20 mt OY for the badly overfished bocaccio rockfish. This harvest level fails to meet the rebuilding requirements of the Magnuson-Stevens Act because it would allow only a 50 percent chance of rebuilding bocaccio within 170 years. NMFS admits that this bocaccio harvest level violates its National Standard Guidelines and claims that the Guidelines do not address the bocaccio situation. Although we believe that the National Standard Guidelines themselves violate the Magnuson-Stevens Act, NMFS cannot simply dismiss those Guidelines.

*Response:* In the revised bocaccio rebuilding analysis prepared following the June 2002 Council meeting, the bocaccio stock failed to have a 50 percent probability of rebuilding by TMAX, even in the absence of fishing. NMFS subsequently prepared a sustainability analysis for bocaccio rockfish to determine the fishing rates that would lead to no further decline in abundance over a specified time frame. The sustainability analysis shows that a harvest level of  $\leq 20$  mt would provide a 50 percent probability for the stock to rebuild in 170 years, with a high probability ( $\leq 80$  percent) of no further

decline in the spawning biomass over the next 100 years. The southern bocaccio rockfish stock has suffered poor recruitment during the warm water conditions that have prevailed off Southern California since the late 1980s. If a period of good recruitment occurs, the stock could be expected to rebuild much faster than estimated.

The National Standard Guidelines do not address the situation where NMFS concludes that a stock cannot rebuild by TMAX, even with zero fishing mortality. Therefore, NMFS has determined that the National Standard Guidelines do not provide sufficient guidance for the bocaccio rockfish situation and instead has looked directly to the Magnuson-Stevens Act for guidance. Section 304(e)(4)(A)(i) states that a rebuilding period shall "be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem."

NMFS believes that the Magnuson-Stevens Act requires that the Council and NMFS meet the conservation needs of the stock (National Standard 1), and also consider the needs of fishing communities (National Standard 8). In balancing these considerations NMFS has determined that zero fishing mortality is not required for this situation. Zero fishing mortality would seriously adversely affect fishers and communities in California south of Cape Mendocino because commercial fisheries (including fisheries for non-groundfish species) and recreational fisheries that incidentally catch bocaccio would be severely curtailed or closed altogether for many years into the future.

*Comment 3:* NMFS violates the Magnuson-Stevens Act by proposing the same cowcod OY as in previous years. NMFS has not adequately assessed whether the amount of cowcod discard that is occurring is above or below the 4.8 mt OY. Finally, NMFS has failed to address the fact that its prohibition of cowcod landing and retention is not being complied with in practice the FEIS shows 0.8 mt of cowcod landed in 2001, the first year in which cowcod retention and landings were prohibited.

*Response:* NMFS believes that the ABC/OY alternatives presented in the FEIS represent a reasonable range of alternatives. Under each alternative, a full suite of ABC/OYs for all managed species were considered. For cowcod, where no new stock assessment information was available, the outcome

and projections from the previous assessments (the best scientific information) and rebuilding analyses were carried over into the new fishing year.

The cowcod OY is based on a constant fishing mortality rate rebuilding strategy that is approximately 1 percent of the population (See Council documents: Revised Rebuilding Plan for West Coast Cowcod Exhibit C.10 Attachment 3, June 2001.) As new assessments are prepared for cowcod and as the stock recovers, the annual OY will increase in direct proportion to the biomass. These rates are consistent with the long term rebuilding goals defined for the individual species and recommended by the Council.

NMFS agrees that further analysis is needed to fully understand how prohibiting bottom fishing activities in two Cowcod Conservation Areas in the Southern California Bight (estimated to be the most important habitats for cowcod) and no retention regulations coastwide affect the total mortality of cowcod. Despite these uncertainties, NMFS anticipates that efforts to minimize bocaccio fishing-related mortality south of Cape Mendocino will provide further protection for cowcod, which have a similar latitudinal and depth distribution and reside in similar habitats as bocaccio. These measures include: the elimination of all directed bocaccio rockfish retention; new depth based management measures that will prohibit groundfish-directed bottom trawl; reduced limited entry fixed gear and open access fishing opportunities in the depths where bocaccio are most commonly found; and the closure of the California recreational fisheries south of 40°10' N. lat. from January through June 2003.

Data collected by observers in the commercial fishery support this opinion. From September 1, 2001 to August 31, 2002, prior to implementing the rockfish conservation area, a total of 322 lb (146 kg) of cowcod were weighed by NMFS observers on limited entry trawl trips, south of 40°10' N. lat., where some groundfish was retained. When expanded to account for sub-sampling of some tows, the estimated total cowcod catch on these observed trips is 751 lb (341 kg), in association with 745,162 lb (338 mt) of retained groundfish. Using the average tow depth recorded by the observers as the measure of fishing depth, 95 percent of the weighed cowcod and 93 percent of the expanded cowcod catch occurred on tows within the depth ranges upon which the 2003 rockfish conservation area is based. No attempt has been made yet to extrapolate these results to the