

in the absence of fishing is 2027, while the target rebuilding year associated with a 22 mt OY for 2003 is 2052(TMID). Selecting an OY that corresponds to TMID is consistent with NMFS guidance on rebuilding plans.

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). A lower rebuilding OY, which would further reduce the potential income of the fishers is not required.

*Comment 7:* One commenter stated that the sablefish should be set higher, at 8,187 mt, which would be based on recruitment changes affected by environmental conditions, the default MSY proxy, and the Council's harvest control rule. Failing to base the sablefish OY on environmental conditions ignore the best available science, which show that environmental conditions affect stock status. Conversely, another commenter stated that the sablefish OY is 30 percent higher than that recommended by the Council's Allocation Committee, saying that the higher amount is not justified.

*Response:* The SSC indicated that the medium and high OYs were relatively risk-prone and advised the Council that caution should be used when setting the 2003 harvest levels. The 5,000 mt OY, as recommended by the Council's ad hoc Allocation Committee, was consistent with the Scientific and Statistical Committee (SSC) recommendation because it addressed uncertainty in the assessment relating to the different states of nature.

After deliberations, the Council recommended OY of 6,500 mt which is a 7,455 mt OY, based on a 40/10 adjustment to the ABC, with an additional 1,000 mt precautionary reduction. The Council based its recommendation on the SSC's advice to be precautionary because of assessment uncertainties, and because the sablefish biomass is within the precautionary range. While the OY is higher than that recommended by the Allocation Committee, this OY is still considered to be risk averse rather than risk neutral. NMFS agrees with the Council's recommendation.

*Comment 8:* One commenter stated that the whiting OY is too low and is set at a harvest rate that is more conservative than the Council's default rate, which is unjustified. Another commenter stated that the OY is contrary to the scientific advice of the U.S. Canada Review Panel. A third commenter stated that the whiting OY was higher than recommended by the

Council's SSC and that setting the higher OY was unjustified.

*Response:* In estimating the current biomass, NMFS used a medium level recruitment assumption of a recent (1999) large year class. The medium recruitment level was considered to be risk neutral. The U.S. ABC of 188,000 mt is 80 percent of the coastwide ABC. The U.S. whiting OY is 148,200 mt which is 80 percent of the coastwide OY (185,325 mt) and is based on the application of an F45% harvest rate, reduced by the Council's default rebuilding 40–10 harvest rate policy. Under the 40–10 harvest rate policy, the OYs of stocks that are below B40% abundance are set at increasingly more conservative rates the farther they are below B40%.

The SSC advised the Council to be precautionary when setting the Pacific whiting OY and not increase it over the 2002 harvest level (U.S. OY for 2002 was 129,600 mt) until a new assessment was conducted. However, the Council indicated that the medium harvest level, 148,200 mt (13 percent increase over 2002), based on the 2003 projected biomass with an F45% harvest rate proxy was sufficiently precautionary, because the risk neutral medium recruitment assumption and a more conservative harvest rate proxy were applied. The ABC for a species or species group is generally derived by multiplying the harvest rate proxy by the biomass to forecast the amount of harvest available to the fishery. Because of expected whiting biomass growth in the coming years, this will result in a short-term increase in the OY. However, the more precautionary harvest rate proxy is expected to increase the rebuilding rate and reduce the risk of declining back into an overfished state because whiting is a highly productive species.

The Joint Canada-U.S. Review Panel on the Stock assessment of the Coastal Pacific Hake/Whiting stock met in February 2002 and prepared a report, which was used by the Council and SSC in recommending the Pacific whiting harvest levels for 2002. While both U.S. and Canadian review panel members had a common interest in conducting sound technical review, they had different responsibilities in terms of the type of advice expected by the Council and Canadian Department of Fisheries and Oceans. Specifically, the review panel recommended changing the harvest rate to an F45% harvest rate and selecting the harvest level bounded by the low and medium recruitment scenarios for the 1999 year-class. This was a risk adverse policy recommendation that was not adopted

by the Council for the reasons previously stated.

*Comment 9:* NMFS has failed to compensate for overharvest in past years' fisheries in proposing harvest limits for 2003. In its proposed rule at 68 FR 953, NMFS discussed overfishing that had occurred in 2001, but not in 2002, claiming that landings data was not available at the time of the publication of the proposed rule. A full month has passed since the end of 2002, therefore, NMFS will violate the Magnuson-Stevens Act if it fails to consider 2002 catch data in making its final decision on the 2003 specifications.

*Response:* Each year since 2000, NMFS has provided a brief report within the preamble to the proposed rule on whether overfishing occurred on any groundfish species in the last year for which data was available. This report is not a required part of the preamble to the specifications and is simply provided as an update for the public. The commenter has taken a sentence from that report and revised its context so as to accuse the agency of failing to consider 2002 data in crafting specifications and management measures for 2003. The Council and its participating state and Federal agencies consider all available data, including catch data from the current fishing year when devising specifications and management measures for the upcoming fishing year.

To the extent that they were available, data from fisheries conducted during 2002 were used in evaluating 2003 management options for all fleets targeting groundfish. Inseason comparison of trawl bycatch projections with reported landings during the first four months of 2002 resulted in adjustments to the expected target species landings of vessels within the 2003 model. Additionally, because trawl landings of bocaccio during the first four months exceeded the total bycatch projected for that timespan, bocaccio bycatch rates were increased for modeling the 2003 trawl fishery. Recommendations for management of the fixed gear, daily trip limit fishery for sablefish also incorporated landings during the first four months of 2002, in conjunction with catch rates over the previous three years. Early season landings in the recreational and commercial fixed gear fisheries for nearshore rockfish were included in evaluating 2003 management, along with recent years' landings. However, in the region north of 40°10' N. lat., participation is usually low early in the year due to bad weather. As a result, landings during this period are of