

NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070.

Copies of Amendment 16-1 and the environmental assessment/ regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280.

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SUPPLEMENTARY INFORMATION:

Electronic Access

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NMFS is proposing this rule to implement Amendment 16-1 to the FMP. Amendment 16-1 mainly revises the FMP and not Federal regulations. However, the specific standards that govern the harvest levels for overfished species rebuilding plans would be codified in the Code of Federal Regulations (CFR). Thus, this proposed rule would establish a new section in the Federal groundfish regulations at 50 CFR 660.370 for overfished species rebuilding plans. This proposed rule to implement Amendment 16-1 will be shortly followed by a proposed rule to implement Amendment 16-2, which was adopted by the Council in June 2003. If approved, Amendment 16-2 would place rebuilding plans for canary rockfish, darkblotched rockfish, lingcod, and Pacific ocean perch in the FMP and in Federal regulations. NMFS expects to publish a Notice of Availability for Amendment 16-2 in autumn 2003. This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR/IRFA prepared by the Council for Amendment 16-1.

Background

Amendment 12 to the FMP was intended to provide a process for developing overfished species rebuilding plans. Under Amendment 12, rebuilding plans were to be stand-alone documents that described an overfished stock's status and articulated rebuilding goals and strategies for achieving those

goals. Amendment 12 was challenged, and the court ordered NMFS to develop rebuilding plans as fishery management plans, plan amendments, or regulations. Amendment 16-1 is intended to partially respond to this Court order (*Natural Resources Defense Council, Inc. v. Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001).)

Amendment 16-1 would require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and then implemented through Federal regulations. For each approved overfished species rebuilding plan, the following parameters would be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under National Standard Guidelines were applied (T_{MAX}) and the year in which the stock would be rebuilt based on the application of stock rebuilding measures (T_{Target}). These estimated values will serve as management benchmarks in the FMP. The FMP would not be amended if, as is likely to happen, the values for these parameters change after new stock assessments. Other relevant information listed in Amendment 16-1 will also be included in the FMP.

The two rebuilding parameters that control the establishment of the annual or biennial optimum yield of each overfished species will be codified in the CFR: the target year for rebuilding and the harvest control rule to be used to rebuild the stock. If, after a new stock assessment, the Council and NMFS conclude that these should be revised, the revision will be done through a rulemaking, and the updated values codified in the CFR.

Amendment 16-1 additionally sets schedules and standards for reviewing rebuilding plans. The current FMP sets five goals for evaluating rebuilding plans: (1) Achieve the population size and structure that will support the maximum sustainable yield (MSY) within the specified time period; (2) minimize, to the extent practicable, the social and economic impacts associated with rebuilding, including adverse impacts on fishing communities; (3) fairly and equitably distribute both the conservation burdens (overfishing restrictions) and recovery benefits among commercial, recreational, and charter fishing sectors; (4) protect the quantity and quality of habitat necessary to support the stock at healthy levels in the future, and; (5) promote widespread public awareness, understanding, and

support for the rebuilding program. Amendment 16-1 would require that the Council review rebuilding plan goals 2-5 every two years, but goal 1 only with new stock assessments, since new stock assessment data would be needed to determine whether rebuilding trajectories were being met. Stock assessments are generally updated every 2-4 years, with overfished species having higher priority in assessment scheduling.

As stated above, the first goal of rebuilding plans is to: "Achieve the population size and structure that will support the maximum sustainable yield (MSY) within the specified time period." Amendment 16-1 specifies that the rebuilding plan for each species will set a species-specific standard for determining the adequacy of rebuilding progress for the particular species toward that goal. The Council had considered whether to set a single standard that would apply to all species, but decided that the variations in life histories, productivity, and abundances of the different overfished species warranted a species-specific rebuilding standard in each rebuilding plan.

Amendment 16-1 also considered how rebuilding plans would operate if an overfished species were to become listed as either threatened or endangered under the Endangered Species Act (ESA). Under Amendment 16-1, ESA jeopardy standards and/or recovery plans would take precedence over rebuilding plans if they establish higher recovery standards than those already set in the rebuilding plans. If a species is listed as threatened or endangered under the ESA and is subsequently de-listed, but still not rebuilt to B_{MSY} under the Magnuson-Stevens Act, then the rebuilding plan would continue to provide standards for the management and rebuilding of that species.

Finally, Amendment 16-1 included several minor changes to the FMP text. These changes include: (1) revising the list of species managed under the FMP to correct mis-spellings and to specify certain rockfish species already managed under the FMP as part of the FMP's generic inclusion of all species of the family *Scorpaenidae*; (2) revising the FMP definitions of "Maximum Fishing Mortality Threshold" or "MFMT" and of "Minimum Stock Size Threshold" or "MSST" to ensure that they match the definition of these terms in the National Standard Guidelines; (3) revising the requirements for items to be included in the annual Stock Assessment and Fishery Evaluation (SAFE) report and the schedule for delivery of different sections of that