

## Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register's** website at: <http://www.gpoaccess.gov/fr/index.html>.

Amendment 16–2 revises the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP and adds specific rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370, for each overfished species. This rulemaking is necessary to implement the rebuilding plans specified by Amendment 16–2.

Amendment 16–2 address the requirements of the Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 is also intended to partially respond to a Court order in *Natural Resources Defense Council, Inc. v. Evans*, 168 F. Supp. 2d 1149 (N.D. Cal. 2001.), in which NOAA Fisheries was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. A Notice of Availability for Amendment 16–2 was published on November 7, 2003 (68 FR 63053).

This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. Background information and the Council's recommendations are summarized below. Further detail appears in the EIS/RIR/IRFA prepared by Council staff for Amendment 16–2.

## Background

In the fall of 2000, NMFS had approved the first three rebuilding plans for lingcod, bocaccio, and POP (September 5, 2000, 65 FR 53646). Subsequently, requirements for developing overfished species rebuilding plans were addressed in Amendment 12 to the FMP, which were submitted for public review (September 8, 2000, 65 FR 54475) and approved by NMFS on December 7, 2000.

During NMFS's review of Amendment 12, the agency considered whether the three previously approved rebuilding plans met the requirements of Amendment 12 and concluded that the plans did not. As a result, NMFS instructed the Council to re-submit the rebuilding plans for lingcod, bocaccio, and POP. The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, bocaccio, and POP rebuilding plans (December 29, 2000, 65 FR 82947). In the absence of final rebuilding plans approved by

NMFS, the groundfish fishery has continued to operate under interim rebuilding measures for these species.

While NMFS and the Council were developing rebuilding plans that were consistent with the requirements of Amendment 12, NMFS notified the Council that canary rockfish and cowcod were overfished and that Council must submit rebuilding plans for these species (On January 4, 2000 65 FR 221). On January 11, 2001 (66 FR 2338), NMFS notified the Council that darkblotched and widow rockfish were overfished and that Council must submit rebuilding plans for these species.

On August 20, 2001, a Federal magistrate ruled in *Natural Resources Defense Council, Inc. v. Evans* (N.D. Cal. 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854 (e)(3). In accordance with the Court ruling, the magistrate issued an order setting aside those portions of Amendment 12 dealing with rebuilding plans (Amendment 12 provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations). As a result of the magistrate's decision, the Council was required to amend the FMP to make rebuilding plans consistent with the Magnuson-Stevens Act.

On January 11, 2002 (67 FR 1555), NMFS notified the Council that yelloweye rockfish was overfished and that the Council must submit a rebuilding plan. On April 15, 2002 (67 FR 18117), NMFS notified the Council that Pacific whiting was overfished and that the Council must submit a rebuilding plan.

Amendment 16–1 was prepared in part to respond to the court order. Amendment 16 1 establishes a process for and standards by which the Council will specify rebuilding plans for groundfish stocks that are declared overfished. Amendment 16–1 also amends the FMP to require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and implemented through Federal regulations.

Amendment 16 1 is intended to ensure that overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act, in particular National Standard 1 on overfishing and section 304(e), which addresses rebuilding of overfished fisheries. NMFS approved Amendment 16–1 on November 14, 2003. A proposed rule to codify provisions of Amendment 16–1 was

published in the **Federal Register** on September 5, 2003 (68 FR 52732).

For each approved overfished species rebuilding plan, the following parameters will 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 target year in which the stock would be rebuilt under the adopted rebuilding plan ( $T_{Target}$ ). Other relevant information listed in Amendment 16–1 will also be included in the FMP, including the probability of the stock attaining  $B_{MSY}$  by  $T_{MAX}$  ( $P_{MAX}$ ). These estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments are completed, as is likely to happen.

As required by the standards established by Amendment 16–1, the rebuilding plans being adopted under Amendment 16–2 for lingcod, canary rockfish, darkblotched rockfish, and POP include  $B_0$ ,  $B_{MSY}$ ,  $T_{MIN}$ ,  $T_{MAX}$ , and  $T_{Target}$  for each species. If adopted, Amendment 16–2 would add these parameters to section 4.5.4. of the FMP. Other relevant information on each of these overfished stocks, such as stock distribution, fishery interaction, and the rebuilding strategy would also be added to section 4.5.4 of the FMP if the rebuilding plans proposed under Amendment 16–2 are adopted.

Amendment 16–1 specified two rebuilding parameters that are to be codified in Federal regulations for individual species rebuilding plans. This proposed rule adds these rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370. These parameters are the target year for rebuilding and the harvest control rule that is to be used during the rebuilding period. The target rebuilding year is the year in which there is a 50 percent likelihood that the stock will have been rebuilt with a given mortality rate. The harvest control rule expresses a given fishing mortality rate that is to be used over the course of rebuilding. These parameters would be used to establish the annual optimum yields (OYs). Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate harvest levels for a species or species groups, including those harvest levels established for rebuilding overfished species.

If, after a new stock assessment, the Council and NMFS conclude that either