

substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

#### **§ 217.89 Modifications of Letters of Authorization.**

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS issued pursuant to §§ 216.106 and 217.87 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 217.88, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 217.80(b), a Letter of Authorization issued pursuant to §§ 216.106 and 217.87 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

**RIN 0648-BA01**

#### **Fisheries Off West Coast States; Notice of Availability for Amendments 16-5 and 23 to the Pacific Coast Groundfish Fishery Management Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Availability of amendments to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendments 16-5 and 23 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 16-5 would modify the FMP to implement an overfished species rebuilding plan for petrale sole and revise existing overfished species rebuilding plans. In addition, Amendment 16-5 would modify the default proxy values for FMSY and BMSY as they apply to the flatfish species, including petrale sole; and the harvest control rule policies. Amendment 23 introduces a new framework for fishery specifications and other measures for establishing Annual Catch Limits (ACLs) as required by the recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments on Amendments 16-5 and 23 must be received on or before November 30, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 0648-BA01, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal, at <http://www.regulations.gov>.
- Fax: 206-526-6736; Attn: Becky Renko.
- Mail: William Stelle, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Becky Renko

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.)

voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

#### **FOR FURTHER INFORMATION CONTACT:**

Becky Renko (Northwest Region, NMFS), phone: 206-526-6110; fax: 206 526 6736; and e mail: [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**: <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve Amendments 16-5 and 23 to the FMP.

Petrale sole was declared overfished on February 9, 2010. Amendment 16-5 adds a new rebuilding plan for petrale sole to the FMP and revises the seven existing overfished species rebuilding plans consistent with the Magnuson-Stevens Act. The following groundfish species have been declared as overfished and are currently being managed under rebuilding plans: bocaccio in the Monterey and Conception areas; canary rockfish; cowcod south of Point Conception to the U.S. Mexico boundary; darkblotched rockfish, Pacific Ocean Perch (POP), widow rockfish, and yelloweye rockfish.

In the FMP, MSY refers to a constant harvest rate (F) control rule that is assumed to produce the maximum average yield over time while protecting the spawning potential of the stock. The constant F control rule is generally the proxy for the MSY control rule. The long-term average biomass associated with fishing at  $F_{MSY}$  is  $B_{MSY}$ . Fishing rates above  $F_{MSY}$  eventually result in

biomass smaller than  $B_{MSY}$  and produce less harvestable fish on a sustainable basis. The Council uses default  $F_{MSY}$  proxies for species groups. If sufficient information becomes available to develop more appropriate values of  $F_{MSY}$ ,  $B_{MSY}$ , and harvest control rules for individual species or species groups the FMP allows those more specific values to be used. Amendment 16–5 revises the proxy  $F_{MSY}$  value for all flatfish species from  $F_{40\%}$  to  $F_{30\%}$ .

$B_{MSY}$  (or its proxy) is used as a reference point for rebuilding for overfished stocks, such as petrale sole. Amendment 16–5 revises the proxy  $B_{MSY}$  value for all flatfish species from  $B_{40\%}$  to  $B_{25\%}$ . A rebuilding analysis is used to project the status of the overfished resource into the future under a variety of alternative harvest strategies to determine the probability of recovering to  $B_{MSY}$  within a specified time-frame. The overfished threshold is also being revised. The overfished threshold or minimum stock size threshold (MSST) is the estimated biomass level of the stock relative to its unfished biomass (i.e., depletion level), below which the stock is considered overfished. Amendment 16–5 revises the default proxy MSST for the assessed flatfish species from  $B_{25\%}$  to  $B_{12.5\%}$ , which is 50 percent of the  $B_{MSY}$  target of  $B_{25\%}$ .

Amendment 16–5 adds to the FMP a new harvest control rule referred to as the 25–5 harvest control rule for stocks with a  $B_{MSY}$  proxy of 25 percent ( $B_{25\%}$ ).

When the estimated biomass has fallen below  $B_{25\%}$  and when the stock is not managed under an overfished species rebuilding plan, the 25–5 harvest control rule would be applied. Under the 25–5 harvest control rule, a precautionary adjustment is made to the ACL when the stock's depletion drops below  $B_{25\%}$  and at  $B_{5\%}$ , the ACL is set to zero. The 25–5 harvest control rule is designed to prevent stocks from becoming overfished.

On January 16, 2009, NMFS adopted revisions to its guidelines implementing Magnuson-Stevens Act National Standard 1 (74 FR 3178) to prevent and end overfishing and rebuild fisheries. In particular, the revised guidelines provide guidance on implementation of the new statutory requirement for annual catch limits (ACLs). The revised guidelines also include new requirements for accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. To comply with the statute and these new guidelines Amendment 23 to the FMP redefines several existing terms and reference points to make them consistent with the new guidelines; provides a framework for the specification of the overfishing limit (OFL), acceptable biological catch (ABC) and ACLs, including control rules for determining the ABC; describes AMs; addresses the formation of stock complexes; and otherwise ensures that

the FMP is consistent with the revised guidelines. Further, Amendment 23 removes dusky and dwarf-red rockfish from the FMP because these stocks are not considered to be in the fishery as there are no historical records of them being landed.

NMFS welcomes comments on the proposed FMP amendments through the end of the comment period. A proposed rule to implement Amendments 16–5 and 23 has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on proposed regulations to implement Amendments 16–5 and 23, along with the groundfish specifications and management measures for 2011 and 2012, in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 24, 2010.

**Carrie Selberg,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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