for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30 day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: April 8, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–8352 Filed 4–8–04; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125288–4102–02; I.D. 110303A]

RIN 0648–AR35

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–2

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 16–2 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–2 amended the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and Pacific ocean perch (POP) within the FMP. This final rule adds two rebuilding parameters to the Code of Federal Regulations (CFR) for each overfished stock, the target year for rebuilding and the harvest control rule.

Amendment 16–2 addressed the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 also responded to a Court order, in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

DATES: Effective May 13, 2004.

ADDRESSES: Copies of Amendment 16–2 and the final environmental impact statement/regulatory impact review/initial regulatory flexibility analysis (FEIS/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. These documents are also available online at the Council's website at *http://www.pcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736 or; e-mail: *becky.renko@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed and final rules for this action are accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org*.

Background

Amendment 16–2 revised the FMP to include overfished species rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP. This final rule implements Amendment 16–2 by adding two rebuilding parameters, the target year in which the stock would be rebuilt under the adopted rebuilding plan (T_{TARGET}) and the harvest control rule, to the CFR at 50 CFR 660.370 for each overfished stock.

Amendment 16–2 addressed the requirements of the Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–2 also responded to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001,), in which NMFS 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). NMFS requested comments on the amendment under the Magnuson-Stevens Act FMP amendment review provisions for a 60–day comment period, ending January 6, 2004. A proposed rule was published on December 5, 2003 (68 FR 67998), requesting public comment through January 5, 2004. During the Amendment 16–2 and proposed rule comment period, NMFS received four letters of comment. These letters are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background information on the fishery and on this final rule. Further detail on Amendment 16–2 also appears in the FEIS/RIR/IRFA for this action which was prepared by the Council.

After consideration of the public comments received on the amendment, NMFS approved Amendment 16–2 on January 30, 2004. As required by the standards established by Amendment 16–1, the rebuilding plans adopted under Amendment 16–2 for lingcod, canary rockfish, darkblotched rockfish, and POP specified the following rebuilding parameters in the FMP: 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 information relevant to rebuilding was also included. The 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 and rebuilding analyses are completed, as is likely to happen.

Amendment 16–1 specified two rebuilding parameters, TTARGET and the harvest control rule for the rebuilding period, that are to be codified in Federal regulations for each individual species rebuilding plan. This final rule adds these rebuilding parameters to the CFR at 50 CFR 660.370 for lingcod, canary rockfish, darkblotched rockfish, and POP. T_{TARGET} 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 will be used to establish the optimum yields (OYs-harvest specifications) for species with rebuilding plans. Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate OY for each species or species groups, including those OYs established for rebuilding overfished species. The OYs and management measures will be set on an

annual or biennial basis, and will address the fisheries as a whole. Regulations implemented through the harvest specifications and management measures are based on the most recently available scientific information and are intended to address all of the fisheries that take groundfish and to keep the total catch of groundfish, including overfished species, within their respective OYs. The FMP addresses how the fisheries as a whole are to be managed, whereas rebuilding plans are species-specific and define the parameters that govern the rebuilding of a particular species.

If, after a new stock assessment, the Council and NMFS conclude that either or both of the parameters defined in regulation should be revised, the revision will be implemented through the Federal rulemaking process, and the updated values codified in the Federal regulations. NMFS believes that the FMP with the newly added rebuilding plans will be sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish'' (16 U.S.C. 1854(e)(3)(A).

Amendment 16–2 will be followed by Amendment 16–3. A notice of intent to prepare an Environmental Impact Statement (EIS) was published on September 12, 2003 (68 FR 53712) for Amendment 16–3. If approved, Amendment 16–3 will contain rebuilding plans for bocaccio, cowcod, widow rockfish and yelloweye rockfish. The Council is scheduled to take final action on the Amendment 16–3 rebuilding plans at its April 5–9, 2004 meeting. The notice of availability of the Draft EIS is scheduled for publication in June 2004.

Comments and Responses

NMFS received four letters of comment on the proposed rule to implement Amendment 16–2: three letters were received from environmental advocacy organizations, and one letter was received from the U.S. Department of the Interior. These comments are addressed here:

Comment 1: The proposed target dates for rebuilding Amendment 16–2 species are inconsistent with the Magnuson-Stevens Act because the target rebuilding dates are not as short as possible.

Response: NMFS believes that the specified rebuilding time periods for the four overfished species are consistent with the legal requirements of the Magnuson-Stevens Act and with the national standard guidelines. The Magnuson-Stevens Act does not state that rebuilding must be completed in the shortest time possible, rather it requires the time for rebuilding to be as short as possible, taking into account certain factors. The Magnuson-Stevens Act, section 304 (e)(4)(A), and the national standard guidelines at 50 CFR 600.310 (e)(4)(A) recognize the following factors that enter into the specification of a time period for rebuilding: the status and biology of the stock or stock complex; interactions between stocks or stock complexes and the marine ecosystem; the needs of fishing communities; recommendations of international organizations in which the U.S. is a participant; and management measures under an international agreement in which the U.S. participates.

According to the national standard guidelines at 50 CFR 600.310(e)(ii)(B)(*2*), if the year the stock would be rebuilt in the absence of fishing (T_{MIN})is 10 years or less, then the specified time period for rebuilding may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations of international organizations in which the U.S. is a participant. However, the rebuilding period may not exceed 10 years unless international agreements, which the United States is a party to, dictate otherwise.

Of the four overfished stocks affected by this rulemaking, lingcod was the only species in which T_{MIN} was estimated to be 10 years or less. As permitted by the Magnuson-Stevens Act and the national standard guidelines, the needs of the fishing community were taken into consideration when the rebuilding period for lingcod was established that would rebuild the stock by 2009. It should be noted, that the difference between the T_{MIN} rebuilding year of 2007 (the Maximum Conservation Alternative) and the rebuilding year of 2009 under Council's preferred alternative was 2 years.

Lingcod are caught in wide range of commercial and recreational fisheries both on the continental shelf and nearshore areas. To achieve rebuilding by T_{MIN}, management measures would need to be designed to prohibit the catch of lingcod until the stock was rebuilt. Any fishery in which bycatch occurs would need to be curtailed or eliminated to completely prevent bycatch of lingcod. The Maximum Conservation Alternative which would have achieved rebuilding by T_{MIN}, was expected to result in a significant adverse socioeconomic impact due to the reduction in profits, personal income, and employment. NMFS believes that choosing the Council-preferred alternative, which results in a target year for rebuilding of 2009, was a reasonable accommodation to meet the needs of the fishing communities.

According to the national standard guidelines at 50 CFR 600.310(e)(ii)(B)(*3*), if T_{MIN} is 10 years or greater, "then the specified time period for rebuilding T*TARGET* may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the U.S. participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics (T_{MAX}).'' All of the rebuilding periods for canary rockfish, darkblotched rockfish and POP are less than T_{MAX}.

The rebuilding probabilities (P_{MAX}, which are estimated probabilities of rebuilding the stock by T_{MAX}) for canary rockfish, darkblotched rockfish and POP range between 60 percent and 80 percent. This represents a better than 50 percent likelihood that each of these stocks will be rebuilt (reach the B_{MSY} biomass) by T_{MAX}, while allowing sufficient access to overfished stocks, so that healthy groundfish stocks that co-occur with overfished species can be harvested. Canary rockfish are relatively unproductive but occur in a wide range of fisheries. The Council chose a T_{TARGET} closer to T_{MAX} (reflected in the relatively lower 60–percent rebuilding probability) in order to allow some bycatch in all of the various fisheries. The EIS for this amendment has further information regarding the reasons for the adopted rebuilding periods.

Comment 2: Rebuilding target dates for lingcod and canary rockfish are based upon a 60 percent probability of achieving rebuilding within T_{MAX}. This low probability results in target rebuilding dates that are close to T_{MAX}, which leaves little room for uncertainties in stock status, recruitment success, accounting and management of fishing mortality and other factors. The rebuilding probabilities for Amendment 16–2 species should be closer to those suggested by the *Technical Guidance on the Use of the Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act* (Technical Guidance).

Response: As explained above in the response to comment 1, if T_{MIN} is 10 years or greater, the national standard guidelines at 50 CFR 600.310(e)(ii)(B)(*3*), allow T_{TARGET} to be adjusted upward to the extent warranted by the needs of fishing communities and

recommendations by international organizations in which the U.S. participates, except that no such upward adjustment can exceed T_{MAX}. The Technical Guidance recommends that T_{TARGET} be set no higher than the midpoint between T_{MIN} and T_{MAX}.

Adopting the midpoint as a binding criterion in all cases would not be consistent with the Magnuson-Stevens Act because it would not allow the factors in the Act at section 304(e)(4) and the national standard guidelines at 50 CFR 600.310(e)(4)(ii), which include the needs of fishing communities, to be taken into account. The Technical Guidance is not a binding regulation that must be followed; the Technical Guidance itself acknowledges that it deals only with biological issues, and not with socioeconomic issues, which fishery management councils must consider, per the Magnuson-Stevens Act.

Canary rockfish and lingcod are caught in a wide range of commercial and recreational fisheries both on the continental shelf and nearshore areas. The Council recognized the socioeconomic importance of the fisheries for co-occurring species to harvesters and communities and recommended target rebuilding periods that would allow the harvest of the healthy stocks while providing a strong likelihood the overfished stocks will recover within the targeted time period. NMFS agrees with the Council's recommended rebuilding goals.

Comment 3: The groundfish fishery suffers from a variety of factors that create uncertainty in the rebuilding process. While estimates of catch have improved over time for the commercial fishery, the recreational fishery catch estimates remain problematic. Inadequate enforcement means some catch is never recorded. A standardized reporting methodology to assess the amount and type of bycatch in each West Coast fishery is incomplete. Without adequate enforcement and data collection methods, it is unlikely that the total mortality of the four overfished species will be consistent with the limits necessary to rebuild these species.

Response: Many recent improvements have been made to the information systems used to manage the groundfish fishery. The improvements that are expected to reduce the types of uncertainty identified by the commenter include: the implementation of a West Coast Groundfish Observer Program (WCGOP) to collect commercial fishery data to improve discard and total catch estimates in the commercial fishery; the development of a new bycatch model to better estimate fleetwide impacts; replacement of the old Marine Recreational Fishery Statistical Survey (MRFSS) with new and more accurate statistical surveys; and the implementation of a vessel monitoring program to monitor compliance with depth-based management measures. NMFS believes that these data collection methods and enforcement mechanisms, which are discussed below, improve the agency's ability to monitor and enforce the harvest management measures specified for the fishery, and thereby keep the overfished species within the harvest levels established for rebuilding.

NMFS recognizes that effective bycatch accounting and control mechanisms are necessary for staying within the total catch OYs established for rebuilding. NMFS agrees with the commenter that estimates of catch have improved over time for the commercial fishery. Since the inception of the WCGOP in August 2001, substantial improvements have been made in the data and models used to estimate fleet-wide discards in commercial fisheries. Following the release of the first year of WCGOP data in January 2003, NMFS incorporated observer program data on the bycatch of overfished species into the bycatch model. The Council began to use observer data to inform inseason groundfish management at its April 2003 meeting. For the 2004 fishing year, NMFS has further revised the bycatch model to incorporate discard rates on both overfished and targeted species, as generated by observer data. Because the second year of the WCGOP increased coverage of the limited entry nontrawl fleet, NMFS plans to further modify the 2004 bycatch model to incorporate nontrawl data once it has been compiled into a usable form. The agency expects that data from the second year of the WCGOP will be incorporated into inseason groundfish fisheries management by the April 2004 Council meeting, and will be used in the development of 2005–2006 management measures. [For further information on the bycatch model, see the preamble to the 2003 and 2004 proposed rules to implement specifications and management measures, 68 FR 936, January 7, 2003, and 69 FR 1380, January 8, 2004.]

Recreational catch data are compiled in the Recreational Fisheries Information Network (RecFIN) database. The types of data compiled in RecFIN include sampled biological data, estimates of landed catch plus discards, and economic data. The MRFSS, which includes field surveys and a random-daily phone survey, has been part of the RecFIN database system. The MRFSS was not initially designed for the purpose of estimating catch and effort at the level of precision needed for management or assessment, rather it was designed to provide a broad picture look of national fisheries. Comparisons with independent and more precise estimation procedures has shown wide variance in catch estimates. Inseason management of recreational fisheries using MRFSS has been complicated by large inseason variance of catch estimates. Washington and Oregon have used the MRFSS system as a supplement to the port sampling programs from which most of their recreational catch estimates are derived. Because California has had a greater dependence on MRFSS in estimating their recreational catch, catch estimates of California recreational catch have varied considerably.

In recent years, many efforts have been made to improve the MRFSS system. In 2001 the Pacific States Marine Fisheries Commission (PSMFC), with support from NMFS, began a new survey to estimate party/charter boat (CPFV) fishing effort in California. This survey differed from the traditional MRFSS telephone survey of anglers to determine CPFV trips by 2-month period. The survey sampled 10 percent of the active CPFV fleet each week to determine the number of trips taken and the anglers carried on each trip. This 10–percent sample was then expanded to make estimates of total angler trips for Southern California and Northern California. However, increased sampling coverage is needed to improve the precision in estimates necessary for managing for the low OYs of overfished species like canary rockfish and bocaccio. In any statistical sampling program, a greater sample size is needed to more accurately predict rare events such as the catch of overfished species. Therefore, the Council and West Coast states requested a different system to replace MRFSS on the West Coast. NMFS agreed, and a new catch and effort estimation system is being developed.

The MRFSS has been or is being phased out on the West Coast. Changes listed below are expected to result in improved recreational catch estimates. Beginning in January 2004, the MRFSS and State of California State Ocean Salmon Project were replaced by one all inclusive survey, the California Recreational Survey which will sample all fisheries and fishing modes. Since July 2003, Oregon has continued to use its Oregon Recreational Boat Survey and replaced MRFSS with a new inland boat and shore survey using the state's angler

licenses to estimate effort. Since July 2003, Washington MRFSS has maintained its Ocean Sampling Program and replaced Puget Sound MRFSS boat and shore sampling with a new Puget Sound Boat Survey. The State's angler licenses will be used to estimate angler effort in the Puget Sound. Shore sampling was discontinued in July 2003. RecFIN funds formerly used to conduct MRFSS in the three states have been redirected to support, along with state funding, the cost of these new programs.

In January 2004, NMFS implemented a vessel monitoring program to monitor compliance with closed and restricted areas, including the rockfish conservation areas. The Pacific Coast vessel monitoring program consists of declaration reports and a vessel monitoring system (VMS). The declaration reports, which aid enforcement in identifying vessels operating in a closed or restricted area, are reports sent by fishermen before leaving port on a fishing trip. The purpose of the declaration report is to identify their intent to legally fish within a Rockfish Conservation Area (RCA -large-scale depth-related areas where low overfished rockfish species are commonly found), the gear that will be used, and the fishery they are participating in. The VMS is used to track an individual vessel's geographic position through a satellite communication system. VMS transceiver units are required aboard all vessels registered to limited entry permits and will be used to track vessel activity in relation to closed areas within 200 nautical miles along the Pacific coast.

NMFS expects that, taken together, these various improvements to commercial and recreational fisheries monitoring and sampling methodologies should greatly improve estimates of total mortality of overfished and other species.

Comment 4: Amendment 16–2 does not contain management measures to rebuild overfished species. To ensure rebuilding goals are met, rebuilding plans need to include management measures to (1) ensure rebuilding targets are met, (2) account for and reduce bycatch, (3) reduce impacts of current fishing on habitats that are important to the overfished stocks and their prey species, and (4) aid in the enforcement of the management measures.

Response: West Coast groundfish fisheries are multi-species fisheries and the FMP covers over 80 species of fish. The four overfished species affected by this action co-occur with many other more abundant stocks. Because of this commingling of overfished and more abundant stocks, the varied fisheries that take groundfish all tend to have some effect on at least one of the nine species that has been declared overfished.

The FMP addresses how the fisheries as a whole are to be managed, whereas rebuilding plans are species-specific and define the parameters that govern the rebuilding of a particular species. The harvest specifications and management measures, on an annual or biennial basis, address the fisheries as a whole. Regulations implemented through the harvest specifications and management measures are intended to address all of the fisheries that take groundfish and include measures to implement rebuilding plans for overfished species. Management measures in these regulatory packages are based on the most recently available scientific information on the status of the various groundfish stocks and fisheries.

In managing a multi-species fishery, it is not necessary or practical to include all of the management measures that will be used to rebuild a particular overfished species in that species' rebuilding plan. Rebuilding plans will provide the specific time period and fishing mortality rate that management measures implemented under the authority of the FMP be consistent with. It is important for the FMP as a whole to provide the structure to implement a variety of different management measures to rebuild overfished stocks, and to manage the fisheries as a whole in accordance with the Magnuson-Stevens Act. Relying on the whole FMP to protect overfished stocks within a multi-species fishery, does not violate the Magnuson-Stevens Act.

The FMP and its rebuilding plans are sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish'' (16 U.S.C. 1854(e)(3)(A). They are neither vague nor meaningless. This Amendment 16 1 sets out the required elements for a rebuilding plan. The FMP states in section 4.6.1.5. that "OY recommendations will be consistent with established rebuilding plans and achievement of their goals and objectives. . . . (b) In cases where a stock or stock complex is overfished, Council action will specify OY in a manner that complies with rebuilding plans developed in accordance with Section 4.5.2.'' The Plan further states at 5.1.4 "For any stock the Secretary has declared overfished or approaching the overfished condition, or for any stock the Council determines is in need of rebuilding, the Council will implement such periodic management measures as are necessary to rebuild the stock by controlling harvest mortality, habitat impacts, or other effects of fishing activities that are subject to regulation under the biennial process. These management measures will be consistent with any approved rebuilding plan.'' Most management measures used in the fishery are described in section 6 of the FMP. The existing emergency rule for groundfish for January and February 2004, (69 FR 13222; January 8, 2004), implements the first four rebuilding plans, and the interim rebuilding strategies for the remaining overfished species for January and February. The proposed rule for groundfish for 2004 (69 FR 1380; January 8, 2004), proposes ABCs/OYs and management measures that implement the rebuilding plans. The management of overfished species for 2004 is summarized at 69 FR 1380.

The FMP as a whole provides direction on rebuilding overfished species in several places and includes, in Chapter 6, management measures and regulatory programs the Council uses and intends to use to meet its varied fishery management responsibilities. Section 6.1 describes a series of management measures that the Council uses to control fishing mortality, including but not limited to: permits, licenses and endorsements; restrictions on trawl mesh size; landing limits and trip frequency limits; quotas, including individual transferable quotas; escape panels or ports for pot gear or trawl or other net gear; size limits; bag limits; time/area closures; other forms of effort control including input controls on fishing gear such as restrictions on trawl size or longline length or number of hooks or pots; and allocation of species or species groups between fishing sectors. Section 6.2 among other things authorizes the Council to close fishing seasons, either as time/area closures set pre-season or inseason, in order to protect overfished species. Section 6.3 of the FMP deals with bycatch management and measures the Council has taken in recent years to reduce bycatch. Essential fish habitat (EFH) is addressed in section 6.6. As described below in the response to this comment, NMFS is in the process of reviewing the FMP's approach to EFH. Nonetheless, it is the FMP as a whole that sets the Council's management philosophies and practices for all groundfish species and protects overfished species, not just the specific rebuilding plans for those species.

The Magnuson-Stevens Act at section 303(a) describes the required provisions of any Federal fishery management plan. Sub-paragraph 303(a)(7) requires that the FMP describe and identify

essential fish habitat and "minimize to the extent practicable adverse effects on such habitat caused by fishing...'' Subparagraph 303(a)(11) requires that the FMP "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority: (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.''

Amendment 11 to the FMP provided a description within the FMP of EFH for West Coast groundfish. Amendment 11 was challenged in *American Oceans Campaign* v. *Daley* 183 F. Supp. 2d1 (D.C.C. 2000), along with challenges to fisheries managed by the Caribbean, Gulf of Mexico, New England, and North Pacific Fishery Management Councils. For West Coast groundfish, the Court found that NMFS had not conducted an adequate National Environmental Policy Act (NEPA) analysis on the effects of fishing on groundfish EFH. NMFS is in the midst of drafting an EIS on groundfish EFH and plans to release the draft EIS for public review in February 2005. Further information on this EIS is available at: *http://www.nwr.noaa.gov/1sustfsh/groundfish/eis__efh/efh/*.

Amendment 11 described EFH for West Coast groundfish based on information that was available in 1998, when the amendment was completed. Since that time, there have been notable increases in funding for EFH research and improvements in ocean habitat mapping technologies. These research and mapping improvements are informing the drafting of the new EFH DEIS. Until the completion of that DEIS, Amendment 11's descriptions of EFH for each of the overfished species must serve to characterize species-specific EFH and to inform management measures intended to rebuild those species. For example, the EFH appendix to Amendment 11 (online at *http://www.nwr.noaa.gov/1sustfsh/efhappendix/page1.html*) provides descriptions of the habitats used by the 80+ species in the FMP, including the ocean depths where those species are commonly found. The Council used these habitat descriptions in the development of Rockfish Conservation Areas (RCAs), which are intended to protect the suite of continental and slope overfished species in waters where they are commonly found. RCAs are primarily intended to protect overfished stocks from being incidentally harvested by vessels targeting more abundant species. Closure of these areas, however, also protects habitat within the RCAs from the effects of groundfish fishing gear. NMFS anticipates that the new EFH EIS will allow the Council to incorporate more data-rich descriptions of the EFH of individual groundfish species into its groundfish fishery management planning. Section 303(a) of the Magnuson-Stevens Act requires that the FMP as a whole include a description of EFH and EFH protection measures. It does not require that each amendment to the FMP describe EFH and provide EFH protection measures.

Amendment 13 to the FMP addressed bycatch in the West Coast groundfish fisheries and was also challenged in Court, *Pacific Marine Conservation Council, Inc.* v. *Evans*, 200 F. Supp. 2d1194 (N.D. Calif. 2002). The Court held that Amendment 13 failed to establish an adequate bycatch reporting methodology, did not comply with the duty to minimize bycatch and bycatch mortality, and violated NEPA because NMFS did not take "hard look'' at the environmental consequences of Amendment 13, and failed to consider a reasonable range of alternatives and their environmental consequences. In particular, the Court concluded that Amendment 13 failed to establish a standardized reporting methodology because it failed to establish either a mandatory or an adequate observer program. Further, it failed to minimize bycatch and bycatch mortality because it failed to include all practicable management measures in the FMP itself. The Court also found a lack of reasoned decisionmaking because four specific bycatch reduction measures (fleet size reduction, marine reserves, vessel incentives, and discard caps) were rejected without consideration on their merits. With respect to NEPA, the EA prepared for Amendment 13 failed to address adequately the ten criteria for an action's significance set forth in the Council on Environmental Quality regulations at 40 CFR 1508.27(b), and also failed to analyze reasonable alternatives, particularly the immediate implementation of an adequate at-sea observer program and bycatch reduction measures.

NMFS is in the process of drafting an EIS to address the Court's requirement for a new NEPA analysis on bycatch in the groundfish fisheries and is scheduled to release the draft EIS for public review through the Environmental Protection Agency on February 27, 2004. The draft EIS on bycatch provides information necessary to further improve the bycatch reduction program for West Coast groundfish fisheries. Further information on this EIS is available at: *http://www.nwr.noaa.gov/1sustfsh/groundfish/eis__efh/pseis/*.

NMFS has implemented numerous bycatch reduction measures since the Council's approval of Amendment 13 in 2000. Through the issuance of exempted fishing permits (EFPs), the agency has supported the collection of data needed to assess the feasibility of full retention measures in the following fisheries: Pacific whiting, arrowtooth flounder, yellowtail rockfish, nearshore flatfish, and the dogfish fishery. NMFS has also supported the use of EFPs to test the effectiveness of flatfish selective trawl gears. Shorter-than-year-round fishing seasons have been set for various species and sectors of the groundfish fleet in order to protect different overfished groundfish species. Amendment 14 to the FMP implemented a permit stacking program for the limited entry fixed gear fleet that reduced the number of vessels participating in the primary sablefish fishery by about 40 percent. In 2003, NMFS implemented a buyback of limited entry trawl vessels and their permits, reducing the groundfish trawl fleet by about one-third. NMFS has implemented gear modification requirements that restrict the use of trawl gear in rocky habitat and that constrain the catching capacity of recreational fishing gear. Higher groundfish landings limits have been made available for trawl vessels using gear or operating in areas where overfished species are less likely to be taken.

Implementation of the NMFS WCGOP in August 2001 addressed the Court's order that NMFS implement an adequate bycatch assessment methodology, which uses a standardized reporting methodology. NMFS believes that the WCGOP comprises an adequate reporting methodology for estimating the amount and type of bycatch occurring in the fishery. Amendment 16–1 added provisions to the FMP that made this program mandatory.

In 2002, a bycatch model was first used to examine species-to-species landings limit ratios. Data from this observer program, from historic observer programs, and from fishery-dependent data are used in the bycatch model for West Coast groundfish fisheries. WCGOP data are used in analyzing where and when different sectors of the groundfish fleet have targeted and may target groundfish. Each intervening year since 2002, the bycatch model has been modified to incorporate new WCGOP data. The bycatch model has been used in the development of Rockfish Conservation Areas (RCAs - large time/

area closures that affect the entire West Coast and are specifically designed to reduce the incidental catch of overfished groundfish species in fisheries targeting more abundant stocks) which were implemented through 50 CFR 660.304 and the harvest specifications and management measures.

Comment 5: NMFS should, at a minimum, include measures to compare total mortality estimates at the end of each year with that year's OY values to determine if any overages have occurred. If so, an adjustment should be made in the following year's OY as early in that year as possible to compensate for the overages. Such measures would be consistent with recommendations in the Technical Guidance to make downward adjustments of subsequent year fishing mortality rates in response to OY overages for overfished species.

Response: The Magnuson-Stevens Act requires NMFS to annually report to Congress on the status of the fisheries and to identify those fisheries that are overfished or approaching a condition of being overfished. Each year, NMFS prepares *The Annual Report to Congress on the Status of the Fisheries* which provides the mandated information and also identifies any stocks for which overfishing has occurred. Overfishing occurs when a stock or stock complex is subjected to a rate of fishing mortality that jeopardizes the stock's ability to produce maximum sustainable yield (MSY) on a continuing basis. For West Coast groundfish, the ABC is set at FMSY and exceeding the ABC is overfishing.

When looking at whether ABC values have been exceeded, NMFS also notes whether OY values have been exceeded and works with the Council to revise management measures so as to reduce the likelihood that OYs for the same species will be exceeded in subsequent years. Management measures for healthy stocks are intended to achieve OYs without exceeding them, unless the achievement of a particular species' OY would negatively affect the rebuilding of a co-occurring overfished species. In such a case, management measures would be designed to keep the harvest under the OY of the healthy stock in order to rebuild the overfished stock. NMFS will continue to monitor whether the fisheries have exceeded acceptable biological catches (ABCs) or OYs and will continue to work with the Council to make inseason adjustments to management measures to prevent the fisheries from continually exceeding OY target levels.

NMFS, the state fisheries agencies, and the Council monitor fisheries landings inseason. Commercial fisheries landings are monitored by a fish ticket system managed by the three states. State fish ticket data is compiled by the Pacific States Marine Fisheries Commission (PSMFC). Estimated commercial landings amounts are provided to the agencies and the public via the Pacific Fisheries Information Network (PacFIN). Depending on state funding and staffing levels, groundfish landings may be recorded in PacFIN anywhere from several days to a few months after the landings have been made. For this reason, fishery managers must estimate current landings levels of a particular species by extrapolating what we know has already been landed out to an estimate based on several different variables, such as past harvest rates in particular months, number of vessels participating in the fishery in those months, etc. With the time delays in this landings monitoring system, the Council does not have fully up-to-date landings information when making its inseason adjustments or ABC/OY recommendations.

The state fish ticket system and PacFIN monitor commercial fisheries landings. These systems do not include fish taken at sea and lost or discarded. While NMFS monitors total catch levels through at-sea observer sampling programs, the agency does not have the staff, funding, or technology to monitor the thousands of trawl tows and trap and longline hauls that result in the fishery's total commercial catch. Instead, NMFS monitors a portion of the commercial fleet through observers and uses a model based on the observer data with fish ticket and other data to estimate total catch for the fleet.

In the preamble to the proposed rule for the 2004 Annual Specifications and Management Measures (January 8, 2004, 69 FR 1380), NMFS described a bycatch model that is used both pre-season to develop management measures and inseason to modify management measures. This model is a "total catch'' model, i.e. it calculates the total expected catch, not just fish that are actually landed. The model is updated annually with new WCGOP data. Observer data from the 2001–2002 fisheries was used to develop 2004 management measures and discard estimates. NMFS just completed its analysis of 2002–2003 WCGOP data (*http://www.nwfsc.noaa.gov/research/divisions/fram/observers/*), and that analysis will be available to the Council for the development of the 2005–2006 fishery specifications and management measures.

As with the commercial fisheries, PSMFC maintains a database for recreational fisheries, the Recreational Fisheries Information Network (RecFIN). Estimates of recreational fisheries catch and landings are available on the internet at *http://www.recfin.org/*. All three states deploy port samplers for at-dock sampling of recreational groundfish fisheries. Even more so than in commercial fisheries, recreational fisheries data may not be available to fisheries managers until several months after the subject fishing trips have occurred. Because the states of Washington and Oregon have smaller coastlines and smaller populations than California, they tend to directly sample a much greater proportion of their recreational fisheries catch than California does.

In past years, California has relied on NMFS' MRFSS for its estimates of recreational fisheries catch. MRFSS uses a telephone survey of the general population to determine which persons in the population are anglers, and, of the anglers, how much of which species they are catching and landing. MRFSS was initially designed as an annual sampling program that would provide a snapshot of an entire year's harvest of different recreational species. Because MRFSS was the only tool for estimating recreational catch, the Council has used it for inseason management in recent years.

Recreational fisheries data needs have increased notably since the Council first began managing the fisheries to rebuild overfished stocks in 2000. All three states, the Council, and NMFS have been concerned that data generated from MRFSS was not accurate or timely enough to support inseason management of recreational fisheries. Over 2002–2003, the agencies met through the PSMFC's RecFIN Data Committee and worked together to update their monitoring programs so as to better meet the coastwide need for improved recreational fisheries catch data. PSMFC reported to the Council on the planned changes to recreational fisheries data gathering in the three states at the Council's November 2003 meeting. All three states have eliminated MRFSS as a sampling tool, focusing instead on at-dock sampling and angler interviews. While California will continue to use telephone interviews as one of its data-gathering methods, its survey population will be licensed California anglers, not the entire population of the State of California. California will also be increasing its at-dock sampling presence and providing some on-board observation of charterboats. Oregon and Washington will also be replacing their MRFSS general-population surveys with

surveys specific to licensed anglers, and with increased at-dock and at-sea monitoring.

The Technical Guidance at section 3.4 states that ''...Stock rebuilding should be monitored closely so that adjustments can be made when rebuilding milestones are not being met for whatever reason. For example, if target rebuilding fishing mortality rates are exceeded due to quota over-runs, subsequent target fishing mortality rates should typically be adjusted downwards to put the stock back on the rebuilding time table.'' NMFS makes adjustments to OYs after conducting a stock assessment of the population of a particular species; these assessments occur every 2–4 years. (Previously, NMFS had been on a 3–year stock assessment cycle. With the adoption of Amendment 17, the science and management cycle has shifted from annual to biennial management. Under the biennial management cycle, stock assessments will be conducted every 2–4 years.) The decisions on which stock assessments to do which year will depend on the status of the stocks, and the availability of data and stock assessment personnel. In the years between assessments, NMFS and the Council address over-and under-harvests by adjusting management measures to try to achieve, but not exceed, OYs of several of the more abundant stocks will, of necessity, not be achieved in order to protect co-occurring overfished species.

Stock assessments take harvest overages and underages into account in evaluating the status of a stock and whether rebuilding milestones are being met. New fishing mortality rates set subsequent to each new stock assessment will keep the stock on its rebuilding trajectory. NMFS does not plan to adopt a policy of regularly adjusting ABCs and OYs either inseason or annually to account for catch overages or underages from the previous year. Such a policy, if carried out over a period of several years, could result in wild fluctuations in harvest levels, further de-stabilizing fishing communities. Overages or underages will continue to be incorporated into new stock assessments and the appropriate adjustments to fishing mortality rates to remain on the rebuilding trajectories will be made at that time. As the Technical Guidance notes in several places, its guidance is intended to address the biological aspects of national standard 1 and does not incorporate the socio-economic considerations addressed by the Magnuson-Stevens Act and the other national standards.

Comment 6: In the preamble to the proposed rule, NMFS states that the target year for rebuilding should only be changed in unusual circumstances, such as if, based on new information, the rebuilding target is greater than the maximum allowable time frame (T_{MAX}) and if socio-economic reasons dictate otherwise. These are inappropriate reasons for changing the target rebuilding date because: (1) Shortening the rebuilding period to account for a revised T_{MAX} provides no assurance that the species will be rebuilt in as short a time as possible, and (2) target rebuilding dates have already been lengthened for socio-economic reasons, further lengthening target rebuilding periods for socio-economic reasons will prevent rebuilding of the overfished populations.

Response: NMFS believes that the specified rebuilding time periods for the four overfished species need to be consistent with the legal requirements of the Magnuson-Stevens Act and with the national standard guidelines. If a new stock assessment and rebuilding analysis result in a T_{MAX} being a shorter duration than that previously predicted, NMFS would be required to keep T_{TARGET} below T_{MAX}. Discussion on setting target rebuilding dates can be found in the responses to Comment 1 and Comment 2, where we explain the Magnuson-Stevens Act and the national standard guideline requirements regarding rebuilding duration and factors that may affect the rebuilding period, as well as the Technical Guidance recommendations.

Comment 7: The proposed rule presents the status of each Amendment 16–2 stock when it was declared overfished, but omits the status of those species as of their most recent stock assessments. Those stock statuses should be shown, since the rebuilding parameters provided in the regulations reflect information from the most recent stock assessments.

Response: The proposed rule reflects the rebuilding parameters that were adopted by the Council in June 2003. These parameters were based on the most recent stock assessments that were available at that time. Since June 2003, new stock assessments and rebuilding analyses were prepared and approved by the Council for POP and darkblotched rockfish. The most recent status of each overfished species can be found in the overfished species section of the preamble to the proposed rule for the 2004 harvest specifications and management measures January 8, 2004 (69 FR 1380). It is NMFS's intention to provide the most recent stock assessment and rebuilding analysis results with the preamble discussions in future proposed rules to implement the harvest specifications and management measures. The harvest specifications and management measures is a Federal rulemaking with a notice and comment period. This information will also be available within the annual Stock Assessment and Fishery Evaluation (SAFE) document. As explained earlier in this document under "changes from the proposed rule,'' this final rule implements the most up-to-date rebuilding parameters for the four Amendment 16–2 overfished species. Any changes to these rebuilding parameters will be through a notice-and-comment rulemaking.

Comment 8: Amendment 16–2 should be brought into compliance with the Magnuson-Stevens Act requirement at 304(e)(3)(a) that a rebuilding plan be designed "to end overfishing in the fishery and to rebuild affected stocks of fish.'' To do so, rebuilding plans should include specific conservation and management measures designed to rebuild each species. The EIS for Amendment 16–2 should have included a range of management measures alternatives necessary to achieve the proposed rebuilding targets and time periods.

Response: The rebuilding plans for the four overfished species are consistent with the Magnuson-Stevens Act requirements at 304(e)(3)(a) and, when considered as part of the FMP as a whole, are sufficient to "to end overfishing in the fishery and to rebuild affected stocks of fish.''

The FMP is the Council's policy vehicle for addressing how the fisheries as a whole are to be managed, whereas rebuilding plans are species-specific and are intended to define the parameters the Council will use to govern the rebuilding of a particular species. The harvest specifications and management measures, on an annual or biennial basis, address the fisheries as a whole. Regulations implemented through the harvest specifications and management measures are intended both to address all of the fisheries that take groundfish and to implement the requirements of rebuilding plans. Management measures in these regulatory packages are based on the most recently available scientific information on the status of the various groundfish stocks and fisheries. The response to Comment 4 further describes the components of the FMP that can be used to manage the fishery and rebuild overfished stocks.

Comment 9: Accounting mechanisms must be established to accurately count bycatch of overfished species and other

marine life such as the use of an observer program with adequate coverage, Federal permit or licensing requirements, or other appropriate data collection methods. Bycatch accounting measures must also ensure that all sources of mortality data are made available to the public and incorporated into the annual specifications process in a timely manner.

Response: At 16 U.S.C. 1853(a)(11), the Magnuson-Stevens Act requires that FMPs, among other things, "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery...'' Adequate bycatch accounting is necessary for managing a fishery, and for keeping total catch within specified OYs.

An observer program is one means for obtaining bycatch information in commercial fisheries. In August 2001, NMFS implemented the WCGOP which uses a standardized bycatch reporting methodology. The availability of the WCGOP observer coverage plan was announced on January 10, 2002 (67 FR 1329) and is available via the internet at: *http://www.nwfsc.noaa.gov/research/divisions/fram/observers/*.

In the first year of the WCGOP (August 2001–August 2002,) NMFS focused observer coverage largely on the non-whiting groundfish trawl fleet, with some pilot effort in the nontrawl limited entry and open access fleets. Observer coverage for the nontrawl fleet, particularly for limited entry vessels with sablefish endorsements, expanded during the second year of the observer program (September 2002–August 2003). In September 2003, NMFS reported to the Council on bycatch modeling and observer data developments.

WCGOP has focused its coverage on the limited entry trawl fleet because that fleet annually makes greater than 95 percent (by weight) of West Coast commercial groundfish landings coastwide (PacFIN, 1999–2003). Under the WCGOP coverage plan, the program has a goal of 10 percent coverage of trawl landings in any one year. With its 30–40 observers available each year, the WCGOP has been able to select each trawl fleet participant for coverage for at least one cumulative limit period in each year. The observer coverage levels are dependent upon the number of vessels actively participating in the fishery and on available program funding. Data from the first year of the observer program are available on the WCGOP site, mentioned earlier in this paragraph. NMFS is evaluating data from the second year of observer coverage and plans to release a data report on the WCGOP activities over September 2002–August 2003 in early 2004.

Following the release of the first year of WCGOP data in January 2003, NMFS incorporated WCGOP data on the bycatch of overfished species into the bycatch model. The Council began to use observer data to inform inseason groundfish management at its April 2003 meeting. For the 2004 fishing year, NMFS has further revised the bycatch model to incorporate discard rates on both overfished and targeted species, as generated by observer data. Because the second year of the WCGOP increased coverage of the limited entry nontrawl fleet, NMFS plans to further modify the 2004 bycatch model to incorporate nontrawl data. The agency expects that data from the second year of the WCGOP will be incorporated into inseason groundfish fisheries management by the April 2004 Council meeting, and will be used in the development of 2005–2006 management measures. Amendment 16–1 of the FMP added language that made the WCGOP a mandatory program for the groundfish fishery. The commenter also wishes the FMP to discuss the scope and adequacy of an observer program, whereas the FMP defers the design of the WCGOP to NMFS.

Over the past year, NMFS has been reviewing the agency's approach to standardized bycatch monitoring programs for all federally managed fisheries. The report, "Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs,'' is available on the internet at: *http://www.nmfs.noaa.gov/bycatch.htm*. Also available at that website is the "NOAA Fisheries Objectives, Protocol, and Recommended Precision Goals for Standardized Bycatch Reporting Methodologies.'' This latter report addresses the question of the adequacy of an observer program or other standardized reporting methodology by setting "precision goals'' for monitoring programs. According to this report, the levels of precision NMFS strives to achieve for fishery resources caught as bycatch in a fishery, excluding species protected under the ESA or MMPA, is a 20–30 percent CV [coefficient of variation] for estimates of total discards (aggregated over all species) for the fishery; or if total catch cannot be divided into discards and retained catch then the recommended goal for estimates of total catch is a CV of 20–30 percent.'' In setting these precision goals, NMFS recognizes that "(1) there are intermediate steps in increasing precision which may not immediately achieve the goals; (2) there are circumstances in which higher levels of precision may be desired, particularly when management is needed on fine spatial or temporal scales; (3) there are circumstances under which meeting the precision goal would not be an efficient use of public resources; and (4) there may be significant logistical constraints to achieving the goal.''

The "Evaluating Bycatch'' report characterizes the WCGOP as a "developing'' observer program, meaning that it is a program "in which an established stratification design has been implemented and alternative allocation schemes [for observer coverage] are being evaluated to optimize sample allocations by strata to achieve the recommended goals of precision of bycatch estimates for the major species of concern.'' The next step beyond a developing observer program is a "mature'' program "in which some form of an optimal sampling allocation scheme has been implemented. The program is flexible enough to achieve the recommended goals of precision of bycatch estimates for the major species of concern considering changes in the fishery over time.''

As discussed above, NMFS will be releasing the second year of observer data in January 2004. Because observer coverage in the groundfish fishery has been largely focused on the trawl fishery, NMFS expects that it will have achieved the NMFS precision goals of 20–30 percent CV for estimates of total discards in the trawl fishery and of 20–30 percent CV for estimates of species-specific discards of those overfished species that are commonly taken in the trawl fishery. For overfished species that are either not commonly taken in the trawl fishery, such as yelloweye rockfish, or species that are unavailable to the fisheries because of large area closures, such as cowcod, NMFS expects that the current trawl-focused sampling program will not achieve the 20–30 percent CV precision goal. As it works toward becoming a mature observer program, the WCGOP will likely increase observer coverage of nontrawl vessels in order to get a more precise estimate of yelloweye rockfish bycatch. For cowcod, a rare event species with large portions of its habitat closed to fishing, evaluation of annual mortality may have to take some form other than a fishery observation program.

At section 6.3.3, the FMP identifies the management need for an observer program or other bycatch measurement program as an aid for the Council to "better identify and prioritize the bycatch problems in the groundfish fishery, based on the expected benefits

to the U.S. and on the practicality of addressing these problems.'' The Council has used data from WCGOP to re-shape its landings limits and time/area closures. The Council has also used WCGOP data to evaluate species-to-species landings limit ratios, as well as species-to species catch ratios in the bycatch model. NMFS expects that the WCGOP will continue to meet the Council's need to identify and prioritize bycatch problems in the groundfish fishery, and that WCGOP data will continue to directly inform both annual and inseason management measures.

In January 2004, NMFS implemented a vessel monitoring program to monitor compliance with closed areas, including the groundfish conservation areas. The Pacific Coast vessel monitoring program consists of declaration reports and VMS. With VMS, vessels registered to limited entry trawl vessels are required to install and use a mobile transceiver unit whenever the vessel is used to fish in state or Federal waters off the west coast. The VMS equipment records the vessel's geographic position and sends it to NMFS through a satellite communication system where it is stored in a database. VMS position data can be used in combination with observer data to better understand total fishing effort, shifts in fishing effort, and potential bycatch levels.

Comment 10: Amendment 16–2 does not include provisions for the rebuilding plans of its subject species that would set standards for reviewing progress toward rebuilding for those species. This is a requirement of rebuilding plans according to Amendment 16–1. NMFS, as the agent of the Secretary of Commerce, has the duty to review rebuilding plans every two years to ensure adequate progress. Without established standards for determining adequacy of progress and triggers for modifying rebuilding parameters, there is a high probability that rebuilding plans will ultimately fail to achieve rebuilding.

Response: NMFS believes that the rebuilding plans under Amendment 16–2 are consistent with the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires the Secretary to review rebuilding plans at intervals that may not exceed two years. During the Amendment 16–1 process, for the purpose of clarity, NMFS worked with the Council staff to add a sentence to the FMP at the end of section 4.5.3.6 to read, "Regardless of the Council's schedule for reviewing overfished species rebuilding plans, the Secretary of Commerce, through NMFS, is required to review the progress of overfished species rebuilding plans toward rebuilding goals every two years, per the Magnuson-Stevens Act at 16 U.S.C. 304(e)(7).'' NMFS's review of the adequacy of progress on rebuilding plans will be primarily be done through stock assessment updates and are expected to follow the schedule defined by the Magnuson-Stevens Act.

FMP Section 4.5.3.2, Contents of Rebuilding Plans, states that generally, "rebuilding plans will contain ... 4. The process, and any applicable standards, that will be used during periodic review to evaluate progress in rebuilding the stock to the target biomass.'' While adopting these rebuilding plans, the Council and NMFS realized that standards for measuring the progress of rebuilding needed to be refined. Therefore, at the Council's November 2003 meeting, NMFS asked the Council's SSC to review and develop standards for measuring the progress of rebuilding. NMFS also made this request to the Council in its letter of approval for Amendment 16–1 and reminded the Council of this request in its letter of approval for Amendment 16–2. In these letters, NMFS recommended that setting standards for measuring the progress of rebuilding plans be included in the SSC's Terms of Reference for the Stock Assessment Review (STAR) processes. By including the setting of rebuilding plan progress standards in the STAR processes for overfished species, the NMFS/Council process for developing and reviewing stock assessments would continue the link between stock assessments and rebuilding plans for overfished species. NMFS fully expects that these standards will be defined before the Secretary's review in January 2006 and the standards will be included in the Council's annual SAFE document.

Comment 11: Amendment 16–2 improperly opens the door for use of the mixed-stock exception, which is contrary to the requirements of the Magnuson-Stevens Act.

Response: Amendment 16–2 does not open the door for what the commenter allege is the "illegal use of the mixed-stock exception.'' Amendment 16–2 has no effect on the mixed-stock exception. Although the mixed-stock exception currently exists in the national standard guidelines, the Council has never exercised the exception. Amendment 16–2 makes no change in the condition of its possible application.

Comment 12: Marine sanctuaries are needed where fishing is prohibited. The rebuilding policy does not provide enough protection for fish stocks.

Response: Marine sanctuaries are defined under the National Marine Sanctuaries Act (16 U.S.C. 1431–1445) as areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities that will improve the conservation, understanding, management, and wise and sustainable use of marine resources; enhance public awareness, understanding, and appreciation of the marine environment; and maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.

Section 303(a) of the Magnuson-Stevens Act requires that the FMP as a whole include a description of EFH and EFH protection measures, but does not provide authority to implement marine sanctuaries. Further, it does not require that each individual amendment to the FMP describe EFH and provide EFH protection measures such as marine protected areas. The commenter is correct in stating that Amendment 16–2 does not contain requirements for marine sanctuaries. However, the commenter is incorrect in then concluding that overfished species are not adequately protected by the FMP.

Comment 13: Commercial fisheries are causing stock depletion.

Response: NMFS agrees that commercial fishing results in fishing mortality, as does recreational fishing. Declines below the overfished levels in the 1990s were due in large part to harvest rate policies that were based on the best scientific information at the time, but were later discovered to not be sustainable. More recent stock assessments indicate that West Coast groundfish stocks likely have lower levels of productivity than other similar species worldwide. A retrospective analysis determined that harvest rate policies in the 1990s, though based on the best available information at the time, were too high to maintain stocks at BMSY.

A 2000 review of groundfish harvest rates by the Council's SSC showed that then-current scientific information indicated both lower than historically estimated recruitment levels for West Coast groundfish and a corresponding need for lower than historically used harvest rates. Since 2000, NMFS and the Council have set ABCs for groundfish species at more precautionary rates (F40% for flatfish, F50% for rockfish, and F45% for other groundfish such as sablefish and lingcod).

Comment 14: To ensure rebuilding, fishing mortality rates and rebuilding strategies should be upheld even when new information suggests that the stock

size is increasing more rapidly than expected.

Response: Rebuilding plans are expected to be revised only when reviews reveal a significant discrepancy between current stock status and that projected in the original rebuilding plan or in earlier reviews. It is NMFS's intention that any changes to rebuilding strategies be made during the annual or biennial setting of harvest specifications and management measures and be established through a Federal rulemaking with a notice and comment period.

Changes From the Proposed Rule

On January 8, 2004, NMFS published a proposed rule to implement the 2004 fishery specifications and management measures January 8, 2004 (69 FR 1380). This proposed rule contained revisions to the harvest control rules for POP and darkblotched rockfish that had originally been published in the Amendment 16–2 proposed rule. These revisions are now in place under the final 2004 fishery specifications and management measures that were published on March 9, 2004 at 69 FR 11064.

The POP rebuilding parameters in the Amendment 16–2 proposed rule were based on a 2000 stock assessment that had resulted in a target rebuilding year of 2027 and a harvest control rule of F=0.0082. The 2004 OY presented in the 2004 fishery specifications and management measures was based on a new stock assessment prepared in 2003. Because POP rebuilding parameters such as the unfished biomass and BMSY were updated with the new stock assessment, the POP harvest control rule in the final rule will be revised to F=0.0257 from F=0.0082. However, the target rebuilding year (2027) will remain the same as was announced for POP in the Amendment 16–2 proposed rule.

Similarly, the darkblotched rockfish rebuilding parameters in the Amendment 16–2 proposed rule were based on a 2000 stock assessment that had resulted in a target rebuilding year of 2030 and a harvest control rule of F=0.027. The 2004 OY presented in the 2004 fishery specifications and management measures was based on a new stock assessment that was prepared in 2003 and results in the same target rebuilding year (2030) as was announced in the Amendment 16–2 proposed rule for the darkblotched rockfish rebuilding plan. However, because other rebuilding parameters such as the unfished biomass and BMSY were updated with the new stock assessment, the harvest control rule in the final rule will be revised to F=0.032 from F=0.027.

Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 16–2 is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

A Final Environmental Impact Statement (FEIS) for this action was filed with the Environmental Protection Agency on December 12, 2003. A notice of availability for the FEIS was published on December 19, 2003 (68 FR 70795). In approving Amendment 16–2, on January 30, 2004, NMFS issued a Record of Decision identifying the selected alternative (see ADDRESSES).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) as part of the regulatory impact review. The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**).

During the comment period for the proposed rule, NMFS received four letters of comment, but none of these comments addressed the IRFA or impacts on small businesses. There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This rule does not duplicate, overlap, or conflict with other Federal rules.

This action is needed because the Magnuson-Stevens Act at 304 (e)(3) requires rebuilding plans for species that have been declared overfished. These plans must be in the form of FMPs, FMP amendments, or regulations. The objective of this proposed rule is to implement rebuilding parameters that will result in lingcod, canary rockfish, darkblotched rockfish and POP stocks returning to their MSY biomass levels.

Amendment 16–2 responds to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001,), in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. On October 27, 2003, the Court ordered NMFS to approve rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP by January 31, 2004.

Amendment 16–2 follows the framework established by Amendment 16–1 and amends the FMP to include rebuilding plans for canary rockfish, darkblotched rockfish, POP, and lingcod. For each 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 target year in which the stock would be rebuilt under the rebuilding plan ($T_{TARGETt}$). No new management measures are proposed in Amendment 16–2, Amendment 16–1 describes and authorizes the use of numerous types of management measures intended to achieve rebuilding. These management measures will be implemented through the biennial management process and will be used to constrain fishing to the targets identified in the rebuilding plans.

The FEIS/RIR/IRFA for this final rule defines six alternative actions that were considered for each of the four overfished species. The alternatives present a range of rebuilding strategies in terms of rebuilding probabilities for each species. The no action alternative would be based on the "40 10 harvest policy'', which is the default rebuilding policy for setting OYs. Under the 40 10 harvest policy, stocks with biomass levels below B40% have OYs set in relation to the biomass level. At B40%, an OY may be set equal to the ABC. However, if a stock's spawning biomass declines below B40%, the OY is scaled downward until at 10 percent (B10%) the harvest OY is set at zero unless modified for a species-specific rebuilding plan. In comparison to the other alternatives, (except the maximum conservation alternative) the 40 10 policy can result in lower OYs in the short term, when a stock is at a low biomass level, but allow greater harvests when a stock is at higher biomass levels. For further information on the 40 10 policy see the preamble for the annual specifications and management measures published on January 8, 1999(64 FR 1316) or section 5.3 of the FMP.

The 40–10 policy alternative could require short-term reductions in OYs for stocks at lower biomass levels than would be required under the other alternatives, except the maximum conservation alternative. Such reductions could result in reduced profits, income, and employment in a wide range of groundfish fisheries over a longer period of time than would occur with the other alternatives. The maximum conservation alternative,

based on a harvest mortality rate of zero, would be in place for each stock until the individual stock was rebuilt, resulting in the target rebuilding period for each stock being equal to T_{MIN}. Each stock could be expected to rebuild fastest under this alternative, but at considerable socioeconomic cost. Because canary and darkblotched rockfish are caught in a wide range of other fisheries, a zero harvest mortality rate would likely result in the closure of other fisheries. The rebuilding of these stocks, even in the absence of fishing, is likely to result in many current participants in the commercial recreational fisheries as well as supporting businesses going out of business. The maximum harvest alternative for each overfished species was based on a 50–percent probability of rebuilding the stocks to their MSY biomass levels by T_{MAX}. This alternative would delay rebuilding for the longest period of time with the intent of keeping harvests at the highest allowable levels for the duration of rebuilding. As a result, this alternative would have the least socioeconomic impact, in the short term. Delaying the rebuilding period under the maximum harvest alternative can also be expressed as the level of increased risk to the overfished stocks. Further delay in rebuilding could have a greater socioeconomic impact than the other alternatives, if currently healthy stocks were overfished.

Intermediate alternatives were presented only as the rebuilding parameter values for the harvest rate, P_{MAX}, and T_{TARGET}. While keeping the number of alternatives manageable (recognizing that the five primary alternatives encompass the full range of reasonable alternatives) these additional alternatives were presented in the FEIS to support decision making and were structured around 10 percent increments in PMAX between 60 percent and 80 percent for each of the four overfished stocks. The 90 percent P_{MAX} value was not evaluated because the effects were not significantly different from the Maximum Conservation Alternative.

The socioeconomic impacts of the intermediate values fall within the range of the other alternatives that were fully analyzed in the FEIS analysis. Quantifying the differences between these alternatives is difficult given the lack of detailed socioeconomic data. The mixed stock exception alternative would allow higher harvests of canary rockfish and could be combined with any of alternatives (except the no action alternative). Since the demands of rebuilding canary rockfish will affect a range of fisheries, (because it constrains stocks), relaxing this constraint under any of the alternatives would allow a higher harvest level in some fisheries. However, fisheries with little or no canary rockfish bycatch, but with bycatch of other overfished species, would not necessarily benefit. This alternative was not considered for POP or lingcod, since they do not constrain stocks in fisheries where they are targeted or incidentally caught. The last set of alternatives considered were the Council's preferred alternatives for each species and are as follows: lingcod - 60–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2009 and a harvest rate of 0.0531 in the North and 0.0610 in the south; canary rockfish - 60–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2074 and a harvest rate of 0.0220, darkblotched rockfish - 80 percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2030 and a harvest rate of 0.027, and POP - 70 percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2027 and a harvest rate of 0.0082. The Council's preferred alternatives, were taken from the range of intermediate alternatives for each species.

Rebuilding parameters associated with P_{MAX} values less than 50 percent were considered, but rejected because they were not considered to be compliant with the requirements of the Magnuson-Stevens Act as interpreted in a 2000 Federal Court ruling (*Natural Resources Defense Council* v. *Daley, April 25, 2000, U.S. Court of Appeals for the District of Columbia Circuit*,). A mixed stock exception alternative was considered for darkblotched rockfish, but was rejected because the Council indicated that it should not be applied to darkblotched rockfish.

A fish-harvesting business is considered a "small'' business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. The economic impacts of implementing these rebuilding plans will be shared among the participants. Approximately 1,560 vessels participate in the West Coast groundfish fisheries. Of those, about 410 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,150 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at nongroundfish species. All but 10 20 of those vessels are considered small businesses by the SBA. Of the 450 groundfish buyers that regularly purchase groundfish, 38 buyers purchased groundfish product in excess of $1,000,000 in 2002. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast. NMFS does not know the proportion of recreational charter vessel operations that would be considered large businesses, but the agency believes that the majority of these businesses would be considered "small'' businesses by the SBA. This rule is not expected to yield disproportionate economic impacts between those small and large entities.

Implementation of specific rebuilding plans may entail substantial economic impacts on some groundfish buyers, commercial harvesters, and recreational operators. The Council preferred rebuilding alternatives specify annual OY levels for the overfished species that allow some harvest of healthy stocks to continue and are sufficient to mitigate some of the adverse economic impacts on these entities, while not compromising the statutory requirement for timely rebuilding.

This action was developed after meaningful consultation and collaboration with tribal representatives on the Council who have agreed with the provisions that apply to tribal vessels. This action is, therefore, compliant with Executive Order 13175 (Consultation and coordination with Indian tribal governments).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: April 6, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES] OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Section 660.370, "Overfished species rebuilding plans'' is revised to read as follows:

§ 660.370 Overfished species rebuilding plans.

(a) *Canary rockfish.* The target year for rebuilding the canary rockfish stock to B_{MSY} is 2074. The harvest control rule to be used to rebuild the canary rockfish stock is an annual harvest rate of F=0.022.

(b) *Darkblotched rockfish.* The target year for rebuilding the darkblotched rockfish stock to B_{MSY} is 2030. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual harvest rate of F=0.032.

(c) *Lingcod.* The target year for rebuilding the lingcod stock to B_{MSY} is 2009. The harvest control rule to be used to rebuild the lingcod stock is an annual harvest rate of F=0.0531 in the area north of 40°10′ N. lat. and F=0.061 for the area south of 40° 10′ N. lat.

(d) *Pacific ocean perch (POP).* The target year for rebuilding the POP stock to B_{MSY} is 2027. The harvest control rule to be used to rebuild the POP stock is an annual harvest rate of F=0.0257.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 040604B]

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Plaice in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Alaska plaice in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Alaska plaice in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 10, 2004, until 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC specified for Alaska plaice in the BSAI is 9,250 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC specified for Alaska plaice will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,250 mt, and is setting aside the remaining 3,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Alaska plaice in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of Alaska plaice fishery in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 7, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–8353 Filed 4–8–04; 4:15 pm]

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