determining whether to initiate the requested rulemaking, the AA will publish in the **Federal Register** a notice of the agency's final disposition of the Petitioner's request.

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

Dated: June 30, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 04–15396 Filed 7–6–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 040618188–4188–01; I.D. 061404A]**

**RIN 0648–AS26**

## Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–3

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 16–3 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–3 amends the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish within the FMP and would add two rebuilding parameters, the target year for rebuilding and the harvest control rule, to the Code of Federal Regulations (CFR) for each overfished stock. Amendment 16–3 is intended to address 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 16–3 is also intended to partially respond to a Court order, in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, as required by the Magnuson-Stevens Act. NMFS also proposes to update the list of rockfish species defined in the CFR to match those listed in the FMP.

**DATES:** Comments must be submitted in writing by August 17, 2004. Copies of Amendment 16–3 and the Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EIS/RIR/IRFA) for the amendment are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE. Ambassador Place, Portland, OR 97220.

**ADDRESSES:** You may submit comments on Amendment 16–3 or supporting documents, identified by [I.D. 061404A], by any of the following methods:

- E-mail: *Amendment16–3PR.nwr@noaa.gov*. Include the I.D. number in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.
- Fax: 206–526–6736, Attn: Jamie Goen.

**FOR FURTHER INFORMATION CONTACT:** Jamie Goen (Northwest Region, NMFS), phone: 206–526–4646; fax: 206–526–6736 and; e-mail: *jamie.goen@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This **Federal Register** document is also accessible via the Internet at the Web site of the Office of the **Federal Register**'s Web site at: *http://www.gpoaccess.gov/fr/index.html*.

### Background

Amendment 16–3 revises the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish and adds specific rebuilding parameters to the Code of Federal Regulations (CFR) at 50 CFR 660.370, for each overfished species. This rulemaking is necessary to implement the rebuilding plans specified by Amendment 16–3.

Amendment 16–3 addresses the requirements of the Magnuson-Stevens Act to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–3 is also intended to partially respond to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001), in which NOAA Fisheries was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, as required by the Magnuson-Stevens Act. A Notice of Availability for Amendment 16–3 was published on June 18, 2004 (69 FR 34116).

This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. Background information and the Council's recommendations are summarized below. Further detail appears in the EIS/RIR/IRFA for Amendment 16–3.

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

During NMFS's review of Amendment 12, the Agency considered whether the three previously approved rebuilding plans met the requirements of Amendment 12 and concluded that the plans did not. As a result, NMFS instructed the Council to re-submit the rebuilding plans for lingcod, boccacio, and Pacific ocean perch (POP). The final rule to implement Amendment 12 describes NMFS's revocation of the lingcod, boccacio, and POP rebuilding plans (December 29, 2000, 65 FR 82947). At that time, NMFS determined that while the rebuilding plans specified adequately protective harvest limits for these three species, the rebuilding plans did not meet all of the rebuilding plan requirements described in Amendment 12, and are not adequately explained and analyzed. In the absence of final rebuilding plans approved by NMFS, the groundfish fishery has continued to operate under interim rebuilding measures for these species.

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

On August 20, 2001, a Federal magistrate ruled in *National Resources Defense Council, Inc.* v. *Evans* (N.D. Cal. 2001) that rebuilding plans under the FMP must be in the form of a plan amendment or proposed regulations as specified by the Magnuson-Stevens Act, 16 U.S.C. 1854 (e)(3). In accordance

with the Court ruling, the magistrate issued an order setting aside those portions of Amendment 12 dealing with rebuilding plans (Amendment 12 provided a framework for rebuilding plans that were not themselves plan amendments or proposed regulations). As a result of the magistrate's decision, the Council was required to amend the FMP to make rebuilding plans consistent with the Magnuson-Stevens Act.

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

Amendment 16–1 was prepared, in part, to respond to the court order. Amendment 16 1 established a process for and standards by which the Council would specify rebuilding plans for groundfish stocks that are declared overfished. Amendment 16–1 also amended the FMP to require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and implemented through Federal regulations. Amendment 16 1 was intended to ensure that overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act, in particular national standard 1 on overfishing and section 304(e), which addresses rebuilding of overfished fisheries. NMFS approved Amendment 16–1 on November 14, 2003. The final rule to codify provisions of Amendment 16–1 was published in the **Federal Register** on February 26, 2004 (69 FR 8861).

Under Amendment 16–1, for each approved overfished species rebuilding plan, the following parameters will be specified in the FMP: estimates of unfished biomass ($B_0$) and target biomass ($B_{MSY}$), the year the stock would be rebuilt in the absence of fishing (TMIN), the year the stock would be rebuilt if the maximum time period permissible under national standard guidelines were applied ($T_{MAX}$), the target year in which the stock would be rebuilt under the adopted rebuilding plan ($T_{Target}$), and the harvest control rule. Other relevant information listed in Amendment 16–1 will also be included in the FMP, including the probability of the stock attaining BMSY by $T_{MAX}$ ($P_{MAX}$). These estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments are completed, as is likely to happen. The rebuilding plans will also be included in the periodic stock assessment and fishery evaluation (SAFE) reports required by 50 CFR 600.315(e)(1). However, if and when these rebuilding parameters change, the rebuilding plans, as published in the SAFE document, will be amended to include updated parameters.

Amendment 16–2, which NMFS approved on January 30, 2004, amended the FMP to include rebuilding plans for lingcod, canary rockfish, darkblotched rockfish, and POP. NMFS published a final rule implementing Amendment 16–2 on April 13, 2004 (69 FR 19347).

As required by the standards established by Amendment 16–1, the rebuilding plans being adopted under Amendment 16–3 for bocaccio, cowcod, widow rockfish, and yelloweye rockfish include $B_0$, $B_{MSY}$, $T_{MIN}$, $T_{MAX}$, $T_{Target}$, and the harvest control rule for each species. If adopted, Amendment 16–3 would add these parameters to section 4.5.4. of the FMP. Other relevant information on each of these overfished stocks, such as stock distribution, fishery interaction, and the rebuilding strategy would also be added to section 4.5.4 of the FMP if the rebuilding plans proposed under Amendment 16–3 are adopted.

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

If, after a new stock assessment, the Council and NMFS conclude that either or both of the parameters defined in the regulation should be revised, the revision will be implemented through the Federal notification and comment rulemaking process, and the updated values codified in the CFR. Generally, the target year should only be changed in unusual circumstances. Two such unusual circumstances include (1) if it is determined, based on new information, that the existing target year is later than the maximum rebuilding time (TMAX), or (2) if the harvest control rule calculated from the new information is estimated to result in such a low OY as to cause substantial socio-economic impacts. Any change to a harvest control rule must be fully supported by a corresponding analysis and updated through the Federal rulemaking process, which would include opportunity for public notice and comment.

An approved rebuilding plan will be implemented through setting OYs and establishing management measures necessary to maintain the fishing mortality within the OYs to achieve objectives related to rebuilding requirements.

At the Council's April 2004 meeting, rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish were adopted and include the parameters listed below. When making the recommendation to implement these rebuilding plans, the Council sought to balance the rebuilding risks to each stock with the short and long-term socio-economic costs borne by groundfish buyers, commercial harvesters, and recreational operators as a result of constraining the fisheries to reduce total mortality of these overfished species.

*Bocaccio*

Assessment scientists and managers have treated West Coast boccacio as independent stocks north and south of Cape Mendocino, CA. The southern stock, which has been declared overfished, occurs south of Cape Mendocino, CA and the northern stock, which is not overfished, north of 48° N. lat. in northern Washington (off Cape Flattery). The overfished southern bocaccio rockfish stock occurs in Central and Southern California waters, on the continental shelf and in nearshore areas, often in rocky habitat. Bocaccio are caught in both commercial and recreational fisheries in approximately equal amounts. Commercial catches mainly occur in limited entry trawl fisheries.

*Date declared overfished:* March 3, 1999

*Status of the stock when declared overfished:* In 1999, the biomass of the southern stock of bocaccio was believed to be at 2.1 percent of its unfished biomass level. In subsequent stock

assessments, the southern stock of bocaccio was believed to be at 3.6 percent of its unfished biomass in 2002 and 7.4 percent of its unfished biomass in 2003. The northern stock of bocaccio has not been assessed.

$B_0$: 13,387 billion eggs in 2003
$B_{MSY}$: 5,355 billion eggs
$T_{MIN}$: 2018
$T_{MAX}$: 2032
$P_{MAX}$: 70 percent
$T_{TARGET}$: 2023
*Harvest control rule*: F=0.0498

*Rebuilding strategy at the time of rebuilding plan adoption:* Commercial management measures intended to limit catch of bocaccio include prohibiting retention of bocaccio or allowing low landing limits for incidental catch, reducing landing limits (cumulative trip limits) on co-occurring species, establishing extensive time/area closures, and restricting the use of trawl nets equipped with large footropes. Large areas off southern California, known as the Cowcod Conservation Areas or (CCAs), have been closed to groundfish fishing to protect cowcod. These closed areas also protect bocaccio. The CCAs are bounded by straight lines enclosing simple polygons. Beginning in 2002, time/area closures, referred to as Rockfish Conservation Areas (RCAs), also came into use as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector (trawl, non-trawl, and recreational), and may be modified in response to new information about the geographic and seasonal distribution of bycatch. Recreational management measures off California include depth closures, restricting fishing to shallow waters, bag limits, size limits, and seasonal closures.

*Cowcod*

Cowcod are a species of large rockfish that ranges from Ranger Bank and Guadalupe Island in central Baja California to Mendocino County, California, and may infrequently occur as far north as Newport, Oregon. Adult cowcod are primarily found over high relief rocky areas. They are generally solitary, but occasionally aggregate. While cowcod are not a major component of the groundfish fishery, they are highly desired by both recreational and commercial fishers because of their bright color and large size.

*Date declared overfished*: January 4, 2000 (65 FR 221)

*Status of the stock when declared overfished*: 6–9 percent (STAT team preferred model) of its unfished biomass level in 1999. Within this range provided in the stock assessment, the Council and NMFS use a value of 7 percent of its unfished biomass level in 1999 based on the ''best case'' scenario in the stock assessment.

$B_0$: 3,367 mt
$B_{MSY}$: 1,350 mt
$T_{MIN}$: 2062
$T_{MAX}$: 2099
$P_{MAX}$: 60 percent
$T_{TARGET}$: 2090
*Harvest control rule*: F=0.009

*Rebuilding strategy at the time of rebuilding plan adoption*: Commercial management measures intended to limit catch of cowcod include prohibiting retention of cowcod, reducing landing limits (cumulative trip limits) on co-occurring species, establishing extensive time/area closures, and restricting the use of trawl nets equipped with large footropes. Large areas off southern California, known as the CCAs, have been closed to groundfish fishing to protect cowcod. Because cowcod is a fairly sedentary species, establishment of a closed area is an important strategy for limiting cowcod fishing mortality. The CCAs in the Southern California Bight encompass two areas of greatest cowcod density, as estimated in 2000, based on historical cowcod catch and catch rates in commercial and recreational fisheries. To aid in enforcement, the CCA is bounded by straight lines enclosing simple polygons. Estimated fishery removals have been at levels sufficient to rebuild the stock since the CCAs were implemented, except in 2001, when 5.6 mt was caught in the Conception management area. Most of this catch occurred in the spot prawn trawl fishery; fishing for spot prawns with trawl gear has been subsequently prohibited. In addition to the CCAs, large depth-based time/area closures were implemented off California beginning in 2003, referred to as RCAs. RCAs were implemented as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector, and may be modified in response to new information about the geographic and seasonal distribution of bycatch. Recreational management measures to reduce recreational cowcod catches off California include: time/area closures (both CCAs and RCAs), restricting fishing for other groundfish species to shallow waters, non-retention of cowcod, bag limits for other groundfish species, and seasonal closures.

*Widow rockfish*

Widow rockfish range from the western Gulf of Alaska to northern Baja California and are often found suspended in the water column in large schools. They are an important commercial species from British Columbia to central California, primarily caught with midwater trawl gear. Historically, there have been target fisheries for widow rockfish. Since declared overfished, most widow rockfish catches have occurred incidentally in the midwater fishery for Pacific whiting. Tribal midwater trawl fisheries account for a large part of the remainder of recent catches. Widow rockfish are a minor component of recreational groundfish fisheries.

*Date declared overfished*: January 11, 2001 (66 FR 2338)

Status of the stock when declared overfished: Following a stock assessment in 2000 and a revised rebuilding analysis in 2001, the stock was believed to be at 23.6 percent of its unfished biomass level. In a subsequent stock assessment, widow rockfish was believed to be at 22.4 percent of its unfished biomass in 2002.

$B_0$: 43,580 million eggs
$B_{MSY}$: 17,432 million eggs
$T_{MIN}$: 2026
$T_{MAX}$: 2042
$P_{MAX}$: 60 percent
$T_{TARGET}$: 2038
*Harvest control rule*: F=0.0093

*Rebuilding strategy at the time of rebuilding plan adoption*: Commercial management measures intended to limit catch of widow rockfish include reducing landing limits (cumulative trip limits) on widow rockfish and co-occurring species and establishing extensive time/area closures. Beginning in 2002, time/area closures, referred to as RCAs, came into use as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector, and may be modified in response to new information about the geographic and seasonal distribution of bycatch. Because widow rockfish occur in the water column (midwater) and aggregate at night, elimination of target fishery opportunities is a relatively easy way of reducing widow rockfish bycatch. Management measures to reduce incidental catch of widow rockfish have been directed primarily at the Pacific whiting fishery, which has historically taken widow rockfish in relatively high amounts. While catch in other fisheries is sufficiently small, management measures are still intended to

discourage targeting on widow rockfish. In general, recreational management measures include depth closures, as needed, restricting fishing to shallow waters off California, bag limits, size limits, and fishing seasons established for each West Coast state. No recreational bag or size limits have been established for widow rockfish. However, general bag limits for rockfish may have some constraining effect on widow recreational catches.

*Yelloweye rockfish*

Yelloweye rockfish are common from Central California northward to the Gulf of Alaska. They are bottom-dwelling, generally solitary, rocky reef fish. Boulder areas in deep water (>180 m) are the most densely populated habitat type, and juveniles prefer shallow-zone broken-rock habitat. They also occur around steep cliffs and offshore pinnacles. The presence of refuge space appears to be an important factor affecting their occurrence. Yelloweye rockfish are caught in a range of both commercial and recreational fisheries. Because of their preference for rocky habitat, they are more vulnerable to hook and line gear.

*Date declared overfished*: January 11, 2002

*Status of the stock when declared overfished*: Following a stock assessment in 2001, the stock was believed to be at 7 percent of its unfished biomass level off northern California and 13 percent of its unfished biomass level off Oregon. In a subsequent stock assessment, yelloweye rockfish was believed to be at 24.1 percent of its coastwide unfished biomass in 2002.

$B_0$: 3,875 mt

$B_{MSY}$: 1,550 mt

$T_{MIN}$: 2027

$T_{MAX}$: 2071

$P_{MAX}$: 80 percent

$T_{TARGET}$: 2058

*Harvest control rule*: F=0.0153

*Rebuilding strategy at the time of rebuilding plan adoption*: Commercial management measures intended to limit catch of yelloweye rockfish include prohibiting retention of yelloweye rockfish in the limited entry fixed gear and open access fisheries and allowing low landing limits for incidental catch in the limited entry trawl fisheries as part of minor shelf rockfish limits, reducing landing limits (cumulative trip limits) on co-occurring species, establishing extensive time/area closures, and restricting the use of trawl nets equipped with large footropes. Beginning in 2002, time/area closures, referred to as RCAs, came into use as a way of decreasing bycatch of overfished species. RCAs enclose depth ranges where bycatch of overfished species is most likely to occur. The boundaries vary by season and fishery sector, and may be modified in response to new information about the geographic and seasonal distribution of bycatch. In addition to the depth-based RCAs, a C-shaped closed area off the Washington coast near Cape Flattery, the Yelloweye Rockfish Conservation Area (YRCA), has prohibited recreational groundfish and halibut fishing in an area where yelloweye rockfish are concentrated since 2003. The YRCA is also a voluntary closed area for fishing with commercial longline gear for sablefish and troll gear for salmon. [Note: Areas closed by the RCAs and the YRCA partially overlap.] In general, recreational management measures include depth closures, as needed, restricting fishing to shallow waters off California, bag limits, size limits, and fishing seasons established for each West Coast state. Recreational management measures for yelloweye rockfish include closed areas, bag limits, and seasons. Beginning in 2004, retention of yelloweye rockfish has been prohibited coastwide and has been prohibited off Washington since 2002. Yelloweye rockfish has also been prohibited on most halibut fishing trips off Washington and Oregon since 2002.

*New Rockfish Species in Regulations*

NMFS intends to update the list of rockfish species defined in the CFR at § 660.302 to match the list of rockfish species included in the Pacific Coast Groundfish FMP. The FMP and CFR state that, ''Rockfish includes all genera and species of the family Scorpaenidae, even if not listed, that occur in the Washington, Oregon, and California area.'' These species are already specifically listed in the FMP and will be added to the CFR. The following seven new rockfish species in the family Scorpaenidae are being listed in the CFR as species managed under the FMP: chameleon rockfish, dwarf-red rockfish, freckled rockfish, half-banded rockfish, pinkrose rockfish, pygmy rockfish, and swordspine rockfish. In addition, dusty rockfish is being corrected to read dusky rockfish.

## Classification

At this time, NMFS has not determined whether Amendment 16–3, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a draft Environmental Impact Statement (EIS) that discusses the effects on the environment as a result of this action. A notice of availability for this draft EIS was published on April 9, 2004 (69 FR 18897). A copy of the draft EIS is available from the Council office. (see **ADDRESSES**)

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

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A copy of the full analysis is available from the Council office (see **ADDRESSES**). A summary of the analysis follows.

The purpose of this proposed action is to implement rebuilding plans for four overfished species, bocaccio, cowcod, widow rockfish and yelloweye rockfish. This action is necessary to meet the Magnuson-Stevens Act requirements for overfished stocks which are defined in the national standard guidelines (50 CFR 600.310). National standard 1 requires that remedial action be taken by preparing an FMP, FMP amendment or proposed regulation to end overfishing if it is occurring, rebuild overfished stocks to the maximum sustainable yield (MSY) level within an appropriate time frame, and to prevent stocks from becoming overfished if they are approaching an overfished threshold. The objective of this proposed rule is to implement rebuilding parameters that will result in bocaccio, cowcod, widow rockish, and yelloweye rockfish stocks returning to their MSY biomass levels.

There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The draft EIS/RIR/IRFA for this proposed rule defines five 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 is 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 $B_{40\%}$ (40 percent of the unfished biomass, a proxy for $B_{MSY}$) have OYs set in relation to the biomass level. At B40% and greater, 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 ($B_{10\%}$), the harvest OY is set at zero unless modified for a species-specific rebuilding plan. In comparison to the other alternatives, the 40–10 harvest policy generally results in lower OYs in the short term, when a stock is at a low biomass level, but allows greater harvests when a stock is at higher biomass levels. For further information on the 40–10 harvest policy see the preamble to the final rule for Amendment 16–1 (February 26, 2004, 69 FR 8861) or Section 5.3 of the FMP. The 40–10 harvest policy alternative would not result in rebuilding for three of the four overfished species (i.e., only bocaccio would be rebuilt within $T_{MAX}$) within the maximum allowable rebuilding time. Lack of rebuilding for these species makes this alternative not a legally-viable alternative and increases the risk to long-term productivity of the stock.

The maximum conservation alternative, Alternative 4, specifies the most conservative, legally-compliant harvests that would allow these four species to rebuild and has the highest probability, 90 percent, of rebuilding within $T_{MAX}$ (except for cowcod which has a 60–percent probability). Each stock is expected to rebuild fastest under this alternative, but at considerable socioeconomic cost. Short-term socioeconomic costs would be highest under this alternative due to severe restrictions on fishing opportunity to allow the stock to rebuild faster.

The maximum harvest alternative, Alternative 1, for each overfished species was based on a 60 percent probability of rebuilding the stocks to their MSY biomass levels by $T_{MAX}$, except for cowcod which was based on a 55 percent probability. 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. Because this alternative would allow fishermen an opportunity to harvest higher levels in the short-term, this alternative would have the least socioeconomic impact. However, allowing higher harvest levels in the short-term would slow down rebuilding and, thus, have the highest risk among the action alternatives of not rebuilding within $T_{MAX}$.

Intermediate alternatives, Alternatives 2 and 3, were defined for each overfished species and were based on 70 and 80 percent probabilities of rebuilding the stocks to their MSY biomass by $T_{MAX}$ (except for cowcod which was based on a 60- percent probability for Alternatives 2 and 3). The socio-economic impacts of the intermediate alternatives fall within the range of the other alternatives that were fully analyzed in EIS analysis. Alternative 2 would have more socio-economic impacts than Alternative 1, but less than Alternative 3. Alternative 3 would have more socio-economic impacts than Alternative 2, but less than Alternative 4. Alternative 2 would have a lower risk of not rebuilding within $T_{MAX}$ than Alternative 1, but higher than Alternative 3. Alternative 3 would have a lower risk of not rebuilding within $T_{MAX}$ than Alternative 2, but higher than Alternative 4.

After the draft EIS was made available by EPA for public review (69 FR 18897, April 9, 2004), the Council selected their preferred alternatives at their April 2004 meeting. The Council's preferred alternatives for each species are as follows: bocaccio, Alternative 2 (using the STATc Model)—70 percent probability of rebuilding the stock to its MSY biomass by TMAX with a $T_{TARGET}$ of 2023 and a harvest rate of 0.0498; cowcod, Alternatives 2 through 4 (all the same)—60 percent probability of rebuilding the stock to its MSY biomass by TMAX with a $T_{TARGET}$ of 2090 and a harvest rate of 0.009; widow rockfish, Alternative 1 (using Model 8)—60 percent probability of rebuilding the stock to its MSY biomass by TMAX with a $T_{TARGET}$ of 2038 and a harvest rate of 0.0093; and yelloweye rockfish, Alternative 3—80 percent probability of rebuilding the stock to its MSY biomass by $T_{MAX}$ with a $T_{TARGET}$ of 2058 and a harvest rate of 0.0153. The Council-preferred alternative for each species was chosen by balancing biological and economic risks, maximizing the likelihood of rebuilding the stock while minimizing the socio-economic impacts on the industry.

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. For related fish-processing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts not in excess of $6 million.

The economic impacts of implementing these rebuilding plans will be shared among the participants and would vary according to their dependancy on groundfish-related income. The proposed action adopts rebuilding plans for four overfished species. The economic impact of implementing these rebuilding plans will be shared among groundfish buyers, commercial harvesters, and recreational operators. There are approximately 4,600 commercial vessels fishing from West Coast ports. Of these, 1,709 vessels had some involvement in West coast groundfish fisheries, 421 of those held groundfish limited entry permits, and an additional 771 participated in open access groundfish fisheries (if vessels derive more than 5 percent of total revenue from groundfish and do not have a limited entry permit, then they are considered to be participating in open access fisheries). After the buyback program in the fall of 2003, 91 limited entry trawl vessels and their permits were permanently retired, representing a 35 percent reduction in the capacity of the limited entry trawl fleet in terms of permits. Regarding buyers and processors, there are approximately 1,780 fish buyers on the West Coast, of which 732 bought at least some groundfish from commercial fishermen. Only 19 of the 732 fish buyers purchased more than $2 million worth of total harvest during the year 2000. In 2001, there were an estimated 753 recreational fishing charter vessels operating in ocean fisheries on the West Coast: 106 in Washington, 232 in Oregon and 415 in California.

Most of these entities would qualify as small businesses under the SBA's criteria. A few processors/buyers may not qualify as small businesses. There are fewer than 9 processors/buyers on the West coast that employ more than 500 people and, therefore, may not qualify as small businesses. Of these 9 processors/buyers, they also process fish other than groundfish and operate in ports in Alaska. Most employees are likely employed in Alaska ports, due to the higher volume of fish processed in Alaska. In addition, most of these employees are seasonal based on when fisheries are open. Therefore, most of these processors/buyers would not have more than 500 employees year round. No alternatives, other than those considered in the draft EIS, have been identified that would reduce the impacts on small entities. This proposed rule is not expected to yield disproportionate economic impacts between small and large entities.

Implementation of specific rebuilding plans may entail substantial economic impacts on some groundfish buyers, commercial harvesters, and in the case of bocaccio, cowcod, and yelloweye rockfish, recreational operators. The economic impact will vary according to their dependency on groundfish-related income, the frequency of overfished species in their area of the coast, and the

severity of those species overfished status. The Council preferred rebuilding alternatives specify annual OY levels for the overfished species that are sufficient to mitigate some of the adverse economic impacts on these entities, while not compromising the statutory requirement for timely rebuilding. NMFS welcomes comments on this issue (see **ADDRESSES**).

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 and 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: June 29, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be 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. In § 660.302, the definition of ''Groundfish,'' is amended by adding seven new rockfish species and correcting ''dusty rockfish'' to read ''dusky rockfish'' in alphabetical order to read as follows:

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### § 660.302 Definitions.

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*Groundfish* * * *

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chameleon rockfish, *S. phillipsi*

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dwarf-red rockfish, *S. rufinanus*
dusky rockfish, *S. ciliatus*

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freckled rockfish, *S. lentiginosus*

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half-banded rockfish, *S. semicinctus*

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pinkrose rockfish, *S. simulator*
pygmy rockfish, *S. wilsoni*

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swordspine rockfish, *S. ensifer*

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3. In § 660.370, paragraphs (e) through (h) are added to read as follows:

### § 660.370 Overfished species rebuilding plans.

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(e) *Bocaccio.* The target date for rebuilding the southern bocaccio stock to $B_{MSY}$ is 2023. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual harvest rate of F=0.0498.

(f) Cowcod. The target year for rebuilding the cowcod stock to $B_{MSY}$ is 2090. The harvest control rule to be used to rebuild the cowcod stock is an annual harvest rate of F=0.009.

(g) Widow rockfish. The target year for rebuilding the widow rockfish stock to $B_{MSY}$ is 2038. The harvest control rule to be used to rebuild the widow rockfish stock is an annual harvest rate of F=0.0093.

(h) Yelloweye rockfish. The target year for rebuilding the yelloweye rockfish stock to BMSY is 2058. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual harvest rate of F=0.0153.

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