

## PROPOSED GROUND FISH FMP AMENDMENT LANGUAGE FOR AMENDMENT 24

This document presents proposed Groundfish FMP amendment language being considered as Amendment 24. The 2015-16 and Beyond Biennial Harvest Specifications EIS, currently in development, describes the three alternatives under consideration in addition to the alternative of No Action. Under No Action the FMP is not amended. Amendment language consistent with the objectives of these alternatives is presented below. To aid the reader, relevant sections of the Groundfish FMP are excerpted and appended to this document.

- ~~Strikethrough~~ indicates text moved or deleted
- Underline indicates new text
- Double underline indicates moved text at its new location

### **Alternative 1 – Default HCRs Use a P\* Value of 0.45**

Under this alternative the Groundfish FMP is amended to describe the harvest control rule (HCR) framework, provide a decision framework for determining adequate progress on rebuilding plans, and establish new criteria for management measures that may be considered during the biennial process.

Default ACLs would be computed using the HCRs currently in place and used to compute ACLs for the previous biennial period except that, where applicable, a P\* value of 0.45 would be used.

#### **Amendment Language**

FMP Section 5.1 (General Overview of the Harvest Specifications and Management Process) would be amended to add the following paragraphs after bullet #8 with some additional language relevant to the specifics of this alternative (underlined below):

Notwithstanding the above, for any stock (or other management unit) the Council does not need to take explicit action if harvest specifications for the next biennial period use harvest control rules employing the pre-agreed elements described here. These pre-agreed methods, referred to as default harvest control rules, would use all the elements of the harvest control rule in place during the previous biennial period, except that the ABC would be calculated using a P\* value of 0.45. These default harvest control rules are applied to the best available scientific information to determine the numerical values of the harvest specifications. For example, current  $F_{MSY}$  (or proxy value) is applied to the best current estimate of stock biomass to determine the OFL (as in bullet #1). The ABC is determined by applying the current uncertainty buffer (as in bullet #2) except that if the P\* approach is used a value of 0.45 is applied. The ACL is determined as described in bullet #4 using the appropriate method for current stock status. Thus, if based on the best available science it is determined that stock status has changed from healthy to the precautionary zone, the methods outlined in Section 4.6.1 would be applied. If a stock has recovered such that stock size is now above the MSY biomass target, the default harvest control sets the ACL equal to the ABC using a P\* value of 0.45, if applicable.

For allocations not specified in the FMP, without explicit Council action the current allocations (expressed as a proportion of the fishery harvest guideline) will be used.

For any stock the Council may take explicit action to depart from the default harvest control rules described in the previous paragraph, after considering the harvest specifications thus computed or other relevant factors as long as such changes are consistent with the framework described in Chapter 4 of this FMP and the MSA.

Prior to final adoption of harvest specifications the Council will announce for which stocks they intend to take explicit action. Current harvest control rules (and related harvest policies as applicable) will be listed in an appendix to this FMP. The contents of this appendix can be changed through the biennial management process without an FMP amendment as a two-meeting process (see Section 5.4). Numerical values for these specifications will be presented to the Council and the public, usually by publication of the groundfish SAFE document (see Section 5.2).

Section 4.6.3.4 (Updating Key Rebuilding Parameters) would be revised as follows:

In addition to an initial specification in the FMP in Appendix F, the target year ( $T_{TARGET}$ ) and the harvest control rule (type and numerical value) will also be specified in regulations. The target year is the year by which the stock would be rebuilt to its target biomass and the harvest control rule defines the corresponding exploitation rate. If new information indicates a need to change the value of either of these two parameters, such a change will be accomplished through full (notice and comment) rulemaking as described in Section 6.2 of this FMP and reflected in Appendix F.

~~¶The target year is the year by which the stock would be rebuilt to its target biomass. Therefore, if a subsequent analysis identifies an earlier target year for the current fishing mortality rate (based on the harvest control rule), there is no obligation to change in regulations either the target year (to the computed earlier year) or the harvest control rule (to delay rebuilding to the original target year).~~ Stock assessments for overfished species are typically conducted every two years. Stock assessments and rebuilding analyses use mathematical models to predict a stock's current abundance, as well as project future abundance and recruitment. In any mathematical model that uses a variety of data sources, as the stock assessments do, model results tend to vary from one assessment to the next within some range of values.

~~¶This expected variation means that, when the Council and~~ When the SSC reviews a new overfished species stock assessment and rebuilding model, they shall advise the Council on whether adequate progress toward ending overfishing and rebuilding the affected fish stock is being made. The SSC will consider the following factors in making their recommendation:

1. Therefore, if a subsequent rebuilding analysis identifies an earlier target year for the current fishing mortality rate (based on the harvest control rule), there is no obligation to change in regulations either the target year (to the computed earlier year) or the harvest control rule (to delay rebuilding to the original target year).
2. must also consider whether the result of that model or models show a rebuilding trajectory that varies from the previously predicted trajectory to a significant degree. If the variation difference in the rebuilding trajectory for a particular species (as indicated by the probability of rebuilding by the  $T_{TARGET}$  specified in the rebuilding plan) between the consecutive stock assessments and rebuilding analyses for a particular species does not a show significant differences in the rebuilding trajectory for that species (even if the probability has fallen below 0.5 in the second of two consecutive rebuilding analyses), they are mathematically considered to be essentially the same then it may be reasonable to conclude that adequate progress towards rebuilding the stock is still being made.

In that ~~these~~ circumstances, the Council will likely not need to revise the  $T_{TARGET}$  or harvest control rule for that ~~species stock~~. Since the target year is the key rebuilding parameter, it should only be changed after careful deliberation. ~~For example, Circumstances where the Council might~~ may recommend that the target year be changed ~~if~~, based on new information about the status and/or biology of the stock, include:

1. ~~they determine that the existing~~ The current target year is later than the recomputed maximum rebuilding time ( $T_{MAX}$ ) or if a recomputed harvest control rule would result in such a low optimum yield as to cause substantial socioeconomic impacts. These examples are not definitive: the Council may elect to change the target year because of other circumstances. However, any change to the target year or harvest control rule must be supported by commensurate analysis that demonstrates that the new target year is a target to rebuild the stock as soon as possible, taking into account the status and biology of the stock, the needs of fishing communities, and the interaction of the stock within the marine ecosystem.

Section 6.2 (General Procedures for Establishing and Adjusting Management Measures) would be revised as follows:

...

#### C. Management Measures Rulemaking For Actions Developed Through the Three-Council-Meeting Biennial Specifications Process and Two *Federal Register* Rules

~~These include (1) management action developed through~~ During the biennial specifications process the Council may propose: (21) management measures ~~being to be~~ classified as routine the first time these measures are used; or (32) adjustments to measures previously classified as routine, such as trip limits that vary by gear type, closed seasons or areas, and in the recreational fishery, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements the first time these measures are used. ~~These also ;~~ or (3) new include management measures that are intended to have permanent effect and are discretionary, and for which the impacts have not been previously analyzed. Examples of new measures that may be proposed during the biennial process include: changes to or imposition of gear regulations; imposition of landings limits, frequency limits, or limits that differ by gear type; closed areas or seasons used for the first time on any species or species group or gear type.

~~The Council will develop and analyze the proposed management actions over the span of at least two Council meetings (usually April and June) and provide the public advance notice and opportunity to comment on both the proposals and the analysis prior to and at the second Council meeting. If a management measure is designated as routine under this procedure, specific adjustments of that measure can subsequently be announced in the *Federal Register* by notice, as described in the previous paragraphs. The Secretary will publish a proposed rule in the *Federal Register* with an appropriate period for public comment followed by publication of a final rule in the *Federal Register*.~~

As described elsewhere in this FMP, the three-Council-meeting biennial specifications process refers to two the following decision-making schedule: meetings.

1. The Council will develop proposed harvest specifications during the first meeting (usually November). They will finish drafting harvest specifications and develop the management measures during the second meeting (usually April).
2. The Council will develop and analyze the proposed management actions over the span of at least two Council meetings (usually April and June) and provide the public advance notice and

opportunity to comment on both the proposals and the analysis prior to and at the second Council meeting.

3. Finally, at the third meeting, the Council will make final recommendations to the Secretary on the complete harvest specifications and management measures biennial management package (usually June). For the Council to have adequate information to identify proposed management measures for public comment at the first management measures meeting, the identification of issues and the development of proposals normally must begin at a prior Council meeting.

If a management measure is designated as routine under this procedure, specific adjustments of that measure can subsequently be announced in the *Federal Register* by notice, as described in the previous paragraphs. The Secretary will publish a proposed rule in the *Federal Register* with an appropriate period for public comment followed by publication of a final rule in the *Federal Register*.

#### D. Full Rulemaking For Actions Normally Requiring at Least Two Council Meetings and Two *Federal Register* Rules (Regulatory Amendment)

These include any proposed new management measures to be classified as routine or intended to have a permanent effect (as described in C, above), including those considered that is highly controversial, or any measure that directly allocates the resource. ~~These also include management measures that are intended to have permanent effect and are discretionary, and for which the impacts have not been previously analyzed.~~ These Full full rulemakings will normally use a two-Council-meeting process, although additional meetings may be required to fully develop the Council's recommendations on a full rulemaking issue. Regulatory measures to implement an FMP amendment will be developed through the full rulemaking process. The Secretary will publish a proposed rule in the *Federal Register* with an appropriate period for public comment followed by publication of a final rule in the *Federal Register*.

#### **Alternative 2 – Default HCRs Use a P\* Value of 0.25**

Under this alternative the Groundfish FMP is amended to describe the HCR framework, provide a decision framework for determining adequate progress on rebuilding plans, and establish new criteria for management measures that may be considered during the biennial process.

Default ACLs would be computed using the HCRs currently in place and used to compute ACLs for the previous biennial period except that, where applicable, a P\* value of 0.25 would be used.

#### **Amendment Language**

Section 5.1 of the FMP would be amended in the same way as under Alternative 1, except that a value of 0.25 would be substituted for the references to a P\* value of 0.45 in the first paragraph

The same revisions to Section 4.6.3.4 (Updating Key Rebuilding Parameters) described above for Alternative 1 would be made under Alternative 2.

The same revisions to Section 6.2 (General Procedures for Establishing and Adjusting Management Measures) described above for Alternative 1 would be made under Alternative 2.

### **Alternative 3 (Preliminary Preferred Alternative) – Use the HCRs in Place in the Previous Period as the Defaults**

Under this alternative the Groundfish FMP is amended to describe the HCR framework, provide a decision framework for determining adequate progress on rebuilding plans, and establish new criteria for management measures that may be considered during the biennial process.

Default HCRs would be those in place during the previous biennial period.

#### **Amendment Language**

Section 5.1 of the FMP would be amended to add the following paragraphs after bullet #8:

Notwithstanding the above, for any stock (or other management unit) the Council does not need to take explicit action if they wish to continue the current harvest policy. In these cases the current harvest control rule (i.e., those used in the previous biennial period) is applied to the best available scientific information to determine the numerical values of the harvest specifications for each stock. These pre-agreed methods, referred to as default harvest control rules, would use all the elements of the harvest control rule in place during the previous biennial period. For example, current  $F_{MSY}$  (or proxy value) is applied to the best current estimate of stock biomass to determine the OFL (as in bullet #1). The ABC is determined by applying the current uncertainty buffer (as in bullet #2). The ACL is determined as described in bullet #4 using the appropriate method for current stock status. Thus, if based on the best available science it is determined that stock status has changed from healthy to the precautionary zone, the methods outlined in Section 4.6.1 would be applied. If a stock has recovered such that stock size is now above the MSY biomass target, the default harvest control sets the ACL equal to the ABC using the current  $P^*$  value, if applicable.

For allocations not specified in the FMP, without explicit Council action the current allocations (expressed as a proportion of the fishery harvest guideline) will be used.

For any stock the Council may take explicit action to depart from the default harvest control rules described in the previous paragraph, after considering the harvest specifications thus computed or other relevant factors as long as such changes are consistent with the framework described in Chapter 4 of this FMP and the MSA.

Prior to final adoption of harvest specifications the Council will announce for which stocks they intend to take explicit action. Current harvest control rules (and related harvest policies as applicable) will be listed in an appendix to this FMP. The contents of this appendix can be changed through the biennial management process without an FMP amendment as a two-meeting process (see Section 5.4). Numerical values for these specifications will be presented to the Council and the public, usually by publication of the groundfish SAFE document (see Section 5.2).

The same revisions to Section 4.6.3.4 (Updating Key Rebuilding Parameters) described above for Alternative 1 would be made under Alternative 3.

The same revisions to Section 6.2 (General Procedures for Establishing and Adjusting Management Measures) described above for Alternative 1 would be made under Alternative 3.

## Current FMP (May 2013): Relevant Sections Excerpted

### 5.1 General Overview of the Harvest Specifications and Management Process

The specifications and management process, in general terms, occurs as follows:

1. The Council will determine the MSY or MSY proxy and OFL for each major stock. Typically, the MSY proxy will be in terms of a fishing mortality rate ( $F_{x\%}$ ) and OFL will be the  $F_{x\%}$  applied to the current biomass estimate. The MSY is the maximum long-term average yield expected from annual application of the MSY (or proxy) harvest policy under prevailing ecological and environmental conditions.
2. The Council and SSC will determine an appropriate scientific uncertainty buffer to set the ABC below the OFL. The ABC accommodates the uncertainty in estimating the OFL and may be determined using either a straight percentage reduction of the OFL as recommended by the SSC or by the P\* approach.
3. Every species will either have its own designated ACL or be included in a multispecies ACL. Species which are included in a multispecies ACL may also have individual ACLs, have individual HGs, or be included in a HG for a subgroup of the multispecies ACL.
4. To determine the ACL for each stock, the Council will determine the best estimate of current abundance and its relation to its precautionary and overfished thresholds. If the abundance is above the precautionary threshold, the ACL will be equal to or less than the ABC. If abundance falls below the precautionary threshold, the ACL will be reduced according to the harvest control rule for that stock. If abundance falls below the overfished/rebuilding threshold, the ACL will be set according to the interim rebuilding rule until the Council develops a formal rebuilding plan for that species.
5. For any stock or stock complex where the Secretary identifies that overfishing is occurring, the Council will take remedial action to end overfishing and prevent the stock or stock complex from falling below the minimum stock size threshold. 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 this biennial process. These management measures will be consistent with any approved rebuilding plan.
6. The Council may reserve and deduct a portion of the ACL of any stock to provide for compensation for vessels conducting scientific research authorized by NMFS. Prior to the research activities, the Council will authorize amounts to be made available to a research reserve. However, the deduction from the ACL will be made in the year after the “compensation fishing”; the amounts deducted from the ACL will reflect the actual catch during compensation fishing activities.
7. The Council will identify stocks which are likely to be fully harvested (i.e., the ACL or ACT/HG achieved) in the absence of specific management measures and for which allocation between LE and open access sectors of the fishery is appropriate.

8. The groundfish resource is fully utilized by U.S. fishing vessels and seafood processors. The Council may entertain applications for foreign or joint venture fishing or processing at any time, but fishing opportunities may be established only through amendment to this FMP. This section supersedes other provisions of this FMP relating to foreign and joint venture fishing.

#### **4.3.6.4 Updating Key Rebuilding Parameters**

In addition to an initial specification in the FMP in Appendix F, the target year ( $T_{TARGET}$ ) and the harvest control rule (type and numerical value) will also be specified in regulations. If new information indicates a need to change the value of either of these two parameters, such a change will be accomplished through full (notice and comment) rulemaking as described in Section 6.2 of this FMP and reflected in Appendix F. The target year is the year by which the stock would be rebuilt to its target biomass. Therefore, if a subsequent analysis identifies an earlier target year for the current fishing mortality rate (based on the harvest control rule), there is no obligation to change in regulations either the target year (to the computed earlier year) or the harvest control rule (to delay rebuilding to the original target year). Stock assessments for overfished species are typically conducted every two years. Stock assessments and rebuilding analyses use mathematical models to predict a stock's current abundance, as well as project future abundance and recruitment. In any mathematical model that uses a variety of data sources, as the stock assessments do, model results tend to vary from one assessment to the next within some range of values. This expected variation means that, when the Council and SSC review a new overfished species stock assessment and rebuilding model, they must also consider whether the result of that model or models show a rebuilding trajectory that varies from the previously-predicted trajectory to a significant degree. If the variation between the stock assessments and rebuilding analyses for a particular species do not show significant differences in the rebuilding trajectory for that species, they are mathematically considered to be essentially the same. In that circumstance, the Council will likely not need to revise the  $T_{TARGET}$  or harvest control rule for that species. Since the target year is the key rebuilding parameter, it should only be changed after careful deliberation. For example, the Council might recommend that the target year be changed if, based on new information about the status and/or biology of the stock, they determine that the existing target year is later than the recomputed maximum rebuilding time ( $T_{MAX}$ ) or if a recomputed harvest control rule would result in such a low optimum yield as to cause substantial socioeconomic impacts. These examples are not definitive: the Council may elect to change the target year because of other circumstances. However, any change to the target year or harvest control rule must be supported by commensurate analysis that demonstrates that the new target year is a target to rebuild the stock as soon as possible, taking into account the status and biology of the stock, the needs of fishing communities, and the interaction of the stock within the marine ecosystem.

## **6.2 General Procedures for Establishing and Adjusting Management Measures**

This FMP establishes three framework procedures through which the Council is able to recommend the establishment and adjustment of specific management measures for the Pacific Coast groundfish fishery. The *points of concern framework* allows the Council to develop management measures that respond to resource conservation issues; the *socioeconomic framework* allows the Council to develop management measures in response to social, economic, and ecological issues that affect fishing communities. The *habitat conservation framework* allows the Council to modify the number, extent, and location of areas closed to bottom trawling in order to protect EFH. Criteria associated with each framework form the basis for Council recommendations, and Council recommendations will be consistent with them. The process for developing and implementing management measures normally will occur over the span of at least two Council meetings, with an exception that provides for more timely Council consideration under certain specific conditions.

The time required to take action under any framework will vary depending on the nature of the action, its impacts on the fishing industry, resource, and environment, and review of these impacts by interested parties. This depends on the range of biological, social, and economic impacts that may need to be considered at the time a particular change in regulations is proposed. Furthermore, other applicable law (e.g., the National Environmental Policy Act, Administrative Procedures Act, Regulatory Flexibility Act, relevant Executive Orders, etc.) may require additional analysis and public comment before measures may be implemented by the Secretary.

The Secretary will develop management measures recommended by the Council for review and public comment as publications in the *Federal Register*, either as notices or regulations. Generally, management measures of broad applicability and permanent effectiveness should be published as regulations. More narrowly applicable measures, which may only apply for short duration (one biennium or less) and may also require frequent adjustment, should be published as notices.

Management measures are normally imposed, adjusted, or removed at the beginning of the biennial fishing period, but may, if the Council determines it necessary, be imposed, adjusted, or removed at any time during the period. Management measures may be imposed for habitat protection, resource conservation, or social or economic reasons consistent with the criteria, procedures, goals, and objectives set forth in the FMP.

The NMFS Regional Administrator will review the Council's recommendation, supporting rationale, public comments, and other relevant information and determine whether to approve, disapprove, or partially approve the Council's recommendation. If the recommendation is approved, NMFS will implement the recommendation through regulation or notice, as appropriate. NMFS will explain any disapproval or partial disapproval of the recommendation to the Council in writing.

The procedures specified in this chapter do not affect the authority of the Secretary to take emergency regulatory action as provided for in Section 305(c) of the Magnuson-Stevens Act if an emergency exists involving any groundfish resource, or to take such other regulatory action as may be necessary to discharge the Secretary's responsibilities under Section 305(d) of the Magnuson-Stevens Act.

Four different categories of management actions are authorized by this FMP, each of which requires a slightly different process. Management measures may be established, adjusted, or removed using any of the four procedures. The four basic categories of management actions are described below.

#### A. Automatic Actions

The NMFS Regional Administrator may initiate automatic management actions without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must be reasonably accountable, based on previous application of the action or past analysis. Examples include fishery, season, or gear type closures when a quota has been projected to have been attained. The Secretary will publish a single notice in the *Federal Register* making the action effective.

#### B. Notice Actions Requiring at Least One Council Meeting and One *Federal Register* Notice

These include all management actions other than automatic actions. Notice actions may be nondiscretionary; they may be actions for which the scope of probable impacts has been previously analyzed.

These actions are intended to have temporary effect, and the expectation is that they will need frequent adjustment. They may be recommended at a single Council meeting, although the Council will provide as

much advance information to the public as possible concerning the issues it will be considering at its decision meeting. The primary examples are those inseason management actions defined as routine according to the criteria in Section **Error! Reference source not found.** These include, but are not limited to, trip landing and frequency limits and size limits for all commercial gear types and closed seasons for any groundfish species in cases where protection of an overfished or depleted stock is required and bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements for all recreational fisheries. Previous analysis must have been specific as to species and gear type before a management measure can be defined as routine and acted on at a single Council meeting. If the recommendations are approved, the Secretary may waive for good cause the requirement for prior notice and comment in the *Federal Register* and will publish a single notice in the *Federal Register* making the action effective. This category of actions presumes the Secretary will find that the need for swift implementation and the extensive notice and opportunity for comment on these types of measures, along with the Council already having analyzed the scope of their impacts, will serve as good cause to waive the need for additional prior notice and comment in the *Federal Register*.

#### C. Management Measures Rulemaking For Actions Developed Through the Three-Council-Meeting Biennial Specifications Process and Two *Federal Register* Rules

These include (1) management action developed through the biennial specifications process; (2) management measures being classified as routine; or (3) trip limits that vary by gear type, closed seasons or areas, and in the recreational fishery, bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements the first time these measures are used. Examples include: changes to or imposition of gear regulations; imposition of landings limits, frequency limits, or limits that differ by gear type; closed areas or seasons used for the first time on any species or species group or gear type. The Council will develop and analyze the proposed management actions over the span of at least two Council meetings (usually April and June) and provide the public advance notice and opportunity to comment on both the proposals and the analysis prior to and at the second Council meeting. If a management measure is designated as routine under this procedure, specific adjustments of that measure can subsequently be announced in the *Federal Register* by notice, as described in the previous paragraphs. The Secretary will publish a proposed rule in the *Federal Register* with an appropriate period for public comment followed by publication of a final rule in the *Federal Register*.

The three-Council-meeting process refers to two decision meetings. The Council will develop proposed harvest specifications during the first meeting (usually November). They will finish drafting harvest specifications and develop the management measures during the second meeting (usually April). Finally, at the third meeting, the Council will make final recommendations to the Secretary on the complete harvest specifications and management measures biennial management package (usually June). For the Council to have adequate information to identify proposed management measures for public comment at the first management measures meeting, the identification of issues and the development of proposals normally must begin at a prior Council meeting.

#### D. Full Rulemaking For Actions Normally Requiring at Least Two Council Meetings and Two *Federal Register* Rules (Regulatory Amendment)

These include any proposed management measure that is highly controversial or any measure that directly allocates the resource. These also include management measures that are intended to have permanent effect and are discretionary, and for which the impacts have not been previously analyzed. Full rulemakings will normally use a two-Council-meeting process, although additional meetings may be required to fully develop the Council's recommendations on a full rulemaking issue. Regulatory measures to implement an FMP amendment will be developed through the full rulemaking process. The

Secretary will publish a proposed rule in the *Federal Register* with an appropriate period for public comment followed by publication of a final rule in the *Federal Register*.