GROUNDFISH AMENDMENT 16-5 AND 2012 HARVEST SPECIFICATIONS AND MANAGEMENT MEASURES

Groundfish Fishery Management Plan (FMP) Amendment 16-5 concerns modifications to existing rebuilding plans for seven overfished rockfish species, a new rebuilding plan for petrale sole, and new reference points for managing assessed flatfish species. The Council adopted a final preferred alternative for Amendment 16-5, including 2011-2012 harvest specifications for overfished species in June 2010. National Marine Fisheries Service (NMFS) announced their decision to disapprove the Council’s Amendment 16-5 decision in December 2010 (Attachment 1). In March 2011, the Council considered the NMFS decision, together with new information on the socioeconomic impacts associated with yelloweye rockfish and cowcod rebuilding constraints, and reaffirmed the original Council-preferred alternative for Amendment 16-5. The Council directed Council staff to transmit their Amendment 16-5 recommendations to NMFS with accompanying rationale for their decision (Attachment 2). On April 29, NMFS announced their final decision on 2011 groundfish harvest specifications and management measures (Attachment 3). This action implemented the NMFS-preferred alternative (Attachment 4) for 2011 that was described in the final environmental impact statement (FEIS) prepared by NMFS (FEIS available online at http://www.pcouncil.org/groundfish/fishery-management-plan/fmp-amendment-16-5/#16-5) and was done using the Secretary of Commerce’s authority under the Magnuson-Stevens Act to promulgate emergency regulations for the rebuilding plans and new reference points for managing assessed flatfish species. However, the associated emergency regulations implementing Amendment 16-5 are due to expire at the end of 2011.

Under MSA section 304(a), when an FMP amendment is disapproved, the Council may resubmit a revised amendment (Attachment 5). Under this agenda item, the Council is tasked with reconsidering Amendment 16-5 and the affected 2012 groundfish harvest specifications and management measures.

FMP amendment disapprovals are rare in the Council process, and the potential actions taken can affect the timing of implementing 2012 regulations. The first decision the Council needs to consider is whether the final decision on revised Amendment 16-5 should be one taken by the Council or the Secretary. If the Council takes action, it could necessitate a process delay that might delay implementation of 2012 harvest specifications and management measures. If the Council elects to take no action at this meeting, then the Secretary has the authority to develop a Secretarial amendment under MSA section 304(c) and make final decisions on Amendment 16-5 and 2012 harvest specifications and management measures. In this case, it is likely that the Secretarial process could be done more expeditiously and the amendment approved with regulations implemented by January 1, 2012 (Attachment 6). Further, the workload impacts on NMFS staff and Council staff would be less than the Council conducting a two-meeting process to decide and submit a revised Amendment 16-5.

There are different options for action at this meeting, but all have a strong likelihood to cause a delay in implementing Amendment 16-5 and 2012 regulations. The potential actions and the likelihood for an implementation delay are as follows:
1) The Council takes action to reaffirm their June 2010 preferred alternative in a resubmitted amendment. This action may require another Council meeting, yet would likely be disapproved by NMFS given their original disapproval and a lack of any new analysis or information. This process would likely delay implementation of 2012 regulations.

2) The Council takes action to adopt the NMFS-preferred alternative and submit the revised amendment and implementing regulations under MSA section 304(a). This action may also require another Council meeting, followed by submission to the agency under section 304(a) and notice and comment rulemaking that would likely delay implementation of 2012 regulations.

3) The Council takes action to adopt in a revised amendment a different alternative that was analyzed in the EIS but was not one of the alternatives preferred by either the Council or NMFS. This action would require another Council meeting, followed by submission of the revised amendment and implementing regulations under MSA section 304(a), and notice and comment rulemaking that would likely delay implementation of 2012 regulations.

4) The Council takes action to adopt in a revised amendment an alternative that was not analyzed in the EIS. This action would require new analysis and at least one more, if not two more Council meetings, prior to submission of the revised amendment and implementing regulations under MSA section 304(a), and notice and comment rulemaking. This action would delay implementation of 2012 regulations.

The Council should carefully consider these issues and tradeoffs, as well as the recommendations of NMFS staff, NOAA General Counsel, advisory bodies, and the public before deciding a preferred process and action for implementing Amendment 16-5 and 2012 groundfish harvest specifications and management measures.

**Council Action:**

**Determine necessary process and actions to implement Amendment 16-5 and 2012 groundfish harvest specifications and management measures.**

**Reference Materials:**

1. Agenda Item E.3.a, Attachment 1: December 27, 2010 letter from Mr. William Stelle to Chairman Mark Cedergreen concerning the NMFS decision to disapprove Amendment 16-5.
3. Agenda Item E.3.a, Attachment 3: April 29, 2011 letter from Mr. Frank Lockhart to Chairman Mark Cedergreen concerning the NMFS final decision on 2011 groundfish harvest specifications and management measures.
4. Agenda Item E.3.a, Attachment 4: Comparison of the target year and harvest control rule for overfished species under the current regulations, the Council Preferred Alternative, and the NMFS Preferred Alternative.
5. Agenda Item E.3.a, Attachment 5: May 19, 2011 letter from Mr. Frank Lockhart to Chairman Mark Cedergreen concerning the Secretarial amendment process.
6. Agenda Item E.3.a, Attachment 6: Draft schedule for 2012 specifications and revised FMP amendment under a Secretarial amendment process.

**Agenda Order:**

a. Agenda Item Overview
   
   John DeVore

b. Reports and Comments of Advisory Bodies and Management Entities

 c. Public Comment

 d. **Council Action:** Determine Necessary Process and Actions to Implement Amendment 16-5 and 2012 Groundfish Harvest Specifications and Management Measures

PFMC
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