Dear Mr. Cedergreen:

The National Marine Fisheries Service (NMFS) has made its final decision on the groundfish harvest specifications and management measures for 2011. The final rule was submitted to the Office of the Federal Register on April 28, 2011, and on April 29, 2011, we notified the court in NRDC v Locke that the agency has complied with the court’s Remedy Order. We will notify you of the publication date of the final rule as soon that information is available.

As a consequence of our disapproval of Amendment 16-5 on December 27, 2010, NMFS has adopted all the rebuilding plans, revisions to flatfish proxies, Annual Catch Limits (ACLs) for overfished species, and specifications for flatfish pursuant to section 305(c) of the Magnuson Stevens Act (MSA), which provides the Secretary of Commerce the authority to promulgate emergency regulations that are treated as an amendment to an Fishery Management Plan (FMP) for the period the regulations are in effect. These provisions will be effective only temporarily, and additional action will be required in the coming months to extend their effectiveness through the end of the 2011-2012 biennium.

NMFS’ Decision

The final rule implements NMFS’ preferred alternative as described in the Final Environmental Impact Statement (FEIS). The provisions that are implemented in the final rule are divided into two distinct sets of actions. The first is the 2011–2012 harvest specifications for most of the species in the groundfish fishery and management measures for the entire fishery. The second establishes or revises rebuilding plans, sets catch limits for eight overfished species, revises flatfish proxies and precautionary control rule, and sets temporary harvest specifications for flatfish.

Harvest Specifications for Most Species and Fishery Management Measures

NMFS’ final decision regarding the 2011-2012 harvest specifications for most of the species in the groundfish fishery and final 2011-2012 management measures was made under the standard process for Secretarial adoption of regulations recommended by the Council, and are implemented for the biennium and beyond. Specifically, NMFS has concluded that the
overfishing limits (OFLs) and acceptable biological catches adopted by the Council and described in the FEIS are consistent with the recommendations of the scientific and statistical committee (SSC), the MSA, and the revised guidelines for implementing National Standard 1 of the MSA (74 FR 3178, 50 CFR 600.310). Likewise, the ACLs for non-overfished species described in both the Council’s final preferred alternative and the NMFS preferred alternative are consistent with the guidelines and the MSA, as are the management measures for the fishery.

NMFS has concluded that most of the management measures that the Council recommended in June 2010 are adequate for preventing overfishing and ensuring that rebuilding continues for overfished species. The Council has a strong track record of setting appropriate management measures designed to maintain harvest within established limits and also has effective procedures that allow the Council to adjust fishing levels in-season if monitoring reveals a chance of exceeding harvest limits. However, as discussed below, NMFS is not implementing the Council-recommended changes to the Cowcod Conservation Areas (CCA).

The Council recommended changes to the CCA that would allow recreational fishing in areas shoreward of the boundary line approximating the 30 fathom depth contour and would also allow retention of shelf rockfish in depths open to recreational groundfish fishing within the CCA. NMFS is not implementing these changes to the CCA management measures because the Council’s analyses do not allow us to conclude that the changes will not result in increased mortality on cowcod. The impacts on juveniles are particularly uncertain, and increased impacts on juveniles could potentially delay rebuilding. In addition, because the cowcod biomass is extremely low, the Region believes that any measures that potentially increase cowcod mortality require better information to support such a change. NMFS intends to work with the state of California and the affected industry to design a sampling regime that would provide more information while maintaining protections for cowcod.

In addition, while NMFS is implementing the specifications related to the stock complexes in the fishery, we note, as the Council’s advisory committees observed, that the existing complexes may not be ideally organized to prevent overfishing on the component species. We understand that the Council plans to make progress during the 2013-2014 specification cycle toward reconsidering management of the complexes. We support the Council’s commitment to make progress and will work with the Council to that end.

Overfished Species and Flatfish

NMFS is implementing, under emergency authority, the measures included in Amendment 16-5 with modifications to make those measures consistent with the court’s decision and statutory requirements. NMFS is implementing the NMFS’ preferred alternative, as described in the FEIS, which includes an ACL of 3 mt for cowcod and an ACL of 17 mt for yelloweye. This deviates from the Council’s final preferred alternative (FPA), which included an ACL of 4 for cowcod and an ACL of 20 mt and annual catch target (ACT) of 17 mt for yelloweye. After careful consideration of the analysis in the FEIS, public comments, the Council’s April 4, 2011 letter, and other information in the record, NMFS concluded that its preferred alternative would rebuild the overfished species in the shortest time possible, taking into account the statutory factors, and is the most consistent with the court’s order in NRDC v. Locke. Although the
difference between the NMFS preferred alternative and the Council's final preferred alternative is only a total of 4 mt between yelloweye rockfish and cowcod, these small differences result in noticeable reductions in rebuilding times with minimal additional impacts to communities.

NMFS agrees with the Council that the needs of fishing communities cannot be assessed solely in the context of a single year or 2-year management period. As public and state comments have shown, many communities have lost important infrastructure such as ice houses, fuel docks, and processing facilities during the last decade. Continued low levels of revenue will likely result in further losses of infrastructure. Although it is difficult to predict, at some point the losses of infrastructure and fishing opportunity result in a “tipping point” in which a community shifts from a fishing community to a non-fishing community. In addition, with decreased revenues, fishermen are not making needed repairs or improvements to fishing gear, resulting in potential safety issues and potentially reducing innovation in the fleet to reduce bycatch or impacts to habitat. Accordingly, NMFS preferred alternative allows for small increases in projected revenues (although revenues for many sectors individually are projected to decline), similar to that of the Council’s FPA.

Action Required to Finalize PCGFMP Amendment 16-5

As described above, the measures adopted under emergency authority, which include all the rebuilding plans, revisions to flatfish proxies, ACLs for overfished species, and specifications for assessed flatfish, are temporary in duration. Further action is necessary to extend these measures through 2012. As you are aware, the Council has scheduled a June agenda item for the reconsideration of Amendment 16-5. NMFS will provide detailed information to the Council for incorporation into the briefing book; this information will include statutory language about Secretarial amendments and further guidance on what NMFS believes is appropriate action for the Council to consider.

Conclusions

Amendment 23, Amendment 16-5 and the 2011-2012 groundfish harvest specifications and management measures were developed over several Council meetings and required a significant amount of work by the Council, its advisory bodies, and Council staff. NMFS recognizes and appreciates the hard work by the Council family and we are committed to working with you in the coming months to conclude action on Amendment 16-5, and to initiate work on the upcoming biennial harvest specifications and management measures.

Sincerely,

Frank D. Lockhart
Assistant Regional Administrator