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These are some preliminary comments from the EPA on the draft Amendments 16-1 and 16-2. Due to the very short timeframe for reviewing these documents, our review was cursory. We offer NMFS and the Council some brief comments on the following points for clarification or further information in their preparation of the EIS. Our review of the EIS, when it is released to the public, will be much more substantive, and EPA will submit formal comments under our Clean Air Act Section 309 responsibilities at that time.

Page 1-1 briefly states the relationship between documents describing amendments 16-1 and 16-2. The draft EIS should identify the relationship between amendments 16-1 and 16-2 in greater detail. The draft EIS should also describe the timing of preparing NEPA analyses and making decisions for each of the planning elements for rebuilding overfished species.

Page 1-1 states that federal agencies requires agencies to prepare and circulate draft EISs which must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(c) of the Act. Although other entities may prepare EISs (e.g., state departments of transportation), the leading federal agency is ultimately responsible for the content of the EIS and its support of the decision made. The EIS should clearly identify that NMFS is the party responsible for the NEPA process.

Page 1-1 discusses the Council's preferred alternative. NEPA regulations discuss the "agency" preferred alternative. Activities initially proposed by the agency and outside parties are usually referred to as proposals. We recommend that the Council's preferred alternative be renamed "the proposal" and NMFS' preferred alternative be called the preferred alternative.

Pages 1-1 and 1-2 state that information would be arranged in 11 chapters. It appears that only five chapters (plus appendices exist in the preliminary EIS).

Page 1-2 states that rebuilding plans are mandated when the size of a stock or stock complex falls below a level described in the FMP as the Minimum Stock Size Threshold of MSST, which is 25% of unfished biomass for stocks managed under the Groundfish FMP. This description is difficult to understand for those unfamiliar with fisheries management. We recommend that you explain this concept in greater detail and give an example.

Page 1-3 states that the proposed action is needed because National Standard 1 in the Magnuson-Stevens Act requires conservation and management measures that prevent overfishing. The EIS should explain if proposed actions conserve overfished species by limiting impacts to habitat, harvest as target species, or harvest as bycatch species.

Page 1-3. An example would be invaluable to a reader in understanding the requirements for rebuilding plans and how overfishing should be distinguished from an overfished stock.

Page 1-3 describes the mixed stock exception. We are pleased that the document explicitly states that different fish assemblages-some with healthy stocks and some with overfished stocks-can co-occur in a mixed-stock complex, and thus be caught simultaneously and that an optimum yield harvest for the healthy stock can result in overfishing the depleted stock. On the face of things, however, it appears that the criteria for mixed stock exception are oriented largely toward not worsening the overfished condition of depleted stocks rather than recovering them. The EIS should state if and if so, why this is the case.

Page 1-4 states that the actual discard rate of fish species that are overfished is a critical uncertainty that must be addressed if effective measures to control total mortality and thus achieve rebuilding objectives are to be adopted. The EIS continues to state that assumptions are contentious and that an observer

program has existed since August 2001 to monitor bycatch and discard. The EIS should 1) describe the sufficiency of the observer program to represent activities of the fishing community, 2) state if recently collected observer data has been used to indicate the validity of models and assumptions used now and in the past, and 3) state why observer data is not being relied upon to a greater extent to describe bycatch and discard.

Page 1-6 states that scientific and industry advisory bodies commented on the high degree of uncertainty associated with predicting stock rebuilding. If possible, the draft EIS should quantify this level of uncertainty and state if prediction of recovering overfished stocks take this high level of certainty into consideration.

Page 1-6 states that rebuilding analyses showed that even at high levels of risk (low probability of stock recovery) annual catch levels would have to be substantially reduced. It appears that higher levels of risk would make it more imperative to substantially reduce annual catch levels. Please explain.

Page 1-7 states that in September 2000, choosing a rebuilding strategy was made difficult due to uncertainty about the maximum age and survival of female fish. The draft EIS should state if this information is now available.

Page 1-9 discusses the purpose of scoping in the context of identifying relevant issues. We recommend that the beginning of the EIS contain a section which succinctly raises issues in a question format and those questions with references to pages in the EIS to provide the reader with additional information.

Page 1-10. Renaming "mean generation time" with "difference between  $T_{min}$  and  $T_{max}$ " might be clearer to readers.

Page 2-1 discusses the no-action alternative. The draft EIS does not clearly state if the No Action alternative is the situation prior to or after interim measures were adopted to address overfishing. Instead, the discussion on the bottom of 2-1 nebulously addresses 40-10 adjustments and what could be interpreted as the no-action. We recommend that the EIS clearly state what the no-action alternative is and why NMFS and the Council selected that particular scenario.

Page 2-4 identifies the probability of rebuilding stocks within  $T_{max}$ . The draft EIS should also explain the probability of rebuilding stocks within  $T_{min}$  or explain why this parameter is not included.

Page 2-4 lists the criteria for the mixed stock exception alternative. Criteria (a) states that the Council demonstrates by analysis that such action will result in long-term benefits to the Nation. The draft EIS should explain this criteria in more detail. For example, what is the timeframe used to analyze long-term benefits? What resources are valued and which are not? Are values placed on ecological resources?

Page 2-5 indicates that the mixed stock exception might be used for canary rockfish. The description indicates that it is assumed that the stock would be static for the next 100 years. The EIS should explain why the NMFS and the Council are entertaining maintaining the depleted condition of overfished canary rockfish instead of planning to rebuild this stock.

Page 4-1 describes various human caused effects. The draft EIS should attempt to quantify different human-caused effects and their significance for different alternatives. This information and analysis should indicate the extent by which habitat degradation, targeted harvest, or bycatch harvest are causing decreased numbers or preventing recovery and the effectiveness of mitigation measures in limiting these effects.

Page 4-3, second paragraph of Section 4.2.1.4 is missing text.