



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

December 27, 2010

Mr. Mark Cedergreen, Chair  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, Oregon 97220

Dear Mr. Cedergreen:

By this letter, I am partially approving Amendment 23 and disapproving Amendment 16-5 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 23 revises relevant sections of the Groundfish FMP to ensure they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act of 2006 (MSA) and National Standard 1 Guidelines. The guidelines describe fishery management approaches to meet the objectives of MSA National Standard 1 (MSA Section 301). Amendment 16-5 revises rebuilding plans for the following species: Bocaccio south of 40°10' north latitude; canary rockfish; cowcod south of 40°10' north latitude; darkblotched rockfish, Pacific Ocean Perch, widow rockfish, and yelloweye rockfish. This amendment also created a rebuilding plan for petrale sole, which was declared overfished on February 9, 2010. In addition, Amendment 16-5 modifies status determination criteria for flatfish and establishes a new precautionary harvest control rule for flatfish.

The National Marine Fisheries Service (NMFS) strongly supports the Council's efforts with these amendments to increase the accounting for scientific and management uncertainty, prevent overfishing, and rebuild overfished species.

NMFS has determined that, except for the removal of dusky and dwarf-red rockfish from the FMP, Amendment 23 is consistent with the national standards and other provisions of the MSA and other applicable laws. A further discussion of the basis for NMFS' disapproval of the removal of the two species from the FMP is provided in the Issues Attachment 1 below.

As you are aware, on April 29, 2010, the District Court for the Northern District of California ruled in part against NMFS in a case on the 2009-2010 harvest specifications (*Natural Resources Defense Council v. Locke*). Specifically, the court found that NMFS violated:

- National Standard 2 of the MSA by failing to use the best scientific information available on the economic status of fishing communities;



- Section 304(e)(4)(A)(i) of the MSA by establishing rebuilding plans for darkblotched rockfish, cowcod and yelloweye rockfish that do not rebuild those species in time periods that are “as short as possible.”

As thoroughly discussed at the November meeting, NMFS concluded that we would not be able to make necessary analytical refinements to the Draft Environmental Impact Statement (EIS) for Amendment 16-5 in time for NMFS to make a final decision by the deadlines imposed in Section 304(a) of the Magnuson-Stevens Act. Therefore, Amendment 16-5 is being disapproved. Because of the disapproval, NMFS’ implementation of the 2011 specifications and management measures will be accomplished, in part, under the emergency authority of the MSA. NMFS requests that the Council revise as appropriate and resubmit Amendment 16-5 for implementation of the 2012 specifications and management measures. NMFS understands that the Council has already preliminarily scheduled time in the spring/summer 2011 meeting agendas to accomplish this task.

### **Items for Disapproval**

Amendment 16-5 is being disapproved because there is not currently an adequate EIS to support decision-making. The Magnuson-Stevens Act (16 U.S.C. 1854(a)(3)) requires that before approving an FMP or amendment, NMFS must review the FMP for consistency with the measures of the MSA itself, as well as other applicable law. One of the primary tools that NMFS uses to accomplish this review is an adequate Final EIS, drafted in a manner consistent with the guidance contained within NAO 216-6 (Environmental Review Procedures For Implementing The National Environmental Policy Act). At this time, there is not any Final EIS, let alone an adequate Final EIS, to serve as a basis for either approving or disapproving Amendment 16-5 to the FMP. The Region will continue to work with Council staff to reorganize and refine the Draft EIS analyses to publish a Final EIS in time to support a final decision by the court-ordered April 29, 2011 deadline.

Amendment 23 as recommended by the Council also removes dusky and dwarf-red rockfish from the list of species in the FMP, and from the minor rockfish complex as a management group. The FMP currently specifies that it covers “rockfish,” which includes all genera and species of the family Scorpaenidae<sup>1</sup>, *even if not listed*, that occur in the Washington, Oregon, and California area.” NMFS believes that removing any species of “rockfish” from the FMP at this time is a fundamental change to one of the foundations of groundfish management, and as such, should be accompanied by a thorough analysis to support such a change. As described below, a thorough analysis was not provided. Therefore, NMFS is partially approving Amendment 23, which would leave these species in the FMP.

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<sup>1</sup> *Scorpaenidae* genera (*Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastolobus*)

The rationale given by the Council for removing dusky and dwarf red rockfish was that there are very few historical landings of these species. However, these two species are not the only species with little or no landing history that are currently in the FMP. Further, when NMFS looked at Pacific whiting data from the NORPAC database, which includes observer sampling information, there were historical catches of dusky rockfish in most years, including over 2 metric tons in 2003. Although the catches were relatively small in most years, they show that this species is regularly subject to mortality in this fishery. In addition, there are other rockfish species currently in the FMP that have very small landings; our review revealed at least 15 species with less than 1,000 pounds of landings in 2009

Although the FMP includes all rockfish species, individual management of all species of rockfish is not feasible because some species are rarely caught in fisheries, and in many cases there is insufficient information on certain species on which to base management decisions. In response to this circumstance of rare catches and limited scientific information, many species in the FMP are managed within a stock complex. This is the case for both dusky and dwarf-red rockfish, which are members of the minor shelf rockfish complex. Stock complexes are an important management tool for managing many rockfish species on the West Coast.

Removal of a species from the FMP would reflect a determination that conservation and management measures are not necessary. NMFS is not prepared to make that determination at this time without a more comprehensive discussion and review of how the Council and NMFS manage rockfish genera and species within the family of scorpaenidae. NMFS understands that the Council is planning to refine the existing stock complexes for the 2013-14 specifications and management measures. NMFS believes it is prudent, from a management perspective, to take a comprehensive look at all species and complexes in the FMP before deciding to remove or add any. The option to designate species as ecosystem component species is also another option that may be explored through the Council process.

As discussed above, NMFS is approving the remainder of Amendment 23. However, we note that public comments highlighted a lack of clarity in the amendment with respect to the connection between Annual Catch Limits (ACLs) and Accountability Measures (AMs). While NMFS does not believe this is a basis on which to disapprove the amendment, we agree that this lack of clarity needs to be addressed through the development and submission of an additional amendment to the FMP. The National Standard 1 Guidelines require that the FMP describe AMs to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACLs if they occur. Amendment 23 contains an extensive suite of inseason and other management measures, some of which are referred to as accountability measures, but the amendment does not clearly articulate the connection between ACLs and AMs, and it is not entirely clear which management

measures constitute AMs. NMFS requests that the Council address this issue in conjunction with its resubmission of Amendment 16-5, and we are committed to working with Council staff to develop the appropriate language.

Amendments 23 and 16-5 were developed over several Council meetings and required significant efforts by the Council, its advisory bodies, and its staff. NMFS will continue to work with the Council to make the changes necessary to Amendment 16-5 for approval for implementation for 2012, as well as the refinements to ACL provisions discussed above. The deliberations by the Council and its advisory bodies, and the work of members of the public at Council meetings and in their home ports, demonstrate an impressive commitment to the principles of the Magnuson-Stevens Conservation and Management Act. Thank you for your time and effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Stelle, Jr.", written in a cursive style.

For William W. Stelle, Jr.  
Regional Administrator

Issues Attachment  
Rationale for partial disapproval of Amendment 23

The Pacific Coast Groundfish Fishery Management Plan was established to manage all “rockfish” genera and species within the family of scorpaenidae, even if not listed individually in the FMP, that occur in Washington, Oregon and California. Although the FMP includes all rockfish species, individual management of all species of rockfish is not feasible because some species are rarely caught in fisheries, and in many cases there is insufficient information to manage a species specifically. In response to this circumstance of rare catches and limited scientific information, many species in the FMP are managed within a stock complex. This is the case for both dusky and dwarf-red rockfish, which are members of the minor shelf rockfish complex.

Stock complexes are an important management tool for managing many rockfish species on the West Coast. NMFS believes it is prudent, from a management perspective, to take a comprehensive look at all species and complexes in the FMP before deciding to remove or add any. The option to designate species as ecosystem component species is also another option NMFS will explore through the Council process.

The rationale given by the Council for removing dusky and dwarf red rockfish was that there are very few historical landings of these species. However, these two species are not the only species with little or no landing history that are currently in the FMP. Further, when NMFS looked at data from the NORPAC database, observer sub-sampling data in the Pacific whiting fishery indicated that incidental catch of dusky rockfish has historically been reported (Table 1). Although the landings were relatively small, they show that this species has been landed. There are other rockfish species currently in the FMP that have very small landings (Table 2). Removal of a species from the FMP would reflect a determination that conservation and management measures are not necessary. NMFS is not prepared to make that determination at this time, without a more comprehensive discussion and review of how the Council and NMFS manage “rockfish” genera and species within the family of scorpaenidae.

The Northwest Fisheries Science Center indicated that dusky and dwarf-red rockfish most likely do not occur in Washington, Oregon or California in numbers sufficient enough to determine abundance or conduct a stock assessment. However, this does not lead NMFS to conclude that these species should be removed from the FMP at this time. NMFS believes that as the stock complexes are further refined, it may be appropriate to remove species from the FMP. However, this discussion and related policy decisions should be addressed in a comprehensive, as opposed to piecemeal fashion. Finally, with the implementation of the trawl rationalization program and full catch accounting of both catch and discards, more information will be available to inform any decisions on removal of species from the FMP.

Landings of dusky rockfish  
NORPAC Database

Table 1. Landings of dusky rockfish in individual hauls from the NORPAC database.	
Haul Date	Metric Tons
12/12/1990	0.212
7/23/1991	0.001
9/10/1992	0.036
9/12/1992	0.233
9/12/1992	0.524
9/12/1992	1.220
10/6/1992	0.015
10/6/1992	0.074
4/15/1994	0.817
4/16/1994	0.132
4/16/1994	0.273
5/2/1995	0.027
5/15/1996	0.009
5/18/1998	0.016
5/19/1998	0.005
5/16/1999	0.067
5/23/1999	0.005
5/15/2000	0.014
5/15/2000	0.017
7/17/2000	0.013
7/17/2000	0.017
7/17/2000	0.071
7/17/2000	0.079
7/17/2000	0.093
7/17/2000	0.164
7/22/2000	0.083
7/22/2000	0.479
7/23/2000	0.086
7/23/2000	0.137
7/23/2000	0.250
7/23/2000	2.074
7/24/2000	0.041
9/4/2000	0.002
10/14/2001	0.003
10/24/2001	0.010
10/24/2001	0.018
5/17/2002	0.003
5/15/2003	0.005

Table 2. Landings (in pounds) of rockfish species in the FMP in 2009  
PACFIN Database

Table 2. Landings (in pounds) of rockfish species in the FMP in 2009	
Species	Pounds
UNSPECIFIED SHELF ROCKFISH	7
FLAG ROCKFISH	20
CALIFORNIA SCORPIONFISH	24
QUILLBACK	27
OLIVE	50
VERMILION	63
SHORTBELLY	102
BROWN	115
STRIPETAIL	144
UNSPECIFIED ROCKFISH	148
UNSPECIFIED SMALL REDS ROCKFISH	172
YELLOWEYE	189
ROSETHORN	228
NORTH UNSPECIFIED NEAR-SHORE ROCKFISH	304
UNSPECIFIED REDS ROCKFISH	309
BLACKSPOTTED	360
GREENSPOTTED	539
BLACK	593
SILVERGREY	690
GREENBLOTCHED	797