

## NATIONAL MARINE FISHERIES SERVICE REPORT ON MID-BIENNIUM HARVEST SPECIFICATIONS ADJUSTMENTS

There is currently no mechanism in the Pacific Coast Groundfish Fishery Management Plan (FMP) for modifying harvest specifications when a stock is rebuilt mid-biennium. Therefore, this measure would establish a framework in the FMP that allows exploration of mid-biennium harvest specification changes when a stock is declared rebuilt. This management measure may also be used for stocks with a significant improvement in stock status under a new stock assessment, and may not necessarily be limited to rebuilt stocks only. To use the framework for the 2019–2020 harvest specifications cycle, or any cycle going forward, projected overfishing limits (OFLs), acceptable biological catch (ABC), and annual catch limits (ACLs) for individual stocks would have to be produced based on the updated stock assessment and impacts analyzed to allow access mid-biennium to increased catch.

NMFS notes that this measure has two separate components: the creation of the framework through an FMP amendment and the subsequent analysis of any projected OFLs, ABCs, and ACLs. For the purposes of this report, NMFS's comments are specific to the creation of the framework. For comments on the practical application of this framework, see Agenda Item F.9.a, Supplemental NMFS Report.

### *Frameworking Considerations*

NMFS notes that the benefits to fishers and communities from this action comes from adjustments to management measures that allow increased harvest of stocks with increased ACLs. Therefore, NMFS recommends that the framework also describe the management measure adjustments that would be available (e.g. off-the-top deductions, allocations, harvest guidelines, routine management measures like trip limits, etc.) within this framework. This could be accomplished by thinking about answers to the following questions (generally in the order of the Action Item Checklist, [Agenda Item F.9, Attachment 1](#)):

1. Should the same P\* that applied in the biennial process be applied through the framework?
2. Should the same off-the-top deductions be applied to the new ACL as was done in the biennial process?
3. Should harvest guidelines increase proportionally to the increase in the ACL (e.g. based on a ratio) or would the Council want to revise harvest guidelines (e.g. make new apportionments)?
4. Should there be default allocations described in the framework (e.g. for species with allocations set biennially, keep the same percentage sharing, raising all affected sectors on a pro-rata basis)?
5. Should the set-asides for the at-sea Pacific whiting sectors increase? Proportionally?
6. Would some or all of the routine management measures established in the biennial process be available for revision?
7. Would development of new measures be precluded by the framework, due to the need for additional impacts analysis?

NMFS notes that, the more flexibility and discretion the Council builds into the management response in the framework, the more difficult it will be to predict what impacts analysis should be completed within the harvest specifications process to allow for timely implementation. Any issue that was not adequately analyzed prior to a decision to use the framework would likely mean that implementation would be delayed so that a supplemental analysis could be completed.

Given the need to consider how management measures would respond to higher ACLs, **NMFS recommends that the Council consider revisions to Section 6.2 of the FMP to fully incorporate the new framework.** For example, the *points of concern* framework (or ‘red light’) is mentioned in Section 5.5, and fully described in Section 6.2.

The proposed FMP language refers to “the needs of fishing communities”, a statutory term used in the context of setting rebuilding plans and ACLs for overfished species. It also references “significantly” higher as an indication of when the Council may want to take action. **NMFS recommends removing these references from the proposed FMP language.** The Council may want to draw on language from the November 2016 Council staff paper ([Agenda Item F.7, Attachment 1](#)) given its desire to 1) increase access to a stock when the stock is found to have a higher harvestable surplus and 2) give increased access quickly, for the second year in the biennium.

#### *Timing Considerations*

Council staff, in [Agenda Item F.5 Attachment 1](#) lay out a potential schedule for mid-biennium adjustments to harvest specifications. The report notes that “a process should be established where the Council decides this adjustment in one meeting and, ideally, notice and comment rulemaking is waived.” NMFS notes that specific legal requirements must be met in order to waive notice and comment rulemaking under the Administrative Procedures Act. NMFS’ ability to waive notice and comment is highly situational and depends on the circumstances of the action; therefore, **NMFS recommends that the FMP language for this framework in Section 5.5 include similar language with regards to “good cause” waiver for prior notice and comment that is described in Section 6.2, paragraph B (see attached).**

As a general note, the Council should be aware that using this framework would increase the annual workload already associated with the biennial process (e.g. inseason management measure adjustments, exempted fishing permit issuance and monitoring, etc.). The result could reduce focus on the Council’s other rulemaking priorities. NMFS anticipates that consideration of these trade-off would be part of the Council’s decision making on whether or not to use the framework. **Therefore, NMFS recommends that the FMP language for this framework include a discussion of the trade-offs that the Council would consider when choosing whether or not to recommend a mid-biennium change.**

#### *Stock Assessment Considerations*

Additionally, the Attachment 1 notes that stock assessment prioritization should be modified such that the Council would prioritize stock assessments for two assessment cycles. The Council should consider feedback from the Northwest Fishery Science Center (NWFSC) on this matter. Additionally, any changes to the stock assessment terms of reference as suggested in the report should incorporate input from the NWFSC, and possibly also the Scientific and Statistical Committee (SSC).

## ATTACHMENT

Excerpt from FMP Section 6.2 (emphasis added)

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

B. Notice Actions requiring One Federal Register Notice: One Council meeting or NMFS actions that occur outside of a 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.”*