

## PROCESS FOR IMPLEMENTING THE 2011-2012 SPECIFICATIONS AND MANAGEMENT MEASURES

In June 2010, the Council adopted final preferred alternatives for harvest specifications and management measures for the 2011-2012 groundfish fisheries. Council action included the adoption of Amendment 16-5 to the groundfish Fishery Management Plan (FMP) which proposed to modify all existing overfished species rebuilding plans, institute a new rebuilding plan for petrale sole, modify the status determination criteria for flatfish, and establish a new precautionary harvest control rule for flatfish.

At the November 2010 Council meeting, the National Marine Fisheries Service (NMFS) Northwest Region provided an update on the status of implementing the 2011-2012 harvest specifications and management measures, stating that implementation would not be able to occur on January 1, 2011. The proximate reason provided for the delay was the Final Environmental Impact Statement (EIS) and internal review had not been completed to support the NMFS final decision-making process. However, there was also a stated concern that the rationale expressed in the Draft EIS for the Council's preferred alternative on yelloweye rockfish, a 20 mt annual catch limit and a 17 mt annual catch target to address management uncertainty, did not adequately describe how the rebuilding time was as short as possible, after taking into account the status and biology of the stock, the needs of fishing communities, and other mandates in the Magnuson-Stevens Act. Based on this latter concern, notice was given that Secretarial disapproval of at least part of Amendment 16-5 was under serious consideration. There was no discussion relative to potential disapproval of the status determination criteria for flatfish and the new precautionary harvest control rule for flatfish.

NMFS also described a process by which groundfish fishery management would proceed during the 2011-12 period. Three distinct periods were described.

- (1) The period from January 1, 2011 until about April 28, 2011, when further resolution of the balance of the biennial period would occur. During the first period, the 2010 harvest specifications and management measures would remain in place, unless modified by an emergency rule; NMFS stated the intent to modify any existing 2010 specifications for which the Council process had concluded proper conservation dictated a lower fishery impact than allowed for in the 2010 regulations.
- (2) The period between about April 28, 2011 and December 31, 2011, when management via a new emergency rule might occur, or Council-approved specifications and management measures would be implemented, or some combination of the two. In particular, it was noted that an emergency rule might be needed if there is Secretarial disapproval of Amendment 16-5 elements, such as the yelloweye rockfish catch limits or targets.
- (3) 2012, when management might proceed based on Council reconsideration of any matters subject to Secretarial disapproval. NMFS suggested the Council consider a two meeting process, at the April and June, 2011 Council meetings, for such reconsideration. It was not clear if this two meeting process would reconsider any specifications or management measures that achieved Secretarial approval.

After receiving the NMFS briefing on the issues in November, the Council took action relative to the stated problem of insufficient rationale for the Council recommendation on yelloweye catch levels and practical problems associated with the delay of the Council's recommendations expected to start January 1, 2011.

Regarding the yelloweye rockfish matter, the Council scheduled an agenda item for the March, 2011 Council meeting to provide further justification of the Council's preferred alternative adopted in June, 2010. While somewhat late in the described Secretarial approval process, NMFS indicated input by the Council at this meeting would be considered. Additionally, Council requested NMFS extend the open comment period considering 2011-12 specifications and management measures. While the Council process would not be able to meet during an immediate extension of the open comment period, State agencies and the public would be provided the opportunity to comment on the new information being provided at the November Council meeting.

Regarding practical matters associated with rolling over most of the 2010 specifications and management measures beyond January 1, 2011, the Council recommended specific management measures and allocations different than in place for 2010. Some of the management measures recommended could be viewed as routine, and implemented via inseason adjustments for 2011 recreational and commercial fisheries similar to the measures recommended under normal biennial processes. For those management measures not considered routine, the Council recommended that NMFS implement them via an emergency rule. Because of the uncertainty in the overfished species harvest specifications for 2011, the Council also recommended the flexibility to modify the proposed off-the-top deductions (groundfish mortality from exempted fishing permits, research, incidental open access, and tribal fisheries) and two-year allocations for bocaccio, canary, cowcod, petrale, and yelloweye rockfish. With regard to allocations, the Council recommended that NMFS temporarily suspend the yelloweye rockfish allocations that were recommended by the Council for the 2011-12 biennial cycle. Given a yelloweye rockfish specification of only 14 mt, the Council recommended a trawl allocation of 0.3 mt for the start of the year. The Council also modified the non-trawl apportionments of yelloweye within the non-nearshore, Oregon recreational, and California recreational fisheries. The Council also reduced the estimates of yelloweye rockfish research. A comparison between the Council's final preferred allocations and apportionments and the November action can be found in Attachment 1. The Council asked NMFS to provide flexibility to modify the allocations once the final harvest specifications are issued in April 2011.

On December 20, 2010, NMFS issued an emergency rule specifying harvest specifications, allocations, and quota pounds necessary for the implementation of the trawl rationalization program, effective January 1, 2011 (75FR82296). The emergency rule implemented the lower of the 2010 or Council-approved 2011 harvest specifications on an interim basis, to address conservation concerns until the final rule is implemented. The emergency rule was necessary for the trawl rationalization program, which specifies that quota pounds are based on the trawl allocated portion of each management unit's annual specification. The emergency rule did not include the non-routine management measures recommended by the Council at its November 2010 meeting.

In a letter dated December 27, 2010, NMFS disapproved proposed Amendment 16-5 in its entirety (see Agenda Item H.1.a, Attachment 1). The letter states, “Amendment 16-5 is being disapproved because there is not currently an adequate EIS to support decision-making.” The letter also mentioned “...necessary analytical refinements...” in the draft EIS and the Magnuson-Stevens Act provision on rebuilding decision criteria in the discussion of disapproval rationale. Further, NMFS requested that the Council reconsider Amendment 16-5 for implementation of the 2012 specifications and management measures.

With regard to submissions during the open public comment period for the proposed rule that closed January 4, 2011, the Council has received copies of letters from the Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, California Department of Fish and Game, and a consortium of fishing industry interests.

Under this agenda item, it is anticipated the NMFS will speak to (1) regulatory activities of relevance during the January 1 – March 4, 2011 period, (2) Secretarial disapproval of Amendment 16-5, (3) the status of the final EIS, (4) the anticipated process for implementing the harvest specifications and management measures for the remainder of 2011, including the status of any emergency rulemaking currently under consideration, and (5) the anticipated process for the reconsideration of Amendment 16-5 and any harvest specifications and management measures for 2012.

Council tasks include hearing from the Groundfish Advisory Panel (GAP) and the Groundfish Management Team (GMT) regarding further justification for the Council harvest levels for yelloweye rockfish or other matters associated with identified shortcomings in the final EIS, and providing input to NMFS with regard to impending decisions relative to 2011 groundfish fishery management. For example, the GAP may provide further detail about the shortcomings of a lesser yelloweye rockfish catch from the needs of the fishing communities, and the GMT may provide further analysis on the impacts of a lesser yelloweye rockfish catch on research program value (including international research efforts), rebuilding times and relative harvest rates, treaty tribe obligations, management uncertainty (particularly in recreational fisheries and research efforts), or inter-related allocation arrangements. Additionally, the Council should discuss any necessary activities relative to groundfish fishery management in 2012, such as the agenda items currently scheduled for April and June, 2011.

Reference materials include the NMFS disapproval letter which was presented under Agenda Item H.1 (Agenda Item H.1.a, Attachment 1) and public comments letters submitted by the states of Washington, Oregon, and California on the proposed rule to implement the 2011-2012 harvest specifications and management measures, including Amendments 16-5 and 23. Public comment received by the briefing book deadline is also included.

### **Council Action:**

- 1. Hear NMFS report regarding the specifics of this agenda item.**
- 2. Provide input to NMFS regarding further justification of the Council’s recommendations for Amendment 16-5, with particular reference to yelloweye rockfish.**
- 3. Discuss Council activity to be scheduled for future Council meeting regarding implementing 2011-12 biennial specifications and management measures.**

Reference Materials:

1. Agenda Item H.2.a, Attachment 1: A Comparison of the Yelloweye Rockfish Allocations and Apportionments Between the Council's 2011 Final Preferred Alternative and Actions Taken at the November 2010 Council Meeting.
2. Agenda Item H.1.a, Attachment 1: NMFS Letter Regarding the Partial Disapproval of Amendment 23 and Full Disapproval of Amendment 16-5.
3. Agenda Item H.2.c, WDFW Letter: Washington Department of Fish and Wildlife Public Comment Letter on the Proposed Rule to Implement the 2011-2012 Harvest Specifications and Management Measures and Amendments 16-5 and 23 (75FR67810).
4. Agenda Item H.2.c, ODFW Letter 1: Oregon Department of Fish and Wildlife Public Comment Letter on the Proposed Rule to Implement the 2011-2012 Harvest Specifications and Management Measures (75FR67810).
5. Agenda Item H.2.c, ODFW Letter 2: Oregon Department of Fish and Wildlife Public Comment Letter on the Proposed Rule to Implement the 2011-2012 Harvest Specifications and Management Measures (75FR67810).
6. Agenda Item H.2.c, CDFG Letter: California Department of Fish and Game Public Comment Letter on the Proposed Rule to Implement the 2011-2012 Harvest Specifications and Management Measures (75FR67810).
7. Agenda Item H.2.d, Public Comment.

Agenda Order:

- a. Agenda Item Overview
  - b. NMFS Briefing
  - c. Reports and Comments of Advisory Bodies and Management Entities
  - d. Public Comment
  - e. **Council Action:** Action as Necessary to Implement the 2011-2012 Groundfish Fishery Specifications and Management Measures
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PFMC  
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