

established by the Commission, or any other governmental entity, as remedies in specific areas.

(c) A consumer complaint may be transmitted to the Commission by any reasonable means, including letter, facsimile transmission, telephone (voice and TTY), Internet e-mail, and audio or video cassette recording. The complaint should contain:

(1) The name and address of the complainant;

(2) The name and address of the company against which the complaint is being made;

(3) Details about the product or service about which the complaint is being made;

(4) A statement of facts supporting the complainant's allegation that the defendant company has acted or failed to act as required by the Act or the Commission's rules or orders;

(5) If the complainant is disputing a rate or charge assessed by the defendant company, a copy of the complainant's bill setting forth the rate or charge in dispute; and

(6) The specific relief or satisfaction being sought by the complainant.

(d) The Commission will forward consumer complaints to the appropriate regulated entity for investigation. The regulated entity will, within 30 days, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the entity's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised.

[FR Doc. 02-8795 Filed 4-15-02; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH80

#### Endangered and Threatened Wildlife and Plants; Amendment to Manatee Protection Areas in Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to amend our

existing regulations for establishing and administering manatee protection areas. We propose to except specific activities that will not result in take of manatees from the regulations within the Barge Canal manatee protection area in Brevard County, Florida. We also propose to establish a mechanism by which persons wishing to engage in specific activities within the Barge Canal manatee protection area may request and, as appropriate, receive a determination from us that the proposed activity will not result in take of manatees and is, therefore, excepted from the restrictions imposed by the designation.

**DATES:** We will consider comments on the proposed rule that are received by June 17, 2002. We must receive requests for public hearings by May 31, 2002.

**ADDRESSES:** If you wish to comment, you may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. Also, you may fax your comments to 904/232-2404.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8:00 a.m. to 4:30 p.m., at the above address.

**FOR FURTHER INFORMATION CONTACT:** David Hankla, Peter Benjamin, or Cameron Shaw (*see ADDRESSES* section), telephone 904/232-2580.

**SUPPLEMENTARY INFORMATION:** The authority to establish protection areas for the Florida manatee is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361-1407) (MMPA), and is implemented in 50 CFR, part 17, subpart J. We may, by regulation, establish manatee protection areas whenever substantial evidence shows that such establishment is necessary to prevent the taking of one or more manatees.

Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct (16 U.S.C. 1532 (18)). Harm means an act that actually kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Under the ESA, harass means an intentional or negligent act or omission that creates

the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding or sheltering (50 CFR 17.3).

Section 104 of the MMPA sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment is defined at section 3(18) of the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362).

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles and dredging and filling activities.

We have used manatee protection areas to limit human disturbance around important warm water manatee aggregation sites and to limit vessel speeds in waterways where it has been shown that manatee/vessel collisions have resulted in the injury and death of manatees. We have established seven manatee sanctuaries in the Crystal River area of Citrus County, Florida, (50 CFR 17.108), and on Aug. 10, 2001, we proposed establishing 16 additional manatee protection areas throughout peninsular Florida (66 FR 42318). On

January 7, 2002, we published in the **Federal Register** final designations for two of those 16 sites—the Barge Canal and Sykes Creek in Brevard County (67 FR 680).

In response to our proposed rule to establish 16 additional manatee protection areas, we received comments indicating that certain existing uses of waters proposed for designation would be eliminated or severely restricted, and that the loss of these uses would result in substantial hardship to the affected parties. In regard to the two sites for which we made final designations, on January 7, 2002, we received a request for an exemption to our regulations for the Barge Canal. After reviewing the party's request, we believe that conducting certain otherwise prohibited activities within the Barge Canal in a manner that would not result in take of manatees may be possible. This would be the case if the party could ensure that no manatees were present in the vicinity when the subject activity was to occur.

We have no desire to unnecessarily restrict or prohibit activities that will not cause incidental take of manatees. Therefore, we are proposing to amend our regulations at 50 CFR part 17 to establish a process for evaluating specific requests to conduct otherwise prohibited activities within the Barge Canal manatee protection area. We are proposing to establish this process for the Barge Canal, and only the Barge Canal, at this time, because it is the sole designated manatee protection area to date for which we have received a request for authorization of an otherwise prohibited activity. This proposed rule amendment would establish a process that will allow the public to apply for authorization to conduct otherwise prohibited activities within the Barge Canal, and to allow us to provide such authorization upon finding that the activities will not result in take of manatees. Additionally, we intend to establish this process for a limited area initially, so that we may assess the efficacy of the process in a controlled fashion, both in terms of ensuring effective manatee protection and in terms of our ability to effectively administer such a process, before we consider making it more widely available.

Under our proposed amendment, persons wishing to engage in otherwise prohibited activities within the Barge Canal would submit a written request to us. The request would contain a description of the proposed activity including the timing and duration of the activity, and specific measures to be undertaken by the requester in association with the proposed activity to

ensure that take of manatees will not occur. Upon receiving a complete request, we will publish a notice in the **Federal Register** advising the public that a request has been submitted.

Within 120 days of receiving a complete request, we will grant or deny the authorization and include any terms and conditions appropriate to ensure that no take of manatees will occur. In making these determinations, we will rely on information contained in the written request, other information supplied by the requester, and the best available scientific information related to the effects of the proposed activity on manatees and means for eliminating any such effects. Upon approving or denying a request, we will publish notification of our decision in the **Federal Register**, and will send copies of any approvals to appropriate local, State and federal law enforcement and regulatory agencies.

As stated above, we would approve exceptions to the manatee protection area restrictions in the Barge Canal under this proposed process only upon finding that the activity would not cause take of manatees. Given the broad definitions of "take" in both the ESA and MMPA, we believe that the surest means of eliminating the potential for take is to ensure that no manatees are present when the subject waterborne activity is taking place. Ensuring the absence of manatees will require implementation of an effective manatee monitoring program to cover the manatee watch area.

Water conditions in the Barge Canal are generally murky, and because the Barge Canal serves primarily as a travel corridor for manatees, they are typically submerged for extended periods. Therefore, reliably detecting the presence of manatees from a boat or from shore at ground level is exceedingly difficult. Under such conditions, monitoring of manatees (*i.e.*, manatee watch) must be conducted from an elevated platform that provides a viewing angle as nearly perpendicular to the water surface as possible in order to be effective. Platforms that provide a more oblique viewing angle, such as shore-based or watercraft-based observation stations, are considerably less effective. Effective viewing platforms are generally airborne platforms such as helicopters or small planes, with helicopters being the preferred option. Surface-based observation points (shore or watercraft-based observers) may be used to supplement aerial observers. Tethered airships equipped with video cameras have been used by researchers as an effective method to observe manatee

behavior, and are another alternative aerial platform. Tethered airships may provide the only viable aerial platform for sites located in or near restricted airspaces.

Because manatees are frequently submerged while traveling and water conditions may make it impossible to observe manatees that are not at the surface, the area of the manatee watch (watch area) must extend well beyond the limits of the waterborne activity in order to ensure that any manatees approaching the area are observed. We generally recommend that the watch area extend at least 0.5 miles beyond the limits of the waterborne activity. Observers must have the ability to effectively communicate with those conducting the activity in order to ensure that any high-speed vessel operation ceases immediately when a manatee enters the watch area. Finally, the manatee watch must be initiated at least 30 minutes prior to the start of the activity to ensure that any manatees present in the watch area are observed.

In confined waters with limited access, such as the Barge Canal, employing technologies such as acoustic arrays or sonar devices to detect manatees as they enter and leave the watch area may be possible; thereby effectively gating the area of the waterborne activity. Such devices are currently employed for manatee detection at navigation locks.

The use of aerial manatee watches and certain technologies, as discussed above, are examples of types of measures that may be effective in determining that manatees are not present, and that otherwise prohibited waterborne activities may therefore occur in the Barge Canal without the potential for causing take of manatees. Other methods may be available; however, any method proposed must be able to meet the basic test of ensuring that the proposed waterborne activity will not cause the take of manatees.

#### Public Comments Solicited

We are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why the proposed rule amendment should or should not be adopted;
2. Current or planned activities within designated or proposed manatee protection areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed rule amendment;

4. Potential adverse effects to the manatee associated with the proposed rule amendment;

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed amendment that would provide comparable or improved manatee protection;

6. Potential means of conducting waterborne activities in the Barge Canal in such a way as to ensure that take of manatees will not occur; and,

7. The appropriateness of the public notification process.

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Public Hearings

The ESA provides for one or more public hearings on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Requests for hearings must be made in writing and should be addressed to the Field Supervisor, Jacksonville Field Office (*see ADDRESSES* section). We will publish a separate notice in the **Federal Register** providing information about the time and location for any hearings. Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this

proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

#### Required Determinations

##### Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This proposed rule will not have an annual economic impact of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the proposed rule amendment. The purpose of this proposed rule is to establish a process that will allow the public to apply for authorization to conduct otherwise prohibited activities within the Barge Canal, and to allow us to provide such authorization upon finding that the activities will not result in take of manatees.

b. This proposed rule is consistent with the approach used by the State of Florida to protect manatees, although more protective measures may be deemed necessary. We recognize the important role of State and local partners, and we continue to support and encourage State and local measures to improve manatee protection. Therefore, we are eager to work with State and local agencies to develop and implement measures to protect manatees. We welcome their comments and participation to increase the likelihood of consistency of our final action with possible future action by the State or local agencies.

c. This proposed rule will not materially affect entitlements, grants,

user fees, loan programs, or the rights and obligations of their recipients. No entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur.

d. This proposed rule will not raise novel legal or policy issues.

#### Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

On August 10, 2001, we proposed in the **Federal Register** creation of 16 manatee protection areas in Florida (66 FR 42318), and on January 7, 2002, we published in the **Federal Register** final designations for two of those sites—the Barge Canal and Sykes Creek in Brevard County (67 FR 680). In conjunction with the August 10 rulemaking proposal, we conducted a public hearing in Melbourne, FL, and a 60-day public notice and comment period to determine the activities occurring in Barge Canal and Sykes Creek, among other sites, that might be affected by the creation of manatee protection areas. In our final rule of January 7, 2002, we published information we had compiled on the general economic characteristics and employment statistics for Brevard County and concluded that the designation of both sites as manatee refuges would "not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)." (67 FR 691) The current proposed rule would create a mechanism whereby entities that receive a letter of authorization would be exempted from the regulations governing the Barge Canal manatee protection area. Based on the foregoing, we believe that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). This proposed rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that

unforeseen changes in costs or prices for consumers will stem from this proposed rule.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The purpose of this rule is to establish a mechanism by which persons wishing to engage in specific activities within the Barge Canal manatee protection area may request and, as appropriate, receive a determination from us that the proposed activity will not result in take of manatees and is, therefore, excepted from the restrictions imposed by the designation.

#### Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State of Florida, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

#### Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* Because this proposed rule affects a limited area (the Barge Canal), and due to the fact that only one entity has requested an exception to the restrictions imposed per our designation

of the Barge Canal as a manatee protection area, we anticipate that fewer than 10 local governments, individuals, businesses, or organizations, will seek exceptions under this rule.

#### National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA). We have determined that this rule is categorically excluded under NEPA because it relates to policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case (516 DM 2, Appendix 1.10).

#### Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

#### Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule amendment is not a significant regulatory action under Executive Order 12866, and because it establishes a process for excepting from regulation otherwise prohibited activities within the Barge Canal, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### Author

The primary author of this document is Peter Benjamin (*see ADDRESSES* section).

#### Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

\* \* \* \* \*

#### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108 by revising paragraph (c)(1)(ii) and adding paragraph (c)(1)(iii) to read as follows:

\* \* \* \* \*

(ii) Watercraft must proceed at slow speed (channel included) all year unless the Director has granted authorization to conduct an otherwise prohibited activity under paragraph (c)(1)(iii) of this section.

(iii) Any waterborne activity otherwise prohibited by this subpart may be authorized within the Barge Canal manatee protection area if the Director finds that such activity will not cause the take of manatees.

(A) Persons who want to conduct otherwise prohibited activities in the Barge Canal manatee protection area must submit a request for authorization to the Director. Requests for authorization must include a description of the proposed activity, including the timing and duration of the activity, specific measures that will be undertaken in association with the proposed activity to ensure that take of manatees does not occur, and any other information that the Director may deem relevant to the evaluation of the request.

(B) Upon receipt of a complete request for authorization, the Director will publish notification of receipt of the request in the **Federal Register**. To the maximum extent practicable, the Director will make a determination of approval or denial within 120 days. If the Director decides to issue to a letter of authorization, it will include terms and conditions specific to the activity. Examples of such terms and conditions include, but are not limited to, maximum allowable vessel speed, time and duration of operation, manatee watch protocols, use of specialized equipment, and monitoring and reporting requirements. Letters of

authorization will specify the period of validity, but will not exceed 60 months. Upon approving or denying a request, the Director will publish notification of the decision in the **Federal Register**.

(C) The person conducting the authorized activity must be in possession of a letter of authorization. Violation of any of the terms and conditions of the authorization may result in suspension or withdrawal and appropriate penalties provided in the Marine Mammal Protection Act (16 U.S.C. 1375) or Endangered Species Act (16 U.S.C. 1531). The Director may revoke a letter of authorization upon determining that the activity is likely to cause a taking of manatees or impede the recovery of the species or if the person who has been issued the letter of authorization is convicted of a violation of State or Federal conservation laws. All other Federal, State, and local requirements continue to apply.

(D) The Director will notify Federal and State conservation agencies and other appropriate law enforcement officials of any letters of authorization granted under paragraph (c)(1)(iii) of this section.

\* \* \* \* \*

Dated: April 2, 2002.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-9224 Filed 4-15-02; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[I.D. 040302B]

#### Pacific Fishery Management Council; Notice of Intent

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS); request for written comments.

**SUMMARY:** NMFS and the Pacific Fishery Management Council (Council) announce their intent to prepare an EIS in accordance with the National Environmental Policy Act of 1969 (NEPA) for Amendment 16 to the Pacific Coast Groundfish Fishery Management Plan (FMP). This amendment will incorporate rebuilding plans for groundfish species that have been

declared overfished by the Secretary of Commerce (Secretary) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendment will also establish procedures for periodic review and revision of rebuilding plans. The Council has already held public scoping meetings and will continue to accept written comments to determine the issues of concern and the appropriate range of management alternatives to be addressed in the EIS.

**DATES:** Written comments will be accepted on or before May 31, 2002.

**ADDRESSES:** Send comments on issues and alternatives for the EIS to John DeVore, Pacific Fishery Management Council, 7700 NE Ambassador Pl., Suite 200, Portland, OR 97220 or Becky Renko, NMFS, Northwest Region, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0070. Comments also may be sent via facsimile (fax) to the Council at 503-326-6831. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** John Devore, phone: 503-326-6352; fax: 503-326-6831 and e-mail: [John.Devore@noaa.gov](mailto:John.Devore@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Act, the United States has management authority over all living marine resources within the exclusive economic zone (EEZ), which extends from three to 200 nautical miles offshore. The Council develops FMPs and FMP amendments governing fisheries off the coasts of California, Oregon and Washington for approval and implementation by the Secretary of Commerce.

The Council implemented the original Groundfish FMP in 1982. Groundfish stocks are harvested in numerous commercial, recreational, and tribal fisheries in state and Federal waters off the West Coast. Groundfish are also harvested incidentally in non-groundfish fisheries, most notably fisheries for pink shrimp, spot and ridgeback prawns, California halibut, and sea cucumbers.

The FMP manages 82 species, of which eight have been declared overfished by the Secretary pursuant to the Magnuson-Stevens Act and overfishing criteria adopted by the Council under Amendment 11 to the FMP. Under Section 304(e)(3) of the Magnuson-Stevens Act (16 U.S.C. 1854(e)(3)), the Council is required, within one year, to prepare an FMP, FMP amendment, or proposed regulations to rebuild any species that has been declared overfished. In 2000,

after three species had been declared overfished, NMFS approved Amendment 12 to the Groundfish FMP. Amendment 12 provided that rebuilding plans would be developed according to so-called "framework procedures" under the Groundfish FMP, but would not be incorporated directly into the FMP itself. Amendment 12 was subsequently deemed inconsistent with the Magnuson-Stevens Act in the case of *Natural Resources Defense Council v. Evans*, 168 F. Supp.2d 1149 (N.D. Calif. 2001), in that the rebuilding plans were not made part of the FMP. The court also found that the environmental assessment prepared for Amendment 12 was deficient under NEPA for failure to adequately discuss appropriate alternatives.

Amendment 16 to the FMP, which is now in development, is intended to comply with the Court's directive to include rebuilding plans in the FMP, and also to provide for rebuilding of additional species that have been declared overfished. Specifically, rebuilding plans for five of the eight overfished stocks (lingcod, cowcod, Pacific ocean perch (POP), widow rockfish, and darkblotched rockfish) will be incorporated into the FMP through Amendment 16. Three additional rebuilding plans (for bocaccio, canary rockfish and yelloweye rockfish) are pending the completion of new stock assessments and rebuilding analyses, and will be adopted in subsequent plan amendments.

Initially, NMFS intended to prepare an environmental assessment (EA) for Amendment 16. An EA is used to determine whether the proposed action (in this case adopting rebuilding plans and procedures) will have a significant impact on the human environment, as defined by NEPA and its implementing regulations. If a significant impact is anticipated to occur, an EIS must be prepared. During public scoping for the EA, it became apparent that the proposed action may cause significant impacts, so NMFS decided to proceed with an EIS rather than an EA.

#### Alternatives

As currently planned, the Amendment 16 EIS will evaluate the effects of two sets of alternatives that might be adopted under Amendment 16. The first set of alternatives will address the effects of different procedures that might be followed for revising rebuilding plans. This could include a variety of strategies based on the results of the biennial reviews of rebuilding plans required by section 304(e)(7) of the Magnuson-Stevens Act at 16 U.S.C. 1854(e)(7). The second set of