

in the petition for review so it was not possible for the agency to determine what assumptions were made as to how many trucks on the road were equipped with ABS. In summary, the petition claims that ABS contributed to reductions in truck occupant fatalities during three years (1998 through 2000) but also contributed to increases in truck occupant fatalities in the first year (1997). The agency study of ABS effectiveness did not specifically address how ABS contributed to truck occupant safety (due to the limited amount of available crash data it only reviewed overall increases and reductions in crashes), but since ABS prevents tractor-trailers from losing control under a variety of circumstances the agency believes it is likely that it has reduced injuries and fatalities among truck occupants.

### V. Agency Decision

The agency has reviewed the petition and is denying it. The agency does not plan to initiate rulemaking or other actions to consider removing ABS from heavy vehicles, to consider requiring an on-off switch for the driver to disable the ABS, or to consider requiring the automatic disabling of ABS at speeds greater than 55 mph. The petitioner has not demonstrated that a safety need exists, which would justify removing or disabling ABS on heavy vehicles, or to vacate FMVSS No. 121 or the ABS requirements contained in it. The safety-need basis of the petition included citations of the agency's study on the effectiveness of ABS on tractor-trailers, and a claim that ABS has allowed less-skilled truck drivers to operate trucks. However, citing a subgroup of FARS data where there was an increase in fatal rear-end crashes among ABS tractors on a particular type of roadway (*i.e.*, high-speed rural highways) does not prove by itself, or provide sufficient evidence, that a safety problem with ABS exists. We note that state data indicated reductions in rear-end crashes for ABS tractors in four states and increases in rear-end crashes for ABS tractors in three states. The crash data were not sufficiently detailed, or consistently conclusive, to present clear evidence that ABS causes an increase in rear-end crashes when it is installed on tractors.

The petition cited a slight increase in overall fatal crashes among ABS tractors, but when those data were weighted to account for the effects of road type and lighting condition, the results indicated an overall reduction in fatal crashes. Although this result was not statistically significant, possibly due to the limited amount of available crash data, the results of the study indicated

that ABS is effective in reducing all crashes, with quite possibly a similar effect on fatal crashes. Beyond these data that were cited in the petition, there was the claim that ABS allows incompetent truck drivers to operate trucks. The agency concludes that while there are variations in levels of experience of truck drivers, they all must meet the same qualifications to drive trucks. We do not believe that ABS somehow allows incompetent drivers to drive trucks. The agency notes that, since the ABS final rule was published in 1995, only one ABS functionality problem has been identified related to some trucks operating in severe, off-road conditions. This problem has been resolved by using a modified ABS algorithm to provide an additional amount of wheel lockup at very low vehicle speeds. The vehicle manufacturers can incorporate this feature as needed by switching to a modified ABS wheel slip algorithm when a front drive axle or interaxle locking system is engaged by the driver. The agency is not aware of any other functionality problems with heavy vehicle ABS that would justify disabling it. We conclude that the petition has not demonstrated that there is a safety need or other technical reason that would justify disabling the ABS at highway speeds under any circumstances.

Issued: September 2, 2011.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

**RIN 0648-BB27**

#### **Fisheries Off West Coast States; Notice of Availability for Secretarial Amendment 1 to the Pacific Coast Groundfish Fishery Management Plan**

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

**ACTION:** Availability of Secretarial amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS has prepared Secretarial Amendment 1 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Secretarial Amendment 1 would modify the FMP to add an

overfished species rebuilding plan for petrale sole and revise existing overfished species rebuilding plans. In addition, Secretarial Amendment 1 would modify the default proxy values for  $F_{MSY}$  and  $B_{MSY}$  as they apply to the flatfish species, including petrale sole; and the harvest control rule policies. Finally the amendment makes non-substantive changes and updates factual information.

**DATES:** Comments on Secretarial Amendment 1 must be received on or before November 8, 2011.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS 2011-0207, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS 2011-0207 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, *Attn:* Sarah Williams.

- *Fax:* 206-526-6736, *Attn:* Sarah Williams.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Sarah Williams (Northwest Region, NMFS), *phone:* 206-526-4646; *fax:* 206-526-6736; and *e-mail:* [sarah.williams@noaa.gov](mailto:sarah.williams@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This **Federal Register** document is also accessible via the internet at the Web site of the Office of the Federal Register: <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

### Background

On December 27, 2010, NMFS disapproved Amendment 16–5 to the Pacific Groundfish Fishery Management Plan (FMP) because there was not an adequate National Environmental Policy Act (NEPA) document to base a decision on; consequently, the provisions of 16–5 were implemented pursuant to emergency authority under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and can only be effective 365 days and therefore further action is necessary to extend the provisions of the Amendment through 2012. A Secretarial Amendment is necessary before the expiration of the emergency provisions, because the Council at its June 2011 meeting chose not to resubmit Amendment 16–5 and instead deferred to NMFS to take action to develop and adopt the amendment. Therefore NMFS has prepared Secretarial Amendment 1 which is a modified version of Amendment 16–5.

### Provisions of Secretarial Amendment 1

Secretarial Amendment 1 proposes to establish one new rebuilding plan, modify seven existing plans, modify the default proxy values for  $F_{MSY}$  and  $B_{MSY}$  as they apply to the flatfish species, and the harvest control rule policies.

The new rebuilding plan is needed because petrale sole was declared overfished on February 9, 2010. The following groundfish species currently being managed under rebuilding plans which are proposed to be modified by Secretarial Amendment 1 are: Bocaccio in the Monterey and Conception areas; canary rockfish; cowcod south of Point

Conception to the U.S. Mexico boundary; darkblotched rockfish, Pacific Ocean Perch (POP), widow rockfish, and yelloweye rockfish. The proposed revisions to these existing rebuilding plans are based on new stock assessments or assessment updates and include revisions to the rebuilding parameters such as rebuilding years,  $B_{MSY}$ , and other parameters.

The new flatfish harvest control rule is necessary because sufficient information became available to develop more appropriate values of  $F_{MSY}$  and  $B_{MSY}$ , for all flatfish species. Therefore Secretarial Amendment 1 would revise the proxy  $F_{MSY}$  value for all flatfish species from  $F_{40\%}$  to  $F_{30\%}$  and revises the proxy  $B_{MSY}$  value for all flatfish species from  $B_{40\%}$  to  $B_{25\%}$ . A rebuilding analysis is used to project the status of the overfished resource into the future under a variety of alternative harvest strategies to determine the probability of recovering to  $B_{MSY}$  within a specified time-frame. The overfished threshold would also be revised. The overfished threshold or minimum stock size threshold (MSST) is the estimated biomass level of the stock relative to its unfished biomass (*i.e.*, depletion level), below which the stock is considered overfished. Secretarial Amendment 1 would revise the default proxy MSST for the assessed flatfish species from  $B_{25\%}$  to  $B_{12.5\%}$ , which is 50 percent of the  $B_{MSY}$  target of  $B_{25\%}$ .

Secretarial Amendment 1 would add to the FMP a new harvest control rule referred to as the 25–5 harvest control rule for stocks with a  $B_{MSY}$  proxy of 25 percent ( $B_{25\%}$ ). When the estimated biomass has fallen below  $B_{25\%}$  and when the stock is not managed under an overfished species rebuilding plan, the 25–5 harvest control rule would be applied. Under the 25–5 harvest control rule, a precautionary adjustment is made to the ACL when the stock's depletion drops below  $B_{25\%}$  and at  $B_{5\%}$ ,

the ACL is set to zero. The 25–5 harvest control rule is designed to prevent stocks from becoming overfished.

Finally, Secretarial Amendment 1 would also move the elements of the rebuilding plans into an appendix and update factual information. This revision is being proposed to provide the public and fishery managers easy access to the current rebuilding plans. Consistent with the existing provisions of the FMP, any changes to rebuilding plans will be available for public comment, be thoroughly reviewed in the Council process and by NMFS and be evaluated through analytical documents prepared by the Council and NMFS.

NMFS welcomes comments on the proposed FMP amendment through the end of the comment period. A proposed rule to implement Secretarial Amendment 1 has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on proposed regulations to implement Secretarial Amendment 1, along with the groundfish specifications and management measures for 2012, in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 6, 2011.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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