

under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment.

The annual salmon management cycle begins May 1 and continues through April 30 of the following year. May 1 was chosen because the pre-May harvests constitute a relatively small portion of the annual catch. The time-frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures depends on when the pertinent biological data are available. Salmon stocks are managed to meet annual spawning escapement goals or specific exploitation rates. Achieving either of these objectives requires designing management measures that are appropriate for the ocean abundance predicted for that year. These pre-season abundance forecasts, which are derived from the previous year's observed spawning escapement, vary substantially from year to year, and are not available until January and February because spawning escapement continues through the fall.

The preseason planning and public review process associated with developing Council recommendations is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. This complex process includes the affected user groups, as well as the general public. The process is compressed into a 2-month period which culminates at the April Council meeting at which the Council adopts a recommendation that is forwarded to NMFS for review, approval and implementation of fishing regulations effective on May 1.

As described earlier (*see* Schedule Used to Establish 2003 Management Measures), the Council solicited public comment on its proposed management options and notified the public of the measures it recommended to NMFS for implementation. In addition to the Council process, notice and opportunity for public comment is provided through meetings and caucuses of State, Tribal, local governments, and the various user groups. This parallel process occurs throughout the February to April time-frame when Council recommendations are developed. The major meetings that concern salmon fisheries on the West Coast include the Klamath Fishery Management Council, established at 16 U.S.C. 46085-2; North of Cape Falcon Forum, sponsored by the State of Washington and northwest Indian tribes

with treaty fishing rights; *U.S. v. Oregon* meetings related to ocean and Columbia River fisheries; and meetings held by the Oregon Fish and Wildlife Commission and California Fish and Game Commission. Recommendations and information from these forums are incorporated into the Council process when representatives from these entities provide comments and information at Council sponsored functions.

Providing opportunity for prior notice and public comments on the Council's recommended measures through a proposed and final rulemaking process would require 30 to 60 days in addition to the 2-month period required for development of the regulations. Delaying implementation of annual fishing regulations, which are based on the current stock abundance projections, for an additional 60 days would require that fishing regulations for May and June be set in the previous year without knowledge of current stock status. Although this is currently done for fisheries opening prior to May, relatively little harvest occurs during that period (e.g., in 2002 less than 10 percent of commercial and recreational harvest occurred prior to May 1). Allowing the much more substantial harvest levels normally associated with the May and June seasons to be regulated in a similar way would impair NMFS' ability to protect weak and ESA listed stocks and provide harvest opportunity where appropriate. The choice of May 1 as the beginning of the regulatory season balances the need to gather and analyze the data needed to meet the management objectives of the Salmon FMP and the requirements to provide adequate public notice and comment on the regulations implemented by NMFS. Providing for notice and public comment on the Council's recommendations, in addition to that provided for through the Council process, is therefore impracticable and contrary to the public interest.

Overall, the annual population dynamics of the various salmon stocks require managers to vary the season structure of the various West Coast area fisheries to both protect weaker stocks and give fishers access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks, or result in foregone opportunity to harvest stocks whose abundance has increased relative to the previous year thereby undermining the purpose of this agency action. For example, the increase in ocean abundance projected for certain coho stocks in 2003 allows for a commercial chinook fishery in the Fort

Bragg area for the entire month of May that was not possible in 2002. North of Cape Falcon the estimated chinook ocean abundance in 2003 is down from last year. As a result, the 2003 fisheries are subject to additional constraints. The 2002 regulations included an all-salmon-except-coho recreational fishery in May and June. In 2003, as a result of the decreased chinook abundance, there is no May-June recreational chinook fishery. The recreational size limit for chinook north of Cape Falcon also changed from 24-inches total length, in 2002, to 26-inches for 2003. The commercial May-June chinook fishery had a quota of 50,000 fish in 2002. In 2003 the May-June chinook quota was reduced to 40,000 fish because of the lower overall abundance. Requiring 2003 fisheries north of Cape Falcon to operate under the 2002 regulations during the May-June time frame would again compromise the status of certain stocks or constrain later season fisheries that were structured to provide opportunity to harvest a relative abundant coho run. Based upon the above-described need to have these measures effective on May 1 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1, NMFS has concluded it is impracticable to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The AA also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this final rule. As previously discussed, these measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. If these measures are not in place on May 1, the previous year's management measures will continue to apply. Failure to implement these measures immediately could compromise the status of certain stocks and negatively impact international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

To enhance notification of the fishing industry of these new measures, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and is also posting the regulations on both of its West Coast regional Web sites (www.nwr.noaa.gov and swr.nmfs.noaa.gov). NMFS is also advising the States of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable