

Register's website at: http://www/access/gpo.gov/su_docs/aces140.html.

Background

NMFS is proposing this rule to implement Amendment 17 to the FMP, which would set the Council's groundfish management process and the NMFS implementation process for specifications and management measures for a biennial period. Amendment 17 would also structure Council development of specifications and management measures so that NMFS has adequate time to implement the biennial specifications and management measures through a notice-and-comment rulemaking. The regulations to implement Amendment 17 would primarily revise references in the Federal groundfish regulations at 50 CFR 660.301–360 to the annual specifications and management measures process so that they reflect the new biennial specifications and management measures process. This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Fishery Conservation and Management Act. (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR/IRFA prepared by NMFS for Amendment 17.

Since 1990, the Council has set Pacific coast groundfish harvest levels through an annual regulatory process. This annual process establishes harvest "specifications," which are harvest levels or limits such as acceptable biological catches (ABCs), optimum yields (OYs), or allocations for different user groups. Management measures, such as trip limits, closed times and areas, and gear restrictions are also set in the annual regulatory process. Management measures are partnered with the specifications in the annual process because these measures are specifically designed to allow the fisheries to achieve, but not to exceed, harvest levels established in the specifications.

The Council has historically developed its recommendations for the annual specifications and management measures in a two-meeting process (usually its September and November meetings), followed by a NMFS final action effective January 1 and published in the **Federal Register**. Following publication, this final action was made available for public comment and correction after the effective date of the action. In 2001, NMFS was challenged on this process in *Natural Resources*

Defense Council, Inc. v. Evans and the Court found that the process violated the Administrative Procedure Act requirement for notice and comment.

NMFS responded in both 2002 and 2003 by publishing the specifications and management measures as a proposed rule, followed by a public comment period and a final rule. In neither year was NMFS able to publish the proposed rule, take public comment, and publish the final rule between the Council's final decision and January 1. Thus for both years, the proposed rule had to be accompanied by an emergency rule to implement groundfish management measures for the period between January 1 and the effective date of the final rule, March 1.

During 2002, the Council considered how it might revise its specifications and management measures development process consistent with the court's ruling in order to allow prior public notice and comment on the specifications and management measures regulatory package. In addition to needing to revise the notice and comment procedure associated with the specifications and management measures, the Council wished to take a new look at efficiency in the annual management process. Groundfish management workload levels have grown in recent years, particularly those associated with setting annual harvest levels for both depleted and healthy stocks. Because of the increasing workload associated with developing specifications and management measures, the Council and NMFS have had less time for addressing many other important groundfish fishery management issues.

NMFS has recently asked all of the fishery management councils to consider how they might streamline their processes for developing regulatory recommendations. To meet this agency-wide request, the Council decided that it would consider whether specifications and management measures could be published for multi-year, rather than single year, periods. To initially investigate both expanded public notice and comment for NMFS specifications regulations and multi-year management periods, the Council created the Ad-Hoc Groundfish Multi-Year Management Committee (Committee.) The Committee included representatives from the fishing industry, the conservation community, the states of Washington, Oregon, and California and NMFS.

The Committee held public meetings in Portland, OR over December 13–14, 2001, and over January 31 - February 1, 2002. During those meetings, the

Committee discussed the many issues associated with changing the specifications and management measures notice and comment process and with the possibility of making a transition to multi-year management. In its meetings, the Committee developed a suite of options to address its two management challenges in a potential FMP amendment. At its March 2002 meeting, the Council requested that NMFS analyze the Committee's management options as draft Amendment 17 to the FMP. These options were analyzed and made available to the public for broader comment. Amendment 17 and its associated EA/RIR/IRFA were available for public consideration and discussed by the Council at its June and September 2002 meetings. In November 2002, the Council finalized its recommendations on Amendment 17. The Council's recommendation was for a three-meeting Council process for developing specifications and management measures, a notice and comment period for the harvest specifications, and a biennial management period. Amendment 17 is essentially administrative in nature, and is intended to revise Council and NMFS processes associated with the specifications and management measures. Under Amendment 17, the Council will develop its recommendations for specifications and management measures in a three-meeting process, at their November–April–June meetings for implementation the January 1 following their final decision in June. Once a specifications and management measures package were implemented, it would apply for a two-year period. Harvest specifications like acceptable ABCs and OYs would continue to apply for 1-year periods. For each biennial management period, the ABC/OY for a particular species would be set for each of the two years within that period. However, the management measures established during the biennial process will still be adjusted as the season progresses, in order to achieve but not exceed OYs. If Amendment 17 is approved, the first biennial management period implemented by this FMP amendment would be 2005–2006. Thus by example, specifications and management measures for 2005–2006 would be developed by the Council between November 2003 and June 2004, with notice and comment rulemaking occurring between July 2004 and November 2004, and a final rule becoming effective by January 1, 2005.