

published on May 22, 2003 (68 FR 27972). NMFS requested comments on the amendment under Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) FMP amendment review provisions for a 60-day comment period, ending July 21, 2003. A proposed rule to implement Amendment 17 was published on June 13, 2003 (68 FR 35354). NMFS requested comment on the proposed rule through July 28, 2003. During the comment periods on the amendment and proposed rule, NMFS received two letters of comment, which are addressed later in the preamble to this final rule. Please see the preamble to the proposed rule for additional background on the fishery and on this rule. Further detail on Amendment 17 also appears in the EA/RIR/IRFA prepared by NMFS for this action.

NMFS approved Amendment 17 on August 20, 2003. Amendment 17 changes the Council's groundfish management process and the NMFS implementation process for specifications and management measures from an annual to a biennial process. Amendment 17 also structures 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. In the FMP, references to the annual specifications process are revised and the biennial fishing period is defined as being the new time unit for specifications and management measures implementation. The regulations to implement Amendment 17 primarily revise references to the annual specifications and management measures process in the Federal groundfish regulations at 50 CFR 660.301–360 so that they reflect the new biennial specifications and management measures process. Amendment 17 does not introduce new regulations or revisions to existing regulations that affect how the groundfish fleets conduct their fishing operations, which is the primary focus of Federal groundfish fishery regulations.

Comments and Responses

NMFS received two letters of comment on the proposed rule for Amendment 17. One letter was received from the U.S. Department of the Interior, providing general support for a more workable approach to groundfish management that provides adequate opportunity for public review and comment on changes to fishery regulations. The second letter was received from an environmental

advocacy organization and contained more specific comments, which are addressed here:

Comment 1: We believe that a sentence in the proposed rule at 50 CFR 660.323(b)(1)(i) needs to be altered. That sentence, as laid out in the proposed rule reads: “Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section.” We believe that the sentence should read: “Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on an inseason basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section.” We think that the current language implies that parts of the biennial specifications could be established for the two-year period without notice and comment, which is not consistent with applicable law.

Response: The suggested change is unnecessary. The regulations say that “routine management measures” may be imposed or adjusted on a biennial or more frequent basis. This does not, however, mean that some measures in the biennial specifications and management measures package will be imposed without notice and comment rulemaking, just because some of the management measures will have been designated routine. The regulations at 660.323(b) state that management measures that have been designated as routine may be imposed through a single **Federal Register** document if good cause exists under the Administrative Procedure Act to waive notice and comment. Therefore, the regulations recognize the legal obligation to provide prior notice and an opportunity for public comment in order to change any regulation, while stating that in certain, limited circumstances this requirement may be waived. In addition, the regulations at 660.321 (a) state that management will be consistent with standards and procedures in the FMP. The FMP, as amended by this Amendment 17, establishes a biennial management process for establishing the specifications and management measures that specifically includes time for a notice and comment rulemaking.

Finally, it would not be accurate to say routine management measures may only be imposed or adjusted on an

inseason basis, because they are also imposed or adjusted during the biennial process. During the biennial process being established by this Amendment 17, however, they will be imposed using notice and comment rulemaking.

Comment 2: We also believe that, in 50 CFR 660.323(b)(1)(i), the last phrase of the paragraph, in referencing paragraphs

§ 660.323(b)(1)(i)(A) and (B), could be read to authorize altering trip landing and frequency limits and size limits without notice and comment where the alteration might cause an exceedance of previously specified harvest levels, in order to “extend the fishing season” or “minimize disruption of traditional fishing and marketing patterns.” We recommend that NMFS add the phrase “so long as the change in trip landing limits, trip frequency limits, or size limits would not result in total fishing mortality greater than previously specified harvest levels” at the end of 660.323(b)(1)(i).

Response: The comment is beyond the scope of this rulemaking. The proposal this action implements is the multiyear management process, and regulatory changes are only being imposed to cover that action. The comment suggests revising language regarding the inseason adjustment process. However, the overriding direction for management measures, whether established preseason or adjusted inseason is to achieve, but not exceed, the specifications.

Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 17 is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) describing the impact of this action on small entities. The initial regulatory flexibility analysis (IRFA) was summarized in the proposed rule on June 13, 2003 (68 FR 35354). The following is a summary of the FRFA.

Amendment 17 revises the Pacific Fishery Management Council's (Council's) annual groundfish management process so that it becomes a biennial process with time for notice and comment rulemaking to implement the biennial specifications and management measures. Amendment 17 is intended to ensure that the