

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Because this action is a final action by NMFS, analyses required under the Magnuson-Stevens Act must be completed and considered by the agency before promulgation of the interim harvest specifications.

Regulations at 50 CFR 679.20(c)(2) require NMFS to specify harvest specifications to be effective January 1 and to remain in effect until superseded by the final specifications. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open, resulting in disruption within the fishing industry. NMFS cannot publish interim specifications until proposed specifications are completed, because the interim specifications are derived from the proposed specifications, as required by regulations at 50 CFR 679.20(c)(2).

The proposed specifications are based on the preliminary recommendations of the Plan Team, which were reviewed by the Scientific and Statistical Committee, Advisory Panel, and Council in October, 2003 in projecting 2003 biomass amounts, as identified in the 2002 SAFE Report, for the proposed 2004 ABC, overfishing levels, and TAC amounts. The Plan Team recommendations incorporate the most current data available from a number of sources, including current-year industry catch levels, and current-year trawl and hydro-acoustic surveys. These data are not available in time for Council review prior to the October Council meeting, as the surveys are conducted during the

summer months, and industry catch levels reflect current year activity. These updated data sources represent the best available scientific information. These data provide the basis for the proposed and interim specifications.

The proposed specifications, as required by regulations at 50 CFR 679.20(c)(1)(i)(A), must be published as soon as practicable *after* consultation with the Council, which occurs at the Council's October meeting. This requirement, along with the requirement of national standard 2 of the Magnuson-Stevens Act to use the best scientific information available, prevents NMFS from publishing the proposed specifications early enough to provide sufficient time to have a public comment period for the interim specifications, which are derived from the proposed specifications, and to have the interim specifications effective on January 1.

As stated above, disruption of the fishing industry, and consequent impacts to fishing communities and the public, would occur if the interim specifications were not effective January 1. Additionally, the public is provided an opportunity to comment on the proposed specifications, from which the interim specifications are derived. For these reasons, good cause exists under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action as such procedures would be impracticable and contrary to the public interest.

Likewise, the AA finds good cause to waive the 30-day delay in effectiveness date of the interim specifications. Regulations at 50 CFR 679.20(c)(2) requires NMFS to establish interim

harvest specifications to be effective on January 1 and to remain in effect until superseded by the publication of final harvest specifications by the Office of the Federal Register. NMFS interprets regulations at § 679.20(c)(2) as requiring the filing of interim specifications with the Office of the Federal Register before any harvest of groundfish is authorized. The interim specifications are based on the proposed 2004 specifications.

The interim specifications rely on data used to propose the 2004 specifications, and those data are not available until the after summer surveys are conducted (see above). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, resulting in disruption of the fishing industry. These reasons constitute good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness date.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared for this action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 2, 2003.

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National Marine Fisheries Service.*

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