

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 021209299-2299-01; I.D. 112502B]

RIN 0648-AQ19

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures

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

ACTION: Emergency rule; groundfish fishery management measures for January through February 2003; request for comments.

SUMMARY: NMFS announces the January through February 2003 management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California. Management measures for January through February 2003 are intended to prevent overfishing; rebuild overfished species; minimize incidental catch and discard of overfished and depleted stocks; provide equitable harvest opportunity for both recreational and commercial sectors; and, within the commercial fisheries, allow achievement of harvest guidelines and limited entry and open access allocations to the extent practicable.

DATES: Effective January 1, 2003, through February 28, 2003. Comments must be received no later than 5 p.m. local time (l.t.) on February 6, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070, or fax to 206-526-6736; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, or fax to 562-980-4047. Comments will not be accepted if submitted via e-mail or Internet. Information relevant to this rule, which includes environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR), is available for public review during business hours at the office the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280. Additional reports referred to

in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT:

Yvonne deReynier or Becky Renko (Northwest Region, NMFS), phone: 206-526-6140; fax: 206-526-6736 and; e-mail: yvonne.dereynier@noaa.gov, becky.renko@noaa.gov or Svein Fougner (Southwest Region, NMFS) phone: 562-980-4000; fax: 562-980-4047 and; e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This emergency rule also is accessible via the Internet at the Office of the **Federal Register's** website at http://www.access.gpo.gov/su_docs/aces/aces140.html. Background information and documents are available at the NMFS Northwest Region website at <http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm> and at the Council's website at <http://www.pcouncil.org>.

Background

The Pacific Coast groundfish fishery management plan (FMP) requires that fishery specifications for groundfish be annually evaluated, and revised as necessary, that optimum yields (OYs) be specified for species or species groups in need of particular protection, and that management measures designed to achieve the OYs be published in the **Federal Register** and made effective by January 1, the beginning of the fishing year. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP require that NMFS implement actions to prevent overfishing and to rebuild overfished stocks.

Throughout 2002, the Council has been developing revisions to its specifications and management measures process, through proposed Amendment 17 to the FMP. Among other procedural changes, Amendment 17 would revise the NMFS publication process for the specifications and management measures. Historically, the Council has developed annual specifications and management measures in a public two-meeting process (formerly at its September and November meetings) followed by a NMFS final action published in the **Federal Register** and made available for public comment and correction after the effective date of the action. Each year, specifications and management measures were effective until the specifications and management measures for the following year are published and effective. In 2001, the agency was challenged on this process in *Natural Resources Defense Council, Inc. v. Evans*, 168 F.Supp. 2d 1149 (N.D.Cal., 2001) and the Court ordered NMFS to provide prior public notice and allow public comment on the annual specifications.

Amendment 17 was recently adopted by the Council, but has not yet been submitted for NMFS for approval. NMFS must still comply with the Court's Order for a public notice and comment period on the 2003 specifications and management measures. The Council had its initial meeting regarding these measures in June, and finalized its 2003 specifications and management measures recommendations at its September 9-13, 2002, meeting in Portland, OR. The Council could not act earlier in the year because the new science upon which the specifications and management measures were based was not ready until June. For 2003, the Council has recommended implementing depth-based management measures, with large closed areas intended to prevent vessels from operating in waters where overfished species are commonly found. NMFS and the Council felt that these management changes were significant enough to warrant analysis via an environmental impact statement (EIS). An EIS is a National Environmental Policy Act (NEPA) analysis document that requires a series of public review and comment periods at different document drafting stages. Given the complexity of the annual specifications and management measures package and the need for EIS-related public review periods, NMFS did not have enough time to publish a proposed rule on the Council's recommendations, receive public comments, and implement a final rule by January 1, 2003. Thus, NMFS is publishing this emergency rule under the Magnuson-Stevens Act emergency authority at section 305(c), which finalizes and makes effective the groundfish management measures for January 1 through February 28, 2003.

Absent a final rule by January 1, 2003, management measures for January and February 2003 would revert to those that were in place for January-February 2002. There are several species for which reverting to a management regime without depth-based closures at the beginning of the year could result in either exceeding the annual commercial OYs or very early attainment of OYs during the year. While these circumstances could jeopardize manager's ability to keep landings within rebuilding targets for some species, they could also lead to significant foregone revenue from other