

## **5.0 CONSISTENCY WITH FMP AND OTHER APPLICABLE LAW**

### **5.1 Magnuson-Stevens Conservation and Management Act**

The Magnuson-Stevens Act provides parameters and guidance for federal fisheries management, requiring that the Councils and NMFS adhere to a broad array of policy ideals. Overarching principles for fisheries management are found in the Act's National Standards. In crafting fisheries management regimes, the Councils and NMFS must balance their recommendations to meet these different national standards.

National Standard 1 requires that "Conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery for the United States fishing industry." Amendment 17 is administrative in nature and would affect neither the prevention of overfishing nor the achievement of optimum yield.

National Standard 2 requires the use of the best available scientific information. As discussed above in Section 4.2 and detailed in Table 4.2.2, the alternative specifications and management measures processes (Issue 1) would vary in the speed with which information from resource surveys is used in fisheries management. While the status quo/no action process alternative would result in the swiftest incorporation of survey information into management for one-third of all assessed stocks, the biennial management processes (Process Alternatives 2-5) would provide stock assessment scientists with more opportunities to improve the overall quality of groundfish science. Process Alternative 3 (Council preferred) uses resource survey data in fisheries management more swiftly than Alternative 2 and less swiftly than Alternatives 4 and 5. However, Process Alternative 3 provides stock assessment scientists with more time to complete the assessments than Alternatives 4 or 5, possibly resulting in better quality stock assessments. Process Alternative 3 differs from the swiftest data use alternative (Process Alternative 5) in the timing of survey data use by ten months. For each alternative, there is a trade-off between use of most recently available data and opportunity to improve the quality of scientific information needed for the management process. The OY Durations Alternatives (Issue 2) do not differ in their use of the best available science in the setting of the OYs. Two-year OYs (OY Duration Alternatives 2 or 3,) however, may provide more flexibility in responding to scientific information for inseason management than one-year OYs (Alternative 1).

National Standard 3 would not be affected by the proposed actions because they do not address whether individual stocks of fish are managed as a unit throughout their ranges, or whether interrelated stocks of fish are managed as a unit.

National Standard 4 requires that "Conservation and management measures shall not discriminate between residents of different States." All alternatives meet this standard

National Standard 5 is not affected by the proposed actions because none of the alternatives would affect the Council's ability to improve or alter efficiency in the utilization of fishery resources. Under Issue 1, however, the preferred alternative (Process Alternative 3) would provide the Council and NMFS with more time to address efficiency issues in the groundfish fishery than under status quo.

National Standard 6 is not affected by the proposed actions because none of the alternatives would affect the Council's ability to take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

National Standard 7 requires that "Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." The biennial management measures processes proposed in Alternatives 2-5 would all reduce cost and duplication over the status quo/no action alternative of an annual specifications and management measures process. Alternatives 2-4 (Alternative 3 is preferred) include higher costs than Alternative 5 because they are 3-meeting Council processes for developing specifications and management measures, rather than a 2-meeting Council process.

National Standard 8 requires that “conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.” Fishing communities could be negatively affected by the biennial management processes (Process Alternatives 2-5) if the Council were to manage with two-year OYs (OY Duration Alternatives 2 or 3), rather than with two one-year OYs (Council-preferred OY Duration Alternative 1). In recent years, the Council has had to shut down large sectors of the fisheries 4-6 months before the end of the fishing year. If two-year OYs were implemented through a biennial management alternative, incautious management regimes in the first fishing year could result in overharvest and a complete fishery shut-down the second fishing year. Amendment 17 itself is administrative in nature and would not create a fishery shutdown, but management actions taken during the specifications and management measures process altered by Amendment 17 could certainly affect fishing communities.

National Standard 9 would not be affected by the proposed actions because Amendment 17 is administrative in nature does not affect the Council’s ability to address the reduction of bycatch or bycatch mortality. Under Issue 1, however, the preferred alternative (Process Alternative 3) would provide the Council and NMFS with more time to address bycatch reduction issues in the groundfish fishery than under status quo.

National Standard 10 would not be affected by the proposed actions because Amendment 17 is administrative in nature does not affect the Council’s ability to promote the safety of human life at sea.

Amendment 17 is administrative in nature and is intended to alter the schedule by which the Council and NMFS develop and consider specifications and management measures; therefore, none of the alternatives are expected to have any effects (positive or negative) on essential fish habitat (EFH.)

## **5.2 Consistency with the FMP**

Similar to the Magnuson-Stevens Act National Standard guidelines, the goals and objectives of the FMP are intended to provide a philosophical framework to guide the Council’s decisions. Amendment 17 is intended to revise the process by which the Council considers the groundfish specifications and management measures. Amendment 17 does not revise the guiding principles of the FMP. None of the Amendment 17 alternatives to either Issue 1 (Process) or Issue 2 (OY Duration) are counter to any of the goals or objectives of the FMP, nor would the alternatives analyzed herein prevent the Council from managing the fishery with those goals and objectives in mind. Of the FMP’s goals and objectives, only Objective 15, a “Social Factors” objective, may be affected by Amendment 17 deliberations.

Objective 15. When considering alternative management measures to resolve an issue, choose the measure that best accomplishes the change with the least disruption of current domestic fishing practices, marketing procedures, and the environment.

Alternatives 2, 4, and 5 all would change the start date of the fishing year. Fishery participants have expressed a desire to continue with the current management practice of a January 1 fishing year start date (Alternatives 1 and 3). Thus, Alternative 3 would be more consistent with Objective 15 than the other biennial process alternatives.

Objective 1, a “Conservation” objective calls for maintaining “an information flow on the status of the fishery and the fishery resource which allows for informed management decisions as the fishery occurs.” This is similar to Magnuson-Stevens Act National Standard 2, which requires the use of the best available scientific information. Amendment 17 would not disrupt the information flow that is currently used in setting specifications and management measures and in revising management measures inseason. As discussed above for National Standard 2, each of the process alternatives provides a different time lag between when resource surveys are conducted and when the data from those surveys is used to support

management for a fishing period.

Objective 17, another “Social Factors” objective is essentially the same as National Standard 8. It states, “Consider the importance of groundfish resources to fishing communities, provide for the sustained participation of fishing communities, and minimize adverse economic impacts on fishing communities to the extent practicable.” And, as discussed at National Standard 8, above, the effect of a biennial management process on fishing communities depends mainly on the particular specifications and management measures developed for any one fishery management period.

FMP amendatory language for Amendment 17 is provided in Appendix A. This amendatory language describes new terms, like “biennial fishing period” and the biennial management process. Because the FMP directs the activities and procedures of the Council, which is not a scientific body, the FMP does not detail the scientific process associated with the biennial management process. As groundfish data availability improves, the biennial science process may also change to take better advantage of that data. NMFS and the states, which conduct the stock assessments, will continue to cooperate with the Council in providing stock assessments on a schedule appropriate to the management process. Under Amendment 17 preferred Process Alternative 3, the FMP would be amended to specify a biennial management process with a January 1 fishing year start date and three Council meetings to develop the specifications and management measures. The FMP would not, however, specifically tie the Council to using a November-April-June meeting process, should future management needs change in a way that the Council also needs to revise its calendar.

### **5.3 Paperwork Reduction Act**

None of the alternatives require collection-of-information subject to the PRA.

### **5.4 Marine Mammal Protection Act**

The Marine Mammal Protection Act (MMPA) of 1972 is the principle federal legislation that guides marine mammal species protection and conservation policy in the United States. Under the MMPA, NMFS is responsible for the management and conservation of 153 stocks of whales, dolphins, porpoise, as well as seals, sea lions, and fur seals while the FWS is responsible for walrus, sea otters, and the West Indian manatee.

Off the West Coast, the Steller sea lion (*Eumetopias jubatus*) Eastern stock, Guadalupe fur seal (*Arctocephalus townsendi*), and Southern sea otter (*Enhydra lutris*) California stock are listed as threatened under the ESA and the sperm whale (*Physeter macrocephalus*) Washington, Oregon, and California (WOC) Stock, humpback whale (*Megaptera novaeangliae*) WOC - Mexico Stock, blue whale (*Balaenoptera musculus*) Eastern north Pacific stock, and Fin whale (*Balaenoptera physalus*) WOC Stock are listed as depleted under the MMPA. Any species listed as endangered or threatened under the ESA is automatically considered depleted under the MMPA.

The West Coast groundfish fisheries are considered a Category III fishery, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals, in the annual list of fisheries published in the Federal Register. Based on its Category III status, the incidental take of marine mammals in the West Coast groundfish fisheries does not significantly impact marine mammal stocks. Amendment 17 is administrative in nature and would not change the effects of the groundfish fisheries on marine mammals.

### **5.5 National Environmental Policy Act (NEPA)**

This EA is intended to meet the NEPA requirements that apply to the proposed action.

### **5.6 Endangered Species Act**

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central

Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery Biological Opinion's (December 15, 1999) incidental take statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental take statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002 that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This action is within the scope of these consultations.

### **5.7 Coastal Zone Management Act**

Section 307(c)(1) of the Federal Coastal Zone Management Act (CZMA) of 1972 requires all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. The proposed alternative would be implemented in a manner that is consistent to the maximum extent practicable with the enforceable policies of the approved coastal zone management programs of Washington, Oregon, and California. This determination has been submitted to the responsible state agencies for review under section 307(c)(1) of the Coastal Zone Management Act (CZMA). The relationship of the groundfish FMP with the CZMA is discussed in Section 11.7.3 of the groundfish FMP. The groundfish FMP has been found to be consistent with the Washington, Oregon, and California coastal zone management programs. The recommended action is consistent and within the scope of the actions contemplated under the framework FMP.

Under the CZMA, each state develops its own coastal zone management program which is then submitted for federal approval. This has resulted in programs which vary widely from one state to the next. Because the intent of Amendment 17 is administrative in nature -- to alter the schedule by which the Council and NMFS develop and consider specifications and management measures -- none of the alternatives are expected to affect any state's coastal management program.

### **5.8 Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

The Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. At Section 302(b)(5), the Magnuson-Stevens Act reserves a seat on the Council for a representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. government formally recognizes that the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinalt) have treaty rights to fish for groundfish. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed (U and A) fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations have been developed in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

None of the alternatives under consideration for Amendment 17 would affect tribal groundfish allocations. As discussed above in Section 4.0, changing the start date of the fishing period from the current January 1 start date could affect tribal management activities for the halibut and groundfish fisheries. The major tribal groundfish and halibut seasons occur in March and April. A fishing year start date of March 1 (Alternatives 2 and 5) would shorten the time between the NOAA approval of groundfish harvest specifications and the start date of tribal fisheries, which could cause logistical challenges for tribal fisheries managers setting season start dates and harvest amounts. Alternative 4, which includes a May 1 fishing period start date, would set the March-April tribal groundfish and halibut fisheries at the end of the Council's fishing period. While this fishing period start date would provide tribal fisheries managers with more advance notice of available groundfish harvest amounts, there could be greater logistical challenges under Alternative 4 if the treaty tribes wished to change their current management practices to extend the tribal fisheries from the current March-April into a March-May or April-May season. None of the alternatives would affect the halibut fishery management schedule, which is determined by the International Pacific Halibut Commission, and which has traditionally had an annual fisheries start date on or around March 15.

### **5.9 Migratory Bird Treaty Act**

The Migratory Bird Treaty Act of 1918 was designed to end the commercial trade of migratory birds and their feathers that, by the early years of the 20th century, had diminished populations of many native bird species. The Act states that it is unlawful to take, kill, or possess migratory birds and their parts (including eggs, nests, and feathers) and is a shared agreement between the United States, Canada, Japan, Mexico, and Russia to protect a common migratory bird resource. The Migratory Bird Treaty Act prohibits the directed take of seabirds, but the incidental take of seabirds does occur. Amendment 17 is administrative in nature and none of the proposed management alternatives, or the Council recommended action are likely to affect the incidental take of seabirds protected by the Migratory Bird Treaty Act.

### **5.10 Executive Order 12898 – Environmental Justice**

Executive Order 12898 obligates federal agencies to identify and address “disproportionately high adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations in the United States” as part of any overall environmental analysis associated with an action. NOAA guidance, NAO 216-6, at §7.02, states that “consideration of E.O. 12898 should be specifically included in the NEPA documentation for decisionmaking purposes.” Agencies should also encourage public participation—especially by affected communities—as part of a broader strategy to address environmental justice issues.

The environmental justice analysis must first identify minority and low-income groups that live in the project area and may be affected by the action. Typically, census data are used to document the occurrence and distribution of these groups. Agencies should be cognizant of distinct cultural, social, economic or occupational factor that could amplify the adverse effects of the proposed action. (For example, if a particular kind of fish is an important dietary component, fishery management actions affecting the availability or price of that fish could have a disproportionate effect.) In the case of Indian tribes, pertinent treaty or other special rights should be considered. Once communities have been identified and characterized and potential adverse impacts of the alternatives are identified, the analysis must determine whether these impacts are disproportionate. Because of the context in which environmental justice developed, health effects are usually considered and three factors may be used in an evaluation: whether the effects are deemed significant, as the term is employed by NEPA; whether the rate or risk of exposure to the effect appreciably exceeds the rate for the general population or some other comparison group; and whether the group in question may be affected by cumulative or multiple sources of exposure. If disproportionately high adverse effects are identified, mitigation measures should be proposed. Community input into appropriate mitigation is encouraged.

Amendment 17 is not expected to affect minority and low-income communities. West Coast groundfish tribes are part of the Council's decision-making process on groundfish management issues and tribes with treaty rights to salmon, groundfish, or halibut have a seat on the Council. None of the revisions to the

FMP under Amendment 17 preferred alternatives affect treaty tribal groundfish allocations or the timing or management flexibility of any of the tribal fisheries for groundfish. West Coast groundfish fisheries are described in Section 3.3 of this document, with more detail provided in the Council’s 2003 EIS for the groundfish specifications and management measures (Council 2003). Available demographic data detailed in the EIS show that coastal counties where fishing communities are located are variable in terms of social indicators like income, employment, and race and ethnic composition. Generally, the preferred alternatives are intended to maintain current fishing practices and schedules while improving Council and NMFS efficiency in implementing specifications and management measures. Thus, Amendment 17 is not expected to have notable effects on fishing communities in general, nor on minority and low income groups in particular.

**5.11 Executive Order 13132 – Federalism**

Executive Order 13132 enumerates eight “fundamental federalism principles.” The first of these principles states “Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.” In this spirit, the Executive Order directs agencies to consider the implications of policies that may limit the scope of or preempt states’ legal authority. Preemptive action having such “federalism implications” is subject to a consultation process with the states; such actions should not create unfunded mandates for the states; and any final rule published must be accompanied by a “federalism summary impact statement.”

The Council and process offers many opportunities for states (through their agencies, Council appointees, consultations, and meetings) to participate in the formulation of management measures. This process encourages states to institute complementary measures to manage fisheries under their jurisdiction that may affect federally managed stocks.

None of the proposed changes to the Plan would have federalism implications subject to EO 13132.

**6.0 REGULATORY IMPACT REVIEW AND REGULATORY FLEXIBILITY ANALYSIS**

The RIR and IRFA analyses have many aspects in common with each other and with EAs. Much of the information required for the RIR and IRFA analysis has been provided above in the EA. Table 6.1 identifies where previous discussions relevant to the EA and IRFA can be found in this document. In addition to the information provided in the EA, above, a basic economic profile of the fishery is provided annually in the Council’s SAFE document.

**Table 6.0 1 Regulatory Impact Review and Regulatory Flexibility Analysis**

RIR Elements of Analysis	Corresponding Sections in EA	IRFA Elements of Analysis	Corresponding Sections in EA
Description of management objectives	1.2 & 1.3	Description of why actions are being considered	1.2 & 1.3
Description of the Fishery	3.3	Statement of the objectives of, and legal basis for actions	1.2
Statement of the Problem	1.0	Description of projected reporting, recordkeeping and other compliance requirements of the proposed action	4.3
Description of each selected alternative	2.2 & 2.3	Identification of all relevant Federal rules	5.0
An economic analysis of the expected effects of each selected alternative relative to status quo	4.3		

## 6.1 Regulatory Impact Review

The RIR is designed to determine whether the proposed action could be considered a “significant regulatory action” according to E.O. 12866. E.O. 12866 tests requirements used to assess whether or not an action would be a “significant regulatory action”, and identifies the expected outcomes of the proposed management alternatives. An action may be considered “significant” if it is expected to: 1) Have a annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; 2) Create a serious inconsistency or otherwise interfere with action taken or planned by another agency; 3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or 4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive Order. Based on the economic analyses found in Sections 4.2 and 4.3, this action is not significant under E.O. 12866.

## 6.2 Initial Regulatory Flexibility Analysis

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. To ensure a broad consideration of impacts on small entities, NMFS has prepared this IRFA without first making the threshold determination whether this proposed action could be certified as not having a significant economic impact on a substantial number of small entities. NMFS must determine such certification to be appropriate if established by information received in the public comment period.

### 1) A description of the reasons why the action by the agency is being considered.

Since 1990, the Council has annually developed its recommendations for specifications and management measures in a two-meeting process (usually 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. In 2001, NMFS was challenged on this process in Natural Resources Defense Council, Inc. v. Evans, 2001 168 F.Supp. 2d 1149 (N.D. Cal. 2001) and the court ordered NMFS

### Requirements of an IRFA

The Regulatory Flexibility Act (5 U.S.C. 603) states that:

(b) Each initial regulatory flexibility analysis required under this section shall contain--

- (1) a description of the reasons why action by the agency is being considered;
- (2) a succinct statement of the objectives of, and legal basis for, the proposed rule;
- (3) a description of and, where feasible, and estimate of the number of small entities to which the proposed rule will apply;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as--

- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- (3) the use of performance rather than design standards; and
- (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

to provide prior public notice and allow public comment on the annual specifications. Because of this court order, the Council needs to amend the FMP's framework for developing annual specifications and management measures to incorporate NMFS publication of a proposed rule for the specifications and management measures, followed by a public comment period and a final rule.

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 NMFS request, the Council decided to consider whether specifications and management measures could be published for multi-year, rather than single year, periods.

#### NMFS Guidance on RFA

NMFS has provided guidance as to how the regulatory flexibility analysis relates to other analyses and other applicable law. (source: "Operational Guidelines, Fishery Management Plan Process" National Marine Fisheries Service, Silver Spring MD, March 1, 1995, Appendix I.2.d.)

"The RFA requires that the agency identify and consider alternatives that minimize the impacts of a regulation on small entities, but it does not require that the agency select the alternative with the least net cost. Section 606 of the RFA clearly states that the requirements of a regulatory flexibility analysis do not alter standards otherwise applicable by law. Executive Order 12866 requires that agencies provide an assessment of the potential costs and benefits of a "significant" action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental function (section 6(a)(3)(B)(ii)). However, the Executive Order also requires agencies to adhere to the requirements of the RFA and other applicable law (section 6(a)(3)). In short, when either the regulatory flexibility analysis or the RIR conflict with a statutory mandate (e.g., the Magnuson Act), the resulting decision must conform to the *statute*."

#### 2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The U.S. groundfish fisheries in the EEZ off the Washington, Oregon, and California coasts are managed pursuant to the Magnuson-Stevens Act and the Pacific Coast Groundfish FMP. The FMP was developed by the Council. Regulations implementing the FMP appear at 50 CFR part 660 subpart G. The rule implementing this action would comply with a court order in Natural Resources Defense Council, Inc. v. Evans, 2001 168 F.Supp. 2d 1149 (N.D. Cal. 2001).

#### 3) A description of and, where feasible, and estimate of the number of small entities to which the proposed rule will apply;

Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions.

Small businesses. The SBA has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting

operations. A wholesale business servicing the fishing industry is a small businesses if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$5.0 million.

Approximately 2,000 vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10-20 of those vessels are considered small businesses by the Small Business Administration. There are also about 450 groundfish buyers on the West Coast, approximately 5 percent of which are responsible for about 80 percent of West Coast groundfish purchases. NMFS does not have data on the number of persons employed by these groundfish buyers, but it is safe to assume that at least some of the groundfish buyers are small businesses. In the 2001 recreational fisheries, there were 77 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast. While most of the West Coast charter businesses, particularly those in Washington and Oregon, are likely small businesses, there may be some West Coast charter businesses with annual receipts in excess of \$5.0 million. This proposed rule is administrative in nature, thus none of these businesses will be subject to regulatory requirements resulting from this rule. However, fishing businesses will be affected by revisions to the Council's specifications and management measures process in that the process proposed by this rule would provide participants with more time and opportunity to review the specifications and management measures as they are developed in the Council and once they are proposed by the Federal government.

Small organizations. The RFA defines "small organizations" as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Both small and large nonprofit enterprises participate in the Council process. Several of the environmental nonprofit organizations that participate in the Council process are dominant in their fields. However, there are also smaller, more localized environmental nonprofit organizations and fishermen's organizations that could be considered small organizations. While none of these organizations will be subject to regulatory requirements resulting from this rule, they will be affected by revisions to the Council's specifications and management measures process in that the process proposed by this rule would provide participants with more time and opportunity to review the specifications and management measures as they are developed in the Council and once they are proposed by the Federal government.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

Although many fishing communities are small governmental jurisdictions, no regulatory requirements for those governmental jurisdictions will result from this rule.

4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

There are no projected reporting, recordkeeping or other compliance requirements associated with this proposed rule.

5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

No duplicative requirements that have been identified.

6) A description of any alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimizes the significant economic impacts of the proposed rule on small entities.

The defined objectives of this proposed rule are to:

- Comply with a court order to provide more opportunity for public comment in the NMFS rule publication process;
- Streamline the process of and reduce the workload associated with developing specifications and management measures so that more Council and NMFS time may be devoted to issues other than specifications and management measures development.

The objectives of the proposed rule, applicable statutes, and the court order in Natural Resources Defense Council, Inc. v. Evans, 2001 168 F.Supp. 2d 1149 (N.D. Cal. 2001) could have been met by Issue 1 (Process) Alternatives 2-5, Alternative 3 preferred, and by all three OY Duration alternatives. Of the Process Alternatives, the proposed rule would implement the alternative expected to have the lowest economic effect on small entities. Process Alternatives 2, 4, and 5 would have resulted in a new fishery season start date, whereas Alternative 3 retains the January 1 season start date. To the extent that any effects were anticipated from the Issue 1 action, the effects were primarily expected to result from the change in fishing season start date, see Section 4.3 above. Of the OY Duration (Issue 2) Alternatives, the preferred Alternative 1 was expected to have the lowest economic effect on small entities. OY Duration Alternatives 2 and 3 could have resulted in greater fluctuations in inseason management measures, creating greater business uncertainty for fishery participants. To the extent that any effects were anticipated from the Issue 2 action, the effects were primarily expected to result from the Alternative 2 or 3 revision to the status quo use of one-year duration OYs, see Section 4.3 above.

## 7.0 REFERENCE MATERIAL

### 7.1 Bibliography

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## **7.2 List of Public Meetings, Agencies and Persons Consulted**

Meetings of the Groundfish Multi-Year Management Committee were held on December 13-14, 2001, and on January 31- February 2, 2002. Amendment 17 was further discussed at the Council's meetings in April, June, and September 2002. Through these meetings, the Council has consulted with the NMFS, WDFW, ODFW, CDFG, and the Groundfish Treaty Tribes. Through its Multi-Year Management Committee and advisory bodies, the Council has also consulted with representatives of the fishing and processing industries, environmental conservation organizations, academia and other public groups.

## **7.3 List of Federal Register Notices Published in Connection with this Action**

66 FR 52114-52115 – 10/12/01 – Announcing November 2001 Council meeting where Council requested formation of Groundfish Multi-Year Management Committee based on recommendations of Groundfish Management Process Committee

66 FR 59575 – 11/29/01 – Announcing first Groundfish Multi-Year Management Committee meeting for December 13-14, 2001

SUPPLEMENTARY INFORMATION: The formation of this ad hoc committee is in response to the Council's request for a committee to scope multi-year management approaches for the West Coast groundfish fishery. Multi-year management of the groundfish fishery would be synchronized with a multi-year groundfish stock assessment schedule. Full accommodation of federal notice and comment requirements would also be incorporated into the multi-year cycle. This is the first meeting of the committee, and the primary purpose of the meeting is to refine the purpose and objectives of multi-year management, as well as initiate scoping of alternative approaches.

67 FR 569 – 01/04/02 – Announcing second Groundfish Multi-Year Management Committee meeting for January 31-February 2, 2002

67 FR 7358-7360 – 02/19/02 – Announcing March 2002 Council meeting where initial review of Groundfish Multi-Year Management Committee recommendations occurred.

67 FR 13317-13318 – 03/22/02 – Announcing April 2002 Council meeting where Council initiated FMP amendment.

#### **7.4 List of Preparers**

This document was prepared by the Northwest Regional Office of the National Marine Fisheries Service. *Yvonne deReynier*, NMFS, Northwest Region, project leader and primary author. *William Daspit*, Pacific States Marine Fisheries Commission, PacFIN database catch and revenue data extraction. *Jamie Goen*, NMFS Northwest Region, open access fisheries descriptions. *Richard Methot*, NMFS, Northwest Fisheries Science Center, discussion of effects of changing the management process on the timeliness of stock assessment information. *Carrie Nordeen*, NMFS, Northwest Region, non-groundfish and protected species descriptions. *Becky Renko*, NMFS, Northwest Region, discussion of groundfish stock assessment process and groundfish species descriptions. *Edward Waters*, Pacific Fishery Management Council, analysis of the expected economic effects of altering the start date of the fishing year. Preparers also appreciate the organizational aid of *Daniel Waldeck* of the Pacific Fishery Management Council, who staffed Groundfish Multi-Year Management Committee meetings and Amendment 17 discussion items for the Council.