

An FMP Amendment to Change the Groundfish Specifications and Management Measures Process

Pacific Fishery Management Council Staff White Paper (Scoping Information Document)

1 Introduction

This white paper provides information for the Council to begin scoping an amendment (Amendment 24) to the Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) to address problems that have become apparent in the current biennial process for developing and implementing harvest specifications and management measures. Problems with the current process were brought to the fore with implementation of the 2011-12 harvest specifications and management measures, because pursuant final regulations were not published until May 11, 2011, instead of the start date of the fishing year, January 1. This delay was due to NMFS' finding that the draft environmental impact statement (DEIS) evaluating the proposed action, which included an FMP amendment to revised overfished species rebuilding plans, was not adequate to support decision-making, delaying conclusion of the implementation process.

In response to problems that emerged during the last management cycle the Council formed the Groundfish Process Improvement Committee (GPIC) and several constituent subcommittees to look into various aspects of the management process with the objective of developing a more workable process for future management cycles. The GPIC laid the groundwork to develop a decision-making and implementation schedule for the 2013-14 biennial cycle and investigated long-term solutions. As part of their information gathering effort the GPIC found that there have been difficulties in implementing regulations by the start of the January 1 fishing year since the first biennial process, 2005-06.

After hearing the Committee's report at their April 2011 meeting the Council supported further investigation of developing an FMP amendment to address process problems in time for the 2015-16 cycle. Table 1 shows a proposed schedule for an FMP amendment process to accomplish this objective.

2 The Current Groundfish FMP Framework and Biennial Process for Developing Harvest Specifications and Management Measures

2.1 Key FMP Provisions Relating to the Biennial Process

Chapters 4, 5, and 6 in the Groundfish FMP describe elements of policy and process for managing groundfish fisheries.

Chapter 4 lays out the policy framework for achieving optimum yield.¹ From an operational standpoint, the management outcome of this policy framework is the annual catch limits (ACLs) for the fishery management units (stocks and stock complexes), which are established as part of the biennial process. The biennial process is also an opportunity for the Council to evaluate progress in rebuilding the seven groundfish stocks currently managed under rebuilding plans. While section 4.6.3.1 describes rebuilding

¹ The FMP describes optimum yield as "a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purpose and policies, implementing an FMP's objectives, and balancing the various interests that comprise the national welfare" (p. 19).

plan objectives that may be used in such an evaluation, from an operational standpoint the key decision is deciding whether to adjust the rebuilding target year (T_{TARGET}), because the Magnuson-Stevens Act directs councils to “specify a time period for rebuilding the fishery...” (§304(e)(4)). The target year in turn determines an associated harvest rate, which in the short term translates into the ACL for that stock. Chapter 4 provides guidelines for establishing and modifying the target year.

Chapter 5 describes the biennial management process. As amended, this chapter provides quite a bit of flexibility in the timing of necessary Council decisions (which are enumerated in section 5.1) stating only that the Council will develop their recommendations over three meetings, the first of which will “usually” be November.

Chapter 6 catalogs the range of management measures available to the Council. With respect to the biennial process section 6.2 provides an important framework relating Council decision-making to the regulatory process for implementing regulations. It outlines four methods for establishing or modifying regulations:

1. **Automatic management actions** taken by NMFS to address nondiscretionary measures (such as closing a fishery on attainment of a quota).
2. **Notice actions requiring one Council meeting**, which apply to actions with a “temporary effect,” likely need frequent adjustment, and which have been previously analyzed for their effects; usually these are actions classified as routine and referred in the Council process as “inseason management actions.”
3. **Full notice and comment rulemaking requiring three Council meetings**; the Council’s biennial specifications process is so classified; this results in a longer regulatory process, because of the requirement to publish proposed regulations for public comment followed by the publication of the final rule.
4. **Full notice and comment rulemaking requiring two Council meetings** required for discretionary management measures having a permanent effect that are highly controversial or directly allocate the resource. This process may be used to establish new management measures outside the biennial process.

While the details of the regulatory process may be tedious, an understanding of their relationship to Council decision-making is important when considering changes to the biennial harvest specifications process, because Council policies and recommendations must be translated into regulations to have an ultimate effect on the fishery.

2.2 Requirements from Applicable Law

Table 2 estimates the time intervals associated with Council decision-making and the procedural requirements of applicable law based on the schedule adopted for the 2013-14 biennial process.² The applicable identified in the table have these process elements:

- The National Environmental Policy Act (NEPA) provides an umbrella framework to incorporate analyses required under applicable law and support decision-making. Since 2003 an EIS has been prepared for annual and biennial harvest specifications and management measures. If an EIS is prepared, a two-stage process is required. A DEIS is filed with the Environmental Protection Agency. The EPA then publishes a Notice of Availability, which triggers a minimum 45-day public comment period. Once this is concluded, any comments received must be

² Other Federal laws may apply to a particular decision imposing additional timing considerations. However, the three laws described here most directly influence the timing of groundfish harvest specifications.

addressed in a final EIS (FEIS), which is also filed with EPA. A 30-day cooling off period then ensues before the responsible official may sign the Record of Decision (ROD), which serves as the legal determination of the agency's action. The ROD must be signed before the final rule is published and in the case of a related FMP amendment, before the determination on approval of the amendment. Alternatively an environmental assessment (EA) may be prepared to determine whether significant environmental impacts are likely to result. Based on the EA, the agency may make a Finding of No Significant Impact (FONSI) and not proceed to an EIS. Preparation of a draft and final document with formal public comment is not required for an EA. In addition, an EA is supposed to be "a concise public document" with "brief discussions" (40 CFR 1508.9). Preparing an EA is generally a simpler, shorter process compared to an EIS. Prior to 2003 an EA was prepared annually to evaluate groundfish harvest specifications and management measures.

- The Administrative Procedures Act (APA) and Magnuson-Stevens Act (MSA) §304(b) govern the promulgation of regulations, which is the principal way in which harvest specifications and management measures are implemented. This includes a 15-day window for NMFS review of the proposed regulations, preparation of a proposed rule, which is published in the Federal Register and followed by a 30-day public comment period, publication of a final rule in the Federal Register and a 30-day cooling off period after publication before the regulations become effective. All together, once the regulations have been initially drafted, this process takes 90-120 days. (In unusual circumstances the process can take longer.)
- If the harvest specifications process also requires an FMP amendment (for example to incorporate a new rebuilding plan) then MSA §304(a) comes into play. Once the proposed amendment is formally transmitted to NMFS by the Council NMFS must immediately publish a Notice of Availability for the amendment, which triggers a 60-day public comment period. NMFS must take a final decision on the amendment within 30 days of the end of the public comment period. Taken together 95 days are typically allotted for this process.

As shown in Table 2 these process requirements can overlap, although the overall timing is dictated by the successive conclusion of the requirements of the laws. First, the NEPA process must conclude with the signing of a ROD (or in the case of an EA a FONSI). If an FMP amendment is involved then the Secretarial decision usually precedes publication of the final rule.

In addition to these statutory requirements, NMFS has established internal review requirements consistent with the Quality Assurance Plan published by the Northwest Region in 2007. For the NEPA document this review involves the Sustainable Fisheries Division, the Regional NEPA Coordinator, NOAA General Council, NMFS Headquarters staff, and the NOAA Office of Program Planning and Integration. In addition, proposed regulations and FMP amendments require some level of internal review separate from the NEPA review process.

The Council and NMFS are currently in the midst of developing harvest specifications and management measures for the 2013-14 period. The Council committed to limiting the scope of proposed changes to harvest specifications and management measures for this cycle and also "frontloading" their decisions by identifying a preliminary preferred alternative at the November 2011 meeting. Furthermore, the NEPA schedule is accelerated by shortening time periods for developing and reviewing the document, and releasing the DEIS in advance of final Council action (i.e., without identifying a final preferred alternative, which would be included in the FEIS). It is too early to state with complete confidence that this accelerated process will result in regulations being in place by January 1, 2013, because unforeseen events could derail this tight schedule. Furthermore, the Council may bridle at the limited scope imposed on their decisions.

3 Problem Statement

It has become increasingly difficult to complete all the steps necessary in time to implement the regulations by the start of the next 2-year period as the decisions have become more complicated over the past decade or so. Standards for evaluating effects have shifted over time, in part due to litigation, adding to the difficulty in preparing adequate analyses.

The longer time period and frontloading means that the data supporting analyses (including stock assessments) is several years old by the time harvest specifications and management measures are implemented. For the 2013-14 harvest specifications data are by and large from 2010 and earlier; information on baseline conditions during the previous (2011-12) management period is largely unavailable for inclusion in the EIS.

Related to this, the Council has limited ability to respond to new information that indicates, for example, that an ACL can be increased while still meeting policy objectives (“green light” decisions). Longer time lags between data availability and implementation could make this worse. The status of widow rockfish, which has been determined to be rebuilt, is an example.

This implementation problem is essentially a timing problem: There hasn’t been enough time between when the Council makes its final decision (typically June) and when the regulations have to be in place (the following January) to complete all the process steps adequately. Initiating the process even earlier exacerbates the “data staleness issue” outlined above.

This represents in part a tradeoff between the scope for Council decision-making and the level of analysis and documentation (and thus time) needed to implement the decision.

Based on the problem as outlined above, changes to the harvest specifications process (including an FMP amendment) should meet the following objectives:

- Implement the regulations at the start (January 1) of the management period.
- Better explain the decisions before the Council and document the rationale supporting the decisions taken.
- Reduce the complexity and difficulty of conducting the analysis and documentation needed to implement the regulations.
- Reexamine the policy evaluation framework for overfished stock rebuilding, recognizing that small changes in the probability of rebuilding by a previously established target year may not be meaningful and should not prompt a change in the harvest rate.³
- Seek ways to retain or increase flexibility to respond to new information with management changes.
- Implement any changes for use in the 2015-16 management cycle (see Table 1).

Council action will not include new fishery management measures (e.g., new allocations, new stock complexes, lingcod size limit changes) in this FMP amendment so that it focuses exclusively on process improvements.

³ The probability of rebuilding by T_{TARGET} , the median rebuilding year, and the harvest rate are interrelated metrics. Fishery managers only control the harvest rate.

4 Possible Ways to Address the Problem

The following sections describe different types of process changes that could be considered in developing a new decision-making, evaluation, and implementation process for harvest specifications. They should not be interpreted as comparative alternatives; all of these types of changes could be combined in different ways to formulate different alternatives for Council decision-making and supporting analyses. Section 5 describes a few example alternatives to help the Council begin scoping potential process improvements.

4.1.1 Increase the Length of the Management Period

The management period could be lengthened to 4-6 years, or an open ended period, in combination with a comprehensive NEPA analysis at the start of the period. (The length of an open ended period would be predicated on the continued relevance of the initial comprehensive NEPA analysis). Changes to harvest specifications and management measures could occur during the management period supported by tiered NEPA analyses of more narrow scope. “Sideboards” on the scope of Council decision-making (changes to management) that could occur during the management period would need to be established. These sideboards would relate to the scope of the larger NEPA document’s impact evaluation.

4.1.2 Limit the Scope of Council Decisions

Analysis and documentation has to be more complex when the Council has more decision-making scope. This adds to the amount of time needed for analysis and documentation, internal review, and statutory timing requirements (e.g., public comment periods). Some ways decision-making scope could be reduced are:

- Do not establish new management measures; only routine management measures are applied when ACLs and/or allocations are changed.⁴ Establishing new management measures as routine measures would be done in a separate process, which could be better timed with data availability (e.g., WCGOP bycatch rates). A longer (or open ended) management period could provide more flexibility in timing such a process. The timing and workload implications of related rulemaking would have to be taken into account.
- Do not “bundle” FMP amendments into the harvest specifications process. Most often, FMP amendments are completed in connection with new or revised rebuilding plans. However, the Chapter 4 framework in the Groundfish FMP allows most adjustments to be made through regulations.

4.1.3 Change the Timing of Council Decision-making and/or the Start of the Management Period

Under the process used for the 2013-14 harvest specifications, analysis and document preparation begins when the Council adopts a range of alternatives at the November 2011 meeting, providing approximately thirteen and a half months for process requirements. The schedule involves several compromises such as releasing a DEIS before Council final action and expedited internal review.

There is limited scope for the Council to choose harvest specifications earlier, because these decisions depend on approved stock assessments. It might be possible for the Council to adopt alternatives in September, however, if the stock assessment process can somehow accommodate this.

⁴ Some exceptions may be needed to address an emerging conservation concern.

The start of the management period could be delayed, for example from January 1 to March 1, to allow more time to complete process requirements. This would not necessarily require a change in the start of the fishing year (currently January 1) if clear procedures were implemented for establishing “interim” ACLs (and allocations) for any intervening period between the fishing year start and the new management period. Routine management measures (in-season management) would be applied as necessary in relation to the “interim” ACLs.

4.1.4 Standardize and Simplify the Documentation

Specify (and simplify) the scope and elements of the analysis:

- Standardize the format for describing and documenting the decisions to be made as part of the process
- Clearly identify and standardize metrics for evaluating impacts (projected fishing mortality, stock biomass, revenue, personal income)
- Reduce the range of direct and indirect impacts evaluated (fishing mortality and related revenue during the management period) while documenting cumulative impacts (stock status, habitat, ecosystem, protected species stock status, community welfare) in a more generalized fashion
- Link the baseline description (affected environment) to impact evaluation metrics and separately document them (e.g., annual SAFE)

Establish thresholds:

- Adverse impact thresholds to determine the level of documentation required (e.g., EIS versus an EA)
- Thresholds to inform the scope of decisions taken. If a discrete list of decisions can be developed (see above) it may be possible to rate them in terms of the process requirement (notice rulemaking, full notice-and-comment rulemaking, FMP amendment, etc.) and the likely level of analysis and documentation associated with them. This would inform the Council about the process implications of particular types of decisions.

4.1.5 Change Internal Review and Process Requirements

Work with NMFS NWR to determine if there are circumstances where the amount of time required for internal review could be reduced. Although workload and other demands may preclude it, a team-based rather than a sequential review process would be more time efficient and could deliver better results. In a team-based approach, instead of a review model, all players are continuously involved in the preparation of analyses. This requires a high level of transparency and communication to be effective. Those players that traditionally assume reviewing responsibility (NWR, GC) would need to articulate expectations in detail early in the process and preparers would have to regularly report how those expectations are being met in the analysis and documentation.

5 Example Alternatives

Scoping of potential alternatives would benefit from consideration of mixes of the various types of improvements outlined in section 4. However, for illustrative purposes, three example alternatives are shown below. These are merely skeletal examples at this point to promote understanding of possibilities and thinking about what mix of topics might be described for further analysis.

Retain the current 2-year management period but new regulations become effective on March 1 in the first year. This would provide two additional months to complete the process requirements. Developing a legally compliant framework to limit the scope of required analysis could help reduce workload. Demonstrating that a FONSI can be reached for the harvest specifications would reduce NEPA process requirements (i.e., an EA instead of an EIS could be prepared). Procedures for managing the fishery for the 2 months between the end of the last 2-year cycle and the implementation of new regulations would have to be developed. This example alternative demonstrates a relatively limited, simple fix but may end up being only a “band-aid” approach that does not address underlying process issues.

Lengthen the management period to 5 or 6 years supported by an initial comprehensive NEPA analysis and annual or biennial tiered NEPA analyses for subsequent actions during the management period. Before the start of the longer management period an EIS would be prepared to evaluate the full range of effects that would be expected from the application of the decisional framework for determining optimum yield during the management period (outlined in Chapter 4 of the FMP) and related management measures. Adjustments to harvest levels in response to new scientific information and any new management measures that might be needed during the management period would be implemented through a two Council meeting process, full notice-and-comment rulemaking, and “tiered” NEPA (EA) analyses. If an FMP amendment is needed in relation to harvest management objectives (e.g., a new rebuilding plan) this would be accomplished through a separate process.

Separate harvest specification decisions from the development of management measures. Adjustments to harvest specifications would be accomplished annually or biennially while only adjusting routine management measures to constrain catch below ACLs. Management measures other than routine measures would be implemented separately. A fixed process could be established to periodically implement management measures or they could be implemented on a case-by-case basis, as needed.

The process used to establish harvest specifications under the North Pacific Council’s Groundfish FMPs for the Bering Sea and Aleutian Islands (BASI) management area and the Gulf of Alaska (GOA) provides an example of a streamlined process for establishing harvest specifications. In 2007 NMFS Alaska Region prepared an [EIS](#) evaluating alternative harvest strategies for annual harvest specifications. Since then the Region annually prepares a Supplementary Information Report (SIR) to determine whether the current year’s harvest specifications trigger the need to prepare a supplemental EIS (SEIS).⁵ As noted in the [2011 SIR](#), “Not every change requires an SEIS; only those changes that cause effects which are significantly different from those already studied require supplementary consideration.” The Region has not yet found a need to prepare an SEIS for subsequent annual harvest specifications. In addition to relying on the range of impacts identified in the original EIS, the Region relies on information in annual SAFE documents on stock status (stock assessments), ecosystem status, and economic conditions to reach its conclusion in the SIR.

Any attempt to adopt a similar framework for setting harvest specifications under the Pacific Council’s Groundfish FMP would have to account for the different circumstances on the west coast. These include the need to rebuild overfished species and the larger number of fishery management units for which harvest specifications are established. The Alaska harvest specifications process is open ended; each year the SIR determines whether an SEIS is necessary. Alternatively, in adapting this process to west coast circumstances, the Council may want to consider the pros and cons of setting a fixed duration for the applicability of the EIS with SEISs prepared every 5 years or so that would review current circumstances

⁵ CEQ regulations at 40 CFR 1502.9(c)(1) identify the triggers for preparing an SEIS: 1) substantial changes to the proposed action or 2) significant new circumstances or information bearing on the proposed action and its impacts, any of which are relevant to environmental concerns.

in relation to evaluation in the original EIS. A fixed duration could provide greater stability in workload planning but would obligate periodic preparation of supplemental analyses. Another consideration is that the Alaska approach relies on documenting current environmental conditions in their SAFE. It is likely that something similar would be needed if such a process were used by the Council and NMFS Northwest Region.⁶

⁶ The Groundfish FMP, as amended, states that either a SAFE document or NEPA document (EIS or EA) will be prepared every other year to provide the best available scientific information to the Council for setting harvest specifications and gauging their effects.

Table 1. Proposed decision-making and implementation process for the FMP Amendment. The table presupposes and FMP amendment would be implemented in time for application to the next management period (starting in 2015)

Council Meeting / Date	FMP Amendment	Next Management Cycle (assumes current process)
March 2012	Initial scoping	
September 2012		
November 2012	Adoption of a range of alternatives, selection of a preliminary preferred alternative (PPA) for public review	
March 2013	Council final action	
April 2013	FMP amendment submitted for Secretarial Review	
June 2013		Stock assessments adopted for management
September 2013		Remaining stock assessments adopted; initial action on harvest specifications and management measures
November 2013	Secretarial Review completed and any related regulations implemented	Adopt range of alternatives and identify preliminary preferred alternative for harvest specifications
April 2014		Final action on harvest specifications; PPA for management measures
June 2014		Final action on all components of the decision
January 2015		Regulations implemented

Table 2. Time involved in process requirements. Note that percentages of total process time sum to greater than 100 percent because statutory processes overlap in time.

NEPA	Days	Percent by Process	Percent of total process time*
DEIS preparation	92	25%	
Internal review	79	22%	
DEIS publication	19	5%	
DEIS comment period	45	12%	
FEIS preparation	31	8%	
Internal review	26	7%	
FEIS publication	6	2%	
FEIS comment period	30	8%	
Prepare ROD	37	10%	
Subtotal	365	100%	87%
APA			
Prepare proposed rule	26	15%	
Internal review	25	15%	
PR comment period	30	18%	
Prepare final rule	31	18%	
Internal review	30	18%	
Cooling off	28	16%	
Subtotal	170	100%	40%
MSA			
Prepare amendment	58	36%	
Internal review	6	4%	
Publish NOA	6	4%	
Public comment	60	38%	
Secretarial decision	30	19%	
Subtotal	160	100%	38%
Total time			420 days
By Process Type			
Documentation	305		73%
Internal review and publication	197		47%
Public comment	193		46%

*Percent of 420 days