

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Executive Director

DATE: September 25, 2002

SUBJECT: TAC-setting process

ESTIMATED TIME 8 HOURS (for all D-1 items)
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ACTION REQUIRED

Final action

BACKGROUND

In June, the Council reviewed a draft analysis of changing the annual catch specification process. The current process involves publishing proposed specifications (ABCs, TACs, PSC limits) based on the previous years specifications, then publication of interim specifications and final specifications based on updated stock assessments. The issue with the current process is that there may be inadequate time for the public to comment on proposed specifications prior to the start of the fishery. The revised analysis incorporates changes suggested by the Council, Advisory Panel, the Scientific and Statistical Committee, Groundfish Plan Teams, NMFS, and NOAA General Counsel. The analysis was mailed to you last week, and the executive summary is attached as (Item D-1(a)(1)). A letter from NMFS (Item D-1(a)(2)) identifies that Alternatives 2 - 4 will meet the APA requirements for rulemaking, although each has potential negative effects on groundfish management. NMFS recommends *either*:

Alternative 2: Eliminate publication of interim specifications. Issue proposed and final specifications prior to the start of the fishing year. Option of biennial harvest specification for BSAI and GOA target species on biennial survey schedule.

Alternative 3: Issue Proposed and Final Harvest Specifications based on an alternate fishing year schedule (July 1 to June 30).

Option 1: Set sablefish TAC on a January through December schedule.

and:

Option A: Abolish TAC reserves.

Option B: Update FMPs to reflect current fishing participants and harvest specifications process .

EXECUTIVE SUMMARY

Each year, normally in October, proposed groundfish harvest specifications for the Bering Sea and Aleutian Islands area (BSAI) and Gulf of Alaska (GOA) are published in the Federal Register. These proposed specifications are based upon total allowable catch (TAC), acceptable biological catch (ABC) and prohibited species catch (PSC) amounts, and apportionments thereof, which have been recommended by the North Pacific Fishery Management Council (Council) for the current year. Based on public comment on the proposed specifications and information made available at the December Council meeting, final specifications are published in the Federal Register during February or early March. So that fishing may begin January 1, regulations authorize the release of one-fourth of each proposed TAC and apportionment thereof, one-fourth of each PSC and apportionment thereof and the first seasonal allowance of pollock and Atka mackerel. These interim specifications are based upon the proposed specifications and published in the Federal Register in December and are superceded by the final specifications.

The existing harvest specification process is problematic for several reasons. The public is notified and given opportunity to comment on proposed specifications that often are outdated by the time they are published. The publication of proposed specifications each year can confuse the public, because incomplete and outdated information is provided due to the need to adhere to a strict time line in order to comply with all relevant regulations. Because the interim specifications are based on the proposed specifications, they do not take into account the recommendations contained in the Groundfish Plan Teams' final SAFE documents, or the recommendations coming from public testimony, the Science and Statistical Committee, Advisory Panel, and Council at its December meeting. One fourth of the initial TAC and PSC amounts have been found to be an inadequate amount for those fisheries that attract the greatest amount of effort at the beginning of the fishing year. As fisheries are seasonally apportioned to meet other management needs, (i.e., Steller sea lion protection measures) interim TACs based on one fourth of the annual TAC increasingly compromise other management objectives. Under the current process, administrative inefficiency exists in taking the regulatory actions necessary to set interim, proposed and final specifications. For these reasons, NMFS seeks to revise the harvest specification process.

The objectives of modifying the harvest specifications process are to manage fisheries based on best scientific information available, provide for adequate prior public review and comment to the Secretary on Council recommendations, provide for additional opportunity for Secretarial review, minimize unnecessary disruption to fisheries and public confusion, and promote administrative efficiency.

The management alternatives for amending this process are:

- Alternative 1. Status quo. (Publish proposed specifications, followed by interim and final specifications)
- Alternative 2: Eliminate publication of interim specifications. Issue proposed and final specifications prior to the start of the fishing year. Option of biennial harvest specification for BSAI and GOA target species on biennial survey schedule.
- Alternative 3: Issue Proposed and Final Harvest Specifications based on an alternate fishing year schedule (July 1 to June 30).
 - Option 1: Set sablefish TAC on a January through December schedule.
 - Option 2: Reschedule the December Council meeting to January.

Alternative 4: Use Stock Assessment Projections for biennial harvest specifications. For the BSAI and GOA set the annual harvest specifications based on the most recent stock assessment and set harvest specifications for the following year based on projected OFL and ABC values. For setting PSC there are two options:

Option 1: Set PSC limits annually

Option 2: Set PSC limits every two years based on regulations and projected values

Option A: Abolish TAC Reserves

Option B: Update FMPs to reflect current fishing participants and harvest specifications process.

Section 4.12 gives the environmental summary and conclusions. The environmental components that may be affected by the proposed action are the target groundfish species (including the State groundfish fisheries), prohibited species, and Steller sea lions. Results from simulation model and retrospective analysis indicated that under Alternatives 2, 3 and 4 groundfish harvests would be less and several target species biomasses would be more than under the Status Quo. This was primarily due to uncertainty resulting from projecting harvest amounts further into the future than under Alternative 1. Alternative 3 is likely to provide less biomass variability and more likelihood of setting TAC below the OFL compared to alternatives 2 and 4. Alternatives 1 and 3 have potential effects on the temporal dispersion of harvest of Steller sea lion prey species because of the lag between the biomass information used to set harvest specifications and the commencement of the fisheries.

The harvesting effects on groundfish from Alternatives 2, 3 and 4 are unknown due to a number of factors that are not part of the retrospective analysis and simulation model, including the full Council process which can have a substantial effect on the final TAC and has historically been more conservative than the analysis predicted. Potential overfishing identified in the analysis is likely to be mitigated through the Council process and may also be mitigated by additional regulatory action if new information becomes available during the current fishing year that indicates that the level of fishing is inappropriate. Because the effects on groundfish species are unknown, the effects on availability of prey for Steller sea lions are also unknown.

Alternative 3 may also have temporal effects on the groundfish fisheries and potentially conflict with Steller sea lion protection measures. These measures require the temporal dispersion of harvest and current seasons may need to be adjusted for BSAI pollock and Pacific cod trawl fisheries to meet Steller sea lion protection measures and to coincide with the July 1 through June 30 fishing year. During years of high pollock TAC, the BSAI pollock fishery may be conducted into October as the industry attempts to fully harvest the B season allocations, encountering potentially more salmon bycatch and worse weather. Alternative 3 also has the potential for higher levels of harvest in the A season during times of falling biomass than what would occur under the status quo. Because it is not possible to predict if the fishing behavior may change or to predict actions that may be taken by the Council or the State Board of Fish, and because of Steller sea lion protection measures, it is unknown if Alternative 3 could have an effect on target groundfish or Steller sea lions. Option 1 to Alternative 3 to set the sablefish TAC on a January through December schedule would allow the sablefish IFQ program to be managed concurrently with the halibut IFQ program, eliminating any potential effects on these programs from shifting the fishing year.

The Regulatory Impact Review (RIR) meets the requirements of Presidential Executive Order (E.O.) 12866 for a benefit-cost analysis of the proposed action and its alternatives. A complete benefit-cost analysis was

not possible. The information is not available to estimate dollar values for many of the benefits and costs. Moreover, the proposed action affects the conditions under which the Council and Secretary will make decisions about future TAC specifications. The actual benefits and costs will depend on the decisions made by the Council and Secretary, and those decisions cannot be predicted at this time. The RIR does examine a set of outcomes from this action that may affect the benefits and costs. Three general categories of outcomes are identified: (1) impacts on the TAC setting process itself, (2) changes in the fishing year under Alternative 3, and (3) changes in harvests and biomass size under Alternatives 2, 3, and 4.

Alternatives 2, 3 and 4, by extending the time within which the TAC setting should take place, will provide additional opportunities for scientific analysis, for peer review of scientific work, for public notice and comment on the proposed specifications regulations, and for consideration by the Council and the Secretary of Commerce. Since these alternatives will provide for public notice and comment on the specifications actually anticipated for the coming fishing year, comments received from the public will be more useful. Alternatives 2 and 4 provide the most time for this process; Alternative 3 increases the amount of time available, but not to the same extent. It may be difficult, moreover, to complete the entire rulemaking process in the time allotted under Alternative 3, especially with Option 2. Option 2 to Alternative 3 would provide additional time for stock assessment scientists to complete analysis but it may be administratively difficult to reschedule the December Council meeting to January.

Alternative 3 changes the fishing year to begin on July 1. A comparison of fishing seasons for different species with the proposed July 1 start date suggests that a shift from a January 1 to a July 1 start date would cause little disruption to many fisheries. The sablefish IFQ fishery in the GOA and BSAI is an important exception to this. A change in fishing year, and associated change in TAC, would be extremely disruptive in the middle of this fishing season, which currently runs from March 15 to November 15. It might be possible to delay the season, so that it started on July 1 with the start of the new fishing year. However, the administration of the individual quotas in this fishery requires a long closed period between the end of one fishing season and the start of the next. Currently the fishery is closed from November 15 to March 15. This closed period is best in the winter time since fishing conditions aren't as good, and there is less potential for bycatch conflicts with the related halibut fishery. However, a July 1 start for the year would mandate a closed period from March through June. Option 1 to Alternative 3, setting sablefish TAC on a January through December schedule, would eliminate this potential problem.

Alternatives 2, 3, and 4 lengthen the time between biomass surveys and the year in which specifications based on the surveys (specifications year) become effective. Under Alternative 1, the time between the survey information and implementation of the annual fishery based on that information is approximately 7 months, because the first three months of the year are managed under interim specification (which are based on the previous years TACs). Alternative 3 increases the period by three months, Alternative 2 increases the period by nine months, and Alternative 4 increases it by an average of 15 months per year (nine months for the first year of the biennial specifications, and 21 months for the second year). As the length of time between the biomass surveys and the specifications year increases, there is some evidence that biomass levels may vary more, ABCs and harvests may become smaller since lower harvest rates are triggered more often by the harvest control rule, mean spawning biomass levels become larger, and harvest variability increases. These results are extremely tentative.

If the harvest levels do decline as suggested by some modeling results, revenues to industry may also decline. Moreover, an increase in the year-to-year variability of harvest, also suggested by some model results, may impose increased interest and inventory carrying costs on industry.

The Initial Regulatory Flexibility Analysis (IRFA) identifies the numbers of small entities that may be regulated by the action, describes the adverse impacts that may be imposed on these small entities, and describes alternatives to the preferred alternative that may minimize the adverse impacts on the small entities and the reasons they weren't chosen. In this case a preferred action has not yet been identified. This IRFA addresses the statutory requirements imposed under the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Fairness Enforcement Act (SBREFA) of 1996.

The IRFA used the Small Business Administration (SBA) definitions of small entities. Small fishing entities were those that grossed less than \$3.5 million, small shoreside processing entities were those employing fewer than 500 persons. Non-profit entities were also considered small. The SBA also requires that an entity's affiliations be considered in determining its size. Large numbers of small entities may be regulated by this action. These include an estimated 1,353 small groundfish catcher vessel entities, 33 small groundfish catcher/processors, 36 shoreside groundfish processors, and six CDQ groups. The total numbers of entities regulated by this action include 1,366 groundfish catcher vessels, 79 groundfish catcher/processors, three groundfish motherships, 49 shoreside groundfish processors, and six CDQ groups.

There is some evidence that all alternatives compared to Alternative 1 would lead to somewhat reduced revenues, cash flow, and profits for the small entities, although this result is very uncertain. It was not possible to estimate the size of the impact on the small entities, although it was believed to be greatest for Alternative 4, less for Alternative 2, and least for Alternative 3. Increased year-to-year fluctuations in gross revenues may occur, and these also were expected to be greatest for Alternative 4, less for Alternative 2, and least for Alternative 3. The analysis was unable to determine whether or not there would be a disproportionate impact on small entities (compared to large entities). The analysis did identify additional impacts that were not adverse. Alternatives 2 and 4, and to a lesser extent Alternative 3, provide better opportunities for small business input into decision making about specifications since they provide for more informed public notice and comment.

An important component of an IRFA is a review of the alternatives that have not been chosen, but that minimize the burden of the rule on regulated small entities, and an explanation of why each of these has not been chosen. In this case, a preferred alternative has not yet been chosen. Therefore it has not yet been possible to complete this portion of the IRFA.

Environmental impacts and socioeconomic impacts resulting from changing fishing patterns as a result of the preferred alternative would be assessed annually in the EA/RIR/IRFA that accompanies the final harvest specifications.

At this time, a preferred alternative has not been identified. The Council seeks public comments on these alternatives and on the potential impacts on fishery participants and the environment. Alternative 1 appears to have the least potential for environmental effects but does not meet the objectives of this action. Considering administrative procedural aspects, Alternative 2 is more desirable than Alternatives 1, 3, or 4. More time is provided under Alternative 2 to perform stock assessments, to develop Council recommendations and to allow NMFS to implement proposed and final rule making before the beginning of the fishing year. Alternative 4 for demersal shelf rockfish and option 1 for PSC limits, requires annual rulemaking, reducing the administrative efficiencies that could have been realized with a biennial harvest specifications process. Alternative 3 has the disadvantage of requiring changes to the Sablefish IFQ program to accommodate a new fishing year, potentially affecting the State fisheries, and providing less time for the stock assessment and rulemaking processes compared to Alternatives 2 and 4. Option 1 to Alternative 3 would eliminate the potential problems with the sablefish fisheries.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA D-1(a)(2)
OCTOBER 2002

September 19, 2002

RECEIVED
SEP 23 2002
N.P.F.M.C

Mr. David Benton, Chairman
North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 306
Anchorage, Alaska 99501-2252

Re: Final Action on Amendments 48/48 to Fishery Management Plans
(FMPs) for the Groundfish Fisheries of the Bering
Sea/Aleutian Islands area and the Gulf of Alaska

Dear Dave,

At the June 2002 Council meeting, NMFS staff presented the initial review analysis for Amendments 48/48 to the FMPs for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska. These amendments have been before the Council since 1998. Amendments 48/48 would revise the administrative process for the harvest specifications. This analysis was revised, as requested by the Council in June, and was released for public review on September 5, 2002. Agenda item D-1(b) for the October 2002 Council meeting is the final action on Amendments 48/48. Before the Council takes up this issue for final action, Council members should be aware of several issues with the current harvest specifications process.

National Efforts to Revise the Harvest Specifications Process:

National interest in the harvest specifications process has focused on the legal issues. Several initiatives have been proposed, including the formation of a national workgroup to address these and other procedural issues. At this time, the process is slow and has an uncertain outcome. Therefore, the Council should not delay action on revising the harvest specifications process for Alaska in hopes of a national fix.

Steller Sea Lions and Interim Specifications:

The current harvest specifications process uses interim specifications during the first part of the fishing year until the final specifications are implemented, usually by mid to late



February. The use of interim specifications may conflict with Steller sea lion protection measures that require the seasonal apportionment of Atka mackerel, pollock and Pacific cod TACs. Interim specifications are based on two year old information. The final annual specifications are based on the most recent information. In years of falling biomass the old information may indicate a higher level of harvest than what is appropriate for the amount of biomass determined by more recent information. In this situation, the interim specifications could potentially allow for more harvest than the seasonal apportionment of annual harvest allowed by the Steller sea lion protection measures. Emergency action between mid December and January 1 could be required to prevent this situation and to allow the affected fisheries to open January 1. A potential also exists that the emergency rulemaking could not be completed before January 1, disrupting the affected fisheries.

Litigation:

On August 20, 2001, the federal court of the Northern District of California issued an order in favor of the Natural Resources Defense Council (NRDC) in litigation commenced by NRDC, *Natural Resources Defense Council V. Evans*, Case No. C 01-0421 JL (N.D. Cal. August 20, 2001). The NRDC challenged the Pacific Coast groundfish fishery annual harvest specifications process followed by the Pacific Fishery Management Council and authorized by the Secretary of Commerce, as well as the 2001 harvest specifications recommended by the Pacific Council and approved by the Secretary. The court decided in favor of the plaintiff, ruling among other things, that NMFS must publish the Pacific Coast groundfish fishery's proposed annual groundfish specifications in the Federal Register for public notice and comment prior to publication of final groundfish specifications.

Recent review of this case by NOAA General Counsel identified the following four considerations that apply to the harvest specifications process currently used for Alaska groundfish fisheries:

- (1) NRDC V. Evans held that the Magnuson-Stevens Act requires NMFS to publish proposed regulations such as fishery specifications, in the Federal Register and receive public comment on them for a period of 15 to 60 days. This holding is not binding on NMFS outside the Northern District of California and is being appealed. Courts in other jurisdictions, however, may apply the reasoning in the NRDC case to reach a similar result. Alaska groundfish specifications are published as proposed with a 15 to 60 day

comment period but the relation of the proposed rule to the final rule is of concern, as described in (3) below. Of particular concern is the fact that no prior notice and comment opportunity is provided for in the interim specifications.

(2) The Administrative Procedure Act (APA) waivers of prior notice and opportunity for comment and delayed effectiveness are exceptions to be "narrowly construed and only reluctantly countenanced." A reviewing court may find that a fishery specification procedure that requires institutionalized annual waiver of these rulemaking requirements (as currently used for interim specifications) routinizes these exceptions and undermines the intent of the APA. The likelihood of an adverse decision escalates if alternatives exist that meet both NMFS's practical requirements to implement specifications in a timely manner based on the best scientific information available and comply with the APA's public notice and comment requirements.

(3) Proposed fishery specifications published for public comment should be based on data and studies on which NMFS intends to rely in establishing the final specifications. Final specifications that rely in significant part on data and studies that were not available when the proposed specifications were published may not be deemed "a logical outgrowth" of the proposed rule and may be invalidated for that reason. Currently, Alaska groundfish final specifications are based on new SAFE reports that are not available at the time of publication of proposed specifications.

(4) The timing of the final Council recommendations for harvest specifications in December and the January 1 and January 20 start dates of the groundfish nontrawl and trawl fisheries allows for very little time to complete new regulations and analyses to determine compliance with applicable statutes.

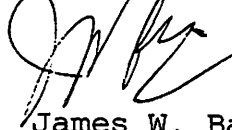
Alternatives 2 through 4 in the Amendments 48/48 analysis will meet the APA requirements for rulemaking. Each of these alternatives also has potential negative effects on the management of the groundfish fisheries. As explained in the analysis, a number of mitigating factors exist that are controlled by the Council. Pending these actions by the Council, whether implementation of Alternative 2 through 4 would actually result in the potential negative effects identified in the

analysis is unknown.

The main difference among the alternatives is the increase in management uncertainty with increase in time between stock assessments and commencement of the fisheries. Alternative 3 has the least amount of time between available information and the commencement of the fisheries, and Alternative 4 has the largest amount of time, and therefore, the greatest uncertainty.

NMFS recommends Options A and B and either Alternative 2 or Alternative 3 with Option 1. These alternatives meet the action objectives without excessive uncertainty seen under Alternative 4. Alternative 2 has greater uncertainty than Alternative 3, but shifting the fishing year under Alternative 3 has certain implementation concerns and shorter rulemaking time which may override the increased uncertainty under Alternative 2. Depending on the alternative chosen, postponing final action until December 2002 or later may result in 2004 harvest specifications being established using the current process because FMP and regulatory amendments will require 9 to 12 months to complete. The difficulty for the Council will be in balancing the potential negative effects and mitigation identified in the analysis with the need to ensure that our harvest specification process complies with all applicable laws.

Sincerely,



James W. Balsiger
Administrator, Alaska Region

cc: D. Demaster, AFSC
L. Lindeman, GCAK

September 25, 2002

FEDERAL EXPRESS

Mr. David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, Alaska 99501-2252

**Re: Draft Environmental Assessment/Regulatory Impact Review
("EA/RIR") for Amending the Annual Gulf of Alaska/Bering Sea-
Aleutian Islands ("GOA/BSAI") Harvest Specification Process**

Dear Mr. Benton:

We respectfully submit these comments on behalf of the Marine Conservation Alliance ("MCA") regarding the proposed revisions to the total allowable catch ("TAC")-setting process utilized by the North Pacific Fisheries Management Council ("NPFMC" or "Council") and National Marine Fisheries Service ("NMFS") to establish annual specifications for the Gulf of Alaska ("GOA") and Bering Sea/Aleutian Islands ("BSAI") groundfish fisheries management plans. This matter is agenda item D-1(b) for the Council's October 2002 meeting.

By way of introduction, the MCA is a broad-based coalition of Alaskan coastal communities, fisheries participants, vessel owners, processors, and many other stakeholders in Alaskan fisheries. MCA promotes the sustainable use of North Pacific marine resources by present and future generations, based on sound science, prudent management, and a transparent, open public process. The MCA seeks practical solutions to resource use questions that seek to protect the marine environment while ensuring a vital and viable North Pacific fishing community. MCA supports research and public education about the fishery resources of the North Pacific.

As will be discussed more fully below, it is MCA's belief that none of the alternatives laid out in the EA/RIR adequately address the problem statement. In an effort to better solve the issues raised in the problem statement, the MCA has had discussions with NMFS legal and program personnel and worked to develop improved alternatives. We set forth in these comments two new options on MCA's behalf that we believe should be evaluated before the Council makes a final decision on a course of action. Because neither of our new proposals precisely match those currently analyzed,

a brief delay in final council action would be required for their evaluation. However, such a delay should not interfere with an implementation schedule in time for next year's TAC-setting cycle.

I. Executive Summary

MCA's primary concern regarding the TAC-setting process is to ensure that harvest specifications continue to be based on the best scientific information available. To this end, the MCA has asked us to review the EA/RIR that has been prepared in connection with the TAC-setting amendment package and to address the following two questions that have arisen in connection with the proposals to change the TAC-setting process:

1. Does the recent court decision involving the Pacific groundfish annual specification process (*Natural Resources Defense Council, Inc. v. Evans*, 168 F. Supp.2d 1149 (N.D. Cal. 2001) ("*NRDC*") or other applicable law compel the NPFMC and NMFS to make major revisions in the procedures that have been used to establish annual harvest specifications for the GOA and BSAI groundfish fisheries?
2. Are there ways in which the North Pacific Council's annual TAC-setting process (which is currently heavily dependent on the use of emergency rules) can be amended so as to more efficiently and expeditiously establish the annual fishing specifications for the GOA and BSAI groundfish fisheries without jeopardizing the goal of ensuring that those specifications are based on the best scientific information available?

As explained herein, the answer to the first question is that *NRDC* appears significantly flawed. While we certainly cannot predict with confidence the outcome of the Government's appeal in that case, neither that case nor applicable law necessarily mandate significant changes in the current TAC-setting procedures utilized in the North Pacific.

Given the legal uncertainties, and MCA's preference for the status quo, MCA's first option works within the current regulations, but enhances the proposed notice of rulemaking with current data and offers the public more opportunities for informed comment in the specification development process. The first option is a slightly modified version of the "status quo" TAC-setting process that can be accommodated under current regulations.

With regard to MCA's second option and the second question presented, we believe there are ways to streamline and enhance the current TAC-setting process without sacrificing the quality of the data utilized to set the annual specifications. In

short, MCA proposes that the Council and NMFS set annual specifications that run from January 1 of the first year through March [or June] of the second year. The Council and NMFS would set annual specifications in November and December, in much the same way as done now, except they would cover a longer period. After the December Council meeting, NMFS would forward the proposed specifications to Washington, D.C. for review and publication as an interim final rule to go into effect on publication. The interim final rule would supersede existing specifications, but also solicit public comments. The final step of the process will be the issuance of a final rule, after the close of the comment period, which addresses any public comments received.

The second option (the 15 [or 18]-month TAC) builds on a proposal that was identified in the EA/RIR, but rejected for reasons which are not entirely clear. See EA/RIR at pages 27-28.¹ As explained herein, MCA believes that the second option may actually have benefits over the current system—independent of any conclusion about *NRDC's* validity—but it has not been fully considered in the EA/RIR, so it requires fuller development and analysis.

Finally, in that it is not likely that any TAC-setting alternative could be implemented in time for the 2002 fishing year, the Council and NMFS have an opportunity to defer final action on the amendment package until there has been an opportunity to fully explore and analyze the options MCA proposes. No compelling reason exists to make a major, immediate change to the current TAC-setting process without careful analysis. The EA/RIR explains that it addresses an important issue, which has major potential ramifications for the quality of the scientific information used by the Council and NMFS, as well as the economic value of the fisheries. Either approach MCA suggests should be able to be in place in time for the 2004 fishing year—if it proves to offer significant advantages over the current TAC-setting process.

II. Given the Stated Goals of the EA/RIR, Magnuson-Stevens Act Requirements, and Needs of the Fisheries, MCA Finds All Proposed Alternatives Inadequate

According to the Executive Summary of the EA/RIR (see page ES-1), the “objectives of modifying the harvest specifications process” include the use of the best

¹ The reasons given for rejecting the proposal to create a 16-month quota were that it “would cause confusion to the public and difficulty in management of the fisheries as the harvest specifications would likely change halfway [sic] through the fishing year. Option 1 does not meet the objectives to minimize disruption of the fisheries and public confusion, and to promote administrative efficiency.” These concerns are addressed below in Part IV.

scientific information which is available, to insure that the public has adequate notice of and opportunity to comment on the annual proposal, to provide more opportunity for secretarial review, to minimize the disruption of fisheries and "public confusion," and to increase administrative efficiency. The MCA agrees these are all laudable goals, but questions whether any of the proposals set forth in detail in the EA/RIR truly achieve them. In the broad sense, all of the proposals other than the status quo "disrupt" the fisheries.

As an initial matter, we draw attention in particular to the goal of increasing the opportunity for secretarial review. This goal appears to be driven by the *NRDC* decision and the questions it raised about the use of abbreviated notice and comment under the Pacific Fishery Management Council's framework process. Our legal analysis of this decision (which is currently under appeal to the Ninth Circuit Court of Appeals) is that it appears to cut strongly against the grain of established caselaw and relies on a very superficial reading of the quite intricate provisions of the Magnuson-Stevens Act. It is MCA's view that nothing in the Act requires a time-consuming and duplicative notice and comment process to be conducted at the secretarial level for annual specifications set by framework action pursuant to regulations implementing an FMP.²

More importantly, as both common sense and preliminary analysis show, introducing a time lag between data collection and the fishing year on which they are based leads to specifications based on "stale data." This will inevitably result in reduced quality of resource management by increasing uncertainty that may threaten conservation efforts and result in reduced quotas.

Furthermore, in terms of the actual substance of the TAC setting process, the Council must bear in mind that the role of the Secretary under the Magnuson-Stevens Act is defined by the National Standards. The Secretary is also bound by the requirements of the Endangered Species Act ("ESA"). Both of these sources of authority require the use of the best scientific information available, and the best way to meet that requirement is to have an effective rule in place at the earliest time administratively possible after the Council makes its recommendations in December. Most courts will – unlike that which decided *NRDC* – properly defer to the Secretary's

² To be clear, *NRDC* held that the Magnuson-Stevens Act, apart from the Administrative Procedure Act, required the Secretary to publish the TACs for a 15 to 60 day comment period after receiving the Council's recommendations. See *NRDC*, 168 F. Supp.2d at 1155-57. Briefly stated, we do not believe it was appropriate for court to apply the Magnuson-Stevens Act notice and comment provision, which is intended to govern regulations proposed to implement FMPs or plan amendments, to framework actions taken under those implementing regulations.

determination of his or her mandate under these laws. What follows, therefore, seeks to improve the current notice and comment process and administrative efficiency, while hewing more closely to both legal requirements and the Council's statutory mandates.

III. MCA's Option One: Minor Adjustments to Status Quo Not Requiring Regulatory Amendment

As an initial matter, the MCA is pleased with the TAC-setting process as it currently stands. The GOA/BSAI groundfish fisheries are managed by a state-of-the-art TAC development process. The existing specification process is a model of transparent decision-making that encourages public input, uses the best possible data, and puts that data to use in a timely fashion. Given the uncertainties, however, that the *NRDC* decision has introduced, we recognize the Council's and NMFS' desire for change, and therefore offer these suggestions which can be implemented with no changes to the current regulations.

More specifically, the established procedure for setting annual Alaska groundfish specifications uses the prior year's quota, prohibited species catch ("PSC"), and seasonal allocations as "place-keepers" until the final specifications proposed by the NPFMC in December are published. Claims have thus been made that the final rule is not, in essence, a "logical outgrowth" of the proposed (and interim) rule within the meaning of the Administrative Procedure Act ("APA").³ *See, e.g., Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994). When a final rule differs materially from the proposed rule, a court may find that proposal did not provide adequate notice nor provide for meaningful comment within the meaning of the APA, 5 U.S.C. § 553(b) & (c). *Id.*

To address this allegation of legal insufficiency, it may not be necessary for NMFS to rewrite the regulations governing the quota setting process for the Alaska groundfish fisheries contained in 50 C.F.R. § 679.20(c). Rather, such concerns can be addressed by including in the proposed rule rough estimates of the specifications likely to be decided, and the basis of the information used to make the estimates (and, ultimately, the final rule). In the context of the GOA/BSAI groundfish specification process, this would simply involve adding to the proposed rule information on initial survey results, preliminary ranges of allowable biological catches ("ABCs"), estimated TAC ranges associated with those ABCs, and other preliminary data.

³ In litigation, NMFS has maintained that framework specifications are not "rules" subject to the APA. However, the MCA believes notice and informed comment are important to good fisheries governance, and will premise this discussion on the assumption that some level of notice and comment apply.

In order to avoid "public confusion," the notice can state that this new information will be refined and then considered in setting the final rule, and that the "anticipated final rule"⁴ is based on the best scientific information currently available. This notice should explain how the preliminary estimates will be used to generate the final rule and also discuss uncertainties that presently exist and the steps that will be taken to refine the estimates and resolve the uncertainties.

This proposal for status quo-plus would insure that the final specifications, when implemented, are a "logical outgrowth" of those proposed. As this process identifies the information upon which the final rule will ultimately be based, no one can claim to be deceived or "misled" by the proposed rule. Further, there is ample authority for use of estimates or ranges of possible specifications in the proposed rule. The Court of Appeals for the Ninth Circuit⁵ has concluded, in *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479 (9th Cir. 1992): "The Secretary [of Agriculture, in that case] would not be bound by the proposed [rule] . . . but the agency would be required to give its best estimate based on the available information at the time notice is published."⁶ 958 F.2d at 1486 (emphasis added). In *NRDC*, Magistrate Judge Larson principally relied on this decision in *Riverbend Farms*.

⁴ To be clear, this proposed rule will, as now, recommend TAC levels based on the rule in place for the present year. What is new is that the notice will go on to "anticipate" the final rule by incorporation of survey data available at the time the notice is published.

⁵ Which is hearing the *NRDC* appeal and has Alaska in its jurisdiction.

⁶ *Riverbend Farms* is closely analogous to the Council's situation. The case involved a committee that issued weekly quota recommendations for the shipment of oranges. While the weekly meetings were noticed in the Federal Register, they did not contain proposed quotas, did not allow for written comments, and the final rule routinely waived the 30-day cooling-off period. The court found good cause for waiving the 30-day period, but required the council to (1) publish general quotas based on an annual estimate the Secretary issued and (2) take comments by letter as well as at the meeting. It is important that the court found comment to the rule-recommending body sufficient (whereas *NRDC* stated comments to the Secretary were mandated by the APA). It also recognized that decision-makers may not have all the information they need at the proposed rule stage: "If, at the time the notice is published, it's too early to tell what the actual figures might be, the Secretary can say so in the notice" 958 F.2d at 1486 n.5. It also reiterated the common rule of law that "[t]here is no requirement that the rule contained in the notice of proposed rulemaking by the same as the final rule" *Id.* n.6.

MCA would also like to make another suggestion to insure the public has ample opportunity to provide informed comment on the annual specification setting process, and thereby address the concerns about the current process set forth in the EA/RIR and summarized above. Given modern technology, the notices published in the Federal Register for the September and November Plan Team meetings and the October and December Council meetings could be used as a means of soliciting public comment. Although it is not feasible to publish details of the alternatives being considered at those meetings, the purposes of the APA could be further advanced if these notices were to discuss the subject of discussion at these meetings, the issues they will address, and actions to be taken. To receive comment from members of the public unable to attend, written comments could be solicited and then be made available for the Council's deliberations. Further, in order for the notice and comment process to be "informed," the Council and NMFS could post all documents upon which decisions are to be made to the appropriate website with enough time prior to the meetings for the public to access them and make comment. The relevant notices would, of course, reference this web address.

Through this approach, the public would have ample opportunity to make comments, both to the Secretary and the Council, at key decision-making points, but no changes would appear to be needed for the implementing regulations. This approach also meets the objectives of NMFS.⁷ The Council should bear in mind the words of the Ninth Circuit Court of Appeals: "The APA was intended to impose procedural requirements on the adoption of rules; it is not a device by which an agency may be forced to adopt a less effective regulatory program in order to more effectively comply with notice and comment procedures." *Riverbend Farms, Inc.*, 958 F.2d at 1484. In other words, the goals of the Magnuson-Stevens Act – primarily to use the best available data, conserve the resource and achieve optimum yield on a continuing basis, and consider the impacts on the regulated fishing industry and their communities – ought not be sacrificed solely to meet rigid procedural requirements.

IV. MCA's Option Two: MCA's Proposed "Fifteen-Month Rule" Amendment to the TAC-Setting Regulatory Process

Given the importance of the need to manage groundfish fisheries on the basis of the most recent data, the MCA believes the proposal set forth below may actually improve the likelihood that the fishery will be managed by the most current information. It also addresses all of the objectives outlined in the EA/RIR. This proposal, however,

⁷ MCA recognizes that the status quo requires having the interim rule in place by January 1, a requirement that has been difficult to meet.

would require a change to the implementing regulations, and necessitate an analytical evaluation in a revised EA/RIR.

A. MCA's Proposal Detailed

In sum MCA's second proposed option is this: Each fall, the Plan Team will recommend annual specifications for the following year and also for the first three to six months of the next year,⁸ based on projections, if necessary. As with the status quo, the Plan Team and Council would meet and make their recommendations at their respective meetings in September/November and October/December. To ensure notice, as with MCA's Option 1, the Plan Team and Council could take and consider written comments at their respective meetings. Also as discussed above in Part III all "decision documents" could be made available in a timely manner prior to the meetings via the Internet so that informed public input is continuously considered at all key stages of the process.

In an effort to ensure that the fisheries are governed by the best scientific information available for the greatest amount of time each year and for other important reasons set forth below, MCA's Option 2 would require NMFS to issue an Interim Final Rule ("IFR") based on the Council's December meeting recommendations. The IFR would immediately implement the specifications for the above-described period of 15 to 18 months. As now, specifications would run from January 1 of the year following the meeting, but would carry over into and remain in effect during the first part of the following year. This would obviate the need to issue interim rules. Upon publication, each IFR would immediately supersede the specifications already in place. Additionally, the IFR would offer the public an opportunity to comment, and those would be taken into consideration in the Final Rule published after the close of the comment period. The Secretary may make adjustments to the IFR in the Final Rule, based on comments from the public and after consulting with the Council.

The purpose of issuing specifications which extend into the following year is to ensure that rules are in place every year on January 1, thus meeting the objective of avoiding disruption in the fishery and the need to constantly employ emergency rulemaking procedures. Use of an IFR to implement the annual specifications accomplishes three additional important objectives:

⁸ MCA offers a range because the details of TAC assessment and projection are highly technical and best left for NMFS' staff to evaluate for Council consideration. Three months is a minimum to insure the new specifications are in place, but a longer period may be desirable for other reasons.

- First, it insures that the annual specifications actually governing the fisheries for the overwhelming bulk of the year are based on the best scientific data available⁹;
- Second, it adds another level of public notice and comment based on actual specifications (*i.e.*, notice and opportunity for comment on the IFR), whereas presently only the prior year's specifications are put out for comment; and
- Third, it introduces administrative efficiency over the current process because there are only two levels of rulemaking, unlike now where there is publication of proposed, interim, and final rules.

Although MCA's Option 2 would have to be integrated into the existing management regime, the MCA is convinced that it would be a more overall effective approach – one that achieves all stated objectives. For example, under this process, the regulations would clearly state that each year's new specifications will supersede existing specifications retroactively to January 1st. The Plan Team, Council, and public would take this into account in the process, thereby avoiding public confusion. Further, with the exception of establishing the specifications for a longer period, the system would operate essentially as it has for the past few years, but without the extra administrative process necessitated by issuance of an interim rule.

B. Specific Issues Addressed

Given that MCA's proposal involves a new process for TAC specifications, we would like to address some specific potential concerns. The following elaborates on certain issues raised by the proposal:

1. Interim Final Rules Are Not Emergency Measures

As stated above, by issuing an interim final rule to implement the annual specifications, the Secretary would best meet the statutory obligations under both the MSA and the ESA to employ the best – most timely – scientific information available to manage fisheries and protect threatened or endangered species. The contemplated use of projections for a longer period of time under the options examined in depth in the

⁹ In fact, based on discussions with NMFS, the MCA estimates that this process will insure that specifications based on the most current scientific information are in place earlier in the year than presently accomplished. By eliminating the interim rule stage, Secretarial review of the December council proposal for issuance of an IFR may well be completed by early February. At present those specifications are not published until sometime in March.

EA/RIR does not accomplish this objective nearly so well. Further, by implementing a proposal that establishes, by regulation, the routine use of IFRs to implement the annual framework specifications, the Secretary could make an explicit finding that it is in the public interest to do so in order to ensure that the specifications are based on the best scientific information available and are otherwise consistent with the goals and objectives of the National Standards.

We note that use of the IFR approach would require a secretarial finding that "good cause" exists to waive the proposed rule stage. We believe that the need to utilize current scientific information would comfortably support such a good cause finding. Importantly, however, the use of an IFR is not the same as managing a fishery on the basis of emergency rules—even though IFRs are also subject to a showing of "good cause," the test may be less difficult to meet than the one required for emergency rules. Under the MCA's Option 2, the regulation itself would provide two important procedural safeguards that would help insulate this process from successful legal challenge: (1) it provides for four levels of informed public comment at the Council (*i.e.*, at both the Plan Team and Council levels) prior to implementation, and (2) it establishes the IFR approach by regulation, itself subject to notice and comment. Further, the IFR process itself allows for post-publication comment which the Secretary must take into account and address in the final rule. In the meantime, however, the new specifications would be in place.

Our review of the caselaw indicates that the approach we outline is consistent with established law and the bulk of applicable judicial decisions. For its part, *NRDC* did not fully take into account a long line of court decisions which more or less explicitly sanctioned the implementation of annual framework specifications without full-blown rule making procedures. It also misread the Magnuson-Stevens Act in applying the notice and comment rules of that Act – which apply to regulations implementing an FMP or plan amendment – to quotas and other catch level-based specifications issued pursuant to those regulations. Finally, and most importantly, it disregarded the admonition from the Ninth Circuit that procedural rules are not designed to create a less effective regulatory regime.

Most courts in this country will uphold the Secretary's reasonable interpretation of his agency's governing statutes (here the MSA and ESA as well as the APA), as well as the regulations and rules promulgated on the basis of the agency's specialized technical and scientific expertise and with the goal of meeting those statutory obligations. Such reasonable deference would extend to findings by the Secretary that it is in the public's interest to have a rule put into immediate effect, which is an element of the good cause standard. Congress itself, in passing the Sustainable Fisheries Act amendments to the Magnuson-Stevens Act reemphasized the importance of healthy fisheries to this nation, and the Act continues to underline the importance of the use of the best information possible to meet this objective. The rigor of the ESA's mandates likewise demonstrates

the overriding national importance of the use of current information. In short, it is definitely in the public's interest to have the best scientific information underlying the specifications that govern these important fisheries – and the protected species with which they interact – at the earliest possible time each year.¹⁰

Further, it would be difficult for anyone to make a sustainable claim that they were unable to make informed comment when comments are solicited at the four critical Council stages and again at the Secretarial level. This is why the MCA believes its proposal is superior to any now before the Council in meeting all objectives.

2. Additional Procedural Safeguards Can Be Built In to Prevent Overfishing or Harm to Steller Sea Lions and Other Endangered Species.

The second objection the MCA anticipates is that this proposal – by implementing measures based on projected quotas that carry over into the following fishing year – will not properly account for changes in the stock status. That is to say, information may arise during the year which might indicate the need for lower quota levels than set by the rule. The consultation process might, as well, indicate the desirability of changes to accommodate the needs of Steller sea lions or other protected species. Such objections, however, are even more applicable to the other options that have been identified in the EA/RIR.

To meet this concern, we would propose incorporating language in the specification setting process, which although possibly redundant, reaffirms and clarifies the Secretary's authority to implement emergency measures as necessary to prevent overfishing or to protect threatened and endangered species. Clearly, the Secretary already has such power under § 1855(c)(1) of the Magnuson-Stevens Act ("Emergency actions and interim measures"). Furthermore, in the event that use of the rule in months 13-15 [13-18] presents significant conservation issues, NMFS will be aware of this by October or November when survey results start coming in, Plan Teams start meeting, and the requisite ESA consultations begin. If necessary, the Council can take appropriate emergency rule action in December to adjust ABCs and TACs to be in place January 1.

¹⁰ Here again, the MCA pauses to point out that all present proposals, save for the status quo option, envision fisheries management on the basis of data which is considerably more dated than that which would govern the fishery under our proposal. To make matters worse, the other options would implement specifications based on aged data for an entire fishing year, as opposed to a very discrete and limited portion of the year, as we propose.

3. Any Process Chosen Should Be Premised on the Notion that the 30-Day "Cooling Off" Period Be Waived for Good Cause

There is no reason in law or common sense why the rule implementing the specifications should not be put into immediate effect. Presently, all proposals contained in the EA/RIR are premised on the notion that a "cooling off" period is necessary after a final rule is published. See EA/RIR at pages 20-21, 23. The Ninth Circuit recognizes, however, that there are different and less stringent criteria for waiving a post-publication waiting period than there are for waiving notice and comment, as in the case of an emergency rule.

In sum, as the *Riverbend Farms* court said, "the 30-day waiting period is intended to give affected parties time to adjust their behavior before the final rule takes effect." 958 F.2d at 1485. In that case, as here, the court found pressing reasons for waiving the waiting period. First of all, interested parties expect and most often very much want the new specifications to take effect sooner rather than later. Furthermore, these parties should have had the opportunity to participate in the specification setting process. More importantly, in the case of annual harvest specifications, the cooling off period only serves to defeat the statutory purposes of the MSA. As the court in *Riverbend Farms* said, use of the 30-day waiting period is not indicated when using it would "throw[] the entire regulatory program out of kilter." *Id.* In short, the law does not look with disfavor upon the routine waiver of this particular APA requirement when necessary to meet the underlying objectives substantive laws, here the MSA and ESA, to ensure prompt use of scientific information.

V. Conclusion

There is no compelling need to completely abandon the current TAC-setting process when the minor adjustments described above as MCA's Option 1 would suffice to address all legitimate concerns. On the other hand, if the Council believes that an entirely new system is called for, the MCA's alternative proposal (Option 2) should be added into the analysis before the Council makes a final decision on a preferred alternative. The delay associated with the analysis of MCA's proposal will not necessarily result in delayed implementation of the new TAC-setting regime since it is not expected that any changes to the TAC-setting regime would be implemented until the 2004 fishing year anyway.

Thank you for the opportunity to present these comments. If you have any questions concerning our comments or the proposals we have suggested herein, please give us a call.

Mr. David Benton
September 25, 2002
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Respectfully submitted,

David E. Frulla
Shaun M. Gehan
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DEF/SMG:mlc

cc: Ms. Stephanie Madsen
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Dr. Dave Fluharty
Mr. Roy Hyder
Mr. Kevin Duffy
Capt. Rich Preston
Mr. John Bundy
Mr. Stosh Anderson
Mr. Dennis Austin
Mr. Dave Hanson
Dr. Tony DeGange
Mr. Bob Penney
Ms. Hazel Nelson

D-16
Melanie Brown
Presentation

EA/RIR/IRFA for Harvest Specifications Administrative Process

9/22/2002 1:27 PM NMFS Alaska Region October 2002 1

Proposed Action

- Revise the administrative process for harvest specifications
- Update language in GOA and BSAI Groundfish FMPs

9/22/2002 1:27 PM NMFS Alaska Region October 2002 2

Objectives

- Develop and use best available scientific information
- Provide adequate opportunity for prior public comment to the Secretary on Council recommendations and provide additional opportunity for Secretarial review
- Minimize disruption to fisheries and minimize public confusion
- Promote administrative efficiency

9/22/2002 1:27 PM NMFS Alaska Region October 2002 3

Alternatives

- Alternative 1. Status Quo (No action Alternative)
- Alternative 2: Eliminate publication of Interim specifications. Issue Proposed and Final Specifications Prior to Start of the Fishing Year.
- Option for Alt. 2: For those GOA and BSAI target species on biennial survey schedule, set TAC biennially.

9/22/2002 1:27 PM NMFS Alaska Region October 2002 4

Alternatives Continued

- Alternative 3: Issue Proposed and Final Harvest Specifications based on an alternate fishing year schedule
 - Option 1: Set sablefish TAC Jan.-Dec.
 - Option 2: Reschedule Dec. Council meeting for Jan.

9/22/2002 1:27 PM NMFS Alaska Region October 2002 5

Alternatives Cont.

- Alternative 4: Use Stock Assessment Projections for biennial harvest specifications
 - Option 1: Set PSC limits annually
 - Option 2: Set PSC limits every two years based on regulations and for crab and herring use either projected values or rollovers from previous year.

9/22/2002 1:27 PM NMFS Alaska Region October 2002 6

Options

- Option A: Abolish TAC Reserves.
- Option B: Updating Portions of the FMPs

9:25:39 AM NMF5 Alaska Region October 2002 7

Council June Request

- Clarify problem statement
- Expand the public process description and APA requirements
- Review language regarding benefits
- Add sablefish option to Alt. 3
- Alternative with current SAFE-fishery schedule

9:25:39 AM NMF5 Alaska Region October 2002 8

NMFS Recommendation

- Either Alternative 2 or Alternative 3 with option 1.
- Options A and B

9:25:39 AM NMF5 Alaska Region October 2002 9

Affected Environment

- The dimensions of the environment that may be affected include:
 - Administrative process
 - Groundfish target species
 - Steller sea lion considerations
 - Economic activity and benefits

9:25:39 AM NMF5 Alaska Region October 2002 10

Administrative Process: Alt. 2 V. Alt. 3

- Alt 2 provides more time for analysis and potentially better information to Council and Secretary
- Alt 2 provides enhanced public notice and comment.
- Alt 2 provide more time for Secretarial decision-making

9:25:39 AM NMF5 Alaska Region October 2002 11

Target Groundfish Species Effects: Alt. 2 V. Alt. 3

- Alt. 2 has more uncertainty in projections.
- Alt. 2 can result in potentially less harvest and more variability in harvest amounts.
- Biomass under Alt. 2 in the future is likely to be higher.

9:25:39 AM NMF5 Alaska Region October 2002 12

Steller Sea Lion Considerations

Alt. 2 and Alt. 3 have potential effects on groundfish that could indirectly affect Steller sea lions.

Alt. 3 fishing year conflicts with seasonal apportionments for BSAI pollock and P. cod trawl fisheries.

10/26/2002 1:07 PM

NMFS Alaska Region October 2002

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Effects on State Fisheries Programs

- Alt. 3 may require the State to adjust their management measures for the Pacific cod fisheries
- Alt. 2 has no known effect

10/26/2002 1:07 PM

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Effects on AFA and CDO

- If Alt 2 and 3 result in lower average harvests, then revenues would be lower

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Economic Effects Alt. 2 v. Alt. 3

- Alt 2 likely to have lower harvests producing lower gross revenues
- Alt. 2 more likely to have more year-to-year variability in revenues and increase industry costs
- Alt 3 prevent use of most rollovers because of Steller sea lion concerns.

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Groundfish FMP Amendments

- **Option B: Update FMP language**
 - Eliminate “foreign fishing” references
 - Update description of harvest specifications process
 - Update description of the fisheries and participants

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Summary

- Alternative 3 with Option 1 has the least effect on the environment, but requires more administrative adjustments.
- Alternatives 2 has larger potential environmental effects but is easier to implement. May have more economic effects with conservative setting of TAC.

10/26/2002 1:07 PM

NMFS Alaska Region October 2002

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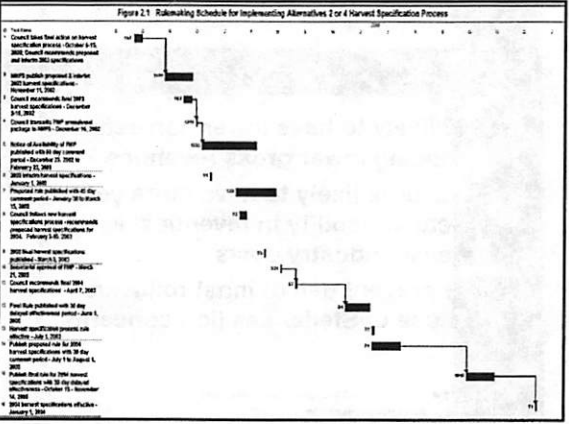
Why Should the Council Act?

- No National fix on the horizon.
- Current process is problematic with Steller sea lion protection measures.
- Proposed regulations are not an accurate representation of final regulations.
- Current process allows very little time for analysis and rulemaking based on final recommendation.
- Interim spec. done without prior notice and comment.

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Implementation Schedule

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Alt. 2 Implementation Schedule

- Council Action in Oct. 2002.
- Council Recommends 2003 Harvest Specs. In Oct. and Dec. 2002.
- Council transmits FMP amendment package in Dec. 2002.
- NOA of FMP published 12/23/02-2/23/03

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Alt. 2 Implementation Schedule continued.

- Proposed rule for harvest spec. process published with comment period Jan. 30-March 15, 2003.
- Council proposes 2004 harvest specs. using new process 2/03.
- Secretary approval of FMP, 3/21/02.
- Council recommends final 2004 harvest specs. 4/03.

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Alt. 2 Implementation Schedule Continued (2).

- Final harvest spec. process rule published June 1, 2003.
- Proposed rule for 2004 harvest specs. published July 2003.
- Final rule for 2004 harvest specs. Published October 2003.

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Alt. 3 Implementation Schedule

- Council proposes Jan-Jun 2004 harvest specs. (1-12/04 for sablefish) during Dec. 2002 or Feb. 2003 meeting
- NMFS published NOA of FMP amend. 2/23-4/25
- Secretary approval of FMP, 5/25/03
- Proposed rule for harvest spec. process published with comment period June 2-July 17, 2003

9/25/02 11:07 AM

NMFS Alaska Region October 2002

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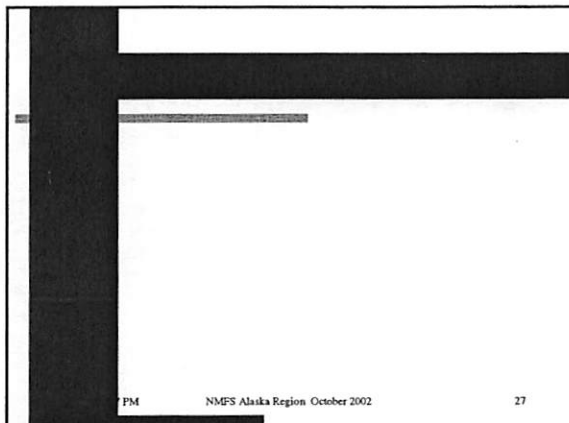
Alt. 3 Implementation Schedule Continued.

- Final harvest spec. process rule published September 1, 2003.
- Council recommends final 2004/2005 harvest specs. 12/03.
- Proposed rule for 2004/2005 harvest specs. published February 2004.
- Final rule for 2004/2005 harvest specs. Published June 2004.

9/25/02 11:07 AM

NMFS Alaska Region October 2002

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Sources:

- NMFS. "Draft EA/RIR/IRFA For Amending the Process by Which Annual harvest Specifications Are Established for Alaska Groundfish Fisheries..." September, 2002.

9/25/02 11:07 AM

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For more information contact:

- Sue Salvesson, Ben Muse, or Melanie Brown
- National Marine Fisheries Service
- Sustainable Fisheries Division
- Alaska Region
- 907-586-7228

9/25/02 11:07 AM

NMFS Alaska Region October 2002

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PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM D-1 (b) TAC-SETTING
PROCESS

PLEASE SIGN ON THE NEXT BLANK LINE.
LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
1.	Ron Clarke & Paul MacGregor	Marine Conservation Alliance
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