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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324-1265-02]

RIN 0648-BC02

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) May 1, 2012.

Comments on this final rule must be received no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by FDMS docket number NOAA-NMFS-2010-0194 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: 206-526-6736, Attn: Colby Brady
- Mail: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Colby Brady.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Colby Brady (Northwest Region, NMFS), phone: 206-526-6117, fax: 206-526-6736, colby.brady@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Website at <http://www.gpo.gov/fdsys/search/home.action>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On November 3, 2010, NMFS published a proposed rule to implement the 2011-2012 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to

implement the 2011-12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by several inseason actions (76 FR 39313, 76 FR 67092, 76 FR 79122, 77 FR 12503). On September 27, 2011, NMFS published a proposed rule to implement final 2012 specifications for overfished species and assessed flatfish species pursuant to Secretarial Amendment 1 to the Groundfish FMP (76 FR 59634). That final rule was effective January 1, 2012. These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with the States of Washington, Oregon, and California, at its March 2 - March 7, 2012, meeting in Sacramento, California. The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and an additional inseason management need to adjust the trawl RCA boundaries. The adjustment to fishery management measures are not expected to result in greater impacts to overfished species than originally

projected through the end of 2012. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, annual catch limits (ACLs) of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

Trawl Rockfish Conservation Area

The Council recommended, and NMFS is implementing, an adjustment to the shoreward line of the trawl Rockfish Conservation Area (RCA) in Washington State, south of Cape Alava and in northern California, north Cape Mendocino from the 75 fathom line (137-m) to the 100 fathom line (183-m) during Period 3, (May 1 - June 30) and Period 5, (September 1 - August 31) from 40° 10' N. lat. to 48° 10' N. lat.

The Council received a request to review the effects of an adjustment to the shoreward boundary line of the trawl RCA south of 48° 10' N. lat and north of 40° 10' N. lat. from 75 fm to 100 fm for Period 3 (May 1 - June 30) and Period 5 (September 1 - October 31) to open some additional shelf areas. The Council considered time-weighted historical average bycatch rates stratified by depth and newly available observer data for this area in Periods 3 and 5, in the area shoreward of 100 fm, verses the area

shoreward of 75 fm, which did indicate that the probability of encountering canary rockfish, darkblotched rockfish, Pacific ocean perch (POP), and yelloweye rockfish could be higher than if status quo shoreward boundaries remained in place. However, attainments of ACLs for these rebuilding species was low under IFQ management in 2011, and attainments of ACLs are currently (through March 5, 2012) tracking low in 2012 (0.6%, 5.8%, 2.9% and 0.2% respectively). Finally, the Council considered the potential positive impact of individual accountability, a goal of the trawl rationalization program, when making the decision to adjust the shoreward line of the trawl Rockfish Conservation Area (RCA).

Therefore, the Council recommended, and NMFS is implementing a shift to the shoreward line of the trawl Rockfish Conservation Area (RCA) in Washington State, south of Cape Alava and in northern California, north Cape Mendocino from the 75 fathom line (137-m) to the 100 fathom line (183-m) during Period 3 (May 1 - June 30), and Period 5 (September 1 - August 31), from 40° 10' N. lat. to 48° 10' N. lat.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

This inseason adjustment is also taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is in accordance with 50 CFR part 660, the regulations implementing the FMP. This action is based on the most recent information available.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available information upon which the changes to the trawl Rockfish Conservation Area (RCA)

management measure changes are based was originally provided to the Council, and the Council made its recommendations, at its March 2-7, 2012. The Council recommended that these changes be implemented by May 1, 2012. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off northern California to Washington State.

These adjustments to management measures must be implemented in a timely manner to allow fishermen north of 40° 10' N. lat. to prosecute their intended fishing strategies under trawl rationalization. If this rule is not implemented immediately, the public could have incorrect information regarding boundaries used, and allowed fishing activities for groundfish fisheries management, which would cause confusion and be inconsistent with the intent of the Council. It would be contrary to the public interest to delay implementation of these

changes until after public notice and comment, because making this regulatory change immediately allows harvest as intended by the Council in fisheries that are important to coastal communities in a manner that prevents ACLs of overfished species from being exceeded.

No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in this inseason adjustment.

Delaying these changes would also keep management measures in place that are not based on the best available information. Accordingly, for the reasons stated above, NMFS finds good cause to partially waive prior notice and comment and the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: April 12, 2012

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660--FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

2. Table 1 (North) to part 660, subpart D is revised to read as follows:

Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table

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	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)^{1/}:						
1 North of 48°10' N. lat.	shore - modified ^{2/} 200 fm line ^{1/}	shore - 200 fm line ^{1/}	shore - 150 fm line ^{1/}		shore - 200 fm line ^{1/}	shore - modified ^{2/} 200 fm line ^{1/}
2 48°10' N. lat. - 45°46' N. lat.	75 fm line ^{1/} - modified ^{2/} 200 fm line ^{1/}	75 fm line ^{1/} - 150 fm line ^{1/}	100 fm line ^{1/} - 150 fm line ^{1/}	100 fm line ^{1/} - 150 fm line ^{1/}	100 fm line ^{1/} - 150 fm line ^{1/}	75 fm line ^{1/} - 150 fm line ^{1/}
3 45°46' N. lat. - 40°10' N. lat.		75 fm line ^{1/} - 200 fm line ^{1/}	100 fm line ^{1/} - 200 fm line ^{1/}	100 fm line ^{1/} - 200 fm line ^{1/}	100 fm line ^{1/} - 200 fm line ^{1/}	75 fm line ^{1/} - modified ^{2/} 200 fm line ^{1/}
<p>Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.</p>						
<p>See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).</p>						
<p>State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.</p>						
4 Minor nearshore rockfish & Black rockfish	300 lb/ month					
5 Whiting						
6 midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7 large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8 Cabezon						
9 North of 46°16' N. lat.	Unlimited					
10 46°16' N. lat. - 40°10' N. lat.	50 lb/ month					
11 Shortbelly	Unlimited					
12 Spiny dogfish	60,000 lb/ month					
13 Longnose skate	Unlimited					
14 Other Fish^{3/}	Unlimited					

TABLE 1 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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