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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

Docket No. 161024999-7999-01

RIN 0648-BG40

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Authorization of an Oregon Recreational Fishery for Midwater Groundfish Species

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would authorize the use of midwater long-leader gear for recreational fishing in waters seaward of a boundary line approximating the 40 fathoms depth contour off the coast of Oregon. Midwater long-leader gear would be allowed for both charter and private vessels seaward of the 40 fathom seasonal depth closure and monitored with the existing Oregon Ocean Recreational Boat Sampling (ORBS) program. The use of this long-leader gear is intended to aid in limiting bycatch of overfished and rebuilding rockfish species, such as bottom-dwelling yelloweye rockfish, while still allowing for the catch of abundant midwater species such as yellowtail and widow rockfish. The season would be limited and occur between the months of April and September, months currently subject to depth restrictions.

DATES: Comments on this proposed rule must be received by *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Submit your comments on this document, identified by NOAA-NMFS-2017-0047, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0047*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Barry Thom, Regional Administrator, West Coast Region, NMFS, 1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232; Attn: Christopher Biegel.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Christopher Biegel, phone: 503-231-6291, fax: 503-872-2737, or email:

Christopher.biegel@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available

at the NMFS West Coast Region website at

<http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the Pacific

Fishery Management Council's website at <http://www.pcouncil.org>.

Background

On the West Coast, recreational fisheries primarily occur in non-federal waters (zero to three nautical miles off the coast) and are managed by the states of Washington, Oregon, and California. Inter-state coordination is facilitated through the Pacific States Marine Fisheries Commission (PSMFC). The Pacific Fishery Management Council (Council) and NMFS manage and regulate fisheries that occur within federal waters (three to 200 nautical miles off the coast). Recreational groundfish fisheries are primarily managed with time/area closures, size restrictions, and bag limits. Fishing participation and effort in Oregon recreational fisheries varies seasonally and geographically with participation highest during warmer months.

There are more than 90 species of groundfish managed under the Pacific Coast Groundfish Fishery Management Plan, including over 60 species of rockfish in the family Scorpaenidae, seven roundfish species, 12 flatfish species, assorted shark species, all endemic skate species, all endemic grenadier species, and a few miscellaneous bottom-dwelling marine fish species. Groundfish species occur throughout the Federal Exclusive Economic Zone (EEZ) off the coast of Oregon and within state waters, occupying diverse habitats at all stages in their life history.

The area affected by the proposed rule is the recreational groundfish fishing grounds within the west coast EEZ, from 3 to 200 nautical miles off the coast of Oregon. Groundfish fishing is largely confined to depths of 30 fathoms or less, approximately 30 miles or less off the coast. Federally-managed recreational groundfish fishing that could be directly affected by the

proposed action occurs in Federal waters seaward of 40 fathoms off the Oregon coast (42°00' N. lat. to 46°18' N. lat.). For the period 2011-2015, anglers fished on approximately 84,405 trips per year for bottomfish (groundfish) in Oregon waters. This represents the largest single recreational ocean fishery in Oregon, representing about 44 percent of the total effort over that time period.

Since 2004, the Oregon recreational groundfish fisheries have been restricted to shallow depths (less than 20-40 fm) during the peak effort and catch months to reduce interactions with deeper water species, especially yelloweye rockfish. The recreational groundfish fisheries are an important part of the local economy and social fabric in Oregon's coastal communities, and the implementation of deep-water rockfish closures in 2004 left several ports without any viable groundfish fishing opportunities. In an effort to increase recreational fishing opportunities in these ports, and relieve some pressure from nearshore reefs, exempted fishing permits (EFP) were issued to test the viability of long-leader gear. EFP test fishing, conducted by the Oregon Recreational Fishing Alliance in cooperation with the Oregon Department of Fish and Wildlife (ODFW), began in 2009 and was completed by 2011. Based in part on favorable EFP test fishing results using midwater long-leader gear on Oregon sport charter fishing vessels, the Council in 2015 requested that regulations authorizing a midwater long-leader fishery off of Oregon be created.

Under the proposed rule, midwater long-leader recreational groundfish fishing would be authorized seaward of a line approximating the 40 fathom depth curve exclusively off the coast of Oregon (42°00' N lat. to 46°18' N lat.) from April-September to target abundant and healthy midwater species while avoiding or minimizing interactions with overfished rockfish species. The gear configuration would include one fishing line, deployed with a sinker and no more than three hooks, with a minimum of 30 feet (9.14 meters) between the sinker and the lowest hook,

and a non-compressible float attached to the line above the hooks. The gear may be equipped with artificial lures and flies not to exceed 5 inches in length. Natural bait, and lures or flies greater than 5 inches in length, may not be used. Further, lingcod retention would be prohibited. All other existing state and Federal groundfish regulations, such as bag limits, rockfish conservation areas, etc., would remain in effect. This alternative would be monitored with the existing Oregon ORBS program.

The Council approved language in the definition of long-leader gear that included a prohibition on “large lures” but did not include a definition. After consultation with ODFW, this rule is proposing that “large lure” be defined as *over five inches in length*. This definition is based on industry standard lure sizes commonly used in the recreational fishery. Public comment is being requested on this definition.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, 16 U.S.C. 1854(b)(1)(A), NMFS Acting Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. When an agency proposes regulations, the RFA, 5 U.S.C. 603 et seq., requires the agency to prepare and make available for public comment an

IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. A copy of the IRFA is available from NMFS (see ADDRESSES). A summary of the analysis follows.

A description of the action, why it is being considered, and the legal basis for this action are contained in the Background section of the preamble and in the SUMMARY section of the preamble.

Description and estimate of the number of small entities to which the rule applies:

The RFA, 5 U.S.C. 603 *et seq.*, requires government agencies to assess the effects that regulatory alternatives would have on small entities. For marinas and charter/party boats, a small business is defined as any business/organization independently owned and operated, not dominant in its field of operation (including its affiliates), with annual receipts not in excess of \$7.5 million.

An estimated 104 recreational charter entities targeted groundfish in Oregon in 2014. Each of these vessels had an estimated average revenue of \$35,743 from groundfish, from a total annual average revenue of \$116,453, with other significant revenue earned in the salmon, tuna/albacore, and shellfish fisheries. It is estimated that all 104 entities would be considered small entities under the RFA.

In 2015 there were 106,504 angler trips in the Oregon recreational groundfish fisheries. This accounted for \$14,225,329 in trip-related expenses (excludes durable goods) and 327 jobs in the state of Oregon. Recreational anglers are not considered small entities under the RFA.

Many charter operations in Oregon earn a majority of their revenue from salmon fishing, however given the natural variability of the salmon fishery year to year, there is a potential for more commercial charter operations to turn to groundfish if the salmon fishery declines.

Estimate of economic impacts on small entities, by entity size and industry:

This rule is expected to give recreational charter entities in Oregon increased flexibility to pursue groundfish fishing opportunities, which is expected to provide positive economic impacts. The rule does not limit any existing activity or impose any mandatory new costs on the fleet, so the overall benefit to small entities is expected to be slightly positive, as some or most vessels may not choose to participate in the midwater fishery due to increased fuel costs from the distance required to travel, and because of midwater gear requirements. If charter operations choose to supplement groundfish in low-salmon years, benefits to these small entities would increase.

Reporting and recordkeeping requirements:

There are no new reporting and recordkeeping requirements associated with this rule.

Relevant Federal rules that may duplicate, overlap or conflict with the proposed action:

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities:

NMFS prepared, and the Council reviewed, a preliminary draft Environmental Assessment (EA) prior to recommending NMFS move forward with promulgating this rule.¹ NMFS is making available a draft EA simultaneous with the publication of this proposed rule in the **Federal Register**.² The preliminary and draft EA analyzed three alternatives in addition to a no action alternative. Of those analyzed, the Council's preferred alternative was the only one that accomplished the stated objectives of creating fishing opportunities while limiting bycatch of overfished and rebuilding rockfish species, such as bottom-dwelling yelloweye rockfish, and still allowing for the catch of abundant midwater species. In addition, the Council's preferred alternative would provide the largest potential positive impact to small business entities. In addition to those analyzed, a number of other alternatives to the proposed action were considered, but ultimately rejected for the purposes of further analysis in the draft EA. For example, an alternative that would reduce the number of months open for the fishery was considered and rejected. Further, an alternative to establish a midwater long-leader recreational groundfish fishery in California waters was considered, but then eliminated from further analysis after the California Department of Fish and Wildlife (CDFW) expressed concerns regarding the monitoring, enforcement, and funding challenges associated with establishing a new fishery in California waters. Additionally, there has been very little EFP test fishing of the midwater long-leader recreational gear in California waters. CDFW argued that until robust observer-verified data exist, this potential alternative presents too high a risk to include in the suite of alternatives

¹ Available at: http://www.pcouncil.org/wp-content/uploads/2016/02/G5_Att1_DraftEA_ORmidwaterSport_MAR2016BB.pdf

² Available at: http://www.westcoast.fisheries.noaa.gov/publications/nepa/groundfish/groundfish_nepa_documents.html

under consideration. Because of these issues, CDFW withdrew their interest in participating in the fishery.

An alternative to establish a midwater long-leader recreational groundfish fishery in Oregon waters for only the sport charter vessel fleet was considered by the Council, as that fleet could carry observers on board the vessels to collect data on interactions with prohibited and constraining species. It was noted that no current program exists for placing observers on private recreational vessels, and such a program would require additional analyses and consideration. The Council decided not to recommend this alternative for further analysis due in part to ODFW policy regarding sector separation and the goal of preserving equality in managing sport recreational fisheries modes in Oregon.

The Council considered an alternative allowing retention of all groundfish species, including lingcod. However, the Council did not recommend further analysis of this alternative given concerns about the increased potential for yelloweye rockfish bycatch should anglers choose to target more bottom-dwelling species, like lingcod.

The Council considered recommending additional monitoring and reporting requirements for anglers fishing in deep waters with the long-leader gear. However, ODFW regards the current sampling rate of the ORBS monitoring program (which includes angler-reported discard estimates by species and area) to be sufficient for adequately covering new activities under the proposed action.

Finally, the Council considered allowing the fishery to operate seaward of 30 fathoms but did not make that part of their recommended alternatives for further analysis. This decision was based in part on input from law enforcement that a 10 fathom buffer zone (i.e., fishing seaward

of 40 fathom enforceable depth contour) would be preferred to allow for effective and efficient enforcement when using depth-based regulations.

NMFS believes that rule will not have a significant impact on small businesses. An estimated 104 small entities are potentially impacted by this rule. This rule is not anticipated to have a substantial or significant economic impact on small entities, or place small entities at a disadvantage to large entities. We are requesting comments on this conclusion.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Reporting and recordkeeping requirements.

Dated: December 14, 2017.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be 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. In § 660.351, add, in alphabetical order, the definition of “long-leader gear” as follows:

§660.351 Recreational fishery—definitions.

* * * * *

Long-leader gear (also known as Holloway gear) means fishing gear with the following: one fishing line, deployed with a sinker and no more than three hooks, with a minimum of 30 feet (9.14 meters) between the sinker and the lowest hook, and a non-compressible float attached to the line above the hooks. The gear may be equipped with artificial lures and flies not to exceed 5 inches in length. Natural bait, and lures or flies greater than 5 inches in length, may not be used.

* * * * *

3. In § 660.360, paragraphs (c)(2)(i)(B) and (c)(2)(iii)(B) are revised to read as follows:

§660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) *Recreational rockfish conservation area (RCA)*. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or groundfish conservation area. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while within the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from April 1 through September 30, recreational fishing

for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour, except that fishing for flatfish (other than Pacific halibut) is allowed seaward of the 40 fm (73 m) depth contour when recreational fishing for groundfish is permitted, and fishing with long-leader gear (as defined in § 660.351) is allowed seaward of the 40 fm (73 m) depth contour (i.e., within the RCA) from April 1 through September 30. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at §660.71.

* * * * *

(iii) * * *

(B) *Lingcod*. There is a 3 fish limit per day for lingcod from January 1 through December 31. The minimum size for lingcod retained in the Oregon recreational fishery is 22 in (56 cm) total length. For vessels using long-leader gear (as defined in § 660.351) and fishing inside the recreational RCA, possession of lingcod is prohibited.

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