

exemptions from pertinent GRA regulations would be required. There will be an opportunity for public discussion of this proposal at the December 12-14, 2000, meeting of the Mid-Atlantic Fishery Management Council in Atlantic City, NJ. An agenda and other details of that meeting will be published in the **Federal Register** in advance of the meeting.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** November 15, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 110800C]

#### Atlantic Highly Migratory Species Fisheries; Technical Gear Workshop

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

**ACTION:** Notification of public meeting.

**SUMMARY:** NMFS announces a public workshop to discuss potential gear modifications for the Atlantic pelagic longline fishery aimed at reducing the incidental take and mortality of threatened and endangered sea turtles. The workshop is intended to synthesize available information and discuss research objectives. A report of the workshop will be made available to interested parties.

**DATES:** The workshop will take place December 12, 2000, from 1 p.m. to 6 p.m. and December 13, 2000, from 8:30 a.m. to 3:30 p.m. Notice of attending the meeting should be provided by December 5, 2000.

**ADDRESSES:** The location for the workshop is: National Marine Fisheries Service, Building 4 - Science Center, 1305 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze-Haugen or Tyson Kade at (301) 713-2347. Also, if you are planning to attend the workshop, please contact the above named individuals by December 5, 2000. Attendees will be provided briefing materials prior to the meeting.

**SUPPLEMENTARY INFORMATION:** A Biological Opinion (BO) issued on June

30, 2000, by NMFS' Office of Protected Resources found that the continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of loggerhead and leatherback sea turtles. Since the BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on turtles. NMFS reinitiated consultation to consider these factors, and anticipates issuance of a new BO in March 2001. This workshop will allow fishermen, gear experts, sea turtle experts, and fishery managers to discuss possible measures, including gear and fishing method modifications, to reduce the incidental take and mortality of sea turtles in the Atlantic pelagic longline fishery in the future. Information developed at the workshop will be incorporated into a workshop report that will be considered in the ongoing fishery consultation. The report will also be made available to the public.

#### Special Accommodations

The public workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen or Tyson Kade (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

**Authority:** 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

**Dated:** November 14, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 001030303-0303-01; I.D. 091900E]

**RIN 0648-AO41**

#### Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 13

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement portions of Amendment 13 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 13 is intended to make the FMP consistent with the bycatch provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 13 would also increase flexibility in the groundfish annual specifications and management measures process to allow the Council to more easily craft measures that protect overfished and depleted species, and would amend the limited entry permit provisions to remove unused and outdated limited entry permit endorsements. This proposed rule would introduce an increased utilization program for the at-sea whiting fisheries, revise the regulatory provisions for the routine management measures process, and remove regulatory references to limited entry permit endorsements other than the "A" endorsement.

**DATES:** Comments must be submitted in writing by January 5, 2001.

**ADDRESSES:** Send comments to Donna Darm, Acting Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 13 to the Pacific Coast Groundfish FMP and the environmental assessment/regulatory impact review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to the NMFS address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 00503 (Attn: NOAA Desk Officer). Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Donna Darm or Rebecca Lent.

**FOR FURTHER INFORMATION CONTACT:** William Robinson at: phone, 206-526-6140; fax, 206-526-6736; and email, bill.robinson@noaa.gov. Svein Fougnier at: phone, 562-980-4000; fax, 562-980-4047; and email, svein.fougnier@noaa.gov.

**SUPPLEMENTARY INFORMATION:** Electronic Access: This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

On October 11, 1996, the Sustainable Fisheries Act went into effect, significantly amending the Magnuson-Stevens Act. Fishery management councils were required by the newly amended Magnuson-Stevens Act to revise their fishery management plans to address several large areas of concern in fishery management, including overfishing and the rebuilding of overfished stocks; bycatch and bycatch mortality; essential fish habitat (EFH); and the effects of fishery management actions on fishing communities.

The Pacific Fishery Management Council (Council) prepared Amendment 13 to the FMP and submitted it on September 11, 2000, for Secretarial review. NMFS published a notice of availability for Amendment 13 in the **Federal Register** on September 22, 2000 (65 FR 57308), announcing a 60-day public comment period, which ends on November 21, 2000.

The Council amended its groundfish FMP with Amendment 11 to bring the FMP into compliance with the Magnuson-Stevens Act. Amendment 11 includes provisions amending the FMP framework that define "optimum yield" for setting annual groundfish harvest limits; defining rates of "overfishing" and levels at which managed stocks are considered "overfished;" defining Pacific Coast groundfish EFH; setting a bycatch management objective and a framework for bycatch reduction measures; establishing a management objective to take the importance of fisheries to fishing communities into account when setting groundfish management measures; providing authority within the FMP for the Council to require groundfish use permits for all groundfish users; authorizing the use of fish for compensation for private vessels conducting NMFS-approved research; and, making other, lesser updates to the FMP. NMFS approved all of the FMP amendment except for those provisions addressing bycatch. The bycatch provisions of Amendment 11 were sent back to the Council for further development. Amendment 13 is the result of the Council's efforts and would make the FMP consistent with the bycatch provisions of the Magnuson-Stevens Act.

When, on March 3, 1999, NMFS notified the Council that it had approved most of Amendment 11 to the FMP, it also notified the Council that

three species (lingcod, bocaccio, and Pacific ocean perch (POP)) managed under the FMP were considered overfished, according to the definition of an overfished species given in Amendment 11. The Council was then required by the Magnuson-Stevens Act to provide rebuilding plans for the three overfished species within one year of that NMFS notification. The Council developed draft rebuilding plans for lingcod, bocaccio, and POP, during its September and November 1999 meetings, and adopted rebuilding plans for all three species at the November 1999 meeting. Measures necessary to implement the Council-adopted rebuilding plans were incorporated into the 2000 annual specifications and management measures for Pacific Coast groundfish (65 FR 221, January 4, 2000). Council staff submitted finalized rebuilding plans to NMFS, and NMFS notification of rebuilding plan approval was published on September 5, 2000 (65 FR 53646). At its April 2000 meeting, the Council approved Amendment 12 to the FMP, which provides a framework process for developing future rebuilding plans.

In January 2000, NMFS notified the Council that two additional species, canary rockfish and cowcod, were also considered overfished. While protective measures for these two species were incorporated into the 2000 management measures, the formal rebuilding plans will be developed over the coming year and completed for the 2001 annual specifications.

To incorporate effective rebuilding measures for the five overfished species into the 2000 annual specifications and management measures, the Council had to create management measures that were consistent with, but outside of the scope of the FMP. The Council asked NMFS to make emergency regulatory changes concurrent with the publication of the 2000 annual specifications so that the rebuilding measures could begin in the 2000 fishing season. NMFS incorporated the emergency regulatory changes into the 2000 annual specifications and management measures. However, emergency regulations are temporary, and the Council needs to incorporate flexibility for managing both overfished and healthy groundfish stocks in 2001 and beyond into the FMP. Amendment 13 broadens the scope of the FMP's framework management measures to better equip the Council to meet some of the overfishing and bycatch requirements of its FMP during the annual specifications and management measures process.

In addition to amending the FMP for consistency with the Magnuson-Stevens Act bycatch provisions and updating the framework language of the FMP to allow more flexibility in meeting rebuilding goals for overfished stocks, Amendment 13 updates the FMP to remove provisions for limited entry permits with provisional "A" endorsements, "B" endorsements, and "designated species B" endorsements. These endorsements were used to smooth the transition from an open access system to the limited entry program, but all current limited entry permit holders now have "A" endorsements, and the three lesser endorsements have either expired or are no longer useful. Removing these endorsements from the FMP's limited entry provisions and from the groundfish regulations is essentially a "housekeeping" measure.

NMFS is proposing this rule to implement sections of Amendment 13 that would establish an increased utilization program for the at-sea whiting fisheries designed to reduce bycatch, revise the regulatory provisions for the routine management measures process, and remove regulatory references to limited entry permit endorsements other than the "A" endorsement. This proposed rule is based on recommendations of the Council made under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR prepared by the Council for Amendment 13.

## Background

### *Standardized Reporting Methodologies*

At 16 U.S.C. 1853(a)(11), the Magnuson-Stevens Act requires that fishery management plans "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority -- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided."

There are several standardized reporting methodologies in place in the groundfish fishery, including a voluntary observer program and a voluntary logbook in the at-sea whiting fisheries, incidental groundfish landings reported in a marine mammal directed observer program for the California halibut setnet fishery, and dockside observer coverage in the shoreside whiting fishery as associated with experimental fishing permits (EFPs).

The Council has recommended making observer coverage mandatory in the at-sea whiting fisheries to ensure consistent inseason catch monitoring and the fishery's compliance with the Endangered Species Act (ESA). The terms and conditions of the section 7 ESA consultation on the Pacific Coast groundfish fishery require 100 percent observer coverage to account for incidental take of ESA listed salmon in the at-sea whiting fisheries.

In addition to the programs described above, the Council has approved a regulatory framework for an on-board observer program for all limited entry and open access catcher vessels that take and retain or land groundfish at processors in the groundfish fishery off Washington, Oregon, and California. If funding for an observer program becomes available, the proposed regulations would (1) require vessels in the groundfish fishery to carry observers when notified by NMFS or its agent, (2) establish notification requirements, and (3) define responsibilities for vessels, including provisions to safeguard the observers' well-being and provide sampling conditions necessary for an observer to follow scientific sampling protocols at sea. These regulations were developed just ahead of the Amendment 13 timeline and thus, allowed to proceed outside the Amendment 13 process. A proposed rule to implement these regulatory changes was published on September 14, 2000 (65 FR 55495). Amendment 13 would facilitate those proposed changes by revising the sections of the FMP that address observer coverage to provide observer coverage plan guidelines. No further regulatory changes beyond those proposed in the rule published on September 14, 2000, would be needed to implement the standardized reporting methodologies section of Amendment 13. An observer program for the shorebased groundfish fisheries will be implemented as soon as funding becomes available or through vessels paying for observers.

#### *Bycatch Reduction Provisions*

Magnuson-Stevens Act National Standard 9 for fishery conservation and management, at 16 U.S.C. 1851(a)(9), states that, "Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." According to the Magnuson-Stevens Act, "The term 'bycatch' means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such

term does not include fish released alive under a recreational catch and release fishery management program."

The EA for Amendment 13 details the Council's past efforts to account for and reduce bycatch in the groundfish fisheries. Bycatch accounting and reduction measures have included: setting cumulative landings limit periods, rather than per-trip limits; reducing optimum yield (OY) from acceptable biological catch (ABC) by estimated discard rates both pre-season and inseason; reducing harvest available to directed non-whiting groundfish fisheries by the observed amounts of those stocks taken incidentally in the at-sea whiting fisheries; time/area closures to protect ESA-listed salmon from interception by the whiting fisheries; gear requirements such as mesh size restrictions and codend specifications to reduce juvenile groundfish bycatch; and setting cumulative landings limits for species complexes to account for catch ratios between co-occurring species.

For 2000, the Council moved beyond its historical practice of merely lowering harvest limits for overfished and depleted species (65 FR 221, January 4, 2000) and introduced new ways of reducing the interception of overfished species. Those measures include closed periods for lingcod to discourage directed lingcod harvest and requiring release of incidentally caught lingcod during closed periods. When lingcod are caught by hook-and-line methods, they can often be released alive. For the mixed-stock rockfish complexes, the Council recommended a landings limit scheme that encourages harvest of healthier stocks with higher limits, yet discourages directed and incidental harvest of overfished and depleted stocks through lower landings limits. In particular, cumulative rockfish landings limits for species concentrated on the continental shelf were lowered to move fishing effort away from that area, which is the primary habitat of several of the overfished rockfish species. The Council also introduced further rockfish protection measures, such as differential trip limits by gear type, season closures, and the structuring of the season to allow targeting of healthy stocks when depleted stock interception is less likely.

All of the new measures taken in 2000 and measures taken in prior years to manage for multi-species interactions illustrate that regulatory efforts to reduce bycatch tend to have multiple management goals — from protecting overfished and depleted species, to preventing overharvest of species of unknown abundance, to acknowledging that vessels using different gear types

require different harvest strategies, and to matching within-year harvest rates to within-year abundance and congregation habits of managed species. For a multi-species fishery, the catching of species other than the targeted species is not necessarily a problem. However, the discard of non-targeted species, whether for economic or regulatory reasons, is a problem that the Council has worked to reduce in its ongoing efforts to address a wide range of management issues.

#### *Amendment 13 Revisions to FMP, Including Increased Utilization for the At-Sea Whiting Fisheries*

Amendment 13 revises the FMP to authorize several measures that are expected to reduce bycatch. Amendment 13 provides for increased utilization programs for appropriately monitored fisheries, shorter fishing seasons with higher cumulative landings limits, permit stacking (combining) in the limited entry fleet, catch allocation to or gear flexibility for gear types with lower bycatch rates, re-examining/improving species-to-species landings limit ratios, and time/area closures. Several of these measures would require further development before implementation. For example, the Council plans to develop and analyze a fixed gear permit stacking program this autumn, which could be implemented in spring 2001. A management measure that will be implemented by Amendment 13 would be the introduction of an increased utilization program for the at-sea whiting fisheries.

The at-sea processing component of the Pacific whiting fishery consists of catcher/processors, motherships (vessels that receive and process fish at sea but do not catch fish), and catcher vessels that deliver the catch to motherships. Each at-sea processing vessel in the whiting fishery has carried at least one NMFS-trained observer since the beginning of operations in the whiting fishery in the early 1990's. In recent years, the catcher/processors and one of the motherships have carried two observers. Catcher/processors and catcher vessels delivering to motherships are subject to the same groundfish landings limits as the rest of the limited entry fleet. For species with landings limits, motherships are allowed to retain no more than the landings limit amount from each delivering catcher vessel.

Incidental catch rates in the offshore whiting fishery are generally low (less than 5 percent of total catch of groundfish), but the magnitude of the whiting fishery is so large that the

tonnage of incidental catch (particularly of yellowtail and widow rockfish) may be considerable. In order to comply with landings limit regulations, at-sea processors may need to discard substantial amounts of incidental species after a landing limit amount is reached.

At-sea whiting processors do not offload their catch as frequently as shore-based vessels. A catcher/processor or mothership may operate during a period that spans several cumulative landings limit periods without offloading. These at-sea processors are not allowed to exceed the cumulative limit that applies for the period in which offloading occurs, which means that the vessel may not combine the cumulative landings limit amounts for more than one period. This puts the at-sea processors and catcher vessels delivering to motherships at greater risk of exceeding the cumulative limits and can result in greater discards at sea than a shore-based vessel subject to the same limits. The offshore whiting fishery is not prohibited from retaining incidentally caught species within landings limit levels, but they generally neither target nor desire these species. Rockfish are spiny, get tangled in the nets, and damage the whiting. The offshore whiting fleet does not routinely process or sell incidentally caught species, and those that are retained are generally made into fish meal. These conditions and the desire of industry to minimize regulatory discards, along with food bank interest in collecting bycatch for use in hunger programs, make the at-sea whiting fleet a viable candidate for a full-retention management option.

Under the proposed increased-utilization program, if a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for 90 percent of the days on the fishing grounds during a cumulative trip limit period, then groundfish trip limits could be exceeded without penalty for that cumulative trip limit period. Because catcher/processors and motherships operate 24 hours a day, a single observer generally cannot monitor all of a ship's catching or processing activities.

In this program, all species would be made available for sampling by the observers before sorting. Any trip limit overage could not enter or otherwise compete in normal markets for that species, and overages would either be (1) converted to meal, mince, or oil products, which could then be sold or (2) donated to an approved food bank distributor. This option would not apply to prohibited species (i.e., salmon,

Pacific halibut, Dungeness crab). If a vessel were to choose to deliver to a food bank distributor, provisions would be made such that state or Federal enforcement representatives would have the opportunity to monitor any such offloading. The vessel could not receive compensation or otherwise benefit from any overage amounts unless the overage were converted to meal, mince or oil products.

The number of observers required for a vessel to participate in the overage program would be evaluated periodically, and changes would generally be announced concurrent with the annual specifications and management measures and, at least, prior to the start of the fishery. In its first year, this provision would apply to an at-sea processor that carries at least two observers. In the future, a higher level of observer coverage might be needed on some high-capacity vessels. The number of days on the fishing grounds would be determined from information routinely submitted by the observer aboard the vessel. A vessel would not be obliged to operate under this program. Some at-sea processing vessels could choose to continue to carry only one observer, the minimum amount recommended by the Council, in which case current trip limits would continue to apply for the rest of the limited entry fleet.

To the extent that vessels choose to participate in this program, this full-retention option would eliminate regulatory discards in the offshore whiting fishery, give offshore fishery participants an incentive to carry more than one observer (if they are not already required to do so), and improve catch data. Further, this program could provide fish for food banks, and the processed incidental catch would not compete in or affect pricing in traditional markets for food fish.

#### *Revisions to Annual Management Measures Framework to Allow Flexibility for Protecting Overfished and Depleted Species*

In the FMP, administrative processes for groundfish management are tiered, with some regulatory changes requiring at least two Council meetings and a regulatory amendment and other regulatory changes requiring discussion at a single meeting followed by publication in the **Federal Register**. Some changes may also be made through an abbreviated rulemaking process, which allows the Council to take certain actions needing swift implementation by discussing those actions with the public and with its advisory entities over two Council

meetings, with the results recommended for publication by NMFS in the **Federal Register**.

Each year at its September and November meetings, the Council uses the abbreviated rulemaking process to develop its recommendations for groundfish specifications and management measures for the following year. NMFS evaluates and publishes the Council's recommendations as the "annual specifications and management measures" in a **Federal Register** document each January. Annual specifications establish ABCs, OYs, and harvest guidelines for managed species. Management measures are the specific landings limits, size limits, and time/area closures that are set in place for one calendar year. As the fishing year progresses, the Council tracks harvest rates for each sector of the commercial fishery, and may recommend adjusting management measures to either allow more access to, or to restrict harvest of, a particular species or species group. For the recreational fisheries, the Council sets aside a portion of the available harvest of recreationally targeted species and sets recreational fishery management provisions in place at the beginning of the year.

Recreational fishery management measures may also be adjusted inseason. While existing procedures allow the Council to publish annual specifications and management measures through a two-meeting process and a single **Federal Register** document, adding to the list of measures that are considered "routine" requires a longer process of consideration and development for each new management measure. Management measures are designated as routine through the Federal rulemaking process, which requires two or more Council meetings to develop and analyze proposed routine management measures.

As stated in the summary section, there were several groundfish management measures introduced in 2000 that had not previously been designated as "routine," but that were specifically crafted to provide protection for overfished and depleted stocks while still allowing the harvest of healthy stocks. Also, proposed new recreational measures, particularly for California fisheries, were outside the routine management measures. The Council also wished to prohibit commercial lingcod landings during the lingcod spawning and nesting season, as well as to provide differential trip limits for different commercial gear types, additional proposals that were outside the routine management measures. NMFS implemented the new measures

for the 2000 fishing season via a Magnuson-Stevens Act emergency rule to ensure protection for overfished and depleted stocks, while allowing access to healthy stocks.

For 2001 and beyond, the Council wanted to have the flexibility to craft new measures through a two-meeting process to protect overfished and depleted species without having to implement those measures via a Magnuson-Stevens Act emergency rule. Amendment 13 would revise the FMP to allow increased flexibility for stock protection, and this proposed rule would amend the groundfish regulatory framework for routine management measures to reflect that flexibility. For commercial fisheries, the list of routine management measures would be amended to include, in cases where protection of an overfished or depleted stock is required, cumulative landings limits that may be different based on type of gear used and closed seasons for any groundfish species. For recreational fisheries, the list of routine management measures would be amended to include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements.

Under Amendment 13, the first time any new measure is used (e.g., first time for a size limit, first time for limits on a particular species, first time for a closed season.), the Council's two-meeting process will be used. Once adopted as "routine," the new measure could be adjusted during the year. Each year, the Council would publish in its Stock Assessment and Fishery Evaluation document an updated list of management measures that have been designated as routine through the two-meeting process; the list of routine measures will no longer be included in the groundfish regulations.

#### *Eliminating Limited Entry Permit Endorsements Other Than The "A" Endorsement*

In 1991, the Council adopted Amendment 6 to the FMP to establish a limited entry permit program for the Pacific coast groundfish fishery. In order to smooth the transition from an entirely open access fishery to the restrictions of limited entry, the Council recommended the creation of four different permit endorsements to provide different levels of fishery access. Only the "A" endorsement is in use today. All 499 current limited entry permits have "A" endorsements. "A" endorsements were originally intended for those vessel owners with a significant level of historical participation in, and dependence on, the fishery during a "window period"

from 1984 through 1988. With Amendment 13, the Council has recommended removing the other three endorsements, as they are outdated and/or unused. In addition to the "A" endorsement, limited entry permit endorsements include the provisional "A" endorsement, the "B" endorsement, and the "designated species B" endorsement.

Provisional "A" endorsements were initially developed for vessel owners who had purchased a vessel part way through the window period or who had a vessel under construction or conversion during the window period. The provisional "A" endorsement requires that, for the first three years after the new vessel purchase or after completion of the vessel upgrade, vessel owners meet minimum groundfish landings requirements. If the landings requirements were met for all three years, the provisional "A" endorsement could be converted to an "A" endorsement. When the limited entry program went into effect, three vessels qualified for and were issued provisional "A" endorsements. All three vessels met the annualized landing requirements and were issued "A" endorsements by 1997. NMFS has received no further applications for provisional "A" endorsed limited entry permits.

Provisional "A" endorsements have also been available to owners of vessels that landed sufficient groundfish during the window period, but that used a gear type that has been subsequently prohibited by a state (Washington, Oregon, or California) or the Secretary of Commerce. Under Amendment 13, if a state or the Secretary of Commerce bans a particular gear at some future time, provisional "A" endorsements would no longer be available to the affected vessels. NMFS expects that removing this opportunity will have little or no effect on current fishery participants because the limited entry window period is 13 to 17 years old and the character of the fishery and its participants have changed significantly since that period.

"B" endorsements were developed to allow vessel owners who had participated in the fishery at a low level during the window period to continue in the fishery for a three-year adjustment period before being required to have an "A" endorsed limited entry permit for participation in the limited entry fishery. Vessels qualified for "B" endorsements with historic landings levels much lower than the minimum landing requirements for "A" endorsements. Unlike provisional "A" endorsements, "B" endorsements could

not be upgraded to "A" endorsements. Twenty vessels initially qualified for and received "B" endorsed limited entry permits. In accordance with the FMP, those permits and the "B" endorsement opportunity expired on December 31, 1996. Of those vessels initially issued "B" endorsements, two are now participating in the fishery with "A" endorsement permits. The "B" endorsement is now obsolete.

"Designated species B" endorsements were developed to allow domestic harvesters to target species that were considered underutilized and harvestable without significant bycatch of other species. At the time that the Amendment 6 "designated species B" permit provision was implemented in 1994, three species in the groundfish fishery were designated as underutilized (Pacific whiting, shortbelly rockfish, and jack mackerel). Under the "designated species B" program, any Pacific whiting, shortbelly rockfish, and jack mackerel that would not be used by the limited entry fleet could be made available to domestic vessels outside the limited entry fleet by providing those vessels with "designated species B" endorsed permits.

Although the "designated species B" endorsement program was created to allow domestic vessels outside the limited entry fleet to participate in underutilized groundfish fisheries, it never benefitted the domestic fleet in a manner originally envisioned by the Council. First, The three groundfish species that the "designated species B" permit program was designed to target became either fully utilized (Pacific whiting), removed from the list of groundfish species managed under the groundfish FMP (jack mackerel), or found to co-occur with overfished and depleted rockfish species under the protection of rebuilding measures (shortbelly rockfish). Second, NMFS never received any requests or applications for "designated species B" permits, and thus, never issued any such permits.

Amendment 13 would remove the three outdated and/or unused limited entry permit endorsements as essentially a housekeeping measure. This proposed rule would revise the groundfish regulations to remove specifications for, and references to, these obsolete endorsements. Because these endorsements are not longer in use, removing them would have neither biological nor socio-economic effects on the environment.

#### **Biological Impacts**

The biological effects of implementing the Amendment 13 increased utilization

program in the at-sea whiting fishery are expected to be positive. This program would encourage at-sea whiting vessels to carry more than one observer, which would result in improved catch and discard accounting in the whiting fisheries. Observer data in the whiting fisheries will also be used for a variety of groundfish stock assessments. Increased observer coverage would improve both the quality and quantity of data derived from the whiting observer program. Over the long-term, these data improvement will lead to more informed stock assessments, which should result in better fisheries management and a lower chance of unforeseen overfishing.

This proposed rule to implement Amendment 13 would also introduce new flexibility into the annual specifications and management measures process. This increased flexibility would allow the Council to craft new management measures without a regulatory amendment, in cases where those measures were needed to protect overfished and depleted stocks while allowing access to healthy stocks. Providing new management flexibility for protecting overfished and depleted stocks is expected to have positive biological effects.

#### **Socio-economic Impacts**

The at-sea whiting increased utilization program would be a voluntary program, providing an incentive in the form of modest revenue from fish meal, to those vessels that choose to carry more than one observer. The revenue generated from selling fish meal from non-whiting incidental catch is expected to offset the cost of additional observers, making this program essentially revenue neutral for vessels that make meal.

Catcher-processors now voluntarily carry two observers per vessel, while motherships generally carry one observer. The cost to at-sea processors of carrying an additional observer, at \$250 per day for a 17-day season as occurred in 1999, would be \$4,250 per vessel. Training and debriefing costs would require approximately \$1,250 per vessel for the additional individual, bringing the per vessel total to approximately \$5,500.

In 1999, the total of retained and discarded non-whiting groundfish taken in both the catcher-processor and mothership sectors was 1142 mt, 94 percent of which was discarded. At this incidental catch level and at a product recovery ratio of 0.17 (standard for fish meal from groundfish, 50 CFR part 679), approximately 194 mt of fish meal could

have been produced for sale. Fish meal is usually exported for foreign markets, with prices per metric ton varying by importing country. Based on total exports, fish meal prices in 1999 averaged about \$590 per metric ton. Depending on where the fish meal generated by this program is sold, 194 mt of fish meal could be expected to generate about \$114,460 for the fleet. Six catcher-processors and six motherships participated in the 1999 whiting fisheries, setting the expected per vessel revenue from this program at about \$9,540. While observer costs per vessel are relatively fixed, revenue generated by this program would vary between vessels according to the rates at which they intercept non-whiting groundfish. On the whole, however, it appears that this program would offset the per vessel cost of carrying an additional observer without generating revenues high enough to give at-sea fleet participants an incentive to target non-whiting groundfish.

Vessels participating in this program would also have the option of donating non-whiting incidental catch to charitable organizations. If a vessel were to donate its non-whiting trip limit overages to food banks under this program, it would not recover the cost of the additional observer needed to participate. Some at-sea processing vessels also may not be equipped to process non-whiting groundfish into fillets and other useable forms, and food banks may be reluctant to accept donations of whole fish. In 1999, 99 percent (by volume) of the total groundfish catch of non-tribal motherships and catcher-processors was whiting. It may not be efficient for an at-sea processor to reserve on-board space and time to process 1 percent of its catch. However, vessels that participate in a food bank donation program likely have reasons other than efficiency for their participation.

Increased flexibility in the annual management measures process will have some economic effect on the fisheries. That effect, however, is not measurable until specific management measures are taken. Amendment 13 specifies that, any time the Council creates a new management measure under the more flexible framework, it will provide an assessment of the biological and socio-economic effects of that measure. Nonetheless, some qualitative conclusions may be made about how this increased flexibility will affect the fisheries.

For the 2000 fisheries, the Council asked NMFS to take some emergency regulatory actions under the Magnuson-Stevens Act in order to allow more

flexibility in the annual management measures process. In general, those emergency measures were needed because the status quo framework was not flexible enough for the Council to provide adequate protection for overfished and depleted species while also allowing fisheries access to healthy stocks. Even with greater flexibility, some amounts of healthy stocks cannot be fully harvested because their harvest will be constrained by regulations designed to protect co-occurring overfished species. For example, management measures to protect overfished and depleted species were drastic enough in 2000 to induce the governors of California, Oregon, and Washington to ask the Secretary of Commerce to declare the West Coast groundfish fishery a Federal disaster.

Amendment 13 would build annual management measures flexibility into the FMP for the purpose of providing protection to overfished and depleted species. This increased flexibility will allow the Council to craft management measures that protect stocks through fishery and gear-specific regulations for both protected species and species that associate with protected species. Increased flexibility will also help to allow sustainable harvest of healthy stocks. In general, a future of more flexible management is expected to be more economically positive than under status quo.

#### **Classification**

At this time, NMFS has not determined that Amendment 13, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 13.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The primary regulatory change introduced by Amendment 13 would be an increased utilization program for the at-sea whiting fishery that affects catcher-processors and motherships, which are considered small businesses. This would be a voluntary program, providing an incentive to vessels that carry more than one observer in the form of modest revenue from fish meal. The revenue generated from selling fish meal

made from non-whiting incidental catch would be expected to offset the cost of additional observers, making this program essentially revenue neutral for vessels that make meal. Because the whiting resource has been allocated between three different non-tribal sectors (catcher/processors, motherships receiving catcher boat deliveries, shorebased processing plants,) providing increased flexibility for these large businesses would not be expected to place small businesses in the whiting fishery (most catcher boats, some shoreside processing plants) at a disadvantage relative to the larger businesses.

The economic effects of increasing flexibility in the annual management measures process cannot be quantified until specific measures are implemented. However, it is generally expected that increasing management flexibility to allow access to healthy fish stocks while protecting overfished and depleted stocks would compare favorably over the status quo. The status quo alternative would be greater reduction in harvest of healthy stocks. When new management measures are proposed, these measures would be analyzed pursuant to the requirements of the RFA. The Council provides economic analysis during its development of annual management measures, and an EA/RIR for implementation of those measures. Setting annual management measures is a balancing exercise in which the Council meets its requirements to protect overfished and depleted species, yet allows fishery access to healthy stocks. In general, increasing the flexibility in this framework process allows the Council to craft management measures that protect fish stocks while mitigating the economic effects of that protection.

Removing specifications for unused limited entry permit endorsements from the regulations would have no economic or other effect on small businesses. Eliminating these endorsements would relieve a minor reporting requirement for limited entry vessels that annually reply to the NMFS survey on underutilized species.

Accordingly, a regulatory flexibility analysis was not prepared.

This proposed rule clarifies entries for a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The Product Transfer/Offloading Log has been approved under OMB control number 0648-0271 with an estimated response time of 20 minutes. Furthermore, this rule would reduce a collection-of-information requirement (approved under OMB control number 0648-0203) associated with the "designated species B" permit endorsement program.

This proposed rule also contains new collection-of-information requirements subject to review and approval by OMB under the PRA. This requirement would be for vessels participating in the voluntary increased utilization program to notify authorized officers of their intent to offload retained overages as a donation to a tax-exempt hunger relief

agency. This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 5 minutes to make a telephone call to NMFS enforcement to indicate an intent to offload fish in excess of cumulative limits for the purpose of donating that fish to a hunger relief organization. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see ADDRESSES) and to OMB at the Office Information and Regulatory Affairs, OMB, Washington, D.C. (Attn: NOAA Desk Officer).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule (see ADDRESSES).

#### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: November 9, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, 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 AND IN THE WESTERN PACIFIC

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

**Authority:** 16 U.S.C. 1801*et seq.*

2. In § 660.302, new definitions for "Overage" and "Tax-exempt organization" are added in alphabetical order to read as follows:

##### § 660.302 Definitions.

\* \* \* \* \*

*Overage* refers to the amount of fish harvested by a vessel in excess of the applicable trip limit.

\* \* \* \* \*

*Tax-exempt organization* means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

\* \* \* \* \*

3. In § 660.321, paragraph (b) is revised to read as follows:

##### § 660.321 Specifications and management measures.

\* \* \* \* \*

(b) *Annual actions.* The Pacific Coast Groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations.

\* \* \* \* \*

4. In § 660.323, paragraph (a)(3)(vi) is added and paragraph (b) is revised to read as follows:

##### § 660.323 Catch restrictions.

(a) \* \* \*

(3) \* \* \*

(vi) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (a)(3)(vi)(A) of this section are met. For purposes of this program, "fishing day" means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing



gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to participate in the program will be announced prior to the start of the fishery, generally concurrent with the annual specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report.

**Note:** For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.

(A) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows.

(1) All catch must be made available to the observers for sampling before it is sorted by the crew.

(2) Any retained catch in excess of cumulative trip limits must either be:

(i) Converted to meal, mince, or oil products, which may then be sold; or

(ii) Donated to a bona fide tax-exempt hunger relief agency (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief agency immediately upon the request of an authorized officer.

(3) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(4) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS,

Northwest Region homepage at <http://www.nwr.noaa.gov>.

(5) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief agency.

(6) Prohibited species may not be retained.

(7) Donation of fish to a hunger relief agency must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of "0" or "donation," followed by the name of the hunger relief agency receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief agency or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(B) [Reserved]

\* \* \* \* \*

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if they have been designated as routine through the two-meeting process described in PCGFMP. Management measures that have been

designated as routine will be listed annually in the Council's Stock Assessment and Fishery Evaluation (SAFE) document.

(1) *Commercial limited entry and open access fisheries—* (i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on an annual or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes set forth below.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on an annual or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

(2) *Recreational fisheries— all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with state regulations, and for the other purposes set forth in this section.



(i) *Bag limits.* To spread the available catch over a large number of anglers; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to enhance the quality of the recreational fishing experience.

\* \* \* \* \*

5. In § 660.333, paragraph (a) is revised, and paragraphs (h)(1)(i) and (ii) are removed, and paragraphs (h)(1)(iii) and (iv) are redesignated as paragraphs (h)(1)(i) and (ii), respectively, to read as follows:

**§ 660.333 Limited entry fishery—general.**

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel hold (by ownership or

otherwise) a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. A sablefish endorsement is also required for a vessel to participate in the regular and/or mop-up seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. There are three types of gear endorsements: trawl, longline, and pot (or trap.) More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is limited to those vessels with sablefish

endorsements, a longline or pot (or trap) limited entry permit holder without a sablefish endorsement may not fish for sablefish with open access gear.

\* \* \* \* \*

**§§ 660.335 and 660.337 [Amended]**

6. Sections 660.335 and 660.337 are removed and reserved.

**§ 660.338 [Amended]**

7. In § 660.338, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).  
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