

upon the size of the ACE and sub-ACL, the size of the change in specification relative to the ACE and sub-ACL, and the rate of catch of the particular stock. If, for example, a sector were currently catching a particular stock for which they have a small ACE at a high rate, and that sector's ACE for that stock is adjusted downward in this rule, then a significant fraction of that sector's ultimate FY 2011 ACE could be harvested and the sector's fishing season shortened upon implementation of this rule. In the worst case scenario, excessive catch by sectors could lead to a sector catching more than its ACE for the applicable FY, and having to forego any additional fishing this year. Thus, delaying this rule's effectiveness and allowing for another round of public comment could cause negative economic impacts to the common pool and to the sectors.

Additionally, any delays for an additional public comment period or to the effectiveness of the rule would create uncertainty for the affected entities that would have negative economic implications, which are contrary to the public interest. Until the stock allocations are finally adjusted, the affected fishing entities will not know how many fish of a particular stock they can catch without going over their ultimate limits. Fishermen may make both short- and long-term business decisions based on the ACLs in a given sector or the common pool; thus, it is important to implement adjusted ACEs and sub-ACLs as soon as possible. Any delays in adjusting the ACLs and ACEs may cause the affected fishing entities to curtail, or speed up, their fishing activities during the interim period before the rule's effectiveness. Both of these reactions could negatively affect the fishery and the businesses and communities that depend on them; the former by delaying profits and potentially reducing harvests, the latter by increasing the potential for exceeding the ultimate fishing limits. Thus, a delay in this rule's effectiveness creates uncertainty in the fishing market that is contrary to the public's interest.

For these reasons, NMFS is waiving the public comment period and delay in effectiveness for this rule, pursuant to 5 U.S.C. 553(c) and (d).

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

Dated: June 9, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324-1295-03]

RIN 0648-BA01

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Interim final rule.

SUMMARY: NMFS issues this interim final rule to revise the sablefish cumulative limits for the limited entry fixed gear primary fishery for the remainder of the 2011 groundfish fishery. This action is necessary to allow the limited entry fixed gear fishery to achieve their fishery harvest guideline, while keeping total impacts of all fisheries within the 2011 sablefish annual catch limit (ACL).

DATES: Effective June 10, 2011. Comments must be received no later than July 15, 2011.

ADDRESSES: Background information and documents, including the environmental impact statement (EIS) for this action, are available from William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070; or by phone at 206-526-6150. Electronic copies of this final rule are also available at the NMFS Northwest Region Web site: <http://www.nwr.noaa.gov>.

You may submit comments, identified by 0648-BA01, 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: Sarah Williams.
- **Mail:** 7600 Sand Point Way NE, Seattle, WA 98115.

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:

Gretchen A. Hanshew, 206-526-6147; (fax) 206-526-6736; Gretchen.Hanshew@noaa.gov.

SUPPLEMENTARY INFORMATION:

On May 11, 2011, NMFS published a final rule to establish the 2011-2012 harvest specifications for most of the species in the groundfish fishery and management measures for that fishery off the coasts of Washington, Oregon, and California (76 FR 27508). That rule, in part, established the 2011 sablefish annual catch limit (ACL) for the area north of 36° N. lat. From the sablefish ACL, NMFS calculated the allocations, fishery harvest guidelines, and the sablefish cumulative limits for the limited entry fixed gear primary sablefish fishery. These values are specified in Federal regulations at 50 CFR 660, Subparts C, D and E. Sablefish cumulative limits for the limited entry fixed gear fishery are specified at 50 CFR 660.231(b)(3)(i), subpart E.

On May 18, 2011, NMFS was notified by the Executive Director of the Pacific Fishery Management Council (Council) that there was a mistake in the calculation of the 2011 and 2012 sablefish cumulative limits during the development of the 2011-2012 biennial specifications and management measures. The sablefish primary fishery cumulative limits contained in the November 3, 2010 proposed rule (75 FR 67810), and ultimately implemented through the May 11, 2011 final rule (76 FR 27508) are incorrect. Public comments were accepted during the development of the 2011-2012 groundfish harvest specifications and management measures, and no public comments were received regarding the cumulative limits in the primary sablefish fishery. The error subsequently identified in the Executive Director's letter overcompensated for discard mortality, and so the pool of fish that is used to calculate the sablefish primary fishery cumulative limits was too low; therefore, the cumulative limits were also too low. The Executive Director requested that NMFS correct the sablefish cumulative limits for the limited entry fixed gear primary fishery as quickly as possible because the 2011 primary fishery season opened on April 1 and some vessels are actively fishing on their cumulative limits.

Based on the information in the Executive Director's letter, and NMFS evaluation of the issues, NMFS is implementing a revision to the 2011 cumulative limits for sablefish in the limited entry fixed gear primary sablefish fishery in this interim final rule. These cumulative limits are specified at 50 CFR 660.231(b)(3)(i), subpart E, and are increased for 2011 from "Tier 1 at 41,379 lb (18,769 kg), Tier 2 at 18,809 lb (8,532 kg), and Tier 3 at 10,748 lb (4,875 kg)" to "Tier 1 at 47,697 lb (21,635 kg), Tier 2 at 21,680 lb (9,834 kg), and Tier 3 at 12,389 lb (5,620 kg)."

Increasing the 2011 cumulative limits for sablefish in the limited entry fixed gear primary sablefish fishery is anticipated to achieve but not exceed the 2011 fishery harvest guideline for the primary fishery of 1,598 mt. It is also not anticipated to, when combined with the projected impacts from other fisheries that catch sablefish, exceed the 2011 sablefish ACL of 5,515 mt. Increasing the 2011 cumulative limits for sablefish in the limited entry fixed gear primary sablefish fishery is not anticipated to increase the projected impacts to co-occurring overfished species above the levels analyzed in the EIS because the projected impacts to co-occurring overfished species were estimated assuming that the sablefish fishery harvest guideline would be achieved.

Delaying the increase to the sablefish cumulative limits could cause disruption to the primary fishery. Some vessels may fish their entire sablefish cumulative limit, thereby concluding their primary fishing season, and then move on to other fisheries (both groundfish and non-groundfish fisheries). Under normal circumstances once a vessel fishes their entire available sablefish cumulative limit the primary season is concluded for that vessel until the next year's primary season. When additional pounds of sablefish are made available with the increase to primary sablefish fishery cumulative limits, many of those vessels will desire to fish those additional pounds. This means that vessels will be moving back and forth in between the limited entry fixed gear primary sablefish fishery and other fisheries. Vessels that desire to resume fishing in the primary sablefish fishery upon the release of additional pounds may encounter difficulties, as regulations are not explicitly designed for the primary sablefish fishery to start, stop and start again during the same calendar year. Delaying the increase means that more vessels will have fished their entire initial sablefish cumulative limits, and

more vessels will encounter disruption and confusion during their fishing activities in the primary sablefish fishery.

Additional movement of vessels between the primary sablefish fishery and other fisheries could also disrupt the Council's inseason tracking of sablefish catch in the limited entry fixed gear fishery. Disruptions to inseason tracking could cause increased uncertainty in total catch projections of sablefish in the groundfish fishery.

Classification

The Administrator, Northwest Region, NMFS, determined that the 2011 sablefish cumulative limits for the limited entry fixed gear primary fishery, which this interim final rule implements, are necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), NMFS finds good cause to waive prior public notice and comment on the increase to the 2011 sablefish cumulative limits in the limited entry fixed gear primary fishery as delaying this rule would be contrary to the public interest. Correcting the mistake in the calculation and raising the cumulative limits in the limited entry fixed gear primary sablefish fishery allows additional harvest opportunities so that the fishery may achieve its fishery harvest guideline. Affording the time necessary to complete notice and comment rulemaking would mean that a higher number of vessels would have their normal fishing practices in the primary sablefish fishery disrupted. This would occur because vessels often achieve their initial sablefish cumulative limits, thereby "closing" this portion of their sablefish season, and move on to another fishery. Vessels choosing to participate in other fisheries after achieving the cumulative limits currently specified in regulation could face difficulty returning to the primary sablefish fishery due to regulatory restrictions on changes in vessel registration. Also, failure to increase sablefish cumulative limits in a timely manner could prevent the limited entry fixed gear primary fishery from attaining their 2011 fishery harvest guideline, and thus would result in unnecessary short-term adverse economic effects for the sablefish primary fishery vessels and the associated fishing communities.

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). As mentioned above, delaying the effectiveness of this rule would mean that a higher number of vessels would have their normal fishing practices in the primary sablefish fishery disrupted. Some vessels fish their entire sablefish cumulative limit, thereby concluding their primary fishing season, and then move on to other fisheries. Vessels choosing to participate in other fisheries after achieving the cumulative limits currently specified in regulation could face difficulty returning to the primary sablefish fishery due to regulatory restrictions on changes in vessel registration. Also, failure to increase sablefish cumulative limits in a timely manner could prevent the limited entry fixed gear primary fishery from attaining their 2011 fishery harvest guideline, and thus would result in unnecessary short-term adverse economic effects for the sablefish primary fishery vessels and the associated fishing communities. For these reasons, this interim final rule is made effective upon publication.

The environmental impacts associated with the sablefish harvest levels that are achieved by this action are within the impacts in the EIS for the 2011–2012 specification and management measures. In approving the 2011–2012 groundfish harvest specifications and management measures, NMFS issued a Record of Decision (ROD). The ROD was signed on April 27, 2011. Copies of the EIS and the ROD are available from NMFS (see **ADDRESSES**).

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

This rule is exempt from the Regulatory Flexibility Act because it was not subject to prior notice and opportunity for public comment. However, a final regulatory flexibility analysis (FRFA) was prepared for the 2011–2012 harvest specifications and management measures final rule (May 11, 2011, 76 FR 27508). The information provided in that FRFA is unchanged by this interim final rule, as this interim final rule only amends cumulative limits for sablefish in the primary fishery and does not make changes to the sablefish ACL, allocations, and fishery harvest guidelines that informed all of the relevant analyses presented in that FRFA.

There are no additional projected reporting, record-keeping, and other compliance requirements of this rule not already envisioned within the scope of current requirements.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery have generally

improved in status since the 1999 ESA section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

The Southern Distinct Population Segment (DPS) of green sturgeon was listed as threatened under the ESA (71 FR 17757, April 7, 2006). The southern DPS of Pacific eulachon was listed as threatened on March 18, 2010, under the ESA (75 FR 13012). NMFS has reinitiated consultation on the fishery, including impacts on green sturgeon, eulachon, marine mammals, and turtles. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, the action would not jeopardize any listed species, would not adversely modify any designated critical habitat, and would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, the 2011–2012 harvest specifications and management measures were developed after meaningful consultation and collaboration with Tribal officials from the area covered by the FMP. This interim final rule takes no action that directly affects the Tribal management measures, which were passed by the Council, and which were developed and proposed by the Tribes.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: June 10, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, 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.*

Subpart C—West Coast Groundfish Fisheries

■ 2. In § 660.231, paragraph (b)(3)(i) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (i.e., stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232, subpart E. In 2011, the following annual limits are in effect: Tier 1 at 47,697 lb (21,635 kg), Tier 2 at 21,680 lb (9,834 kg), and Tier 3 at 12,389 lb (5,620 kg). For 2012 and beyond, the following annual limits are in effect: Tier 1 at 40,113 lb (18,195 kg), Tier 2 at 18,233

lb (8,270 kg), and Tier 3 at 10,419 lb
(4,726 kg).

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