

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the NE Multispecies Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA finds good cause under 5 U.S.C. 553(b)(B) and (d)(3) to waive prior notice and the delayed effectiveness for this action because notice and a delayed effectiveness would be unnecessary, impracticable, and contrary to the public interest. Both the FW 45 final rule and the FY 2011 adjustment rule based on final sector rosters indicated that future adjustments may be made based on updated FY 2010 catch estimates and final sector rosters; these catch estimates and final rosters only recently became available, and this rule implements the anticipated adjustments. Prior opportunity for public comment is unnecessary and impracticable because the public was provided the opportunity to comment on the possibility of the anticipated adjustments, including the basis for such adjustments. However, NMFS is requesting public comment on this action because the actual adjustments in this rule were not specifically stated.

NMFS also finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the delay in effectiveness of this action as contrary to the public interest. Any delay in making these adjustments would cause Category A DAS common pool vessels to operate under a more restrictive differential DAS rate than required in certain areas. Fishermen participating in the common pool fishery make business decisions based on the number of DAS available to them. A delay in this action would prolong the time period that the fishery would be operating under an incorrect differential DAS rate, which may prevent a vessel from gaining the maximum benefit from available fishing opportunities during the summer months, which generally have better weather conditions. NMFS is making this adjustment now because FY 2010 catch information supporting the change only recently became available.

A delay in the announcement of the FY 2010 ACE carryover is also contrary to the public interest because a delay could disrupt sector operations and prevent sectors from planning for the

fishing year based on the amount of ACE available to them in FY 2011. FY 2010 ACE carryover may increase the fishing opportunities available to each sector in FY 2011, especially if a sector has a small allocation for particular stocks. A delay in this action could result in foregone fishing opportunities during the summer months, when weather conditions are generally better. Because ACE may be traded between sectors, a delay in this action could also affect the ACE available to the market for trading, to the economic detriment of the fishery.

Because prior notice and an opportunity for comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are inapplicable.

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

Dated: September 7, 2011.

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 101102552-1319-02]

RIN 0648-BA35

#### Fisheries Off West Coast States; Highly Migratory Species Fisheries; Annual Catch Limits and Accountability Measures

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). NMFS approved Amendment 2 on June 12, 2011. The final rule implements regulatory components specified under Amendment 2 by changing the suite of management unit species and modifying the process for revising numerical estimates of maximum sustainable yield and optimal yield, and specify status

determination criteria so that overfishing and overfished determinations can be made for all management unit species. The final rule is necessary to ensure that the HMS FMP is consistent with the objectives of National Standard 1 in the MSA. National Standard 1 mandates that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry."

**DATES:** This final rule is effective October 13, 2011.

**FOR FURTHER INFORMATION CONTACT:** Craig Heberer, Sustainable Fisheries Division, NMFS, 760-431-9440, ext. 303.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This final rule is also accessible at (<http://swr.nmfs.noaa.gov/>). An electronic copy of the current HMS FMP and accompanying appendices, including Amendments 1 and 2, are available on the Pacific Fishery Management Council's Web site at <http://www.pcouncil.org/hms/hmsfmp.html>.

The HMS FMP was developed by the Pacific Fishery Management Council (Council) in response to the need to coordinate state, Federal, and international management of HMS stocks. The management unit in the FMP consists of several highly migratory species (tunas, billfish, and sharks) that occur within the West Coast (California, Oregon, and Washington) Exclusive Economic Zone (EEZ) and to a limited extent on adjacent high seas waters. The National Marine Fisheries Service (NMFS), on behalf of the U.S. Secretary of Commerce, partially approved the HMS FMP on February 4, 2004. NMFS implements the Council's recommended management measures through the Federal regulatory process.

In June 2010, the Council took final action to recommend adoption of Amendment 2 to the HMS FMP, which addresses statutory requirements of the MSA National Standard Guidelines in regard to the establishment of annual catch limits (ACLs) and accountability measures (AMs). The Council transmitted Amendment 2 to NMFS on March 14, 2011. NMFS approved Amendment 2 on June 12, 2011. This final rule implements Amendment 2. In Amendment 2, the Council recommended and NMFS concurred that all 11 MUS will fall under the international exemption for setting ACLs and AMs as described at 50 CFR

660.310(h)(2)(ii) in the revised MSA National Standard 1 (NS1) Guidelines.

The final rule: (1) Reduces the number of HMS FMP Management Unit Species (MUS) listed in 50 CFR part 660 from 13 to 11; and (2) modifies the process for revising and seeking NMFS approval for numerical estimates of maximum sustainable yield (MSY) and optimal yield (OY) and specifies status determination criteria (SDC) so that overfishing and overfished determinations can be made for all MUS stocks.

In regard to classification of stocks in the FMP, Amendment 2 and this final rule reclassifies bigeye thresher shark (*Alopias superciliosus*) and pelagic thresher shark (*A. pelagicus*) as EC species, thereby reducing the current suite of MUS from 13 to 11. Bigeye and pelagic thresher sharks were originally included in the HMS FMP as MUS due to concern over their low resiliency to exploitation; their reclassification as EC species is based in part on the minor levels of west coast commercial and recreational catch that have been reported for these species since the FMP was implemented. However, given the presence of these species off the West Coast, particularly during El Nino warming periods, these species will continue to be monitored under the HMS FMP as an EC species. One of the essential purposes behind identifying EC species is to monitor these species over time, periodically evaluate their status, and assess whether any management is needed under the HMS FMP, in which case an EC species could be reclassified as MUS, which means they would be treated as “in the fishery.” Amendment 2 establishes eight EC species in the HMS FMP: the two thresher shark species (bigeye and pelagic), pelagic sting ray (*Dasyatis violacea*), wahoo (*Aathocymbium solandri*), common mola (*Mola mola*), escolar (*Lepidocybium flavobrunneum*), lancetfishes (Alepisauridae), and louvar (*Lugarus imperialis*).

In regard to the process for revising numerical estimates of management reference points, the methods for determining MSY (or proxies), OY, and SDC are currently described in the HMS FMP. Existing numerical estimates of these quantities (shown in FMP Table 4–3) are retained. However, upon receipt of any new information based on the best available science, the Council may adjust the numerical estimates of MSY, OY, and SDC periodically under the Council’s management measure process. The process would involve the Council’s HMSMT identifying the numerical estimates within the draft HMS Stock Assessment and Fishery

Evaluation (SAFE) document that is submitted in June with the Council’s SSC HMS subcommittee and then making a recommendation on their suitability. The Council would then decide whether to adopt updated numerical estimates of MSY and OY, which would be submitted as recommendations for NMFS to review as part of the management measure review process. This provides the Secretary with an opportunity to review revised MSY and OY estimates. In this process, the Council takes final action in November and NMFS subsequently engages in rulemaking to implement the specifications of any management measures proposed by the Council. The revised estimates of MSY, OY, and SDC would also be published in the annual HMS SAFE document. However, if a regional fisheries management organization formally adopts reference points for the purpose of regional management for any of the HMS FMP managed species, these would generally take precedence. The Council would engage in a review process similar to that described above before adopting them as appropriate for domestic management purposes under the HMS FMP.

A single public comment was received on the proposed rule to implement Amendment 2 pointing out an error in the use of the common name for bluefin tuna. NMFS made this change in the final rule.

#### Classification

The Administrator of the Southwest Region, NMFS, determined that the HMS FMP Amendment 2 is necessary for the conservation and management of the U.S. West Coast Fisheries for Highly Migratory Species and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final 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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 7, 2011.

**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 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.*

■ 2. In § 660.702, revise the definition of “Highly Migratory Species (HMS)” to read as follows:

#### § 660.702 Definitions.

\* \* \* \* \*

*Highly Migratory Species (HMS)* means species managed by the FMP, specifically:

*Billfish/Swordfish:*

striped marlin (*Tetrapturus audax*)  
swordfish (*Xiphias gladius*)

*Sharks:*

common thresher shark (*Alopias vulpinus*)  
shortfin mako or bonito shark (*Isurus oxyrinchus*)  
blue shark (*Prionace glauca*)

*Tunas:*

north Pacific albacore (*Thunnus alalunga*)  
yellowfin tuna (*Thunnus albacares*)  
bigeye tuna (*Thunnus obesus*)  
skipjack tuna (*Katsuwonus pelamis*)  
Pacific bluefin tuna (*Thunnus orientalis*)

*Other:*

dorado or dolphinfish (*Coryphaena hippurus*)

\* \* \* \* \*

■ 3. In § 660.709, revise paragraph (a) to read as follows:

#### § 660.709 Annual specifications.

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS, including updated MSY and OY estimates based on the best available science. The Council’s HMS Science and Statistical Committee will review the estimates and make a recommendation on their suitability for management. The Council will review these recommendations and decide whether to adopt updated numerical

estimates of MSY and OY, which are then submitted as recommendations for NMFS to review as part of the management measures review process.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures including updated MSY and OY estimates if any for public review.

(3) In November each year, the Council will take final action on any necessary harvest guidelines, quotas, or other management measures including updated MSY and OY estimates if any and make its recommendations to NMFS.

(4) Based on recommendations of the Council, the Regional Administrator will approve or disapprove any harvest guideline, quota, or other management measure including updated MSY and

OY estimates after reviewing such recommendations to determine compliance with the FMP, the Magnuson Act, and other applicable law. The Regional Administrator will implement through rulemaking any approved harvest guideline, quota, or other management measure adopted under this section.

\* \* \* \* \*

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