

Display the symbol, logo, slogan and information signs in the appropriate locations. To reduce wind drag when bolting signs on pilings, it was found helpful in the Northeast to make signs taller than wider. Symbol or logo size may vary. However, if you reduce or

enlarge the symbol, maintain the same proportions.

6. Section 85.47 is revised to read as follows:

**§ 85.47 Program crediting.**

(a) *Crediting logo.* As the source of funding for Clean Vessel Act facilities,

the Sport Fish Restoration program should get credit through use of the Sport Fish Restoration logo. Grant recipients may use the crediting logo identified in 50 CFR 80.26 to identify projects funded by the Clean Vessel Act. The Sport Fish Restoration logo follows:

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BILLING CODE 4310-55-C

(b) *Recipient logo display.* Grant recipients are authorized to display the Sport Fish Restoration logo. Section 85.11 identifies recipients eligible to display the appropriate logo according to 50 CFR 80.26. Display includes on pumpout and portable toilet dump stations that grantees acquire, develop, operate or maintain by these grants, or on printed material or other visual representations relating to project accomplishments or education/information. Display the logo in the appropriate location, according to § 85.43(e). Symbol or logo size may vary. However, if you reduce or enlarge the symbol, maintain the same proportions. Recipients may require sub-recipients to display the logo.

(c) *Other display of logo.* Other persons or organizations may use the logo for purposes related to the Federal Aid Clean Vessel Act program as authorized in 50 CFR 80.26.

(d) *Crediting language.* Suggested examples of language to use when crediting the Clean Vessel Act follow:

(1) *Example 1.* The Sport Fish Restoration Program funded this pumpout facility through your purchase of fishing equipment and motorboat fuels.

(2) *Example 2.* The Sport Fish Restoration Program funded this construction through your purchase of fishing equipment and motorboat fuels.

(3) *Example 3.* The Sport Fish Restoration Program funded the production of this pamphlet through your purchase of fishing equipment and motorboat fuels.

(e) *Logo colors.* Option 1 in paragraph (e)(1) of this section describes the preferred logo colors. Use Options 2 or 3 in paragraph (e)(2) or (e)(3) of this section when necessary or to reduce costs. Do not attempt to match these Pantone Matching Systems (PMS) colors with combinations of screened process colors.

(1) *Option 1.* When printed 100 percent on a white background, use PMS 348.

(2) *Option 2.* When using four-color process printing, print the symbol in 100 percent black on a white background.

(3) *Option 3.* When it is not possible to follow the specifications of Options 1 or 2 in paragraph (e)(1) or (e)(2) of this section, print the logo in any 100 percent solid dark color on a contrasting light background.

Dated: July 29, 1997.

**Donald J. Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 970520120-7198-02; I.D. 040297A]

RIN 0648-AJ19

**Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; 1997 Management Measures for Nontrawl Sablefish**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement management measures for the 1997 limited entry, fixed gear

sablefish fishery north of 36° N. lat. This rule also implements long-term changes to the management measures for this fishery and for the limited entry, fixed gear sablefish fishery south of 36° N. lat. In addition to these regulatory measures, NMFS also announces a 1997 season start date of August 25 for the limited entry, fixed gear regular sablefish season north of 36° N. lat., a season length of 9 days, a season end date of September 3, and an equal cumulative landing limit of 34,100 lbs. These actions are intended to provide qualified fixed gear fishers the opportunity to harvest the 1997 fixed gear allocation and to reduce the risk to human life and safety inherent in the current "derby" fishery.

**DATES:** Effective August 21, 1997.

**ADDRESSES:** Copies of the Environmental Assessment (EA)/Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140, Rodney McInnis at 562-980-4040, or the Pacific Fishery Management Council at 503-326-6352.

**SUPPLEMENTARY INFORMATION:** NMFS issues this final rule to implement a recommendation from the Pacific Fishery Management Council (Council), under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement changes to the management measures for the limited entry, fixed gear sablefish fishery. The notice of proposed rulemaking for this action (62 FR 30305, June 3, 1997) fully described the background and rationale for the Council's recommendations. NMFS requested public comments on this action through July 3, 1997. NMFS received three letters during the comment period, which are addressed later in the preamble to this final rule. Recommendations made at the June 1997 Council meeting and the comments received on the proposed rule resulted in the changes to the regulatory text of the proposed rule that are explained below.

In summary, Council recommendations from the October 1996 and March 1997 meetings strengthened the separation of sablefish fishing effort north and south of 36° N. lat. New management schemes that will

improve safety to fishery participants were recommended for each area.

#### Changes From the Proposed Rule

NMFS either received Council recommendations on, or consulted with the Council on the changes to the proposed rule described in this section.

In March 1997, the total 1996 harvest for the limited entry, fixed gear, daily trip limit fishery for sablefish was estimated at 374 mt (825,000 lb). When the Council made its management recommendations for the limited entry, fixed gear primary (regular plus mop-up) fishery, the Council expressed an expectation that the 1997 daily trip limit fishery might exceed the 1996 total harvest by as much as 11 mt (25,000 lb). NMFS mistakenly wrote this expectation into the codified rule as a guideline for the total harvest for the daily trip limit fishery. As described below in Comment 1, after receiving updated information, the Council offered a correction to the proposed rule that the 385 mt (850,000 lb) was not intended as a harvest target. NMFS changed the regulatory text to eliminate the reference to the 385 mt (850,000 lb) after receiving the Council's comment.

At the June Council meeting, public comment strongly supported and the Council recommended a season start date of August 25 for the limited entry, fixed gear equal cumulative limit (or regular) fishery. The regulatory language from the proposed rule has been altered from describing a framework for a season to setting a season to start on August 25 for the 1997 fishery. However, as NMFS stated at that meeting, administrative appeals to denials of sablefish endorsements will not be completed before mid-September. Thus, some permit holders may receive a sablefish endorsement too late to participate in the fishery that begins August 25. To reconcile this conflict, the regular season will still start on August 25 for endorsement holders; but, an auxiliary regular season will also occur for successful appellants whose appeals are resolved after August 25. The start date of the auxiliary regular season will be announced in the **Federal Register**, and is expected to occur in mid-September, preceding the mop-up portion of the fishery.

This rule will be published very close to the start date of the regular season, primarily because the Council was unable to make final recommendations on this issue until its March 1997 meeting. Under this time constraint, NMFS decided to save time, reduce publication expenses, and limit public confusion by announcing the regular season start date, duration and amount

of the cumulative limit with this rule. These announcements result in changes to the 1997 codified regulations only. NMFS expects that the public would prefer the convenience of having changes to management measures and the 1997 season structure in one document, rather than in two separate documents published within days of each other.

In March 1997, the Council recommended a season structure for the 1997 limited entry, fixed gear regular sablefish fishery of a no more than 10-day fishery, with equal cumulative limits for all permit holders with sablefish endorsements. After consulting with the Council's Groundfish Management Team (GMT) at and subsequent to the June 1997 Council meeting to set the exact number of days in the fishery and the equal cumulative limit, NMFS has decided on a nine-day season starting at noon August 25, and ending at noon, September 3, 1997, with an equal cumulative limit of 34,100 lbs.

A final change from the proposed rule, as explained below in the response to Comment 2, is to allow each permit only one cumulative limit in the regular fishery and one in the mop-up fishery. By linking the cumulative limits to the permit as well as the vessel, multiple vessels will not be able to use the same permit during the cumulative limit periods to land multiple cumulative limits on that single permit. This problem will be dealt with in the long term through a rule that has been recommended by the Council, which has not been issued, that limits the timing and frequency of permit transfers.

#### Management Measures for 1997 Only

For 1997 only, the limited entry, fixed gear sablefish fishery north of 36° N. lat. will consist of a 9-day regular season with a single cumulative limit, equal for all vessels. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed or landed per vessel in a specified period of time, with no limit on the number of landings or trips. In addition, only one regular season and one mop-up season cumulative limit may be landed on a permit, so that no one permit may be used by multiple vessels to the land multiple cumulative limits. The cumulative limit of 34,100 lbs and the 9-day duration of the fishery are based on the number of permits qualifying for the sablefish endorsement and on the harvest taken in the daily trip limit fishery.

The 1997 limited entry, regular fixed gear season will begin at noon on

Monday, August 25, 1997. Only holders of limited entry permits with sablefish endorsements may participate in the fishery. If a limited entry, fixed gear permit holder's application for a sablefish endorsement is on appeal at the time of the season start date, that permit holder may not participate in the regular season. NMFS expects that the endorsement appeal process will be complete by mid-September. Following the completion of the endorsement appeal process, there will be an auxiliary regular season, which will give successful appellants the opportunity to fish towards the same cumulative limit and for the same number of days as those persons participating in the regular fishery. NMFS will announce the start date of the auxiliary regular season in the **Federal Register** before the start of that season.

According to the Council's recommendation, as described in the March 1997 EA/RIR for this issue, the duration of the equal cumulative limit fishery was to be set as close to 10 days as possible, and with a harvest "overhead" of at least 25 percent using the best estimate of projected harvest, and with an overhead of at least 15 percent using a reasonable "worst case" scenario. "Overhead" is defined as the difference between the expected harvest level and the total harvest that would occur if each permitted vessel took its cumulative limit (maximum potential harvest). The total allowable harvest for the regular and auxiliary regular fishery will be the amount of the limited entry, fixed gear sablefish allocation in excess of the amount that is expected to be taken by the daily trip limit fishery. The Council is managing the daily trip limit fishery north of 36° N. lat. so that its 1997 harvest does not substantially exceed its 1996 harvest of 415 mt (915,000 lbs).

Estimates of the likely total harvest in the regular and auxiliary regular fishery have been made conservatively in order to ensure that the fishery does not exceed its total allocation. Because of the provision of overhead and the conservative management described above, the regular and auxiliary regular fishery is not expected to harvest all of the limited entry, fixed gear allocation for north of 36° N. lat. in excess of that required for the daily trip limit fishery. Following an estimation of the catch from the regular and auxiliary regular fishery, there will be a mop-up fishery to harvest this excess. The recommendation on the size of the mop-up cumulative limit will be made by the Council's Groundfish Management Team, after calculation of the actual landed catch from the initial and

auxiliary cumulative limit fishery and the daily trip limit fishery. NMFS will announce the start date, duration, and cumulative limit amount for the mop-up portion of the fishery in the **Federal Register** before the start of the mop-up season.

In 1997, there will be a 48-hour closure before the regular fishery north of 36° N. lat., during which time no fixed gear vessel (limited entry and open access) may deploy gear used to take and retain groundfish, or take and retain sablefish north of 36° N. lat. The 1997 pre-season closure will begin at noon on August 23 and end at noon on August 25, at the start of the fishery. All fixed gear used to take groundfish must be out of the water during this period. For auxiliary regular fishery participants, there will also be a 48-hour closure before the start of that fishery, during which time the same rules that govern the pre-season closure for the regular fishery apply just to auxiliary regular fishery participants.

There will be no opportunities for either pot or longline fishers to set their gear before the 1997 regular or auxiliary regular season start times.

#### **Management Measures for 1997 and Beyond**

This rule introduces a framework that allows the start date of the regular, north of 36° N. lat., limited entry, fixed gear sablefish season to be set for any day from August 1 through September 30. The Administrator, Northwest Region, NMFS, will establish the season start date after consulting with the Council, taking into account tidal conditions, Council meeting dates, alternative fishing opportunities, and industry comments.

To facilitate enforcement at the end of the regular season, there will be a 48-hour post-season closure north of 36° N. lat., during which time no sablefish taken with fixed gear (limited entry or open access) may be taken and retained for the 48 hours immediately after the end of the regular season. However, sablefish taken and retained during the regular season may be possessed and landed during that 48-hour period. In 1997, this 48-hour post-season closure will begin at noon on September 3 and end at noon on September 5. Gear may remain in the water during the 48-hour post-season closure; however, gear used to take and retain groundfish may not be set or retrieved during this period. In 1997, there will also be a 48-hour post-season closure after the auxiliary regular season, for auxiliary fishery participants, during which time auxiliary fishery participants must comply with the rules set for all fixed

gear fishers for the post-season closure at the end of the regular season.

Outside of the regular season (the initial cumulative limit fishery), the mop-up fishery, and the associated 48-hour closures, there is generally a daily trip limit fishery for all vessels with limited entry permits for pot or longline gear. Vessels with limited entry permits for pot or longline gear, but without sablefish endorsements, may not participate in the regular season or the mop-up season; they may only harvest sablefish when the daily trip limit fishery is open for limited entry vessels. The daily trip limit fishery will be open during the time between the end of the 48-hour closure following the cumulative limit period and the beginning of the mop-up fishery.

Commencing at 12 noon local time (l.t.), September 5, 1997, the daily trip limits for nontrawl sablefish will resume at 300 lb (136 kg) per day north of 36° N. lat. (Daily trip limits apply to calendar days. Therefore, on September 5, 1997, a daily trip limit may be landed between 12 noon and 12 midnight l.t. Beginning at 0001 hours l.t. on September 6, 1997, daily trip limits will apply to the full 24 hours.) A vessel participating in the regular fishery must begin landing its catch before 12 noon l.t., September 5, 1997, and complete the offloading before returning to sea or continuing a trip at sea, or the daily trip limit will apply to the fish remaining on board after 12 noon l.t. on September 5, 1997. The regular season trip limit for sablefish smaller than 22 inches (56 cm) still applies.

The regular and mop-up seasons in the area south of 36° N. lat. have been eliminated. The daily trip limit fishery will continue in the southern area during the time of the regular and mop-up seasons, and associated closures north of 36° N. lat. Southern area fishers will be managed with the intent of providing a year-round trip limit fishery, and those without sablefish endorsements may not move north to take part in the primary northern season. There is a separate Acceptable Biological Catch (ABC) for the waters south of 36° N. lat.

Southern area fixed gear sablefish fishing will henceforth be managed under routine management measures imposed under 50 CFR 660.323(b). "Routine" management measures for sablefish include all changes to trip and landing frequency limits for all gears. Reasons for routine management measures include: 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. This rule does not amend § 660.323(b) but appropriately references it. Trip limits for sablefish in this area will be established in the annual specifications, and may be adjusted during the fishing year.

#### Comments and Responses

The comments in 3 letters received during the public comment period ending July 3, 1997, are summarized below. Comment 1 is a comment from the Council itself, whose staff sent a letter with a correction to the proposed rule. Comments 2 through 9 are comments sent by an individual in opposition to the 1997 management regime. This letter included an attachment of 13 letters of comment opposing equal allocation, sent from industry participants to the Council during its consideration of this issue, plus an additional letter comment sent by this same individual to NMFS prior to the publication of the proposed rule, with a report on fishery safety by a university economist. Comments 10 through 14 are comments from a letter of support sent by two associations representing West Coast fishing vessel owners and fishers. This letter raised specific issues concerning the Magnuson-Stevens Act National Standards for fisheries management, as they apply to this fishery.

#### Comment of Correction

*Comment 1:* The draft regulations for the 1997 season contain a reference to a target harvest of 385 mt (850,000 lbs) for the daily trip limit portion of the limited entry, fixed gear sablefish fishery. It was not intended that this target value be included as part of the codified regulations. Furthermore, more recent information indicated that the daily trip limit fishery took a higher amount in 1996 (415 mt (915,000 lb)), and more would be needed for 1997. The Council also recognizes that further adjustments to the duration of the fishery and the size of the cumulative limit may need to be made based on the number of vessels that ultimately qualify for sablefish endorsements.

*Response:* The codified text from the proposed rule has been altered to eliminate the reference. During its March 1997 meeting, the Council recommended setting a target harvest for the primary fishery that would leave about 385 mt (850,000 lb) for the daily trip limit fishery. The goal of this

recommendation was to allow some expansion in the daily trip limit fishery over what it had harvested in 1996. The Council expected that the total 1997 catch in the daily trip limit fishery would expand slightly over the total 1996 catch. At that time, it was estimated that the daily trip limit fishery had taken approximately 374 mt (825,000 lbs) in 1996, and might take as much as 385 mt (850,000 lbs) in 1997. By the June 1997 Council meeting, calculations of the total 1996 sablefish harvest in the limited entry, daily trip limit fishery were finalized at a total of 415 mt (915,000 lbs). If a cap of 385 mt (850,000 lbs) for the daily trip limit fishery were to remain in the codified text, the daily trip limit fishery would be constrained contrary to the logic of the Council's original recommendations.

#### Comments Opposing Rule

*Comment 2:* There are no restrictions on permit transfers. Permit holders who are able to take either the cumulative limit before the end of the cumulative limit period, or the mop-up limit before the end of the mop-up period would be allowed to transfer their permits, which may permit multiple boats to catch the limits during the times set for both the cumulative limit and mop-up periods of the fishery.

*Response:* NMFS agrees. Therefore, the proposed rule has been modified so that the cumulative limit is a period limit for the permit as well as for the vessel. By linking the cumulative limits to both the vessel and the permit, multiple vessels will not be able to make multiple cumulative limit landings on the same permit during the cumulative limit periods. This change is consistent with the intent of the Council's recommendations for management of the 1997 limited entry, fixed gear sablefish regular fishery. This problem will be dealt with in the long term through a rule that has been recommended by the Council, but not yet implemented, that would limit the timing and frequency of permit transfers for all gear types.

*Comment 3:* For vessels unable to catch the cumulative limit within the cumulative limit period, the fishery will still be an unsafe derby. A report by a university economist argues that because the 1997 fishery will increase the amount of time that lower-level harvesters will be in a derby-like setting, the 1997 season is less safe than a derby.

*Response:* The Council debated at its October 1996 and March 1997 meetings whether the equal cumulative limit fishery would still be unsafe for vessels unable to catch the cumulative limit within the time allotted for the fishery.

Fishers who knew that they would not be able to catch the cumulative limit within the allotted time testified at the Council meeting that any increase in the number of days in the fishery would allow them to slow the pace of their fishing and improve their ability to operate in a more safe manner. The U.S. Coast Guard also testified on the safety hazards of derby fisheries and stated that the longer the season, the safer the fishery. For vessels that are able to catch the cumulative limit within the cumulative limit period, the safety of the fishery will increase.

*Comment 4:* The equal cumulative limit system disregards historic fishery participation levels and redistributes fish and income away from high producers to low producers and away from the pot sector to the longline sector.

*Response:* As discussed in the preamble to the proposed rule, the Council determined that the safety benefits that could be gained from replacing the derby fishery with a slower-paced equal cumulative limit fishery would outweigh the one-time negative impact that such a regime would have on the highest producers in the fleet. The Council has considered historic participation as demonstrated in the documents produced for this action, Amendment 9, and the 1998 3-tier proposal. Nonetheless, the Council chose to recommend the equal cumulative limit for 1997 as the best short-term solution. At the June 1997 council meeting, the Council recommended that NMFS implement a three-tiered cumulative limit regime for managing the fishery in 1998 and beyond, which should provide fishers with fishing opportunities more closely aligned to past catch distribution.

*Comment 5:* Information at the March 1997 Council meeting indicated that the 1996 daily trip limit fishery took 385 mt (850,000 lb). Information on the 1997 daily trip limit fishery indicates that the fishery has exceeded the 1996 catch. If the daily trip limit fishery catch is higher than what was expected at the March 1997 Council meeting, NMFS will be unable to implement a catch limit for the cumulative limit fishery that will maintain the required overhead.

*Response:* As mentioned above, "overhead" is the amount by which the harvest would exceed the expected catch if every eligible vessel participates in the fishery and fully harvests its legal limit. The concept of overhead is based on the premise that not all participants in this fishery will harvest the cumulative limit. A fishery where all participants have the opportunity to

catch a cumulative limit and they are all able to catch that limit would be considered an individual fishing quota (IFQ). The Sustainable Fisheries Act of 1996 put a moratorium on the implementation of new IFQ programs until October 1, 2000.

Management measures for the limited entry, fixed gear sablefish fishery have been carefully crafted to not violate the IFQ prohibition. The Council has constrained the monthly limits in the daily trip limit fishery to ensure that the total 1997 catch does not greatly exceed the total 1996 daily trip limit fishery catch. With these constraints in place, NMFS has structured the fishery to meet the Council's parameters by adjusting the season length and trip limit level.

*Comment 6:* If NMFS reserves a portion of the catch available to the cumulative limit fishery for successful appellants to the sablefish endorsement application process to take during the time of the mop-up fishery, there would be a redistribution of catch amounts between the regular and mop-up portions of the fishery, which is not allowed under the current regulations.

*Response:* The auxiliary regular fishery is part of the regular fishery; it is not part of the mop-up fishery. The mop-up season will be held after the auxiliary regular season. A reasonable estimate of the amount needed for both regular seasons under the less conservative scenario described in the EA/RIR for this issue has been made. This estimate determined the duration and cumulative limit for the regular seasons. The amount available to the mop-up portion of the fishery will, as in the past, depend on the accuracy of the catch projections and on the amount of harvest needed to accommodate the daily trip limit fishery for the remainder of the year. As in years past, the NMFS Regional Administrator may determine that too little of the fixed gear allocation remains to conduct an orderly or manageable fishery, in which case there would be no mop-up season. This division of catch and establishment of an auxiliary season is not being implemented through pre-existing regulations, but through this final regulation.

*Comment 7:* The mop-up season has a fairly small cumulative limit for each participant and it is likely that every participant in the mop-up fishery will be able to take that cumulative limit during the mop-up cumulative limit during the mop-up period, there will be no overhead and the fishery will be an IQ.

*Response:* The mop-up fishery does not exist independently of the regular fishery and, in fact, may not even occur

if all of the sablefish available to the regular season is taken during the regular season. Conservative management of the regular fishery to prevent the total regular fishery catch from exceeding the amount available to that fishery creates the probability that not all of the sablefish available to the regular fishery will be taken during the regular fishery. The regulations finalized by this rule allow for the possibility of a mop-up in the event that not all of the sablefish available to the regular fishery is taken during the regular fishery. NMFS expects that overhead within the entire primary fishery, which is the regular fishery in combination with the mop-up fishery, will be within the Council's parameters of 15–25 percent. The structure of the mop-up fishery is similar to the mop-up fishery under past derbies and under the proposed three-tier system for 1998 and beyond.

*Comment 8:* Before actions taken at the June 1997 Council meeting, the overhead suggested for the cumulative limit fishery was 15 percent to 25 percent of the total estimated catch. Reserving a portion of the catch for successful endorsement application appellants, allowing transfers of permits during the fisheries, the higher than expected daily trip limit fishery catch, and altering the division of catch between the regular and mop-up portions of the fishery will absorb the available overhead and allow each participant to catch his or her cumulative limit, which would be an individual quota fishery.

*Response:* NMFS disagrees. As noted in the response to Comment 5 above, the cumulative limit and the overhead are calculated based on the total amount of sablefish available to the fishery and the projected harvest in the fishery. In addition, NMFS has eliminated the potential problem that could result from permit transfers (see Comment 2). Altering the amount of fish available to the fishery, or the projected total harvest does not necessarily eliminate the overhead, it simply requires a recalculation of the cumulative limit and cumulative limit period duration.

*Comment 9:* The Council recommended equal allocation for 1997 because NMFS did not have time to implement a 3-tiered cumulative limit system in time for the 1997 season.

*Response:* The 1997 management regime of equal cumulative limit fishery was recommended by the Council at its October 1996 meeting and refined during its March 1997 meeting. During the discussions of this issue at the October 1996 meeting, some industry members commented that they would

like to have the fishery managed as a tiered cumulative limit regime. The Council agreed to set up an industry advisory committee to discuss such an option for 1998.

The tiered management option had not been discussed or analyzed prior to October 1996. The Council adopted the current management regime for 1997 because it was the best available short-term alternative to the derby. The Council did not adopt a tiered cumulative limit option for 1997, because Council members and staff wished to have sufficient time to consult with the public, design parameters for such an option, and analyze the potential impacts of a tiered cumulative limit program through at least two Council meetings, as required by the FMP. NMFS implementation of a tiered cumulative limit program would also require considerable time to initiate and complete the rulemaking process, and to sort and analyze fisheries landings data so that endorsed permit holders could be assigned to the correct tiers.

There was not enough time between November 1996 and July 1997 for the two-meeting process, full Council pre- and post-decisional analyses, the federal rule publication process, and tier implementation by NMFS.

#### Comments Supporting Rule

*Comment 10:* Under the proposed rule, there would be a greater opportunity to harvest more selectively for the higher valued sablefish, resulting in fewer discards of lower value bycatch. The proposed rule would slow the pace of the affected fisheries, and thus reduce the abandonment of gear and the consequent mortality due to "ghostfishing." Notably, a slower fishery than that described in the proposed rule might result in an increased number of discards.

*Response:* Bycatch can occur for many reasons. In a derby fishery, where all fishers are participating at their highest possible rates of fishing, fishers may not have the time to fish in a selective manner. Fish would be hauled on board as quickly as possible without regard to species or size, and then a portion would be discarded according to market or regulatory constraints on what catch should and may be retained. Conversely, in a fishery where all participants have ample time to sort through their catch and fish until their vessels are filled with the highest-value fish, many lower-value fish may be discarded in the process. It is difficult to determine the optimal point between these two scenarios for minimizing fishery discards. The 1997 management

regime certainly allows fishers to slow their rates of fishing over the rates of previous years and improve the selectivity of their fishing methods. Selectivity in fishing, however, is a matter of personal ethics and fishing skill. NMFS does agree that a slower-paced fishery should have the much desired result of reducing gear abandonment and ghostfishing by lost gear.

*Comment 11:* By assuring a slower pace of harvesting in the affected fisheries, the adoption of the proposed rule would result in improved safety of life at sea. The proposed limited entry measures would allow fishermen to time their harvesting activities so as to avoid dangerous weather conditions. In addition, fishermen would be better able to avoid fatigue and the attendant risk of accidental injury and death.

*Response:* NMFS agrees. If there had been a derby in 1997, it would have been 3–4 days in duration. The management regime implemented by this rule significantly improves safety in the fishery over a 3–4 day derby.

*Comment 12:* The adoption of the proposed rule would ensure a balance of the interests of all affected communities. While some redistribution of landings would likely occur, sustained participation would be assured for all communities, consistent with conservation requirements of the Act. Any adverse effects would be minimized, to the extent practicable, for all affected communities, by providing fair and reasonable access to the fisheries for all participants.

*Response:* NMFS agrees. Access by all affected communities is still maintained with this action. However, NMFS recognizes that, for 1997, resources within the fishery will be reallocated between participants in a manner inconsistent with historic participation levels.

*Comment 13:* The proposed rule is designed to ensure that overfishing is prevented and that the optimum yield is achieved on a continuing basis. The system of landing limits and time and area closures, including the device of a mop-up fishery, allows close control of the fishery to achieve optimum yield.

*Response:* NMFS agrees.

*Comment 14:* Several times the Federal court has held that the Magnuson-Stevens Act provides the authority for the Secretary to sacrifice the interests of some groups of fishermen, for the benefit, as the Secretary sees it, of the fishery as a whole.

*Response:* NMFS agrees and has determined that the 1997 measures are reasonable for the overall fishery this

year. NMFS does, however, support a 1998 management regime for this fishery that both achieves both increased safety over prior year derbies and takes into account historic fishing levels.

#### Classification

Under 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delay in effectiveness for this rule. August 25 was chosen as a season opening date in order to promote safety and to allow fishermen to participate in order fisheries aside from this directed sablefish fishery. In order for the limited entry fixed gear sablefish fishery to fully benefit from the increased vessel safety produced by a longer season and not have the fishery delayed until later in the year when safety could be compromised by worsening weather conditions, this rule must be made effective to allow a regular season for endorsed permit holders to begin August 25. To this extent, to delay the effectiveness of this rule would be contrary to the public interest.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Final Regulatory Flexibility Analysis consists of the IRFA (as submitted by the Council and supplemented by the preamble to the proposed rule (62 FR 30305, June 4, 1997)), and a NMFS addendum prepared for this final rule. All of the 164 vessels that are expected to qualify for sablefish endorsements north of 36° N. lat. and participate in the 1997 limited entry, fixed gear sablefish fishery are small entities. Approximately 38 operators (23 percent of expected endorsed participants) are expected to suffer a loss of greater than 5 percent of their total gross fishing revenues, a “substantial” number for the purposes of the RFA. There will likely be a 29 percent redistribution of the harvest from traditionally high producers to traditionally low producers, a redistribution of ex-vessel revenue of about \$2.5 to \$3.0 million. Individuals in the top third of the fleet in terms of production levels will experience reductions in sablefish incomes, which will be funneled into distributed gains for the lower producing two-thirds of the fleet. Thus, when looking at the fleet as a whole, the impact on high producers would be mitigated by the benefit to the low producers, which are also small businesses. The Council initially reviewed five options for management in this fishery: N1—the status quo; N2—a three week cumulative limit with a

mop-up fishery; N3—a three week cumulative limit with different limits for longline and pot vessel; N4—trip size/frequency limits using three one-week periods, with no mop-up fishery; and N5—three months of monthly trip limits. The initial option chosen, N2, was determined by NMFS to constitute an IFQ system, which is prohibited by the Magnuson-Stevens Act until October 1, 2000. Without substantial changes, options N3–N5 would constitute IFQ’s as well. To avoid the derby fishery the Council chose to modify option N2, because it was the most feasible to be implemented before the 1997 fishery. The option had already been approved by the Council and was acceptable to the majority of participants in the fishery. As modified the option would provide sufficient “overhead” in uncaught fish so that it would not be considered an IFQ. (See responses to comments 5 and 9 for a discussion of overhead). There was insufficient time to modify previously rejected options due to the considerable time required to initiate and execute a more complex program and follow all requirements of the FMP. The management alternative that would have had the least significant economic impact to the fleet would have been the status quo derby, N1. However, the Council decided to reduce the danger that the derby poses to human life and safety and chose an available management alternative that could be implemented in time for an August–September 1997 fishery.

#### 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: August 21, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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

#### PART 660—FISHERIES OFF WEST COAST STATES 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.*

#### Subpart G—West Coast Groundfish Fisheries

2. Section 660.323 is amended by revising paragraph (a)(2) to read as follows:

**§ 660.323 Catch restrictions.**

(a) \* \* \*

(2) *Nontrawl sablefish*. This paragraph (a)(2) applies to the regular and mop-up seasons for the nontrawl limited entry sablefish fishery north of 36° N. lat., except for paragraphs (a)(2) (ii) and (iv) of this section, which also apply to the open access fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing south of 36° N. lat. is governed by routine management measures imposed under paragraph (b) of this section.

(i) *Sablefish endorsement*. In order to lawfully participate in the regular, auxiliary regular, or mop-up season for the nontrawl limited entry fishery, the owner of a vessel must hold (by ownership or otherwise) a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement.

(ii) *Pre-season closure—open access and limited entry fisheries*. (A) From 1200 local time (l.t.), August 23, 1997, until 1200 l.t., August 25, 1997, sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ north of 36° N. lat. may not be retained or landed. Beginning January 1, 1998, sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ north of 36° N. lat. may not be retained or landed during the 72 hours immediately before the start of the regular season for the nontrawl limited entry sablefish fishery.

(B) From 1200 l.t., August 23, 1997, until 1200 l.t., August 25, 1997, all fixed gear used to take and retain groundfish must be out of EEZ waters north of 36° N. lat. Beginning January 1, 1998, all fixed gear used to take and retain groundfish must be out of EEZ waters north of 36° N. lat. during the 72 hours immediately before the opening of the regular season for the nontrawl limited entry sablefish fishery, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ up to 24 hours immediately before the start of the regular season.

(C) From August 21, 1997 through December 31, 1997, during the 48 hours immediately before the opening of the auxiliary regular season for the nontrawl limited entry sablefish fishery, participants in the auxiliary regular season may not retain or land sablefish, and must have all fixed gear used to take and certain groundfish out of EEZ waters.

(iii) *Regular season—nontrawl limited entry sablefish fishery; starting in 1998*. The NMFS Regional Administrator will announce a season for waters north of 36° N. lat. to start on any day from

August 1 through September 30, based on consultations with the Council, taking into account tidal conditions, Council meeting dates, alternative fishing opportunities, and industry comments. During the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the **Federal Register** either before or during the regular season.

(iv) *Post-season closure—limited entry and open access*. (A) No sablefish taken with fixed gear north of 36° N. lat. may be taken and retained from 1200 l.t., September 3, 1997, until 1200 l.t., September 5, 1997. Sablefish taken and retained during the regular season may be possessed and landed during this 48-hour period. Gear may remain in water during this 48-hour post-season closure. Fishers may not set or pull from the water fixed gear used to take and retain groundfish during the 48-hour post-season closure. At 1200 l.t. on September 5, 1997, the daily trip limit regime will resume.

(B) From August 21, 1997, through December 31, 1997, for participants in the auxiliary regular season, no sablefish may be taken with fixed gear and retained during the 48 hours immediately after the end of the auxiliary regular season of the nontrawl limited entry sablefish fishery. Sablefish taken and retained during the auxiliary regular season may be possessed and landed during that 48-hour period. Gear may remain in water during the 48-hour post-season closure. Auxiliary regular season participants may not set or pull from the water fixed gear used to take and retain groundfish during the 48-hour post-season closure. At the end of the post season closure, the daily trip limit regime will resume.

(C) Beginning January 1, 1998, no sablefish taken with fixed gear may be taken and retained during the 48 hours immediately after the end of the regular season for the nontrawl limited entry sablefish fishery. Sablefish taken and retained during the regular season may be possessed and landed during that 48-hour period. Gear may remain in water during the 48-hour post-season closure. Fishers may not set or pull from the water fixed gear used to take and retain groundfish during the 48-hour post-season closure. At the end of the post-season closure, the daily trip limit regime will resume.

(v) *Mop-up season—limited entry fishery*. (A) A mop-up season to take the remainder of the limited entry nontrawl

allocation will begin in waters north of 36° N. lat. about 3 weeks after the end of the regular season, or as soon as practicable thereafter. During the mop-up fishery, a cumulative trip limit will be imposed. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. No vessel may land more than one cumulative limit. The length of the mop-up season and the amount of the cumulative trip limit, including the time period to which it applies, will be determined by the Regional Administrator in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the allocation, the amount of sablefish needed for the remainder of the daily trip limit fishery, and the number of mop-up participants anticipated. The Regional Administrator may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season. There will be no daily trip limit fishery during the mop-up season. At the end of the mop-up season, the daily trip limit fishery will resume.

(B) From August 21, 1997 through December 31, 1997: No more than one mop-up cumulative limit may be landed on each limited entry permit with a sablefish endorsement.

(vi) *Other announcements; starting in 1998*. The dates and times that the regular season starts and ends (and trip limits on sablefish of all sizes are resumed), the dates and times for the 48-hour post-season closure, the dates and times that the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery will be announced in the **Federal Register** and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date.

(vii) *Regular season and auxiliary regular season; from August 21, 1997 through December 31, 1997—limited entry fishery*. (A) The regular season for the nontrawl limited entry sablefish fishery north of 36° N. lat. will start at 1200 noon, l.t. on August 25, 1997, and end at 1200 noon l.t. on September 3, 1997. During this period, each vessel with a sablefish endorsement on its permit will have a cumulative trip limit of 34,100 lb. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. No more



than one regular season cumulative limit may be landed on each limited entry permit with a sablefish endorsement. No vessel may land more than one cumulative limit. Each vessel is subject to the following per-trip limit for small sablefish: Sablefish smaller than 56 cm (22 in) total length may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 56 cm (22 in) (total length) or larger, whichever is greater. There will be no daily trip limit fishery during the regular season.

(B) Permit holders whose applications for sablefish endorsements are under administrative appeal at the time the regular season begins will not be allowed to participate in the regular season. There will be a 9-day auxiliary regular season for permit holders whose sablefish endorsements are granted after August 25. The season will be held following the end of the appeal process. The auxiliary regular season start date will be announced by the NMFS Regional Administrator and published in the **Federal Register**. Each vessel participating in this season will have a cumulative trip limit of 34,100 lb. No more than one regular season cumulative limit may be landed on each limited entry permit with a sablefish endorsement. No vessel may land more than one cumulative limit. Each vessel is subject to the following per-trip limit for small sablefish: Sablefish smaller than 56 cm (22 in) total length may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 56 cm (22 in) (total length) or larger, whichever is greater.

(viii) *Other announcements; from August 21, 1997 through December 31, 1997.* The number of days in the mop-up season, dates and times that the auxiliary regular, and mop-up seasons start and end (and trip limits on sablefish of all sizes are resumed), dates of the pre- and post-season closures for the auxiliary regular season, and the size of the trip limit for the mop-up season will be announced in the **Federal Register** and may be modified. Unless otherwise announced, these seasons will begin and end at 1200 l.t. on the specified date.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 961227373-6373-01; I.D. 082097C]

#### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Primary Season and Resumption of Trip Limits for the Shore-based Whiting Sector

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

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** NMFS announces the end of the 1997 regular season for the shore-based fishery for Pacific whiting (whiting), and resumption of a 10,000 lb (4,534 kg) trip limit, at 12 noon local time (l.t.), Friday, August 22, 1997, because the allocation for the shore-based sector will be reached by that time. This action is intended to keep the harvest of whiting at levels announced by NMFS on January 6, 1997, and May 20, 1997.

**DATES:** Effective from 12 noon l.t., August 22, 1997, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**, unless modified, superseded, or rescinded. Comments will be accepted through September 11, 1997.

**ADDRESSES:** Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or William Hogarth, Acting Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140 or Rodney McInnis at 562-980-4040.

**SUPPLEMENTARY INFORMATION:** This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 6, 1997 (62 FR 700), regulations were published announcing the annual management measures for Pacific coast whiting. The regulations at 50 CFR 660.23(a)(4) (62

FR 27519, May 20, 1997) established separate allocations for the catcher/processor, mothership, and shore-based (also called "shoreside") sectors of the whiting fishery. Each allocation is a harvest guideline, which when reached, results in the end of the primary season for that sector. The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The allocations, which are based on the 1997 commercial harvest guideline for whiting of 207,000 mt, are: 70,400 mt (34 percent) for the catcher/processor sector; 49,700 mt (24 percent) for the mothership sector; and 86,900 mt (42 percent) for the shoreside sector.

The best available information on August 19, 1997, indicated that 80,792 mt of whiting had been taken by the shore-based sector through August 16, 1997, and that the 86,900-mt shore-based allocation would be reached by 12 noon l.t., August 22, 1997. Accordingly, the primary season for the shore-based sector ends at 12 noon l.t., August 22, 1997, at which time no more than 10,000 lb (4,534 kg) of whiting may be taken and retained, possessed or landed by a catcher boat in the shore-based sector per fishing trip. The regulations at 50 CFR 600.323(a)(3)(i) describe the primary season for the shore-based sector as the period(s) when the large-scale target fishery is conducted (when routine trip limits accommodating small fresh fish and bait fisheries and bycatch in other fisheries under § 600.323(b) are neither needed nor in effect). The 10,000 lb (4,534 kg) trip limit, which also had been in effect before the primary season, is intended to accommodate small bait and fresh fish markets, and bycatch in other fisheries.

#### NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(C) NMFS herein announces:

Effective 12 noon l.t., August 22, 1997—No more than 10,000 lb (4,534 kg) of whiting may be taken and retained, possessed, or landed by a catcher vessel participating in the shoreside sector per fishing trip.

#### Classification

This action is authorized by the regulations implementing the FMP. The