

Dated: February 5, 1999.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990121026-9026-01; I.D.
112498A]

RIN 0648-AL52

Pacific Coast Groundfish Fishery; Amendment 11

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement portions of Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared Amendment 11 in order to bring the FMP into compliance with the Sustainable Fisheries Act (SFA) regarding overfishing, bycatch, essential fish habitat, and fishing communities. This proposed rule would implement the portions of Amendment 11 that would establish procedures for compensating a vessel owner or operator who has collected resource information according to a NMFS-approved protocol, with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions. The proposed rule would also modify the regulatory definition of "processing or to process," and add a regulatory definition for "optimum yield" consistent with the definitions of those terms in Amendment 11. This action is also intended to improve the types and amounts of scientific information available for use in stock assessments and management of the Pacific coast groundfish fishery.

DATES: Comments must be submitted in writing by March 29, 1999.

ADDRESSES: Send comments to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Dr. William T. Hogarth, Administrator, Southwest Region, (Regional Administrator) NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Copies of

Amendment 11 to Pacific Coast Groundfish FMP, and the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Larry Six, 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, including suggestions for reducing the burden, William Stelle, Jr. or to Dr. William T. Hogarth and to the Office on Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT:

Katherine King or Yvonne deReynier at 206-526-6140, or James Morgan at 562-980-4000.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the SFA amended the law first known as the Fishery Conservation and Management Act of 1976. For over 20 years, successive iterations of that law have provided broad guidelines and policy direction for U.S. fisheries management. Those guidelines and policy directions have been significantly revised in the law's current iteration, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The new Magnuson-Stevens Act gives the Regional Fishery Management Councils and the Secretary of Commerce (Secretary), through NMFS, many new responsibilities.

The SFA amended the requirements for FMPs in section 303(a) of the Magnuson-Stevens Act. The SFA established a 2-year deadline (October 11, 1998) by which each Regional Fishery Management Council had to submit amendments to NMFS to bring its FMPs into compliance with the new requirements in section 303(a) of the Magnuson-Stevens Act.

Through Amendment 11, the Council intends to make the Pacific Coast Groundfish FMP consistent with the Magnuson-Stevens Act by amending the FMP framework that defines "optimum yield" for setting annual groundfish harvest limits; setting framework control rules on defining rates of "overfishing" and levels at which managed stocks are considered "overfished;" defining Pacific Coast groundfish essential fish habitat; 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; removing jack mackerel from the fishery management unit; and updating FMP objectives, definitions, and industry descriptions.

NMFS is proposing this rule to implement the portions of Amendment 11 that would authorize NMFS to compensate the owners or operators of private vessels conducting NMFS-approved research with fish. The proposed rule would add a definition for the term "optimum yield" (OY) and make minor changes to the definitions of several regulatory terms in the existing regulations governing the Pacific Coast groundfish fishery. This proposed rule would not remove jack mackerel from the fishery management unit, because that will be done with the implementation of the Coastal Pelagic Species FMP, which will include jack mackerel in its fishery management unit. This proposed rule is based on recommendations of the Council, 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 11.

Background

Among the many changes to the Magnuson-Stevens Act was an amendment to authorize the Secretary to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to compensate vessel owners or operators with the fish taken during the survey and with the opportunity to harvest fish in excess of otherwise applicable management measures, if the quality or amount of fish is not adequate, on a subsequent commercial fishing trip (sec. 402(e) of the Magnuson-Stevens Act. Section 303(b)(11) of the Magnuson-Stevens Act further enables the Secretary to "reserve a portion of the allowable biological catch of the fishery for use in scientific research."

At its November 1997 meeting, the Council recommended that NMFS implement an emergency rule for 1998 that would allow owners or operators of vessels that collect resource information to be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions (hereinafter "compensated with fish"). At the time, the Council was

developing Amendment 11, and expected that a portion of Amendment 11 would authorize the Council to set a policy allowing small amounts of the acceptable biological catches (ABC)s of managed species to be reserved for use in scientific research and in compensation with fish for that research. To allow NMFS to use private vessels in its resource surveys in the summer and fall of 1998, NMFS implemented an emergency rule authorizing the agency to make fish available for those surveys prior to the Council's adoption of Amendment 11. On July 7, 1998 (at 63 FR 36614), NMFS implemented a final emergency rule to allow vessel owners and operators to be compensated with fish for their participation in NMFS-approved research surveys. This rule was extended for an additional 180 days on January 4, 1999 (64 FR 45).

The fishing industry, environmental groups, and NMFS have actively explored various ways to expand and improve information used in management of the groundfish fishery and to involve the fishing industry in gathering that information. As a result of this effort, the Council recommended amending the FMP to include provisions allowing NMFS to compensate fishers who participate in resource surveys with fish. This proposed rule would permit the use of fish as compensation for participation in resource surveys through codifying with minor changes regulatory language that was temporarily set in place as an emergency rule in 1998.

Compensation for a Chartered Vessel Conducting a Resource Survey

The Magnuson-Stevens Act authorizes the Secretary, in consultation with the Council and the interested public, to structure competitive solicitations by which a vessel's owner or operator may compete for a NMFS contract to conduct a resource survey. Resource surveys generally are conducted from chartered fishing vessels, chartered university vessels, and dedicated NOAA vessels. In a resource survey, all samples (fish) are collected according to a specified research plan or protocol. NMFS distinguishes survey activities by a scientific research vessel from commercial fishing activities according to a process of acknowledging scientific research, which involves issuing a Letter of Acknowledgment (LOA), described at 50 CFR 600.745(a). Scientific research is not governed by regulations that cover commercial fishing. NMFS frequently uses this mechanism to conduct surveys from chartered fishing vessels, and, in some

cases, some of the sample has been retained by the vessel owner/operator for sale, to reduce waste and to defray some of the costs of the charter. Scientific research is not governed by regulations that cover commercial fishing. However, any additional harvest taken on a subsequent commercial trip as payment for the resource survey would not have been considered scientific research and, was not authorized under the old provisions of the Magnuson-Stevens Act.

The new provisions of the Magnuson-Stevens Act provide NMFS the authority to go beyond allowing the retention and sale of fish caught during the course of a resource survey by providing compensation through the opportunity to harvest fish in excess of current vessel limits and/or outside of other restrictions. This rule would authorize such "compensation fishing" through the issuance of an exempted fishing permit (EFP) in the Pacific Coast groundfish fishery. Such an EFP would be called a compensation EFP and would enable the vessel to take and retain compensation fish through revised trip limits and/or relaxation of other specified management measures.

The compensation EFP would include terms and conditions that limiting the activities authorized. Conditions for disposition of bycatch or any excess catch and for reporting the value of the amount landed and other appropriate terms and conditions would be specified in the EFP. The Council anticipates that compensation fishing would occur no later than the end of September of the year after the survey occurred. Compensation fishing must take place during the period specified in the EFP and must be conducted according to the terms and conditions of the EFP. The compensation EFP may also require the vessel owner or operator to keep separate records of compensation fishing conducted after the survey is completed and to submit them to NMFS within a specified period of time after the compensation fishing is completed. NMFS and the States of Washington, Oregon, and California may need to modify their catch reporting systems, so that fish taken under the compensation EFP are counted separately from other commercial landings.

Process

The process incorporates selection of commercial vessels to be used to conduct the resource surveys, issuance of compensation EFPs to provide for compensation with fish, and adjustment of the ABC to account for the compensation fish used.

Competitive Offers

NMFS may initiate a competitive solicitation (request for proposals, or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation. The RFP would be publicized in the "Commerce Business Daily" and would specify factors that NMFS would use in evaluating the proposals. NMFS would anticipate that vessel owners would submit offers to conduct the resource survey for a combination of dollars and compensation fish, or entirely compensation fish. The competitive solicitation would be part of the Federal procurement process, and it would not be governed by this rule.

Consultation

At a Council meeting, NMFS would consult with the Council and receive public comment on upcoming resource surveys where NMFS proposes to use groundfish to compensate in whole or in part, the vessel owners or operators conducting the survey.

For each proposal, NMFS would present (1) the maximum number of vessels expected or needed to conduct the survey, (2) an estimate of the species and amount of fish likely to be needed to compensate the vessels, (3) the time when the survey and the compensation fish would be taken, and (4) the year in which the compensation fish would be deducted from the ABC before determining the OY or quota. This is, in effect, equivalent to NMFS presenting a compensation EFP application to the Council for the compensation amounts. In general, compensation fish should be similar to surveyed species, but there may be reasons to provide compensation with healthier, more abundant, less restricted, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also want to take into account such other factors as expected discards and incidental catches of other species. If the Council does not approve the proposal to use fish as compensation to pay for a resource survey, NMFS would not use fish, other than fish taken during the scientific research, as compensation for that survey.

Awarding the Contract

NMFS would negotiate and award the resource survey contracts in accordance with normal Federal procurement procedures. The contract could include

any conditions and limits on compensation fishing, including a requirement to carry on board (1) a letter of acknowledgment of research signed by the Regional Administrator or designee, while conducting any resource survey, and (2) the compensation EFP while conducting compensation fishing for at least 15 days after the end of any applicable cumulative trip limit period in which compensation fishing occurred.

Retention of Samples

All fishing on a resource survey trip would be required to be conducted according to scientific protocol and would be

considered scientific research. However, some fish caught during the survey could be retained and sold as partial payment for the vessel's participation as long as the retention of these fish did not interfere with the exclusive research mission of the trip. Retention of samples for sale would be at the discretion of the chief scientist aboard, who would consult with the vessel captain. Collection of scientific information

and samples would be the highest priority and might interfere with the vessel's ability to retain market-quality fish.

Issuance of the Compensation EFP

Upon successful completion of the resource survey and determination of the amount and/or value of the survey sample that was retained for sale as payment for conducting the survey, NMFS would issue a compensation EFP to the owner or operator of the vessel if full compensation has not been achieved by the cash payment and retention of the survey sample. The compensation EFP would allow the vessel an opportunity to exceed the current commercial fishing or landing limits by the total amount of compensation fish needed and/or exempt the vessel from other specified management measures as necessary to harvest such fish. The amount of compensation fish needed would generally be the amount of fish equivalent to the value specified in the contract less the value of the survey sample retained for sale. The compensation EFP also may exempt the vessel from other specified management measures.

Accounting for Compensation Fish

The fish used for compensation should be deducted from the ABC at the beginning of the year so that it will come off the top before the various allocations are made. Deducting the fish

inseason instead could cause great confusion with the many allocations and limits that are set at the beginning of the year. The exact species and amount of fish to be taken as compensation will not be known until the contract has been awarded and the compensation EFP has been issued. During the annual specification process (50 CFR § 660.321(b)), NMFS would advise the Council of the total amount of fish authorized in the compensation EFPs for conducting a resource survey, which then would be deducted from the following year's ABCs before setting the OYs or quotas. Fish caught under EFPs issued too late in the year for the authorized catch to be deducted from the next year's ABC would be deducted in the next management cycle practicable.

Compensation for a Commercial Vessel Collecting Resource Information

NMFS also intends to conduct smaller scale cooperative projects on vessels that are operating in the commercial fishery. This type of activity would not be considered scientific research under 50 CFR 600.745(a) because it would not be conducted by a scientific research vessel, even though the vessels would be

collecting resource information according to strict scientific standards approved by NMFS. For small-scale cooperative projects, NMFS could issue EFPs to fishing vessels to collect the resource information. The EFP would require a vessel to conduct specific activities and allow it to retain and sell the limited amount of fish harvested during these activities, which would be in addition to the amount it could take under its regular trip limit or under other management measure. After the resource information had been obtained, the vessel could sell the fish that were taken under the EFP. This would be a standard EFP, issued under the procedures at 50 CFR 600.745(b). Fish caught under such an EFP would count against the ABCs and OYs or quotas in the year they are caught.

In some circumstances, NMFS might allow the vessel to harvest slightly more fish than necessary for the particular project. These proposed regulations would allow NMFS to provide such compensation. A vessel might be permitted to retain the scientific sample plus a modest compensation amount, no larger than the size of the sample, above the vessel's normal trip limits. For example, these samples might be less than 500–1,500 lb (227–680 kg) of fish per vessel per month, although other amounts could be authorized depending on the scope of the project. NMFS could

propose the amount of fish that would be used as compensation, or the EFP applicant could propose an amount in the EFP application. The extra fish would compensate the vessel for the extra work involved in collecting the samples and may encourage vessels to participate in cooperative projects. Also, more of the fish taken during the samplings that is surplus to sampling needs would be used, rather than discarded.

In cases where NMFS might allow harvesting of fish beyond what is necessary for a project, when NMFS announces receipt of the EFP application and requests comments as required under 50 CFR 600.745(b), NMFS could also announce a window period during which vessels would have an opportunity to submit EFP applications. NMFS contemplates two ways of issuing such EFPs: First, the EFPs could be issued to individuals implementing a protocol approved by NMFS. NMFS would consider the qualified applicants, issue EFPs to all of them, select participation by lottery, issue EFPs to the first applicants, or use other impartial selection methods. Second, NMFS could issue the EFP to a NMFS element, or a state or other Federal research agency, and the research agency's proposal would include an impartial way of selecting fishing vessel participants that would receive individual EFPs under the umbrella EFP held by the research agency.

Regulatory Definitions of Terms

The term, "Processing or to process," is codified in the regulations that implement the FMP and has been modified by Amendment 11. This proposed rule would amend the codified definition of "Processing or to process" to include the preparation or packaging of groundfish to render it suitable for retail sale.

The term, "optimum yield," is not new to the FMP or to Pacific coast groundfish management, but its definition has not been codified in the regulations that implement the FMP. Optimum yield (OY) is defined in the Magnuson-Stevens Act as the amount of fish that will provide the greatest overall benefit to the Nation. The Magnuson-Stevens Act also specifies that OY is based on maximum sustainable yield (MSY) and may be equal to or less than MSY. The FMP authorizes establishment of a numerical or non-numerical OY for any groundfish species or species group and lays out the procedures the Council will follow in determining appropriate numerical OY values. An OY may be specified for

the fishery management area as a whole or for specific subareas. Numerical OYs will be specified annually, based on ABCs for major species or species groups, which are in turn based on quantitative or qualitative stock assessments. "Control rules" for determining the numerical values of OYs ensure they will not exceed the ABCs except under tightly limited conditions.

OY may be expressed non-numerically (in terms of fish that are caught under certain management measures) or numerically (as a harvest guideline or quota). Therefore, the current definitions for harvest guideline and quota remain in effect, as expressions of a numerical OY. "Harvest guideline" continues to mean any specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require closure of a fishery, although closure remains an option. "Quota" continues to mean any specified harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group. Some sections of the codified text that refer to "harvest guideline" or "quota" have been modified to include the term "optimum yield."

The following analysis focuses on the use of compensation fishing in the context of chartering vessels to conduct resource surveys because the issues and impacts are the same as and of a much greater magnitude than those involved in an EFP with a compensation clause.

Biological Impacts

The biological impacts of using fish as compensation would be expected to be neutral in the short term and positive in the long term. In the short term, the amount of fish used as compensation is intended to be within the ABC and, therefore, would be within current acceptable biological levels. In general, NMFS would be most likely to compensate the owner or operator of a vessel with identical or similar species to those taken in the resource survey. However, NMFS may decline to compensate a vessel with certain species, particularly stocks that are (or are expected to be) overfished, subject to overfishing, or have bycatch that are overfished (or are expected to be) or are subject to overfishing. In the long term, the additional information that is gathered because of NMFS's ability to compensate vessels with fish will provide more and better data for use in stock assessments, which should result in better management of the stock and less likelihood of overfishing.

Socio-Economic Impacts

The amount of the compensation fish (as a percentage of the ABC) would depend on the value of the compensation species and the cost of the survey. The cost of a Pacific coast trawl survey is relatively fixed, regardless of the abundance and value of the species surveyed. The contract for an extensive survey (e.g., two vessels for 60 days at sea each), such as the current NMFS triennial trawl survey, would probably cost less than \$450,000, under 0.5 percent of the landed value of all Pacific coast groundfish, (\$90 million), or approximately 1 percent of the \$45 million value of the 1996 fisheries for the Dover sole, thornyheads, and trawl-caught sablefish complex (DTS), the most valuable portion of the Pacific coast groundfish complex. A smaller scale survey targeted on nearshore flatfish (e.g., Petrale sole, English sole, rex sole) would cost close to \$175,000, 2.5 percent of the value of this \$7 million flatfish fishery.

Not all components of the groundfish fishery are useful as compensation fish. Groundfish species for which there is no constraining trip limit, season, or other management restriction would not be desirable targets as compensation because a vessel is not limited in its catch of those species. Groundfish species that are under management restrictions could be compensation species because fishers participating in resource surveys would be authorized to catch a greater quantity of the management-restricted (and generally more valuable) species than otherwise available to the rest of the fleet. An unfortunate aspect is that most depressed stocks (such as Pacific ocean perch) may not afford an allocation of compensation fish, while most healthy stocks (like English sole) have no trip limits or allocations, so would not be desirable compensation. These considerations do not diminish the utility of using fish as compensation, but they do limit the range of species that could be considered as payment.

Vessels engaged in extended resource surveys may not have adequate opportunity to take their monthly cumulative trip limit (or other limit). The contract and EFP may allow the take of a cumulative trip limit (or other fishing opportunity that was lost due to time used in conducting the survey) outside the normal period as one of the activities that might be provided as compensation for conducting the survey.

The amount of compensation fish awarded to a survey vessel would be deducted from the subsequent year's

ABC. If compensation fish comprise a large proportion of an OY or quota, then, potentially, trip or bag limits for that species could be lowered, or other constraints on the fishery could be necessary. However, the amounts used as compensation are expected to be less than 5 percent of an ABC, well within the range of uncertainty associated with ABCs, inseason catch monitoring, and trip limit derivations. Therefore, it is unlikely that awarding fish for compensation would result in lower trip limits or additional or earlier restrictions, although this could potentially occur.

Because the amount of fish used for compensation would be subtracted "off the top" of the ABC, the loss of compensation fish would be shared among all sectors and vessels (commercial, recreational, and tribal) in the fishery.

Use of compensation fish would reduce the Federal outlay of capital, although it would increase the Federal workload by adding new EFP procedures and potentially complicating the determination of acceptable charter offers for resource surveys.

Use of fish as compensation for conducting resource surveys should increase the participation and interest by members of

the fishing industry, some of whom have been skeptical of NMFS's data and survey procedures. Resource survey cooperation between industry and government would provide scientists with valuable guidance from veteran fishers and would provide industry with first-hand insight into scientific sampling procedures.

A survey vessel would receive an extra financial benefit under this process; however, the recipient and level of the benefit would be determined through a competitive process.

Using fish as compensation would enable NMFS to gather more data than would otherwise be possible. More data should lead to better stock assessments and a more accurate long-term prognosis for a sustainable fishery, and thus contribute to stability in the fishing industry and in the resources upon which the industry depends.

Classification

At this time, NMFS has not determined that Amendment 11 that 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.

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

The Assistant General Counsel for Legislation and 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:

NMFS has established standards for determining whether an action will have a significant economic impact on a substantial number of small entities. NMFS has determined that, in general, a substantial number of small entities would be 20 percent of those small entities affected by the rule. Economic impacts on small entities are considered to be "significant" if the proposed action would result in any of the following: (a) reduction in annual gross revenues by more than 5 percent; (b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; (c) compliance costs as a percent of sales for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; (d) capital cost of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or, (e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations. The proposed rule would result in no additional compliance costs, and therefore items (b), (c), and (d) are not at issue. Item (e) is not relevant as this action would not force any business to cease operations. Only (a) appears potentially relevant to this issue.

The groundfish species that would be most desirable to fishers as compensation for resource survey participation would be species under management restrictions such as trip limits or season length limits. The amounts of each species that would be used as compensation are expected to be less than 5 percent of the ABCs of those species. The majority of the groundfish species managed under the FMP are not managed with species-specific landing limits. Therefore, even if as much as 5 percent of each of the management-restricted species were used as compensation fish, the compensation fish would still represent much less than 5 percent of all possible groundfish landings, and less than 5 percent of all groundfish landings revenue. It is possible that more than one survey could be conducted in a given year. Even so, it is not expected that more than 5 percent of any species' ABC would be designated for compensation fishing. For these reasons, it is extremely unlikely that this proposed rule could result in a reduction in annual gross revenues by more than 5 percent for 20 percent of the affected fishers.

To demonstrate the expected insignificant impact of this proposed rule, an analysis is presented below that shows the effect on the groundfish fleet of using the Dover sole, thornyhead, and sablefish (DTS) complex as

compensation fish. These particular fish species were chosen for this analysis because DTS complex species are some of the highest value species within the groundfish complex. The financial effects of reducing the quantity of these species available to fishers who do not participate in resource surveys would be significantly greater than the financial effects of reducing the availability of other management-restricted species.

This proposed rule could affect a maximum of 2,270 vessels, of which approximately 2,260 (almost 100 percent) are considered small entities. The rule is expected to have several different types of effects. For vessels that obtain contracts to conduct research in exchange for fish, this rule would provide increased opportunity for profit. This rule is also expected to lead to the availability of increased scientific data on the status of the fishery, which will enhance the ability of the agency to manage the fishery and may lead to long-term benefits for all participants.

There is also the small possibility that this proposed rule could result in negative economic effects on some fishery participants. The fish that are awarded as compensation would be deducted from next year's ABC. The amounts likely to be diverted for compensation would be so small as to be within the range of accuracy expected for inseason monitoring of harvest guidelines and quotas, and most likely would not change the size of trip limits or their date of achievement. However, there is a remote possibility that some trip limits would be lowered, or lowered earlier in the year, as a result of the small compensation allocation for survey vessels. If this happens, those vessels that routinely achieve their trip limits could experience some degree of economic loss. Again, Dover sole, thornyheads, and trawl-caught sablefish are used to illustrate the greatest expected impact on fishery participants, as those are the most valuable species in the groundfish complex. NMFS estimates that approximately 208 limited entry vessels achieved these limits during at least one trip-limit period between July 1996-June 1997. Thus, 9 percent (208 vessels out of the 2,260 affected small entities) could hypothetically experience some economic loss as a result of this rule. NMFS estimates that the total cost of the fish used as compensation for the 1998 slope survey could be \$135,000. If this amount is divided between the limited entry and open access fleets in proportion to their share of the fishery, then the cost to the limited entry fleet would be approximately \$128,000 and the cost to the open access fleet would be approximately \$7,000.

If the entire \$128,000 share of the survey cost for the limited entry fleet were supported by the 208 vessels that achieved a cumulative trip limit of one DTS species during one trip-limit period, the average cost to each of these 208 vessels would be \$615. The average annual fishing revenue for limited entry vessels in 1996 was \$204,000. Thus, the average cost per vessel of spreading the \$128,000 cost among 208 vessels would be 0.3 percent (\$615 divided by \$204,000). In addition, NMFS notes that the smallest 12-month revenue for any of these 208 vessels

was \$15,000, 5 percent of which is \$750, which is higher than the \$615 average cost of the compensation fish for these 208 vessels. As the vessel revenue increases, which it does for the remaining 207 vessels, the relative impact of the cost of compensation fish becomes smaller, and remains less than 5 percent. From a slightly different perspective, if the cost associated with using fish as compensation were \$128,000 and were distributed amongst the limited entry vessels in proportion to the number of periods in which they attained a limit (during July 1996-June 1997), then the largest reduction in annual revenue for any vessel would be 0.5 percent. NMFS does not anticipate that setting aside a portion of management-restricted species ABCs for compensation fishing could lower trip limits in the open access fishery, because open access allocations of management-restricted species are small enough so that the burden of ABC reduction shared by the open access fleet would be negligible.

For these reasons, and because the effects of the proposed rule would be spread over approximately 2,270 limited entry and open access vessels making Pacific coast groundfish landings, this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under OMB control number 0648-0203 for Federal fishing permits.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any 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 public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the function of the agency, including whether the information has 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

regarding this burden estimate or any other aspect of the data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to OMB, Washington, DC 20503 (ATTN: NOAA Desk Officer).

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: February 4, 1999.

Gary C. Matlock,

*Acting 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, the definition “Optimum yield” is added, and the definitions of “Commercial harvest guideline or commercial quota”, “Processing or to process”, and “Specification” are revised in alphabetical order to read as follows:

§ 660.302 Definitions

* * * * *

Commercial harvest guideline or commercial quota means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes, for recreational fisheries, and for compensation fishing under § 660.350. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

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Optimum yield (OY) means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as an HG, quota, or other specification) or non-numerically.

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Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

* * * * *

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

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3. In § 660.306, paragraphs (d), (e), and (f) are revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.350.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP issued under § 660.350 or part 600 of this chapter.

(f) Take and retain, possess, or land more groundfish than specified under §§ 660.321 and 660.323, or under an EFP issued under § 660.350 or part 600 of this chapter.

* * * * *

4. 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.

* * * * *

5. Section 660.350 is revised to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to take and retain fish as compensation in excess of trip limits and/or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey.* NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council, receive public comment, and seek Council approval of upcoming resource surveys for which NMFS proposes to use groundfish as whole or partial compensation. If the Council does not approve providing whole or partial compensation with fish for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP.* Upon successful completion of the

survey, NMFS will issue a "compensation EFP" to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subpart G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch.* As part of the annual specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas. Fish authorized in an EFP too late in the year to be deducted from the following year's ABC will be accounted for in the next management cycle practicable.

(b) *Compensation for commercial vessels collecting resource information under a standard EFP.* NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this

chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications.* If the RA or designee

agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 600.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

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