

The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is \$800. If the petitioner requests an inspection of a vehicle, the sum of \$827 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

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■ 4. Section 594.8 is amended by revising paragraph (b) and by revising the first sentence of paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

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(b) If a determination has been made pursuant to a petition, the fee for each vehicle is \$150. The direct and indirect costs that determine the fee are those set forth in § 594.7(b), (c), and (d).

(c) If a determination has been made on or after October 1, 2004, pursuant to the Administrator's initiative, the fee for each vehicle is \$125. * * *

■ 5. Section 594.9 is amended by revising paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

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(c) The bond processing fee for each vehicle imported on and after October 1, 2004, for which a certificate of conformity is furnished, is \$9.30.

■ 6. Section 594.10 is amended by revising paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

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(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2004 is \$18. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Department of Homeland Security through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is \$6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be \$48.

Jeffrey W. Runge,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040618188-4265-02; I.D. 061404A]

RIN 0648-AS26

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16-3; Corrections

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 16-3 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16-3 amended the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish within the FMP. This final rule adds two rebuilding parameters to the Code of Federal Regulations (CFR) for each overfished stock, the target year for rebuilding and the harvest control rule. Amendment 16-3 addressed the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16-3 also responded to a Court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. This rule also updates the list of rockfish species defined in the CFR to match those listed in the FMP and contains corrections to 50 CFR part 660, subpart G.

DATES: Effective October 28, 2004.

ADDRESSES: Copies of Amendment 16-3 and the final environmental impact statement/regulatory impact review/initial regulatory flexibility analysis (FEIS/RIR/IRFA) and the Record of Decision (ROD) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280. These documents are also available online at the Council's website at <http://www.pcouncil.org>.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206-526-4646; fax: 206-526-6736 or; e-mail: jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed and final rules for this action are accessible via the Internet at the Office of the Federal Register's website at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the NMFS Northwest Region website at <http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm> and at the Council's website at <http://www.pcouncil.org>.

Background

Amendment 16-3 revised the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish. This final rule implements Amendment 16-3 by adding two rebuilding parameters, the target year in which the stock would be rebuilt under the adopted rebuilding plan (T_{TARGET}) and the harvest control rule, to the CFR at 50 CFR 660.365 for each overfished stock.

Amendment 16-3 addressed the requirements of the Magnuson-Stevens Act to protect and rebuild overfished species managed under a Federal FMP. Amendment 16-3 also responded to a Court order in *Natural Resources Defense Council, Inc. v. Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001.), in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

A Notice of Availability for Amendment 16-3 was published on June 18, 2004 (69 FR 34116). NMFS requested comments on the amendment under the Magnuson-Stevens Act FMP amendment review provisions for a 60-day comment period, ending August 17, 2004. A proposed rule was published on July 7, 2004 (69 FR 40851), requesting public comment through August 17, 2004. During the Amendment 16-3 and proposed rule comment period, NMFS received three letters of comment. These letters are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background information on the fishery and on this final rule. Further detail on Amendment 16-3 also appears in the FEIS/RIR/IRFA for this action, which was prepared by the Council.

After consideration of the public comments received on the amendment, NMFS approved Amendment 16-3 on September 2004. As required by the standards established by Amendment 16-1, the rebuilding plans adopted under Amendment 16-3 for bocaccio, cowcod, widow rockfish, and yelloweye

rockfish specified the following rebuilding parameters in the FMP: unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under national standard guidelines were applied (T_{MAX}), the target year in which the stock would be rebuilt under the adopted rebuilding plan (T_{TARGET}), and the harvest control rule. Other information relevant to rebuilding was also included, including the probability of the stock attaining B_{MSY} by T_{MAX} (P_{MAX}). The estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments and rebuilding analyses are completed, as is likely to happen.

Amendment 16–1 specified two rebuilding parameters, T_{TARGET} and the harvest control rule for the rebuilding period, that are to be codified in Federal regulations for each individual species rebuilding plan. This final rule adds these rebuilding parameters to the CFR at 50 CFR 660.365 for bocaccio, cowcod, widow rockfish, and yelloweye rockfish. T_{TARGET} is the year in which there is a 50-percent likelihood that the stock will have been rebuilt with a given fishing mortality rate. The harvest control rule expresses a given fishing mortality rate that is to be used over the course of rebuilding. These parameters will be used to establish the optimum yields (OYs) for species with rebuilding plans. Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate OY for each species or species groups, including those OYs established for rebuilding overfished species. The OYs and management measures will be set on a biennial basis, and will address the fisheries as a whole. Regulations implemented through the harvest specifications and management measures are based on the most recently available scientific information and are intended to address all of the fisheries that take groundfish and to keep the total catch of groundfish, including overfished species, within their respective OYs. The FMP addresses how the fisheries as a whole are to be managed, whereas rebuilding plans are species-specific and define the parameters that govern the rebuilding of a particular species.

If, after a new stock assessment, the Council and NMFS conclude that either or both of the parameters defined in regulation should be revised, the revision will be implemented through

the Federal notice-and-comment rulemaking process, and the updated values codified in the Federal regulations. NMFS believes that the FMP with the newly added rebuilding plans will be sufficient “to end overfishing in the fishery and to rebuild affected stocks of fish” (16 U.S.C. 1854(e)(3)(A)).

Comments and Responses

NMFS received three letters of comment on the proposed rule to implement Amendment 16–3: one letter was received from an environmental advocacy organization, and two letters were received from one member of the public. These comments are addressed here:

Comment 1: The proposed target dates for rebuilding Amendment 16–3 species are inconsistent with the Magnuson-Stevens Act because the rebuilding periods are longer than the statute allows.

Response: The specified rebuilding time periods for the four overfished species are consistent with the legal requirements of the Magnuson-Stevens Act and with the national standard guidelines. The Magnuson-Stevens Act states that rebuilding “shall not exceed 10 years, except in cases where the biology of the stock of fish, or other environmental conditions,....dictate otherwise.” The Magnuson-Stevens Act also states that the time for rebuilding shall be as short as possible, taking into account certain factors. The Magnuson-Stevens Act, section 304 (e)(4)(A), and the national standard guidelines at 50 CFR 600.310 (e)(4)(A) recognize the following factors that enter into the specification of a time period for rebuilding: the status and biology of the stock or stock complex; interactions between stocks or stock complexes and the marine ecosystem; the needs of fishing communities; recommendations of international organizations in which the U.S. is a participant, and; management measures under an international agreement in which the U.S. participates.

According to the national standard guidelines at 50 CFR 600.310(e)(4)(ii)(B)(3), if the time period for rebuilding is 10 years or greater, then the specified time period for rebuilding (T_{TARGET}) may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the U.S. participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality (T_{MIN}), plus one mean generation time or equivalent

period based on the species’ life-history characteristics (T_{MAX}). All of the rebuilding periods for bocaccio, cowcod, widow rockfish, and yelloweye rockfish are less than T_{MAX} .

The rebuilding probabilities (P_{MAX} , which are estimated probabilities of rebuilding the stock by T_{MAX}) range between 60 percent and 80 percent. This represents a better than 50 percent likelihood that each of these stocks will be rebuilt (reach the B_{MSY} biomass) by T_{MAX} , while allowing sufficient access to overfished stocks, so that healthy groundfish stocks that co-occur with overfished species can be harvested. The Council chose a T_{TARGET} closer to T_{MAX} for cowcod and widow rockfish (reflected in the relatively lower 60-percent rebuilding probability). For cowcod, this was the most conservative alternative available under the current stock assessment. A new stock assessment is planned for cowcod in 2005. For widow rockfish, the lower probability of rebuilding was chosen to allow some bycatch in all of the various fisheries that take widow rockfish incidentally, particularly fisheries for Pacific whiting. The FEIS for this amendment has further information on the reasons for the adopted rebuilding periods.

Comment 2: The proposed rebuilding periods should be consistent with NMFS’s “Technical Guidance On the Use of Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act” (Technical Guidance), which recommends rebuilding periods not exceed the midpoint (T_{MID}) between the minimum and maximum times to rebuild the species.

Response: As explained above in the response to comment 1, if T_{MIN} is 10 years or greater, the national standard guidelines at 50 CFR 600.310(e)(4)(ii)(B)(3), allow T_{TARGET} to be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the U.S. participates, except that no such upward adjustment can exceed T_{MAX} . The Technical Guidance recommends that T_{TARGET} be set no higher than the midpoint between T_{MIN} and T_{MAX} .

Adopting the midpoint as a binding criterion in all cases would not be consistent with the Magnuson-Stevens Act because it would not allow the factors in the Act at section 304(e)(4) and the national standard guidelines at 50 CFR 600.310(e)(4)(ii), which include the needs of fishing communities, to be taken into account. The Technical Guidance is not a binding regulation

that must be followed; the Technical Guidance itself acknowledges that it deals only with biological issues, and not with socioeconomic issues, which fishery management councils must consider, per the Magnuson-Stevens Act.

The Council has not recommended for the Amendment 16–3 species any T_{TARGET} values that exceed T_{MAX} . For bocaccio, the Council recommended a T_{TARGET} of 2023 which is lower than the T_{MID} of 2025. The Council set T_{TARGET} dates to rebuild overfished species within the time allowed, yet recognizes the socio-economic importance of these species to the fishing industry and fishing communities. Each of the Amendment 16–3 species co-occurs with more abundant groundfish stocks. Rebuilding harvest levels allow some targeting of more abundant stocks that co-occur with Amendment 16–3 species. The Council's recommended rebuilding goals comply with the Magnuson-Stevens Act and the national standard guidelines.

Comment 3: NMFS's Technical Guidance recommends that rebuilding plans have at least a 90–percent probability of achieving rebuilding within the maximum allowable time to rebuild (P_{MAX}) under NMFS's national standard guidelines. None of these rebuilding plans result in a 90–percent or greater likelihood of successfully rebuilding by P_{MAX} .

Response: The Technical Guidance has been provided by NMFS “for those aspects of scientific fishery management advice that have biological underpinnings, such as the response of fish to exploitation. The drafting team recognizes that there are many other important aspects to managing fisheries, such as socioeconomic factors, which are key to defining optimum yield, and which Fishery Management Councils must consider.” As such, the Technical Guidance does not direct NMFS, but rather makes suggestions on how to use scientific information to implement the policy guidance of the Magnuson-Stevens Act and the national standard guidelines to achieve the biological goals of national standard 1.

The Technical Guidance at page 38 suggests addressing uncertainty with the guideline that “rebuilding plans be designed to possess a 50–percent or higher chance of achieving B_{MSY} within T_{TARGET} years, and a 90–percent or higher chance of achieving B_{MSY} within T_{MAX} years.” Harvest levels finalized by this action have been set such that overfished species would have a 50–percent chance of achieving B_{MSY} within T_{TARGET} years. However, none of harvest levels for the overfished species

in Amendment 16–3 have been set such that their rebuilding plans would have a greater than 90–percent chance of achieving B_{MSY} within T_{MAX} years. Each species was considered individually in its species-specific rebuilding analysis.

As discussed in the preamble to the proposed rule for this action (69 FR 40851, July 7, 2004), the rebuilding measures for the overfished West Coast groundfish species in Amendment 16–3 have the following probabilities of achieving B_{MSY} within T_{MAX} years: bocaccio, 70 percent; cowcod, 60 percent; widow rockfish, 60 percent; and yelloweye rockfish, 80 percent. These probabilities of rebuilding and the harvest levels associated with them were set to achieve rebuilding, but also to acknowledge that these species are usually taken with other, co-occurring and more abundant species. OY levels for overfished species are set to allow some level of fishing for the more abundant stocks that co-occur with overfished species. At the same time, management measures such as conservation areas and cumulative trip limits are set to minimize opportunities for the vessels targeting more abundant stocks to intercept overfished species. This approach to multi-species management is consistent with the Magnuson-Stevens Act and meets the criteria in the Act at section 304(e)(4) and the national standard guidelines at 600.310(e)(4)(ii).

As discussed in the response to comment 1, according to the national standard guidelines at 50 CFR 600.310(e)(4)(ii)(B)(3), if T_{MIN} is 10 years or greater, “then the specified time period for rebuilding [T_{TARGET}] may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics [T_{MAX}].” While the Technical Guidance suggests that rebuilding plans be designed to possess a 90–percent or higher chance of achieving B_{MSY} within T_{MAX} years (P_{MAX}), adopting that as a binding criterion in all cases would not be consistent with the Magnuson-Stevens Act and the national standard guidelines. It would not be consistent with the Magnuson-Stevens Act because it would not allow the criteria in the Act at section 304(e)(4) and the national standard guidelines at 600.310(e)(4)(ii) to be taken into account. For further discussion on this issue, see the

preamble to the Amendment 16–1 final rule (69 FR 8861, February 26, 2004.)

Comment 4: The target rebuilding periods proposed in the rebuilding plans all have only a 50–percent chance of actually being achieved under the plans. This low probability of rebuilding success by the rebuilding dates specified in the plans violates the Magnuson-Stevens Act's requirement to rebuild as quickly as possible and conflicts with NMFS's own guidance to adopt a precautionary approach to rebuilding and species protection. NMFS's response to this comment in the FEIS ignores the fact that this is the result of policy choices that are neither scientifically mandated nor protective of the overfished species. A higher probability of rebuilding success, by both target and maximum periods, would be more precautionary and would accord much better with the statute and NMFS's own guidance.

Response: As stated in the response to comments in the FEIS (Chapter 12), in a rebuilding analysis that uses the probability calculations described by the Council's Scientific and Statistical Committee (SSC) Terms of Reference for Rebuilding Analyses, the target year is defined as the median rebuilding year for a given fishing mortality rate. As described in Section 4.5.2 of the groundfish FMP (and in more detail in Section 1.1.1.2 of Appendix A to the FEIS for this action), the rebuilding analysis methodology uses a Monte Carlo simulation technique in which many simulations project the change in biomass over time for a given fishing mortality rate (F), based on the biological characteristics of the species and known recruitment variability. The target year, or median year, is defined as the year in which half of these simulations show that the population has rebuilt to the target biomass. In this sense, the target year (T_{TARGET}) is the statistically most likely year in which the population will achieve the target biomass for a given F . Similarly, P_{MAX} , the probability of rebuilding in the maximum allowable time period (T_{MAX}), represents the proportion of simulations within which the population has rebuilt to the target biomass by T_{MAX} . Even T_{MIN} , the rebuilding period in the absence of fishing, is defined probabilistically as the year in which half of all simulations achieve rebuilding when F is set to zero. These three strategic rebuilding parameters (T_{TARGET} , P_{MAX} , and F) cannot be chosen independently of each other because the choice of one parameter determines the value of the other two parameters. The alternatives in the FEIS are structured around P_{MAX}

values. Therefore, in choosing a P_{MAX} as part of the rebuilding strategy for an overfished stock, the Council also chose the values for T_{TARGET} and F for each stock, with T_{TARGET} being defined by the median probability of achieving rebuilding. Although the Council could have chosen the target year directly (as long as it fell between T_{MIN} and T_{MAX}), within the model it would still be defined as the year with 50-percent probability of stock recovery, and that choice would determine the corresponding values for P_{MAX} and F .

As stated in the response to comment 3, the Technical Guidance at page 38 suggests addressing uncertainty with the guideline that "rebuilding plans be designed to possess a 50-percent or higher chance of achieving B_{MSY} within T_{TARGET} years, ..." Harvest levels finalized by this action have been set such that overfished species would have a 50-percent chance of achieving B_{MSY} within T_{TARGET} years. Therefore, NMFS is following its guidance for setting T_{TARGET} when considering uncertainty in stock dynamics, current stock status and recruitment variability. This approach is consistent with the Magnuson-Stevens Act and national standard guidelines on protecting and rebuilding overfished species while taking into account the socio-economic needs of the fishing industry and fishing communities.

Comment 5: Because the rebuilding plans lack any management requirements designed to achieve a rebuilt fishery, they violate the Magnuson-Stevens Act. To ensure rebuilding goals are met, rebuilding plans need to include management measures to (1) ensure rebuilding targets are met, (2) account for and reduce bycatch, (3) reduce impacts of current fishing on habitats that are important to the overfished stocks and their prey species, and (4) aid in the enforcement of the management measures.

Response: This comment poses two issues: first, the commenter states that rebuilding plans must include management measures to be adequate; second, the commenter provides a list of the types of management measures that the commenter believes are needed within a rebuilding plan. Amendments 16-2 and 16-3 incorporated the overfished species rebuilding plans into the FMP. Rebuilding plans are no longer stand-alone documents. Rebuilding plans are species-specific and list the parameters that govern the rebuilding of a particular species. Most importantly, a rebuilding plan sets the harvest parameters for an overfished species. The primary management measure that is governed by and comes out of a

rebuilding plan is the OY, which is implemented through the biennial specifications and management measures process.

In contrast to the species-specific rebuilding plans, the FMP sets policies and principles for the management of the groundfish fisheries as a whole. The FMP must guide the management of over 80 groundfish species, integrating rebuilding policies for overfished species, and harvest policies for species at precautionary harvest levels ($B_{25\%}$ - $B_{40\%}$) and more abundant stocks ($>B_{40\%}$.) The FMP provides this guidance in section 4.6.1.5., which states that "OY recommendations will be consistent with established rebuilding plans and achievement of their goals and objectives. . . . (b) In cases where a stock or stock complex is overfished, Council action will specify OY in a manner that complies with rebuilding plans developed in accordance with Section 4.5.2." The FMP further states at 5.1.4 "For any stock the Secretary has declared overfished or approaching the overfished condition, or for any stock the Council determines is in need of rebuilding, the Council will implement such periodic management measures as are necessary to rebuild the stock by controlling harvest mortality, habitat impacts, or other effects of fishing activities that are subject to regulation under the biennial process. These management measures will be consistent with any approved rebuilding plan." Most management measures used in the fishery to rebuild overfished stocks and to allow harvest on more abundant stocks are described in section 6 of the FMP. The FMP, which includes rebuilding plans for the eight overfished groundfish species, is sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish" (16 U.S.C. 1854(e)(3)(A)).

The 2004 specifications and management measures, (69 FR 11064, March 9, 2004) implemented the first four rebuilding plans (lingcod, canary rockfish, darkblotched rockfish, and Pacific ocean perch (POP)) with revisions to the harvest control rules for POP and darkblotched rockfish, and the interim rebuilding strategies for the remaining overfished species (bocaccio, cowcod, widow rockfish, and yelloweye rockfish). The proposed rule for groundfish harvest specifications and management measures for 2005-2006, to be published in September 2004, will propose OYs and management measures that implement the remaining rebuilding plans. The Council developed its recommendations for the 2005-2006 fisheries based on and

within the constraints of its FMP's policies.

In addition to suggesting that the rebuilding plans are not adequate unless they contain management measures separate from those already provided in the FMP, the commenter listed several types of management measures that the commenter believes are needed within a rebuilding plan. Because the commenter's letter on the Amendment 16-3 proposed rule included more extensive comments on essential fish habitat (EFH) issues, NMFS will respond to those issues below in the responses to Comments 6-8. In addition to requesting that NMFS include measures to protect EFH within the rebuilding plans rather than within the FMP, the commenter suggested that NMFS include within the rebuilding plans measures to: limit fishing effort via capacity reduction, set time/area closures, set a network of no-take marine protected areas, set trip or bag limits, set caps on total mortality, adjust harvest levels in response to the fisheries exceeding OYs, gear modifications to reduce bycatch, implement an observer program, set Federal vessel licensing requirements, and implement enforcement devices and measures such as vessel monitoring systems.

As stated earlier in this response, overfished species rebuilding plans are not stand-alone documents and it is the FMP as a whole that will be used to rebuild overfished species. The FMP and Federal regulations implementing the FMP already include mechanisms to implement, or requirements for, most of the management measures mentioned by the commenter. Chapter 6 of the FMP sets management measures and regulatory programs the Council uses and intends to use to meet its varied fishery management responsibilities, including rebuilding overfished species. Section 6.1 describes a series of management measures that the Council uses to control fishing mortality, including but not limited to: permits, licenses and endorsements; restrictions on trawl mesh size; landing limits and trip frequency limits; quotas, including individual transferable quotas; escape panels or ports for pot gear or trawl or other net gear; size limits; bag limits; time/area closures; other forms of effort control including input controls on fishing gear such as restrictions on trawl size or longline length or number of hooks or pots; allocation of species or species groups between fishing sectors; and a requirement for a Federal observer program. Section 6.2 among other things, authorizes the Council to close fishing seasons or areas, in order to

protect overfished species. Section 6.3 of the FMP deals with bycatch management and measures the Council has taken in recent years to reduce bycatch. EFH is addressed in section 6.6. of the FMP. Federal regulations implementing the FMP provide fishery management requirements as follows: gear restrictions at § 660.310; vessel monitoring system requirements at § 660.312; observer program requirements at § 660.314; allocations at §§ 660.320 through 660.324; vessel licensing/permitting requirements (including capacity reduction measures) at §§ 660.331 through 660.341; overfished species rebuilding parameters at § 660.365; general catch restrictions at § 660.370; and Groundfish Conservation Area regulations at § 660.390. In addition to these regulatory programs, NMFS also implemented a trawl permit/vessel buyback program in 2003 that reduced participation in that fleet by 35 percent. Further discussion of management measures used to implement the FMP in order to provide adequate protection of overfished species is provided in the final rule to implement the 2004 specifications and management measures (69 FR 11064, March 9, 2004) and in the proposed rule to implement the 2005–2006 specifications and management measures which will be published in the **Federal Register** in September 2004.

Comment 6: Scientific evidence confirms that repeated bottom trawling can damage habitat of species such as overfished rockfish. Impacts identified in the few studies conducted on the West Coast and in studies of comparable gears from other areas should inform consideration of habitat protection measures in the rebuilding plans. None of the measures adopted through the biennial specifications and management measures process are designed to address habitat impacts. Management measures, such as gear restrictions and closed areas, are designed and managed for the purpose of reducing bycatch.

Response: As mentioned in the response to comment 5, management measures, including habitat protection measures, are generally not included in rebuilding plans. The groundfish fishery is managed as a whole under the FMP and implementing regulations (50 CFR part 660, subpart G), including the harvest specifications and management measures. [Note: Beginning in 2005, the 2005 through 2006 harvest specification and management measures will be codified as part of 50 CFR part 660, subpart G, after first being published in the **Federal Register**.]

NMFS agrees that the Groundfish Conservation Areas implemented at 50 CFR 660.390 and through the specifications and management measures process are designed and managed for the purpose of reducing the bycatch of overfished species. The boundaries of these closed areas are based on current information about where overfished species commonly occur. Fishing by different gear types is prohibited within the closed areas, thus, groundfish habitat within these closed areas is protected from groundfish fishing gear impacts. The cowcod rebuilding plan provides protection measures specific to adult cowcod habitat by stating that the Cowcod Conservation Areas (CCAs), first implemented in 2001, will be a primary management measure used for protecting cowcod and cowcod habitat.

In addition to closed areas, Federal regulations at § 660.310 and in the 2004 specifications and management measures provide gear restrictions intended to reduce overfished species bycatch, which may provide some habitat protection. Large footrope gear, which is more likely to damage high relief bottom habitat, is prohibited shoreward of closed areas, in areas that tend to have more rocky relief habitat.

NMFS agrees that the agency needs to review available scientific information to determine whether its closed areas should be revised to provide better targeted protection for overfished species and their habitats. NMFS does not agree, however, that this review needs to occur before the agency approves Amendment 16–3 or the rebuilding plans therein. NMFS is developing an environmental impact statement (EIS) on groundfish EFH. On August 16–18, 2004, the agency held a public meeting to draft alternatives for the EFH EIS. The draft alternatives, which will be reviewed at the Council's September 13–17, 2004, meeting in San Diego, CA address groundfish species habitat needs, including overfished species needs, in three categories of alternatives: alternatives for the designation of EFH, alternatives for the designation of habitat areas of particular concern, and alternatives to minimize adverse impacts on habitat. A draft of the EFH EIS is scheduled for release in February 2005. NMFS expects that the Council will use that EIS to amend its FMP to update its EFH provisions, including management measures for overfished species habitat protection. The agency further expects that scientific information on overfished species and their habitats will continue to improve over time. NMFS and the Council will review that information as

it becomes available, and through a public process, to ensure that the FMP continues to provide protection for overfished species based on the best available scientific information.

Comment 7: NMFS has not done the analysis needed to determine whether current measures are adequate to rebuild overfished species because the agency has not analyzed the degree to which closed areas protect critical habitat of overfished species. Further, NMFS has not determined what modifications would be needed in the timing and extent of the closures or gear restrictions to address habitat issues for rebuilding species. The fact that the EFH EIS has not been completed is no excuse for omitting habitat protection measures from rebuilding plans.

Response: As NMFS has stated in its response to Comment 6, the agency is developing a draft EIS on West Coast groundfish EFH. That EIS is intended to provide much needed information on species-specific EFH identification. The EIS will also be used to develop the FMP's overall approach to identifying and reducing the effects of fishing gear on groundfish EFH. Some of the EFH EIS draft alternatives address whether overfished species EFH needs particular protection different from that afforded to EFH of other groundfish species.

Since the first three groundfish species were declared overfished in 1999, NMFS has been revising its various West Coast groundfish management policies and measures to provide better protections for overfished species. Protective fishery management measures vary by species and by the gear types and fisheries known to affect particular species. Adult cowcod, the most sedentary and site-specific of the overfished species, is protected in key habitat with large all-gear area closures off southern California. Lingcod, a shelf species vulnerable to hook-and-line gear during its winter spawning/nesting season, is protected through season closures. The universal policy that guides overfished species rebuilding plans is reducing opportunities for direct and incidental take of overfished species. The rebuilding plans themselves provide parameters for harvest levels that will allow rebuilding. The FMP provides guidance on how to constrain harvest to those levels through reduced landings limits, gear restrictions, season closures, area closures, and/or size limits depending on which measures are most appropriate to each overfished species.

Overfished species allowable total catch (directed and incidental) levels are based on scientific stock assessments. OYs for overfished species

are set based on those stock assessments, through the harvest specifications and management measures process. The rebuilding plans dictate each overfished species' rebuilding fishing mortality rate (F), which may only be revised following review via a new stock assessment. NMFS sets management measures intended to constrain the fisheries so that total catch stays within overfished species' OYs. NMFS and the Council review and adjust management measures to ensure that rebuilding harvest goals are met.

The Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to review the adequacy of rebuilding plans at intervals that may not exceed 2 years. The rebuilding plans for all eight overfished species will be reviewed following their 2005 stock assessments. This fall, the Council's SSC is drafting revisions to its Rebuilding Analyses Terms of Reference to incorporate rebuilding plan adequacy reviews. These reviews will aid NMFS and the Council in determining how and whether harvest targets and management measures need to be revised for the 2007–2008 fishing period. Also during 2005–2006, NMFS will complete its EFH EIS. The completion of that EIS and its implementation through an FMP amendment, if appropriate, and potential Federal regulations will guide how EFH management contributes to overfished species rebuilding measures.

Comment 8: NMFS should evaluate steps like the following to protect vulnerable habitat for overfished species: (1) Close bottom trawling and other damaging bottom gears to all or part of the CCA, Soquel Canyon, and other canyon heads, rocky outcrops, banks and pinnacles that shelter cowcod, (2) close bottom trawling in all or part of sensitive habitats that support or have supported a high abundance of big, old bocaccio, and (3) fine-tune the Rockfish Conservation Area (RCA) and add other areas as needed to take into account sensitive habitat for overfished species.

Response: NMFS will consider steps like those recommended in the EFH EIS process, which will examine habitat for all groundfish species, as described in the response to Comments 6 and 7. Currently bottom trawling for groundfish is prohibited in the CCA and in the trawl RCA, which effectively protects many other rocky relief habitats.

Comment 9: The rebuilding plans contained in Amendment 16–3 lack adequate standards for gauging whether sufficient progress is being made toward

rebuilding during the life of the rebuilding plan in compliance with 16 U.S.C. 1854(e)(7). The rebuilding plans also lack requirements for enforcement and data collection. These accountability mechanisms are critical if NMFS is to track accurately its own progress in rebuilding and be able to intervene in order to correct any deficiencies that may develop during the course of rebuilding.

Response: NMFS believes that the rebuilding plans under Amendment 16–3 are consistent with the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires the Secretary to review rebuilding plans at intervals that may not exceed 2 years. During the Amendment 16–1 process, for the purpose of clarity, NMFS worked with the Council staff to add a sentence to the FMP at the end of section 4.5.3.6 to read, “Regardless of the Council’s schedule for reviewing overfished species rebuilding plans, the Secretary, through NMFS, is required to review the progress of overfished species rebuilding plans toward rebuilding goals every 2 years, per the Magnuson-Stevens Act at 16 U.S.C. 304(e)(7).” NMFS’s review of the adequacy of progress on rebuilding plans will primarily be done through stock assessment updates and is expected to follow the schedule defined by the Magnuson-Stevens Act.

As noted in the response to Comment 7, the Council’s SSC is currently developing rebuilding plan adequacy review standards to be included in their Terms of Reference for Rebuilding Analyses. A draft set of standards are to be provided to the Council for review in September 2004 with final adoption in November 2004. By including the setting of rebuilding plan progress standards in the stock assessment development and review process for overfished species, the NMFS/Council process for developing and reviewing stock assessments would continue the link between stock assessments and rebuilding plans for overfished species. NMFS expects that these standards will be defined before the Secretary’s review of Amendment 16–2 species in January 2006.

As mentioned previously in the response to comment 5, management measures to ensure species are rebuilding are included in the harvest specifications and management measures. Accountability mechanisms, like enforcement and data collection, are included as part of the management of the groundfish fishery as a whole, through the FMP and implementing policies and regulations. These programs are designed for multi-species

fisheries, wherein overfished species and abundant species co-occur. Therefore, it is not necessary for these measures to be included in rebuilding plans.

New Rockfish Species in Regulations

With this action, NMFS is updating the list of rockfish species defined in the CFR at § 660.302 to match the list of rockfish species included in the Pacific Coast Groundfish FMP. The FMP and CFR state that, “Rockfish includes all genera and species of the family Scorpaenidae, even if not listed, that occur in the Washington, Oregon, and California area.” These species are already specifically listed in the FMP and will be added to the CFR. The following seven new rockfish species in the CFR as species managed under the FMP: chameleon rockfish, dwarf-red rockfish, freckled rockfish, half-banded rockfish, pinkrose rockfish, pygmy rockfish, and swordspine rockfish. In addition, dusty rockfish is corrected to read dusky rockfish.

Corrections

NMFS re-arranged the Pacific Coast Groundfish regulations on July 15, 2004 (69 FR 42345) so that they read in a more logical order. This reorganization did not make substantive changes to the existing regulations; rather, it reorganized regulatory measures into a more logical and cohesive order. In publishing the rule on July 15, 2004, NMFS neglected to remove § 660.321, specifications and management measures, which was also added at § 660.370. Therefore, this final rule removes the duplicative and outdated specifications and management measures section at § 660.321. In addition, § 660.334(d)(1)(i) and (ii) were inadvertently removed and are added with this rule.

The observer rule for the whiting at-sea processing fleet (69 FR 31751, June 7, 2004) is corrected so that the paragraphs are numbered according to the proper format. Since the observer rule was published, regulations for the groundfish observer program have moved from § 660.360 to § 660.314 via the re-arranging rule (69 FR 42345, July 15, 2004). Therefore, paragraphs (f)(3)(ii)(B)(i)–(iii) of § 660.314, groundfish observer program, are corrected to read (f)(3)(ii)(B)(1)–(3).

Finally, a reference to the limited entry permit renewal process in § 660.373(h)(3) erroneously refers to § 660.333 and is corrected to refer to § 660.335. These revisions are all housekeeping changes to the regulations

and do not alter the effect of Federal groundfish regulations.

Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 16-3 is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an FEIS that discusses the effects on the environment as a result of this action. The FEIS was filed with the Environmental Protection Agency on July 23, 2004. A notice of availability for this FEIS was published on July 30, 2004 (69 FR 45707). In approving Amendment 16-3, on September 13, 2004, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

NMFS prepared a final regulatory flexibility analysis (FRFA) as part of the regulatory impact review. The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA follows:

During the comment period for the proposed rule, NMFS received three letters of comment, but none of these comments addressed the IRFA or economic impacts of the rule on small businesses. There are no recordkeeping, reporting, or other compliance issues forthcoming from the proposed rule. This final rule does not duplicate, overlap, or conflict with other Federal rules.

The purpose of this action is to implement rebuilding plans for four overfished species, bocaccio, cowcod, widow rockfish and yelloweye rockfish. This action is needed because the Magnuson-Stevens Act at 304 (e)(3) requires rebuilding plans to be implemented as FMPs, FMP amendments, or regulations. The objective of this final rule is to implement rebuilding parameters that are intended to result in bocaccio, cowcod, widow rockfish, and yelloweye rockfish stocks rebuilding to their MSY biomass levels.

Amendment 16-3 responds to a Court order in *Natural Resources Defense Council, Inc. v. Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001), in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. On October

27, 2003, the Court ordered NMFS to approve rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish by September 15, 2004.

Amendment 16-3 follows the framework established by Amendment 16-1 and amends the FMP to include rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish. For each overfished species rebuilding plan, the following parameters would be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under national standard guidelines were applied (T_{MAX}), the target year in which the stock would be rebuilt under the rebuilding plan (T_{TARGET}), and the harvest control rule. No new management measures are proposed in Amendment 16-3. Amendment 16-1 described and authorized the use of numerous types of management measures intended to achieve rebuilding. These management measures will be implemented through the biennial harvest specifications and management measures process and will be used to constrain fishing to the targets identified in the rebuilding plans.

The FEIS/RIR/IRFA for this final rule defines six alternative actions that were considered for each of the four overfished species. The alternatives present a range of rebuilding strategies in terms of rebuilding probabilities for each species. The no action alternative is based on the "40-10 harvest policy", which is the default rebuilding policy for setting OYs. Under the 40-10 harvest policy, stocks with biomass levels below $B_{40\%}$ (40 percent of the unfished biomass, a proxy for B_{MSY}) have OYs set in relation to the biomass level. At $B_{40\%}$ and greater, an OY may be set equal to the ABC. However, if a stock's spawning biomass declines below $B_{40\%}$, the OY is scaled downward until at 10 percent ($B_{10\%}$), the harvest OY is set at zero unless modified for a species-specific rebuilding plan. In comparison to the other alternatives, the 40-10 harvest policy generally results in lower OYs in the short term, when a stock is at a low biomass level, but allows greater harvests when a stock is at higher biomass levels. For further information on the 40-10 harvest policy, see the preamble to the final rule for Amendment 16-1 (February 26, 2004, 69 FR 8861) or Section 5.3 of the FMP. The 40-10 harvest policy alternative would not result in rebuilding for three of the four overfished species (i.e., only bocaccio would be rebuilt within T_{MAX})

within the maximum allowable rebuilding time. Lack of rebuilding for these species makes this alternative not a legally-viable alternative and increases the risk to long-term productivity of the stock.

The maximum conservation alternative, Alternative 4, specifies the most conservative harvests that would allow these four species to rebuild and has the highest probability, 90 percent, of rebuilding within T_{MAX} (except for cowcod which has a 60-percent probability). Each stock is expected to rebuild fastest under this alternative, but at considerable socioeconomic cost. Short-term socioeconomic costs would be highest under this alternative due to severe restrictions on fishing opportunity to allow the stock to rebuild faster.

The maximum harvest alternative, Alternative 1, for each overfished species was based on a 60 percent probability of rebuilding the stocks to their MSY biomass levels by T_{MAX} , except for cowcod which was based on a 55 percent probability. This alternative would delay rebuilding for the longest period of time with the intent of keeping harvests at the highest allowable levels for the duration of rebuilding. Because this alternative would allow fishermen an opportunity to harvest higher levels in the short-term, this alternative would have the least socioeconomic impact. However, allowing higher harvest levels in the short-term would slow down rebuilding and, thus, have the highest risk among the action alternatives of not rebuilding within T_{MAX} .

Intermediate alternatives, Alternatives 2 and 3, were defined for each overfished species and were based on 70- and 80- percent probabilities of rebuilding the stocks to their MSY biomass by T_{MAX} (except that cowcod was based on a 60-percent probability for Alternatives 2 and 3). The socioeconomic impacts of the intermediate alternatives fall within the range of the other alternatives that were fully analyzed in the FEIS. Alternative 2 would have more socio-economic impacts than Alternative 1, but less than Alternative 3. Alternative 3 would have more socio-economic impacts than Alternative 2, but less than Alternative 4. Alternative 2 would have a lower risk of not rebuilding within T_{MAX} than Alternative 1, but higher than Alternative 3. Alternative 3 would have a lower risk of not rebuilding within T_{MAX} than Alternative 2, but higher than Alternative 4.

After the draft EIS was made available by EPA for public review (69 FR 18897, April 9, 2004), the Council selected

their preferred alternatives at their April 2004 meeting. The Council-preferred alternative for each species, as analyzed in the FEIS, is as follows: bocaccio, Alternative 2 (using the STATc Model) – 70-percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2023 and a harvest rate of 0.0498; cowcod, Alternatives 2 through 4 (all the same) - 60-percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2090 and a harvest rate of 0.009; widow rockfish, Alternative 1 (using Model 8) – 60-percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2038 and a harvest rate of 0.0093; and yelloweye rockfish, Alternative 3 – 80-percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2058 and a harvest rate of 0.0153. The Council-preferred alternative for each species was chosen by balancing biological and economic risks, maximizing the likelihood of rebuilding the stock while minimizing the socio-economic impacts on the industry.

A fish-harvesting business, including commercial harvesters and charter/party boat operators, is considered a “small” business by the Small Business Administration if it has annual receipts not in excess of \$3.5 million. For wholesale businesses, a small business is one that employs not more than 100 people. The economic impact of implementing these rebuilding plans will be shared among commercial harvesters and recreational operators. More detailed information on the groundfish catch in these sectors is provided in the FEIS/IRFA.

There are approximately 4,600 commercial vessels fishing from West Coast ports. Of these, 1,709 vessels had some involvement in West Coast groundfish fisheries, 421 of those held groundfish limited entry permits, and an additional 771 participated in open access groundfish fisheries (if vessels derive more than 5 percent of total revenue from groundfish and do not have a limited entry permit, then they are considered to be participating in open access fisheries). After the buyback program in the fall of 2003, 91 limited entry trawl vessels and their permits were permanently retired, representing a 35 percent reduction in the capacity of the limited entry trawl fleet in terms of permits.

In 2001, there were an estimated 753 recreational fishing charter vessels operating in ocean fisheries on the West Coast: 106 in Washington, 232 in Oregon and 415 in California.

There are about 1,700 commercial vessels and 750 recreational charter

operators that may be affected by these actions. Although there is some double counting, most of these entities would probably qualify as small businesses under SBA criteria. No alternatives, other than those considered in the FEIS, have been identified that would reduce the impact on small entities. In addition to an opportunity for public comment on the proposed rule, DEIS and IRFA, the Council process for developing a preferred alternative is conducted in an open forum with industry advisory groups that assist the Council in developing options that meet regulatory objectives and conservation goals, in particular, with the least possible impact on fishing businesses. This rule is not expected to yield disproportionate economic impacts between those small and large entities.

Implementation of specific rebuilding plans may entail substantial economic impacts on some groundfish buyers, commercial harvesters, and in the case of bocaccio, cowcod, and yelloweye rockfish, recreational operators. The economic impact will vary according to their dependency on groundfish-related income, the frequency of overfished species in their area of the coast, and the severity of those species overfished status. The Council-preferred alternative specifies annual OY levels for the overfished species that are sufficient to mitigate some of the adverse economic impacts on these entities, while not compromising the statutory requirement for timely rebuilding. NMFS will implement the Council-preferred alternative.

This action was developed after meaningful consultation and collaboration with tribal representatives on the Council, who have agreed with the provisions that apply to tribal vessels. This action is, therefore, compliant with Executive Order 13175 (Consultation and coordination with Indian tribal governments).

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: September 22, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES 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, in the definition of “Groundfish,” under “Rockfish:” remove “dusky rockfish, *S. ciliatus*,” and add “chameleon rockfish, *S. phillipsi*,” “dwarf-red rockfish, *S. rufinanus*,” “dusky rockfish, *S. ciliatus*,” “freckled rockfish, *S. lentiginosus*,” “half-banded rockfish, *S. semicinctus*,” “pinkrose rockfish, *S. simulator*,” “pygmy rockfish, *S. wilsoni*,” and “swordspine rockfish, *S. ensifer*” in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Groundfish * * *

Rockfish:

* * * * *

chameleon rockfish, *S. phillipsi*

* * * * *

dwarf-red rockfish, *S. rufinanus*

dusky rockfish, *S. ciliatus*

* * * * *

freckled rockfish, *S. lentiginosus*

* * * * *

half-banded rockfish, *S. semicinctus*,

* * * * *

pinkrose rockfish, *S. simulator*

pygmy rockfish, *S. wilsoni*

* * * * *

swordspine rockfish, *S. ensifer*

* * * * *

§ 660.314 [Amended]

■ 3. In § 660.314, paragraphs (f)(3)(ii)(B)(i) through (iii) are redesignated to read (paragraphs f)(3)(ii)(B)(1) through (3).

§ 660.321 [Removed and reserved]

■ 4. Remove and reserve § 660.321.

■ 5. In § 660.334, paragraphs (d)(1)(i) and (ii) are added to read as follows:

§ 660.334 Limited entry permits – endorsements.

* * * * *

(d) * * *

(1) * * *

(i) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(ii) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred

separately from the limited entry permit.

* * * * *

■ 6. In § 660.365, the introductory paragraph and paragraphs (e) through (h) are added to read as follows:

§ 660.365 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock.

* * * * *

(e) *Bocaccio*. The target date for rebuilding the southern bocaccio stock to B_{MSY} is 2023. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual harvest rate of $F=0.0498$.

(f) *Cowcod*. The target year for rebuilding the cowcod stock south of Point Conception to B_{MSY} is 2090. The harvest control rule to be used to rebuild the cowcod stock is an annual harvest rate of $F=0.009$.

(g) *Widow rockfish*. The target year for rebuilding the widow rockfish stock to B_{MSY} is 2038. The harvest control rule to be used to rebuild the widow rockfish stock is an annual harvest rate of $F=0.0093$.

(h) *Yelloweye rockfish*. The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2058. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual harvest rate of $F=0.0153$.

■ 7. In § 660.373, paragraph (h)(3) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(h) * * *

(3) When renewing its limited entry permit each year under § 660.335, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must be

made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

* * * * *

[FR Doc. 04-21691 Filed 9-27-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287-4060-02; I.D. 092204A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 23, 2004, through 2400 hrs, A.l.t., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC specified for Atka mackerel in the Central Aleutian District of the BSAI is 28,768 metric tons (mt) as established by the 2004 harvest

specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Atka mackerel in the Central Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 28,650 mt, and is setting aside the remaining 118 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at 50 CFR 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Atka mackerel in the Central Aleutian District of the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 22, 2004.

Alan D. Risenhoover,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04-21685 Filed 9-23-04; 2:57 pm]

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