

PART 229—INTERIM EXEMPTION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 229.2 paragraph (k) is revised to read as follows:

§ 229.2 Definitions.

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(k) *Incidental take* means the intentional nonlethal or accidental taking of a marine mammal in the course of commercial fishing operations.

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3. Section 229.4 is amended by revising paragraphs (b)(2) introductory text, (b)(2)(i)(B), and by adding paragraph (b)(2)(iii) to read as follows:

§ 229.4 Prohibitions.

* * * * *

(b) * * *
(2) Under this part 229, except as provided under paragraph (b)(2)(iii) of this section, it is unlawful to:

- (i)(A) * * *
- (B) Intentionally lethally take any marine mammal.

* * * * *

(iii) If a taking under paragraph (b)(2)(i)(A) of this section or paragraph (b)(2)(i)(B) of this section is imminently necessary in self-defense or to save the life of a person in immediate danger, it is not an unlawful activity, provided that the taking is reported to the appropriate Regional Office of the National Marine Fisheries Service within 48 hours after the end of the fishing trip during which the taking occurs.

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4. Section 229.6 is amended by revising the third sentence of paragraph (c)(2)(i), removing paragraph (c)(6), and redesignating paragraphs (c)(7) through (c)(10) as paragraphs (c)(6) through (c)(9), respectively, to read as follows:

§ 229.6 Issuance of Exemption Certificates.

* * * * *

(c) * * *
(2) * * *
(i) * * * Marine mammal report/log forms require information on: The fishery, fishing effort, gear type, and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of marine mammal incidental takes; type of interaction and any injury to the marine mammal; a

description of any intentional takes (i.e., efforts to deter animals by nonlethal means to protect gear or catch or efforts to protect human life involving either lethal or nonlethal means); and any loss of fish or gear caused by marine mammals. * * *

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5. Section 229.7 is amended by revising the last sentence of paragraph (b), removing paragraph (e), and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 229.7 Requirements for Category III Fisheries.

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(b) * * * The report must include information on: The fishery, fishing effort, gear type, and fish species involved; the marine mammal species (or description of the animal(s), if species is not known), number, date, and location of all lethal incidental takes; a description of any intentional lethal take to protect human life; and any loss of fish or gear caused by marine mammals.

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50 CFR Part 663

[Docket No. 950126029-5029-01; I.D. 011095A]

RIN 0648-AH80

Pacific Coast Groundfish Fishery; Emergency Rule to Extend the Application Period To Renew Permits for 1995

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues this emergency rule to amend the implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide an additional 4 months during which limited entry permit owners may apply for permit renewals for 1995. This action is necessary to rectify an administrative requirement that is overly restrictive for the first year of permit renewals in the limited entry fishery. The intended effect of this rule is to allow continued participation in the Pacific Coast groundfish fishery by permit owners who failed to apply for a permit renewal by November 30, 1994.

DATES: Effective January 27, 1995 through May 2, 1995. Comments will be accepted through March 3, 1995.

ADDRESSES: Submit comments to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN-C15700, Seattle, WA 98115-0070; or Hilda Diaz-Soltero, Director Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Documentation supporting this emergency action is available at the Northwest Regional Office, NMFS, at the address above.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney McInnis at (310) 980-4030. For further information on application procedures, phone (206) 526-4353.

SUPPLEMENTARY INFORMATION: NMFS issues this emergency rule under the authority of section 305(c)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). An emergency rule that changes a fishery management plan is treated as an amendment to such plan for the period during which such regulation is in effect.

The Pacific Fishery Management Council (Council) prepared, and NMFS approved and implemented, an amendment (Amendment 6) to the FMP, that established a limited entry program for the Pacific Coast groundfish fishery off the coasts of Washington, Oregon, and California. Final regulations implementing the limited entry program were published on November 16, 1992 (57 FR 54001) and the program went into effect on January 1, 1994.

The final regulations, at 50 CFR 663.41(c), require permits to be renewed each year between October 1 and November 30, in order to remain in force the following year. In addition, 50 CFR 663.41(c)(3) specifies that a limited entry permit that is allowed to expire will not be renewed unless the Northwest Region, NMFS, Fisheries Management Division determines that failure to renew was proximately caused by the illness, injury, or death of the permit holder.

Amendment 6, section 4.10, provided the following rationale as to why the administrative procedures should be so rigid:

As initially worded, the draft license limitation program of Amendment 6 provided no means by which the number of permits with 'A' endorsements might be reduced through attrition. A vessel could leave the fishery without transferring the permit to another vessel, and a number of years later the permit could be resurrected

and effort reintroduced. The Council requested an option be developed such that, if a permit holder failed to maintain continuous interest in participating in the fishery, as evidenced by annual permit renewal, the permit would expire. In this way, when attrition occurs, i.e., someone discontinues interest in the fishery without transferring the access rights to someone else, that attrition may be 'locked in' and the permit may not be brought back 'on-line' at a later date.

Section 14.3.5 of Amendment 6, specified very limited exceptions to the timely permit renewal requirement: "With respect to permit renewal, only illness, injury or death of one of the vessel owners will be considered good cause."

NMFS has determined that this administrative requirement is overly restrictive for the program's first annual renewal period. During such period, some permit owners may not have been aware of the need to renew by November 30, 1994, or the penalty for failing to do so. Permanent loss of the permit is too severe a consequence for a late renewal application the first year.

NMFS has determined that it is necessary to provide immediate relief from the overly restrictive administrative requirements at 50 CFR 663.41(c)(3) and to allow permit owners to continue to fish in 1995. All permit owners, even those who failed to submit their first annual renewal by November 30, 1994, demonstrated substantial participation in the Pacific Coast groundfish fishery by meeting initial permit issuance qualifications. Ensuring an opportunity for each permit holder's continued participation is consistent with the goals and objectives of the FMP. In the absence of an amendment to the regulations, permit owners who applied for permit renewal late or whose permits were not renewed by November 30, could lose their permits forever and face a potential loss of

livelihood. Allowing the extra time for renewal does not frustrate the program's ultimate goal of "locking in" attrition, because permit owners still need to renew within a reasonable period of time.

Under this emergency rule, a permit owner who did not apply for limited entry permit renewal by November 30, 1994, has until March 31, 1995, to submit a request for annual renewal. If NMFS approves the renewal, the permit shall be reissued for the remainder of 1995.

Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds that the reasons justifying implementation of this rule on an emergency basis are good cause not to provide prior notice and opportunity for public comment under section 553(b) of the Administrative Procedure Act (APA). NMFS has determined that limiting the period for applying for a permit renewal to 2 months in this first year of the limited entry program is unnecessarily restrictive. In order to allow fishermen, who otherwise would forgo their fishing opportunities in 1995, to renew their permits and fish early in 1995, and to keep their permits from permanently expiring, NMFS has determined it is impracticable and contrary to provide prior notice and opportunity for public comment. Further, pursuant to section 553(d)(1) of the APA, these emergency regulations are being made effective on filing because they relieve a restriction.

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

No environmental assessment was prepared under the provisions of the National Environmental Policy Act

because this rule makes a minor change and is within the scope of the Supplemental Environmental Impact Statement prepared for the limited entry plan (Amendment 6 to the FMP).

This emergency rule is in compliance with the Paperwork Reduction Act. This rule will not increase the information collection burden of the existing limited entry permit program. The emergency rule does not alter the types of information required in a limited entry permit application, as approved by the Office of Management and Budget, OMB Control Number 0648-0203.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 26, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUND FISH FISHERY

1. The authority citation for part 663 continues to read as follows:

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

2. In § 663.41, a new paragraph (c)(4) is added to read as follows:

§ 663.41 Limited entry permits.

* * * * *

(c) * * *

(4) Notwithstanding § 663.41(c)(1) and (3), limited entry permits that expired at the end of 1994 may be renewed after November 30, 1994, but not later than March 31, 1995, in order to remain in force during 1995.

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