

B. COVERED EMPLOYEES

Covered Employees

Employee Category	Number of FHWA Covered Employees	Number of Employees Covered by More Than One DOT Operating Administration				
		FAA	FRA	FTA	RSPA	USCG
Drivers						

C. DRUG TESTING INFORMATION

Number of Specimens Collected and Verified Negative

Employee Category	Pre-Employment		Random		Post-Accident/Non-Fatal		Post-Accident/Fatal		Reasonable Suspicion		Return to Duty		Follow-up		
	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	Coll	Neg	
Drivers															

Number of drivers returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FHWA rule:

Employees who refused to submit to a drug test	Number
Covered employees who refused to submit to a random drug test required under the FHWA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FHWA regulation:	
Drug training/education	Number
Supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by FHWA drug testing regulations:	

D. ALCOHOL TESTING INFORMATION

Number of alcohol screening tests conducted

Employee category	Pre-employment	Random	Post-Accident/non-fatal	Post-Accident/fatal	Reasonable suspicion	Return to duty	Follow-up
Drivers							

Number of drivers who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in FHWA regulations):

Employees who refused to submit to an alcohol test	Number
Covered employees who refused to submit to a random alcohol test required under the FHWA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FHWA regulation:	
Alcohol training/education	Number
Number of supervisors who have received initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FHWA alcohol testing regulations:	

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 663**

[Docket No. 950301063-5063-01; I.D. 032194D]

RIN 0648-AF38

Pacific Coast Groundfish Fishery; Gear Modification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the groundfish trawl regulations and simplifies the marking requirements for commercial vertical hook-and-line gear that is closely tended in the Pacific Coast Groundfish fishery. This rule promotes the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by enhancing the effectiveness of minimum mesh size used in trawl gear, making trawl gear

requirements consistent for all bottom trawl gear and less likely to be circumvented, updating the regulations to be more consistent with changes in gear technology, and removing unnecessary burdens on the industry.

EFFECTIVE DATES: September 8, 1995, except § 663.22(c) is effective on March 13, 1995.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140; or Rodney McInnis at 310-980-4040.

SUPPLEMENTARY INFORMATION: NMFS issues this final rule, based on a recommendation of the Pacific Fishery Management Council (Council), under the authority of the FMP and the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides a socioeconomic framework procedure under which gear regulations may be changed without amending the FMP. A proposed rule was published at 59 FR 40511 (August 9, 1994) requesting comments through September 6, 1994, on changes to the regulations for trawl gear and commercial vertical hook-and-line gear (also called Portuguese longline). Two comments were received and are addressed below.

Comment 1: One comment was received from the American Factory Trawler Association, which represents at-sea processing vessels and the catcher vessels that deliver to them. They were concerned that prohibiting chafing gear from encircling the net would also prohibit the use of protective gear which is needed under choker, transfer, and lifting straps on the codends of pelagic trawls. The straps are used to transfer and lift a full codend onboard a vessel and to empty it. Protective gear is needed to cover the entire circumference of the net under the straps, because the straps will damage any unprotected portion of the net they contact.

Response: NMFS agrees that this type of protective gear, which has been in use for some time, was not meant to be prohibited. The proposed rule for pelagic trawls has been revised to allow a band of mesh no wider than 16 meshes to encircle the net under chokers, lifting straps or transfer cables, but over riblines and restraining straps that are attached to the net.

Comment 2: A fisherman using Scottish seine gear to catch sanddabs off California was concerned that the 4.5-inch (11.5-cm) minimum mesh size throughout the net would enable his target species to escape. Most of the mesh in his gear would satisfy the 4.5-inch (11.5-cm) minimum mesh size—he uses 4.5-inch (11.5-cm) mesh in the last

70 meshes of the net, and over 5-inch (12.8-cm) mesh in the wings and behind the footrope and headrope. However, he needs smaller mesh in the intermediate portion of the net. In his initial letter he stated that he uses 3.5-inch (9.0-cm) mesh in the intermediate portion of the net. In a second letter, he explained that he modified his gear and found that 4.0-inch (10.3-cm) mesh in the intermediate portion of the net could be used, but that 4.5-inch (11.5-cm) mesh still allowed sanddabs to escape.

Response: The requirement to apply the minimum mesh size throughout the net was proposed to enhance escapement of juvenile fish, reduce bycatch, make it impossible to reduce mesh size by cinching off the codend, and facilitate enforcement by using consistent regulations for all bottom trawls. The information provided by the commenter does not justify changes to the proposed rule. However, the commenter may wish to supply additional information to the Council in support of his position and seek modification of this final rule. He also may submit an application for an experimental fishing permit (EFP), which enables fisheries to be conducted that otherwise would be prohibited. If the issue is found to warrant further consideration, an EFP may be issued for the purpose of gathering information to determine if and how the regulation should be changed. The Council then could reconsider the appropriateness of the minimum mesh size for Scottish seine gear.

Changes or Clarifications to the Proposed Rule

The only substantive change to the rule is made as a result of comment #1, described above. Several additional clarifications and editorial changes also have been made, which are consistent with the rule as proposed. (1) The corners of the terminal end of chafing gear may be attached to the net (§ 663.22(b)(3)). (2) The minimum mesh size requirements in existing rules for chafing gear no longer apply. Escapement is provided for by limiting chafing gear to only one-half the circumference of the net. (3) Section 663.22(b)(5) is edited slightly to clarify that the first 20 ft (6.15 m) of pelagic trawls must be bare rope or net with a minimum mesh size of 16-inches (40.6-cms), or any combination of bare rope and 16-inch (40.6-cm) mesh. (4) The type of identification needed to mark fixed gear is clarified. (5) The description of authorized fishing gear at § 663.22(a) is clarified to explain that “set net” includes anchored gillnet or trammel net.

Summary of the Final Rule

The text of the final rule is summarized below, incorporating the above changes. Additional background and rationale are found in the proposed rule and Environmental Assessment (EA) prepared for this action.

1. *Apply the trawl minimum mesh size throughout the net.* Currently, the minimum mesh size applies to the last 50 meshes of the trawl net. This final rule applies the minimum mesh size requirements throughout the net. This is intended to eliminate the practice of tying off the net in front of the last 50 meshes above which smaller mesh could be used legally.

2. *Remove the legal distinction between bottom and roller trawls and the requirement for continuous riblines.* Once the minimum mesh size became identical for bottom and roller trawls in May 1992 (57 FR 12212, April 9, 1992), there was no longer a need to distinguish between the two in the regulations. This rule also eliminates the requirement for continuous riblines to be sewn to bottom and roller trawls, if the vessel has onboard a net with less than 4.5-inch (11.43-cm) mesh.

3. *Clarify the distinction between bottom and pelagic (midwater) trawls.* Current pelagic-trawl requirements state that the footrope at the trawl mouth must be unprotected and that sweeplines, including the bottom of the bridle, must be bare.

This rule adds two requirements to discourage dragging small-mesh pelagic trawls on the sea floor by making the nets more fragile. First, rollers, bobbins, tires, discs, or any other similar device used to protect the net from the sea floor may not be used anywhere in the net. Second, for at least 20 ft (6.15 m) immediately behind the footrope or headrope of the net, bare ropes or 16-inch (40.6-cm) minimum mesh must encircle the net.

4. *Modify chafing gear requirements.* Chafing gear is webbing or other material attached to a trawl net to protect the net from wear, particularly the codend as it scrapes the sea floor or slides onto the vessel. If attached in certain ways, chafing gear could reduce the effective mesh size by compressing or covering the webbing. The current regulations require that: Chafing gear not be connected directly to the terminal end of the net; in bottom trawls, chafing gear have a minimum mesh size of 15 inches (38.1 cm) unless only the bottom half of the codend is covered; and in roller trawls in the Vancouver, Columbia, and Eureka subareas, and in pelagic trawls in all subareas, chafing gear covering the

upper one-half of the codend must have a minimum mesh size of 6 inches (15.24 cm). These provisions are changed to provide the necessary gear protection without unduly impeding escapement of fish through the webbing, and to be consistent with changes in the technology and requirements for bottom and roller trawls. This rule provides that: (a) Chafing gear may cover no more than 50 percent of the circumference of the net, except for 16-mesh "skirts" (designed to protect the underlying gear) under the lifting or splitting straps (chokers), or the transfer cables on pelagic trawls; (b) no section of chafing gear may be longer than 50 meshes of the net to which it is attached; (c) except at its corners, the terminal end of each section of chafing gear must not be connected to the net; (d) chafing gear must be attached outside any riblines or restraining straps; and (e) there is no limit on the number of sections of chafing gear that may be used. This rule removes the minimum mesh size requirements applicable to chafing gear.

5. Modify marking requirements for commercial vertical hook-and-line gear. Current marking requirements required for fixed gear (pole, flag, light, radar reflector, and buoy) were found to be a burden for vessels closely tending their commercial vertical hook-and-line gear. Although the gear is anchored, it is lightweight and can be dragged by prevailing winds and currents. Also, the cost of the radar reflector, lights, and buoys is substantial in comparison to the cost of the gear itself. Since most vessels using this gear stay in the immediate vicinity of the gear, tending the lines frequently, there appears to be less need for such extensive marking requirements. This rule relaxes the marking requirement for commercial vertical hook-and-line gear that is closely tended by requiring only a single buoy clearly identifying the vessel's owner or operator.

6. Correct a mesh definition.

Reference to double-ply mesh at 50 CFR 663.2 is changed to "double-bar mesh". Ply refers to the number of strands twisted together to make twine. The regulation was intended to mean two lengths of twine tied together in one knot, or "double-bar" mesh.

For the reasons stated above and in the proposed rule at 59 FR 40511 (August 9, 1994), NMFS concurs with the Council's recommendations and herein announces the final rule.

Classification

This final rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator for Fisheries, NOAA,

(Assistant Administrator), has determined that it is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an EA for this rule (contained in the EA/Regulatory Impact Review) and the Assistant Administrator concluded that there would be no significant impact on the environment.

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

Under section 553(d)(1) of the Administrative Procedure Act, the change to the fixed gear-marking requirements at 50 CFR 663.22(c) is made effective upon publication in the **Federal Register** because it relieves a restriction on commercial vertical hook-and-line fishermen who closely tend their gear. In contrast, changes to the definitions and trawl gear requirements at 50 CFR 663.2 and 663.22(a) and (b) are effective 6 months after filing with the Office of the Federal Register to allow time for fishermen to modify gear to comply with these new requirements. The Council recommended, and the Assistant Administrator agrees, that this 6-month delay in effectiveness reduces the economic burden on the industry by enabling it to replace at least some of its gear after it is worn out rather than requiring an immediate and abrupt change to all trawl nets.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 7, 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 GROUNDFISH FISHERY

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

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

2. Section 663.2 is amending the definition for "Commercial fishing" by redesignating paragraphs (a) and (b) as paragraphs (1) and (2) respectively, and amending the definition for "Fishing gear" by redesignating paragraphs (a) through (w) as paragraphs (1) through (23), respectively and by revising newly redesignated paragraphs (1) through (3), (6), (14), (16), and (18) to read as follows:

§ 663.2 Definitions.

* * * * *

Fishing gear:

(1) *Bobbin trawl* means the same as a roller trawl, and is a type of bottom trawl.

(2) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes roller (or bobbin) trawls and Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawls at § 663.22(b)(6) is a bottom trawl.

(3) *Chafing gear* means webbing or other material attached to the codend of a trawl net to protect the codend from wear.

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(6) *Double-bar mesh* means two lengths of twine tied into a single knot.

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(14) *Pelagic (midwater or off-bottom) trawl* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net.

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(16) *Roller trawl (bobbin trawl)* means a trawl with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material that keep the footrope above the seabed, thereby protecting the net. A roller trawl is a type of bottom trawl.

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(18) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-bar mesh.

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3. In § 663.22, paragraphs (a), (b)(2) through (b)(4), and (c) are revised; paragraph (b)(5) is removed; and paragraph (b)(6) is redesignated as paragraph (b)(5) and revised to read as follows:

§ 663.22 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: trawl (bottom and pelagic), hook-and-line, longline, pot or trap, set net (anchored gillnet or trammel net), and spear.

(b) * * *

(2) *Mesh size.* Trawl nets may be used if they meet the minimum mesh sizes set forth below. The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel wedge, 3.0 or 4.5 inches (7.6 or 11.4 cm) (depending

on the gear being measured) less one thickness of the metal wedge, can be passed with only thumb pressure

through at least 16 of 20 sets of two meshes each of wet mesh.

MINIMUM TRAWL-MESH SIZE

[In Inches]¹

Subarea						
Trawl Type	Vancouver	Columbia	Eureka	Monterey	Conception	
Bottom	4.5	4.5	4.5	4.5	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0	3.0

¹ Metric conversion: 3.0 inches = 7.6 centimeters; 4.5 inches = 11.4 centimeters.

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in paragraph (b)(5) of this section. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Except at the corners, the terminal end of each section of chafing gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(4) *Codends.* Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(5) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft (6.15 m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

(c) *Fixed gear.* (1) Fixed gear (longline, trap or pot, set net, and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be:

(i) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy except as provided in paragraph (c)(2) of this section; and

(ii) Attended at least once every 7 days.

(2) Commercial vertical hook-and-line gear that is closely tended may be marked only with a single buoy of sufficient size to float the gear. "Closely tended" means that a vessel is within

visual sighting distance or within 1/4 nautical mile (463 m) as determined by electronic navigational equipment, of its commercial vertical hook-and-line gear.

(3) A buoy used to mark fixed gear under paragraph (c)(1)(i) or paragraph (c)(2) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the U.S. Coast Guard, or, for an undocumented vessel, the vessel registration number issued by the state.

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50 CFR Part 681

[Docket No. 950224060-5060-01; I.D. 021395A]

RIN 0648-AH85

Western Pacific Crustacean Fisheries; 1995 Quota

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

ACTION: 1995 final quota for crustaceans; request for comments.

SUMMARY: NMFS announces a 1995 quota of zero lobsters for the Northwestern Hawaiian Islands (NWHI) crustacean fishery. This action is necessary to ensure protection and conservation of lobsters in this fishery. Also, fishermen who wish to participate in an Experimental Fishing Program in this fishery during 1995 are encouraged to contact the Director, Southwest

Region, NMFS (Regional Director). The purpose of any experimental fishery would be to allow for a precisely controlled harvest designed to acquire

data for assessing the status of the spiny and slipper lobster stocks.

DATES: Effective July 1, 1995. Comments are invited until April 12, 1995.

ADDRESSES: Comments about this notice and requests for information about the Experimental Fishing Program should be sent to Hilda Diaz-Soltero, Regional Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougnier, 310-980-4034; or Alvin Z. Katekaru, 808-973-2985.

SUPPLEMENTARY INFORMATION: The crustacean fisheries of the NWHI are managed by NMFS according to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP), which was prepared by the Western Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. Regulations affecting this fishery appear at 50 CFR part 681.

Ordinarily, an annual quota for the NWHI crustacean fishery is announced in two steps. First, based on previous years' fishery data, sampling during research cruises, and other available data, the Regional Director determines an initial quota, which is announced in the **Federal Register**, usually in February each year. Next, a final quota is announced as soon as possible on or after August 15 of the fishing year. The final quota is based on actual commercial fisheries data collected during the first month of fishing, which begins July 1 (when there is a quota).

A substantial decrease in lobster landings and catch-per-unit-of-effort (CPUE) in 1990 raised concern that fishing effort was excessive. Low lobster CPUE continued into the early part of 1991, prompting an emergency closure of the fishery from May through November 1991.

Amendment 7 to the FMP, which was approved by NMFS in February 1992, created an annual 6-month closed season and an adjustable annual fleet