

DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[I.D. 022996C]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearings; requests for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) will hold three public hearings on Draft Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and its draft supplemental environmental impact statement (draft SEIS).

DATES: Written comments will be accepted until 5 p.m., March 26, 1996. The hearings are scheduled as follows:

1. March 18, 1996, 7 p.m. until business is completed, Ronkonkoma, NY

2. March 19, 1996, 7 p.m. until business is completed, Toms River, NJ

3. March 20, 1996, 7 p.m. until business is completed, Salisbury, MD

ADDRESSES: Copies of the draft amendment are available from Susan Buchanan, Public Information Officer (803) 571-4366.

Written comments may be sent by U.S. mail, e-mail or fax to Bob Mahood, Executive Director, SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407. Fax: 803-769-4520, E-Mail: safmc@safmc.nmfs.gov. The draft amendment will be available to the public at the hearings.

The hearings will be held at the following locations:

1. Ronkonkoma—Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11799; telephone: 516-585-9500

2. Tom's River—Holiday Inn, 290 Route 37 East, Tom's River, NJ 08753; telephone: 908-244-4000

3. Salisbury—Holiday Inn, 2625 N Salisbury Blvd., Salisbury, MD 21801; telephone: 410-742-7194

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, 803-571-4366.

SUPPLEMENTARY INFORMATION:

Background

The South Atlantic and Mid-Atlantic Fishery Management Councils (Councils) will hold public hearings on Draft Amendment 8 to the FMP and its draft SEIS. Draft Amendment 8 includes management measures for the fisheries for king and Spanish mackerel, cobia, and dolphin (fish). These measures would apply only in the South Atlantic and Mid-Atlantic Council's (Mid-Atlantic Council) jurisdiction, apply only in the Gulf of Mexico Fishery Management Council's (Gulf Council) jurisdiction, or apply in all three Councils' jurisdictions.

Proposed actions that would affect only the stocks and area under the jurisdiction of the South Atlantic and Mid-Atlantic Councils are as follows: Harvest Spanish mackerel only with hook and line, run-around nets, stab nets, and cast nets (along Florida's east coast nets are limited to run-around gillnets, 800 yd (732 m) in length, and a 1-hour soak time); harvest king mackerel in the South Atlantic Council's area of jurisdiction, south of Cape Lookout, NC, with hook-and-line gear (multigear trips consisting of mixed species, including king mackerel, are allowed north of Cape Lookout NC, but are not to exceed 3,500 lbs (1.6 mt)); allow the harvest of other directed coastal pelagics with surface longline, hook-and-line including manual, electric, or hydraulic rod and reels, and bandit gear only; allow the use of cast

nets and another nets with mesh sizes no larger than 2 1/2 inch (6.35 cm) stretch mesh and no longer than 50 yd (46 m) for the purpose of catching bait; allow the introduction of experimental gear; provide that non-conforming gear be limited to the bag limit for species with a bag limit (no limit for species without a bag limit); establish a 5-year moratorium, beginning on October 16, 1995, on the issuance of commercial vessel permits with a king mackerel endorsement; provide for the transfer of vessel permits to other vessels; require that anyone applying for a commercial vessel permit demonstrate that 25 percent of annual income, or \$5,000, be from commercial fishing; and require, as a condition for a Federal commercial or charter vessel permit, that the applicant comply with the more restrictive of state or Federal rules when fishing in state waters; extend the range of cobia management North to the EEZ off New York; and, establish the following commercial trip limits for Atlantic king mackerel: 3,500 lb (1.6 mt) in the ocean area from Volusia/Flagler County, FL, to the New York/Connecticut border from April 1 to March 31, 3,500 lb (1.6 mt) in the ocean area from Brevard/Volusia County, FL, to Volusia/Flagler, FL, from April 1 to October 31, 50 fish in the ocean area from Brevard/Volusia to Dade/Monroe, FL, from April 1 to October 31, and a 125 fish limit in the EEZ off Monroe County from April 1 to October 31.

Amendment 8 also includes the following measures that apply to the three Councils' jurisdictions: Require commercial dealer permits to buy and sell coastal pelagic fish managed under the FMP and require that dealers keep and make available records of purchase by vessel, recreational bag and commercial trip limit alternatives for cobia and dolphin (fish), retention of up to five damaged king mackerel not to be sold by vessels under commercial trip limits, changes to the procedure used to set total allowable catch, and changes to definitions of overfishing and optimum yield. Additional options are included in the draft amendment.

In December 1995, the Gulf Council held public hearings on proposed measures in Amendment 8 applying only to the area and stocks under its jurisdiction.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by March 13, 1996.

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

Dated: March 6, 1996.

Donald J. Leedy,

Acting Director, Office of Fisheries
Conservation and Management, National
Marine Fisheries Service.

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50 CFR Part 663

[Docket No. 960304057-6057-01; I.D.
020596A]

RIN 0648-AH84

Pacific Coast Groundfish Fishery; Framework for Treaty Tribe Harvest of Pacific Groundfish

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

ACTION: Proposed rule; request for
comments.

SUMMARY: This rule proposes a
framework that allows NMFS, acting on
behalf of the Secretary of Commerce
(Secretary), to implement the rights of
the Washington coastal treaty Indian
tribes to fish for groundfish in their
usual and accustomed fishing areas
(U&A area). The Secretary requests
public comments on the proposed
framework and on the amount of Pacific
whiting to be set aside for the Makah
Indian Tribe (Makahs) for 1996 under
the provisions of this rule. The intent of
this rule is to accommodate treaty
fishing rights.

DATES: Comments will be accepted on or
before April 12, 1996.

ADDRESSES: Comments may be mailed to
William Stelle, Jr., Director, Northwest
Region, NMFS, 7600 Sand Point Way
NE., BIN C15700, Seattle, WA 98115.
Information relevant to this proposed
rule is available for public review
during business hours at the Office of
the Director, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT:
William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: NMFS is
issuing a proposed rule, based on the
agency's authority under the Pacific
Coast Groundfish Fishery Management
Plan (FMP) and the Magnuson Fishery
Conservation and Management Act
(Magnuson Act) to amend the FMP's
implementing regulations to establish a
clear procedure for implementing the
Washington coastal treaty Indian tribes'
rights to harvest Pacific groundfish. At
the same time, NMFS is seeking public
comment on the amount of Pacific
whiting to set aside in 1996 for the

Makahs under the procedures of this
rule. For purposes of this rule,
Washington coastal treaty Indian tribes
means the Hoh, Makah, and Quileute
Indian Tribes and the Quinault Indian
Nation.

Background

The FMP generally acknowledges that
certain treaty Indian tribes have secured
rights to harvest fish from their U&A
area. However, the FMP's implementing
regulations currently do not explicitly
provide a process by which NMFS can
set aside, from the annual harvest
guideline or quota, amounts of Pacific
groundfish for exclusive harvest by
treaty Indian tribes. Since 1989 NMFS,
at the recommendation of the Pacific
Fishery Management Council (Council),
has set aside, through the annual
groundfish management process, a
specific amount of sablefish for harvest
by the Pacific Coast treaty Indian tribes.
In 1992, NMFS first imposed black
rockfish trip limits on commercial hook
and line vessels fishing in certain areas
off the Washington coast. The same
regulation created a process for
establishing a tribal rockfish harvest
guideline during the annual groundfish
management process. Tribal fishermen
fishing under this harvest guideline are
not subject to the black rockfish trip
limit.

In June of 1995, the Makahs informed
NMFS and the Council that they would
seek to exercise their treaty rights to
harvest Pacific whiting, *Merluccius
productus*. At the August 1995 Council
meeting, the Makahs requested that
25,000 metric tons (mt) of whiting be set
aside from the 1996 U.S. harvest
guideline for exclusive harvest by the
Makahs.

At the October 1995 Council meeting,
NMFS and NOAA General Counsel
advised the Council that the Federal
Government recognizes that Washington
coastal treaty Indian tribes, by virtue of
their treaties with the United States,
have harvest rights to Pacific coast
groundfish.

NMFS believes the Makahs have a
treaty right to harvest one-half of the
harvestable surplus of the Pacific
whiting stocks found in their U&A area,
in accordance with treaty fishing rights
elaborated by a U.S. District Court in the
case *United States v. Washington*.
NMFS believes that the allocation
principles applicable to the tribal treaty
right to Pacific whiting and all other
groundfish found in the treaty tribes'
U&A areas are those established in *State
of Washington v. Washington State
Commercial Passenger Fishing Vessel
Association*, 443 U.S. 658, 99 S.Ct. 3055,
3074 (1979), and *Makah Indian Tribe v.*

Brown, No. C-85-1606R, and *United
States v. Washington*, Civil No. 9213—
Phase I, Subproceeding No. 92-1 (W.D.
Wash., Order on Five Motions Relating
to Treaty Halibut Fishing dated
December 29, 1993). *Passenger Fishing
Vessel* establishes the rule that "an
equitable measure of the common right
would initially divide the harvestable
portion of each run that passes through
a 'usual and accustomed' place into
approximately equal treaty and non-
treaty shares." *Makah v. Brown* held
that:

In formulating his allocation decisions, the
Secretary must accord treaty fishers the
opportunity to take 50 percent of the
harvestable surplus of halibut in their usual
and accustomed fishing grounds, and the
harvestable surplus must be determined
according to the conservation necessity
principle.

In the shellfish subproceeding (89-3)
in *United States v. Washington*, the
court found that the right to take fish
that was reserved in the treaties must be
read to apply to all fish, without any
species limitation. The court found:

The fact that some species were not taken
before treaty time—either because they were
inaccessible or the Indians chose not to take
them—does not mean that their *right* to take
such fish was limited.

At the October Council meeting,
NMFS and NOAA Northwest General
Counsel advised the Council that Indian
treaty rights were "other applicable
law" under the Magnuson Act that
required NMFS to set aside an amount
of whiting for harvest by the Makahs in
1996 consistent with their treaty rights.
NMFS advised the Council that
discussions between NMFS and the
Makahs to determine the appropriate
amount of whiting to be set aside in
1996 had not yet been completed, and
that some disagreement between NMFS
and the Makahs as to the proper method
of determining the amount still existed.
Despite the advice by NMFS and NOAA
Northwest General Counsel, the Council
voted 7-4 against recommending that
NOAA/NMFS recognize that the
Washington coastal treaty tribes have
treaty rights to Pacific whiting and set
aside any amount of whiting for harvest
by the Makahs in 1996. The Council
voted after consideration of testimony
from the State of Oregon's Attorney
General's Office that a treaty tribe's right
to harvest fish from its U&A area only
exists for those species to which the
tribe can show historical catch or access
at the time that the treaty was signed.

NMFS cannot accept the Council's
recommendation because it is contrary
to treaty fishing rights law.
Consequently, NMFS proposes to