

Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

E. Authority

Authority for issuance of this Further Notice of Proposed Rulemaking is contained in Sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

F. Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority of Sections 4(i), 257, 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 257, 303(g), 303(r), and 332(a), a further notice of proposed rulemaking is hereby adopted.

It is further ordered, that comments in WT Docket No. 96-148 will be due February 10, 1997, and reply comments will be due February 25, 1997.

List of Subjects

47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 26

Communications common carriers; Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-99 Filed 1-3-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 961227373-6373-01; I.D. 122096B]

RIN 0648-XX78

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

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

ACTION: 1997 groundfish fishery specifications and management

measures; tribal whiting allocation; announcement of exempted fishing permits; request for comments.

SUMMARY: NMFS announces the 1997 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch (ABC) and harvest guideline (HG), including the distribution between domestic and foreign fishing operations. The HGs are allocated between the limited entry and open access fisheries. The management measures for 1997 are designed to keep landings within the HGs, for those species for which there are HGs, and to achieve the goals and objectives of the FMP and its implementing regulations. The intended effect of these actions is to establish allowable harvest levels of Pacific Coast groundfish and to implement management measures designed to achieve but not exceed those harvest levels, while extending fishing and processing opportunities as long as possible during the year. This action also announces issuance of exempted fishing permits (EFPs) in 1996 and applications for exempted fishing permits in 1997.

DATES: Effective 0001 hours (local time) January 1, 1997, until the 1998 annual specifications and management measures are effective, unless modified, superseded, or rescinded. The 1998 annual specifications and management measures will be published in the Federal Register. Comments on the 1997 annual specifications and management measures will be accepted until February 5, 1997.

ADDRESSES: Comments on these specifications and management measures, tribal whiting allocation, and EFPs should be sent to Mr. William Stelle, Jr., Administrator, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or Ms. Hilda Diaz-Soltero, Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Information relevant to these specifications and management measures, including the stock assessment and fishery evaluation (SAFE) report, has been compiled in aggregate form and is available for public review during business hours at

the office of the Administrator (formerly Director), Northwest Region, NMFS (Regional Administrator), or may be obtained from the Pacific Fishery Management Council (Council), by writing the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206-526-6140; or Rodney R. McInnis (Southwest Region, NMFS) 310-980-4040.

SUPPLEMENTARY INFORMATION: The FMP requires that fishery specifications for groundfish be evaluated each calendar year, that HGs or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the HGs or quotas be published in the Federal Register and made effective by January 1, the beginning of the fishing year. This action announces and makes effective the final 1997 fishery specifications and the management measures designed to achieve them. These specifications and measures were considered by the Council at two meetings and were recommended to NMFS by the Council at its October 1996 meeting in San Francisco, CA. NMFS received three public comments regarding the allocation of Pacific whiting (whiting) to the Makah Indian tribe prior to the publication of these specifications. These comments are addressed in paragraph V. Regulatory citations have been changed throughout this document to conform with the nationwide consolidation of Pacific and Western Pacific fisheries regulations at 50 CFR part 600 and part 660.

I. Final Specifications

The fishery specifications include ABCs, the designation of HGs or quotas for species that need individual management, the apportionment of the HGs or quotas between domestic and foreign fisheries, and allocation between the open access and limited entry segments of the domestic fishery. As in the past, the specifications include fish caught in state ocean waters (0-3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3-200 nm offshore). Only changes to the specifications between 1996 and 1997 are discussed herein, otherwise they are the same as announced in 1996 (61 FR 279, January 4, 1996).

BILLING CODE 3510-22-P

Table 1. 1997 Specifications of Acceptable Biological Catch (ABC), Harvest Guidelines, and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) subareas

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)										Harvest Guideline (1000 mt)	Commercial Harvest Guideline (1000 mt)	Allocations (x 1000 mt)			
	(x 1000 mt)												Limited Entry 1000 mt	Open Access 1000 mt		
	Vancouver	Columbia	Eureka	Monte-rey	Concep-tion	Total ABC	Limited Entry %	Open Access %								
ROUNDFISH:																
Lingcod b/	1.3		0.3	0.7	0.1	2.4					2.4	1.5	1.21	80.9	0.29	19.1
Pacific cod	3.2		c/	c/	c/	3.2					--	--	--	--	--	--
Pacific whiting d/			290.0			290.0					232.0	207.0	--	--	--	--
Sablefish e/f/		8.7			0.425	9.125					7.8	7.02	6.557	93.4	0.463	6.6
Jack mackerel g/		52.6			--	52.6					52.6	--	--	--	--	--
FLATFISH:																
Dover sole e/h/	0.82-1.57	3.0	2.9	3.16-4.36	1.0	10.88-12.83					11.05 WOC 2.85 Col	--	--	--	--	--
English sole	2.0			1.1		3.1					--	--	--	--	--	--
Petrale sole	1.2		0.5	0.8	0.2	2.7					--	--	--	--	--	--
Arrowtooth flounder			5.8			5.8					--	--	--	--	--	--
Other flatfish	0.7	3.0	1.7	1.8	0.5	7.7					--	--	--	--	--	--
ROCKFISH:																
POP i/	0.0	0.0	c/	c/	c/	0.0					0.75	0.75	--	--	--	--
Shortbelly			23.5			23.5					23.5	23.5	--	--	--	--
Widow j/			7.7			7.7					6.5	6.5	6.26	96.3	0.24	3.7
Thornyheads: e/k/			8.0			8.0					--	--	--	--	--	--
Shortspine e/k/			1.0			1.0					1.38	1.38	1.376	99.75	0.003	0.25
Longspine e/k/			7.0			7.0					6.0	6.0	--	--	--	--
Sebastes complex: l/	7.130			9.664		7.130 N 9.664 S					6.656 N 9.284 S	6.656 N 9.284 S	6.017 N 6.257 S	90.4 N 67.4 S	0.639 N 3.027 S	9.6 N 32.6 S
Rocaccio-S m/	n/			0.265		0.265					0.387	0.332	0.224	67.4	0.108	32.6
Canary-N n/	1.22			n/		1.22					1.0	1.0	0.912	91.2	0.09	8.80
Chillipepper	c/			4.0		4.0					--	--	--	--	--	--
Yellowtail-N o/	0.454	0.984 N 0.335 S		n/		1.773					2.762	2.762	2.497	90.4	0.265	9.6

(Table 1. continued)

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC) (x 1,000 mt)						Harvest Guideline (1000 mt)	Commercial Harvest Guideline (1000 mt)	Allocations (x 1000 mt)				
	Vancouver a/	Columbia	Eureka	Monte- rey	Concep- tion	Total ABC			1000 mt	%	Open Access		
												1000 mt	%
Sebastes complex (cont'd)													
Remaining rockfish p/:	2.295			1.431		2.295 N 1.431 S	--	--	--	--	--	--	--
bank	c/			0.081		0.08	--	--	--	--	--	--	--
bocaccio-N	0.424			q/		0.424	--	--	--	--	--	--	--
canary-S	q/			0.085		0.085	--	--	--	--	--	--	--
darkblotched	0.209			0.047		0.26	--	--	--	--	--	--	--
POP-S	q/			0.020		0.02	--	--	--	--	--	--	--
redstripe	0.768			c/		0.77	--	--	--	--	--	--	--
sharpchin	0.398			0.071		0.47	--	--	--	--	--	--	--
silvergrey	0.051			c/		0.05	--	--	--	--	--	--	--
splitnose	0.274			0.868		1.14	--	--	--	--	--	--	--
yelloweye	0.039			c/		0.04	--	--	--	--	--	--	--
yellowmouth	0.132			c/		0.13	--	--	--	--	--	--	--
yellowtail-S	q/			0.104		0.155	--	--	--	--	--	--	--
Other rockfish r/	1.842			3.968		--	--	--	--	--	--	--	--
OTHER FISH s/	2.5	7.0	1.2	2.0	2.0	14.7	--	--	--	--	--	--	--

a/ U.S. Vancouver only, except for Pacific whiting.

b/ Lingcod. The stock assessment covers the entire Vancouver INPFC area, including Canada, and the Columbia subarea north of Cape Falcon. The U.S. ABC is based on 50 percent of the ABC for this assessment area, plus 400 mt for the Columbia area south of Cape Falcon. The coastwide harvest guideline equals the sum of the ABCs and includes a 900-mt estimate of recreational harvest. The limited entry and open-access percents are applied to the commercial portion of the harvest guideline, which is 1,500 mt (the 2,400 mt harvest guideline minus 900 mt recreational harvest).

c/ Other. These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "other rockfish" category for the areas footnoted only.

d/ Pacific whiting. The ABC is coastwide, including Canadian waters. The U.S. harvest guideline is set at 80 percent of the U.S./Canada ABC. Allocation to catcher/processor, mothership, or shore-based operations are based on the commercial portion of the harvest guideline (the U.S. harvest guideline minus the tribal allocation of 25,000 mt for 1997).

e/ DTS complex. Dover sole, thornyheads, and trawl-caught sablefish are managed together as the "DTS complex." There is no harvest guideline for the DTS complex.

f/ Sablefish. The 7,800 mt harvest guideline north of the Conception area (36° N. lat.) is the 8,700 mt ABC (for that same area) reduced by 900 mt for estimated discards. The 7,800-mt harvest guideline is reduced by 780 mt for the treaty tribes before dividing the remaining 7,020 mt between the limited entry (6,557 mt) and open-access (463 mt) fisheries. The limited entry allocation is further allocated 58 percent (3,803 mt) to the trawl fishery, and 42 percent (2,754 mt) to the nontrawl fishery, both of which are harvest guidelines.

g/ Jack mackerel. Only jack mackerel north of 39°00' N. latitude are managed by the FMP. The ABC and harvest guideline include waters beyond 200 nm.

h/ Dover sole. The ABC for Dover sole in the Vancouver area ranges from 818 mt (the ABC recommended in the 1995 assessment) to 1,565 mt (1990-1994 average landings). The ABCs for Dover sole in the Columbia and Eureka areas are based on the stock assessment. The ABC for Dover sole in the Monterey area ranges from 3,164 mt (1990-1994 average landings) to 4,360 mt (the level recommended in the 1995 assessment).

The 11,050 mt coastwide harvest guideline for Dover sole is based on the upper end of the ABC range for the Vancouver subarea and the lower end of the ABC for the Monterey subarea (which are the recent average catches in those two subareas), plus the ABCs for the Columbia, Eureka and Conception subareas, minus 580 mt for estimated discards. The coastwide harvest guideline includes a 2,850 mt harvest guideline for the Columbia subarea (3,000 mt ABC minus 150 mt estimated discards).

i/ Pacific ocean perch. The ABC remains at zero. The harvest guideline for landed catch applies to the Vancouver/Columbia subareas combined, and is intended to represent only incidental catches.

j/ Widow rockfish. The 6,500 mt harvest guideline is derived by subtracting 16 percent for estimated discards (1,200 mt) from the ABC (7,700 mt).

k/ Thornyheads. The thornyhead ABCs and harvest guidelines apply north of Point Conception, CA (34°27' N. lat.). The harvest guideline for shortspine thornyheads has been reduced by 120 mt to represent landings rather than total catch. The total

catch estimate of 1,500 mt (which was the harvest guideline in 1996) is 50 percent above the ABC, but below the overfishing threshold, in order to allow greater harvest of longspine thornyheads. Eight percent is deducted for discards. The harvest guideline for longspine thornyheads is 1,000 mt below its ABC to help prevent overharvest of shortspine thornyheads.

1/ Sebastes complex. The Sebastes-north ABC is the sum of the ABCs for canary, yellowtail, "remaining rockfish," and "other rockfish" in the Vancouver and Columbia areas. The Sebastes-north harvest guideline, which applies to the Vancouver/Columbia area, is the sum of the harvest guidelines for canary and yellowtail rockfish, plus the sum of the ABCs or recent catch, whichever is less, for "remaining rockfish" and "other rockfish."

Within the Sebastes-north harvest guideline are two small harvest guidelines for commercial harvest of black rockfish by the Makah, Quileute, Hoh, and Quinault Indian tribes: 20,000 lb (9,072 kg) for the EEZ north of Cape Alava (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.).

The Sebastes-south ABC is the sum of the ABCs for bocaccio, chilipepper, "remaining rockfish," and "other rockfish" in the Eureka, Monterey, and Conception areas. The Sebastes-south harvest guideline, which applies to the Eureka/Monterey/Conception area, is the harvest guideline for bocaccio plus the sum of the ABCs or recent catch, whichever is less, for "remaining rockfish" and "other rockfish."

The harvest guidelines for the Sebastes complex, bocaccio, canary rockfish, and yellowtail rockfish are for total catch, so estimates of discards will be added during the season as data become available.

m/ Bocaccio. The bocaccio harvest guideline, which applies to the Eureka, Monterey, and Conception areas and represents total catch, is stepped down from 1,700 mt in 1996 to 387 mt in 1997, the estimated overfishing threshold. In 1997, 55 mt for estimated recreational harvest is subtracted from the harvest guideline before deriving the limited entry and open access allocations. In 1998, the harvest guideline is expected to equal the ABC.

n/ Canary rockfish. Even though the ABC increased slightly (from 1,000 mt in 1996 to 1,220 mt in 1997), landings are not intended to increase in 1997. The increase in the from 850 mt (for landed catch) in 1996 to 1,000 mt (for total catch) in 1997 results from adding an estimate for discards in 1997.

o/ Yellowtail rockfish. The stock assessment for northern yellowtail rockfish addressed three separate areas: 454 mt for the U.S. Vancouver area; 984 mt for the Columbia area north of Cape Falcon (45°46' N. lat.); and 439 mt for the Eureka area plus the Columbia area south of Cape Falcon. The ABC has been prorated to conform with management areas for other species in the Sebastes complex, at 335 mt for the southern Columbia area and 104 mt for the Eureka area. The prorated ABC for the Vancouver/Columbia area is 1,773 mt, a reduction of more than 70

percent from the 1996 ABC of 6,540 mt for this area. A separate stock assessment provided the 155 mt ABC for the Monterey/Conception area, resulting in an ABC of 259 mt for yellowtail in the Eureka/Monterey/Conception area.

The harvest guideline for yellowtail rockfish in the Vancouver/Columbia area is stepped down from 3,590 mt in 1996 to 2,762 mt in 1997, with the intent to set the harvest guideline equal to ABC in 1998. The 1997 harvest guideline represents total catch, whereas in 1996 it represented landed catch only.

p/ Remaining rockfish. Prior to 1997, this category included all species in the Sebastes complex that did not have an individual ABC, and therefore included species that in 1997 are designated as "other rockfish." In 1997, "remaining rockfish" includes only those species and areas listed in Table 1.

q/ There is a separate ABC for this species and area which is not included in "remaining rockfish" or "other rockfish."

r/ Other rockfish. "Other rockfish" includes offshore Sebastes species not identified in Table 1. It is based on the Sebastes complex assessment of commercial landings and includes estimates of recreational landings for those species without individual ABCs.

s/ Other fish. Includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

Changes to the ABCs and HGs

The ABCs, which are based on the best available scientific information, represent the total catch, including amounts that are discarded as well as retained. Stock assessment information considered in determining the ABCs is available from the Council, and was made available to the public, before the Council's October 1996 meeting, in the Council's SAFE document (see ADDRESSES). The 1997 ABCs are changed from 1996 for Pacific whiting, the *Sebastes* complex, bocaccio, canary rockfish, and yellowtail rockfish. New ABCs were developed for "remaining rockfish" and for a new category of "other rockfish." Changes that result only from rounding are not explained.

Those species or species groups managed with HGs in 1996 will continue to be managed with HGs in 1997. The 1997 HGs differ from 1996 for Pacific whiting, shortspine thornyheads, the *Sebastes* complex, yellowtail rockfish, bocaccio, and canary rockfish.

Stock assessments and inseason catch monitoring are designed to account for all fishing mortality, including that resulting from fish discarded at sea. Discards of rockfish and sablefish in the fishery for whiting are well monitored and are accounted for inseason as they occur. In the other fisheries, discards caused by trip limits have not been monitored consistently, so discard estimates have been developed to account for this extra catch. A discard level of about 16 percent of the total catch, previously measured for widow rockfish in a scientific study, is assumed to be appropriate for the commercial fisheries for widow rockfish, yellowtail rockfish, canary rockfish, and Pacific ocean perch (POP). A discard estimate of 8 percent is used for the deepwater thornyhead fishery, 5 percent for Dover sole, and 20 percent for sablefish.

In some cases (e.g., sablefish, widow rockfish, thornyheads, Dover sole), an estimated amount of discards has been subtracted from the ABC to determine the HG for the landed catch. In other cases (e.g., whiting, *Sebastes* complex), a HG representing total catch is more appropriate. Discards in the whiting fishery have been well documented and, therefore, the HG for whiting represents total catch and discards are accounted for during the season. In 1996, the HG for the *Sebastes* complex included only landings to be consistent with most of the other groundfish HGs. However, using HGs based only on landed catch was too rigid because it did not provide for inseason adjustments, a particular problem when actual reports of discards during the season differed from the

amount assumed at the beginning of the year. Therefore, for greater management flexibility during the season, HGs for the *Sebastes* complex and its components in 1997 will include the total catch, and estimates of discards will be added to the landings during the season.

The 1997 changes to the ABCs and HGs are summarized below. More detailed information appears in the Council's SAFE document (September 1996), the "Groundfish Management Team Final Acceptable Biological Catch and Harvest Guideline Recommendations for 1997" (GMT Report C.4.) from the October 1996 Council meeting, and the Council's newsletters for its August and October 1996 meetings.

Whiting

A new stock assessment for whiting indicated that the 1994 year class was larger than previously expected. This, combined with substantive changes in the stock assessment model, resulted in an ABC of 290,000 mt for the U.S. and Canada combined, 25,000 mt higher than in 1996. Nonetheless, this ABC may be somewhat conservative. Another year of data is needed to verify whether the apparent high abundance of the 1994 year class is due to an actual increase in fish, rather than a shift in their distribution to more northern waters. Other factors considered in setting the ABC were promoting stability in landings by distributing the harvest of strong year classes over several years and the need to suppress the bycatch of yellowtail rockfish at a time when that fishery is facing a major reduction in its ABC. The U.S. HG (232,000 mt) is set at 80 percent of the U.S.-Canadian ABC, as in recent years. Allocation to the Makah treaty Indian tribe in 1997 is discussed in paragraph V.

Pacific Ocean Perch (POP)

Since 1981, POP has been managed under a schedule intended to rebuild POP to a level that would annually support removals of 1,000 mt. Landings were higher than this as recently as 1993. To achieve an annual harvest of about 1,000 mt while maintaining a biologically sound harvest rate, the current biomass would have to double. This would be a slow process unless there is a fortuitous sequence of large recruitments. The harvest guideline for POP is meant to accommodate only small, incidental catches and, therefore, is not a target to be achieved deliberately. Trip limits for POP will not be increased to achieve the harvest guideline, and may be reduced if landings are too high. The harvest

guideline of 750 mt for POP is the same as last year.

Shortspine Thornyheads

The ABC for shortspine thornyheads is the same as in 1996, but the HG is reduced from 1,500 mt to 1,380 mt to more accurately represent the landed catch.

Sebastes Complex

The ABCs for the *Sebastes* complex are the sum of the ABCs of its components. The HGs (for total catch) are the sum of the HGs for each species or of the ABCs for those species without HGs. The 1997 HG for the *Sebastes* complex in the Vancouver/Columbia area is reduced from 11,900 mt for landed catch in 1996 to 7,130 mt for total catch in 1997. The 1997 HG for the *Sebastes* complex in the Eureka/Monterey/Conception area is reduced from 13,200 mt for landed catch in 1996 to 9,664 mt for total catch in 1997. The large declines are due primarily to large reductions in the ABCs and HGs for bocaccio, yellowtail rockfish, and also to new ABC estimates for the "remaining rockfish" and "other rockfish" categories.

Bocaccio

The 1997 ABC for bocaccio in the Eureka/Monterey/Conception area is 265 mt, only 15 percent of the 1,700-mt ABC in 1996. (Landings were projected at 454 mt for 1996, so the reduction in ABC, while severe, is not as extreme as it appears.) The new stock assessment indicates it is unlikely that the current stock size is greater than 17–20 percent of the 1970 level but also suggests a high degree of uncertainty in current stock size. Recruitment is highly variable for bocaccio. Assuming that future recruitment will be similar to that in 1969–1996, the level of fishing mortality that would produce spawning biomass at 35 percent of its unfished level (F35%) is 265 mt. The 1997 HG (for total catch) is 387 mt, 122 mt higher than ABC, and at, but not above, the overfishing threshold for bocaccio. The Council recommended that the bocaccio HG be set above ABC in 1997 to allow a 1-year phase-down to mitigate the economic impacts of a 60 percent reduction in catch in 1 year (from 664 mt to 265 mt). The consequences of the phase-down are that the ABC and HG in 1998, and possibly subsequent years, most likely will be lower than they would have been if 1997 catches did not exceed ABC. The Council intends that the HG be set equal to ABC in 1998.

Bocaccio also are particularly difficult to manage, because of the multiplicity of gear types involved, including trawl, set

net and recreational fisheries. The 2-month cumulative trip limit in the limited entry fishery is substantially reduced from 60,000 lb (27,216 kg) in 1996 to 12,000 lb (5,443 kg) in 1997. Additional trip limits specific to bocaccio have been placed on the open access fishery in 1997. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits to 500 lb (227 kg) in 1997, one third of the 1996 shrimp trip limit and one half of the 1996 prawn trip limit.

Canary Rockfish

The 1997 ABC for canary rockfish in the Vancouver/Columbia area is 1,220 mt, slightly higher than the 1,000-mt ABC in 1996. A new assessment for canary rockfish used two models that estimate the 1995 spawning biomass is 18–33 percent of the 1967 value. Both models predict yield and spawning biomass levels will decline during 1997–1999. For both models combined, the average catch projection for the next 3 years is 1,220 mt when average recruitment is assumed. The HG for canary rockfish is increased from 850 mt for landed catch in 1996 to 1,000 mt for total catch in 1997 to account for estimated discards.

Yellowtail Rockfish

The 1997 ABC for yellowtail rockfish in the Vancouver/Columbia/Eureka area is 1,773 mt, 4,667 mt lower than the 6,440-mt ABC in 1996. (The stock assessment determined ABCs for different areas. The 1997 ABC is prorated in Table 1 to apply north and south of the Columbia-Eureka boundary for consistency with other species in the *Sebastes* complex.) The results of the new assessment have caused a great deal of concern because they conflict with the impressions of many who fish for yellowtail rockfish. For the Eureka/south Columbia area (south of Cape Falcon (45°46' N. lat.)), addition of 1995–96 stock assessment data resulted in substantial reductions in estimates of biomass and recruitment of the 1984 year class in 1988 (to 20 percent of its former level). For the north Columbia area (north of Cape Falcon), addition of the 1995–96 data also reduced estimates of biomass and recruitment. Major changes did not occur in the U.S. Vancouver area. Available fishery age-composition data indicate that fish older than 25 years have all but disappeared from the fishery. Additionally, there is no evidence of any strong incoming year classes. Only half the population is mature 3 or 4 years after recruiting to the fishery, so immature fish have a relatively high likelihood of being

caught before they have had an opportunity to contribute to building future biomass. Given this new information, it appears that yellowtail rockfish may have been fished for the last several years above the overfishing threshold.

The recommended 1997 HG of 2,762 mt for yellowtail rockfish in the Vancouver/Columbia area represents total catch, whereas the 3,590-mt HG in 1996 was for landed catch (equivalent to 4,160 mt for total catch). The Council recommended that the 1997 HG be set at, but not above, the overfishing threshold. Fishing is allowed at, but not above, the overfishing threshold of 2,762 mt in 1997 in order to mitigate the sudden and severe economic impact to the fishing industry that would occur if the HG were reduced from the 1996 ABC of 6,440 mt to the 1997 ABC of 1,773 mt in a single year. The Council recognized, however, the need to adjust catches to the ABC level as soon as possible, and consequently, announced its intent that this phase-down in harvest last only a single year and that it intended to recommend a 1998 HG equivalent to the 1998 ABC. Fishing at the overfishing threshold for 1997 is expected to result in a lower ABC and HG in 1998 than if the 1997 harvest did not exceed ABC, but the fishing industry will have had a full year to adjust to reduced harvest levels.

The Council carefully considered the possible impacts of continuing to harvest at a level greater than ABC for 1 more year in contrast to making the full adjustment to the ABC level in a single year. The Council concluded, based on risk analysis conducted by the stock assessment scientists, that the 1-year phase-down will cause only a small further decline in the stock level while it buffers the economic impact of the harvest reductions. Lower stock levels means the likelihood of continued lower ABCs and HGs for the next few years until the stock recovers sufficiently to allow higher harvests. The Council also recommended the phase-down to allow sufficient time for further analysis of some of the components of the stock assessment in order to refine estimates of the ABC for 1998. Considerable public testimony pointed to some indicators, such as yellowtail bycatch rates in the whiting and shrimp trawl fisheries, that were contradictory to the stock assessment results. A work plan was developed to examine some of these indicators and redo the stock assessment during the upcoming year so that the results could be used to set the 1998 ABC.

Yellowtail rockfish is particularly difficult to manage because it is

encountered as bycatch in other fisheries. A substantial portion of the yellowtail harvest guideline is taken as bycatch in the whiting and shrimp fisheries. Catch data from the whiting fishery have been examined, and regulatory changes to reduce bycatch are not obvious. The whiting ABC may be somewhat conservative in 1997, in part to suppress the bycatch of yellowtail rockfish. The at-sea processing sector of the whiting fishery has agreed to monitor its bycatch more closely, using daily satellite transmissions to alert them to areas of high bycatch of yellowtail rockfish, as was done to monitor salmon bycatch in 1996. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits to 500 lb (227 kg) in 1997, one third of the 1996 shrimp trip limit and one half of the 1996 prawn trip limit. The target fishery for yellowtail rockfish is addressed by reducing the trip limit, from 6,000 lb (2,722 kg) per month north of Cape Lookout OR (45°20'15" N. lat.) and 35,000 lb per month between Cape Lookout and Cape Mendocino CA (40°30' N. lat.) to 6,000 lb (2,722 kg) per 2-month period in both areas.

Remaining Rockfish

New assessments were provided for a number of previously unassessed rockfish species (listed in table 1). "Remaining rockfish" includes canary, POP, and yellowtail rockfish in the Eureka/Monterey/Conception area, and bocaccio in the Vancouver/Columbia area—areas not included in the individual HGs for these species. The ABCs were based on either the ABC from the assessment or recent catch, whichever is less.

Other Rockfish

Assessments were not conducted for a number of other rockfish species ("other rockfish"). The combined ABC for these species is set at the recent landed catch.

Setting HGs Greater Than ABC

In most cases, HGs are less than or equal to the ABCs. However, the Council recommended HGs that exceed the ABCs for POP and shortspine thornyheads (as in 1996), yellowtail rockfish, and bocaccio. The FMP requires that the Council consider certain factors when setting a HG above an ABC. These factors were analyzed by the Council's Groundfish Management Team (GMT) and considered at the Council's October 1996 meeting before the Council recommended the 1997 HGs. These factors also were considered when establishing the 20-year rebuilding schedule for POP in the 1981

FMP, in the most recent stock assessments for POP (in the September 1995 SAFE document) and shortspine thornyheads (in the October 1994 SAFE document), and in the GMT's recommendations for 1996 (GMT Report C.1., October 1995) and for 1997 (GMT Report C.4., October 1996).

Overfishing

The FMP defines "overfishing" as a fishing mortality rate that would, in the long term, reduce the spawning biomass per recruit below 20 percent of what it would have been if the stock had never been exploited (unless the species is above the level that would produce maximum sustainable yield (MSY)). The rate is defined in terms of the percentage of the stock removed per year. Therefore, high catch rates can cause overfishing at any stock abundance level. Conversely, overfishing does not necessarily occur for stocks at low abundance levels if the catch can be kept to a sufficiently small fraction of that stock level. The target rate for exploitation of Pacific Coast groundfish typically is the rate that would reduce spawning biomass per recruit to 35 percent of its unfished level. This desired rate of fishing will always be less than the overfishing rate, so there is a buffer between the management target and the level that could harm the stock's long-term potential productivity. If the overfishing threshold is reached, the Guidelines for Fishery Management Plans at 50 CFR part 600 require the Council to identify actions to be undertaken to alleviate overfishing. As discussed above, efforts have been taken to avoid exceeding the overfishing thresholds for bocaccio and yellowtail rockfish in 1997 by reducing their HGs to the F20% level and by instituting more restrictive trip limit management in 1997, that will make it less likely that HGs will be reached before the end of the year. In addition, the Council has expressed its intent to reduce the HGs to the F35% level in 1998.

Foreign and Joint Venture Fisheries

For those species needing individual management that will not be fully utilized by domestic processors or harvesters, and that can be caught without severely affecting species that are fully utilized by domestic processors or harvesters, foreign or joint venture operations may occur. A joint venture occurs when U.S. vessels deliver their catch to foreign processing vessels in the EEZ. A portion of the HGs or quotas for these species may be apportioned to domestic annual harvest (DAH), which in turn may be apportioned between

domestic annual processing (DAP) and joint venture processing (JVP). The portion of a HG or quota not apportioned to DAH may be set aside as the total allowable level of foreign fishing (TALFF). In January 1997, no surplus groundfish are available for joint venture or foreign fishing operations. Consequently, all the HGs in 1997 are designated entirely for DAH and DAP (which are the same in this case); JVP and TALFF are set at zero.

In the unlikely event that fish are reallocated inseason and a foreign or joint venture fishery should occur, the incidental catch levels would be as follows, subject to change during the year: For a whiting fishery, the same as announced at Table 2, footnote 1, of 58 FR 2990 (January 7, 1993); for a jack mackerel joint venture, initially the same as those suggested in section 12.5.2 of the FMP.

II. The Limited Entry Program

The FMP established a limited entry program that, on January 1, 1994, divided the commercial groundfish fishery into two components: The limited entry fishery and the open access fishery, each of which has its own allocations and management measures. The limited entry and open access allocations are calculated according to a formula specified in the FMP, which takes into account the relative amounts of a species taken by each component of the fishery during the 1984-88 limited entry window period. At its October 1996 meeting, the Council recommended the species and areas subject to open access and limited entry allocations in 1997, and the Regional Administrator calculated the amounts of the allocations that are presented in Table 1. Unless otherwise specified, the limited entry and open access allocations are treated as HGs in 1997.

Open Access Allocations

The open access fishery is composed of vessels that operated under the HGs, quotas, and other management measures governing the open access fishery, using (1) exempt gear, or (2) longline or pot (trap) gear fished from vessels that do not have permits endorsed for use of that gear. Exempt gear means all types of legal groundfish fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp or spot or ridgeback prawns (shrimp trawls), and, south of Point Arena, CA (38°57'30" N. lat.), California halibut or sea cucumbers.)

The open access allocation is derived by applying the open access allocation percentage to the annual HG or quota

after subtracting any set-asides for recreational or tribal fishing. For those species in which the open access share would have been less than 1 percent, no open access allocation is specified unless significant open access effort is expected.

Limited Entry Allocations

The limited entry fishery means the fishery composed of vessels using limited entry gear fished pursuant to the HGs, quotas, and other management measures governing the limited entry fishery. Limited entry gear means longline, pot, or groundfish trawl gear used under the authority of a valid limited entry permit issued under the FMP, affixed with an endorsement for that gear. (Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot prawns, or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Point Arena, CA.)

The limited entry allocation is the allowable catch (HG or quota) reduced by: (1) Set-asides, if any, for treaty Indian fisheries or recreational fisheries; and (2) the open access allocation. In 1996, a new definition was added for "commercial harvest guideline", (the commercial harvest guidelines are set forth in Table 1). It is the HG minus the amount set aside for tribal or recreational fishing and, therefore, is the number that, when multiplied by the open access allocation percentages, provides the open access and limited entry allocations. Estimates of recreational harvest are subtracted for two species in 1997, 55 mt for bocaccio (which also is reflected in the allocations for the *Sebastes* complex in the Eureka, Monterey, and Conception subareas), and 900 mt for lingcod. Allocations for Washington coastal tribal fisheries are discussed in paragraph V.

III. 1997 Management Measures

Projections of landings in 1996 are based on the information available to the Council at its October 1996 meeting (GMT Supplemental Report C.4., October 1996).

A. Limited Entry Fishery

The following management measures apply to vessels operating in the limited entry fishery starting January 1, 1997, and are designed to keep landings within the HGs or limited entry allocations. Cumulative trip limits continue to be used for most of the limited entry fishery, which allows fishers to accumulate fish over a period of time without limit on the number of landings. Two-month cumulative limits

will continue to be used for most of the limited entry fishery in 1997. As in 1996, no more than 60 percent of a 2-month limit may be taken in either calendar month, resulting in a variable monthly trip limit within the 2-month limit. This enables the limited entry fleet to maintain its current monthly fishing pattern, target on 50 percent of the 2-month cumulative limit in a month, and have the protection of a buffer equivalent to 10 percent of the 2-month cumulative limit to account for inaccuracies in weighing fish at sea or for small amounts caught above the target level. Unless otherwise announced later in the year, the 2-month periods are: January–February, March–April, May–June, July–August, September–October, and November–December. One-month periods may be used later in the year.

Platooning

An optional platooning system is added for 1997, that enables the limited entry trawl fleet to provide a more consistent supply of fish to processors. Whereas the cumulative limits normally apply by calendar month (this would be considered the "A" platoon), a vessel in the "B" platoon would choose to operate under limits out of phase by 2 weeks, from the 16th to the 15th of the month. All limited entry trawl vessels will automatically be in the "A" platoon, unless the permit owner indicated in the annual permit renewal that the permitted vessel will participate in the "B" platoon. Vessels operating in the "B" platoon will not be able to land any species of groundfish from January 1–15, 1997. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon so that a vessel's "B" limit will not be changed during its cumulative trip limit period. Special provisions will be made to accommodate "B" vessels at the end of the year so that the amount of fish made available to both "A" and "B" vessels is the same. A vessel in the "B" platoon will have the same cumulative trip limit for the final period as vessels in the "A" platoon, but the final period may be 2 weeks shorter, so that both the "A" and "B" fishing periods end on December 31, 1997. For example, if the last period is a 2-month cumulative trip limit for November–December, the vessel would be able to take it in 6 weeks (November 16–December 31) without a 60-percent monthly limit. The choice of platoon applies to the permit for the entire calendar year, even if the permit is sold, leased, or otherwise transferred. The platoon system is experimental and may not be continued in 1998 if the Council

decides the benefit does not outweigh the administrative burden.

Widow Rockfish

In 1996, the 2-month cumulative limit of 70,000 lb (31,752 kg) was in effect until September, at which time it was reduced to 50,000 lb (22,680 kg). In November, a monthly cumulative limit of 25,000 lb (11,340 kg) was applied until the end of the year. Landings were projected to be 6,275 mt in 1996, within 1 percent of the HG. In 1997, the year will start with the same cumulative limits as in 1996: 70,000 lb (31,752 kg) per 2-month period.

The *Sebastes* Complex (Including Yellowtail Rockfish, Canary Rockfish, and Bocaccio)

Beginning in January 1996, the 2-month cumulative trip limits for the *Sebastes* complex were: 70,000 lb (31,752 kg) north of Cape Lookout (45°20'15" N. lat.), 100,000 lb (45,359 kg) between Cape Lookout and Cape Mendocino (40°30' N. lat.), and 200,000 lb (90,719 kg) south of Cape Mendocino. Two-month cumulative limits also applied to yellowtail rockfish, canary rockfish and bocaccio, which counted toward the limits for the *Sebastes* complex. Beginning in January 1996, these limits were: Yellowtail rockfish—32,000 lb (14,515 kg) north of Cape Lookout or 70,000 lb (31,752 kg) between Cape Lookout and Cape Mendocino; canary rockfish—18,000 lb (8,165 kg); bocaccio south of Cape Mendocino—60,000 lb (27,216 kg). These limits remained in effect until September 1996, at which time the 2-month cumulative limit for yellowtail was reduced to 20,000 lb (9,072 kg) north of Cape Lookout. In November, all the trip limits for the *Sebastes* complex north of Cape Mendocino were converted to 1-month cumulative limits to provide more management flexibility. The 1-month limits were set at half the poundage of the 2-month cumulative limits, except for yellowtail rockfish north of Cape Lookout, which was reduced to 6,000 lb (2,722 kg).

By the end of 1996, landings are projected to be as follows: *Sebastes* complex in the Vancouver/Columbia area—8,583 mt (19 percent below the HG); yellowtail rockfish north of Cape Lookout—3,144 mt (5 percent over the HG), but this projection was made before the cumulative limit was reduced in November 1996; yellowtail rockfish south of Cape Lookout—1,621 mt (33 percent below the HG); canary rockfish—868 mt (2 percent below the HG); and bocaccio—654 mt, including estimated recreational catch (56 percent below the HG).

In January 1997, the 2-month cumulative trip limits for the *Sebastes* complex are 30,000 lb (13,608 kg) north of Cape Mendocino and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these limits, no more than 14,000 lb (6,350 kg) may be canary rockfish; 6,000 lb (2,722 kg) may be yellowtail rockfish north of Cape Mendocino; and 12,000 lb (5,443 kg) may be bocaccio south of Cape Mendocino. The yellowtail and bocaccio cumulative trip limits are substantially reduced because of severe reductions in their HGs. As discussed above, both yellowtail and bocaccio will be fished at their overfishing threshold in 1997, as a 1-year step down to fishing at F35%. Both species are particularly difficult to manage because of the multiplicity of gear types involved. A substantial portion of the yellowtail HG is taken as bycatch in the whiting and shrimp fisheries. Catch data from the whiting fishery have been examined, and regulatory changes to reduce bycatch are not obvious. The whiting ABC may be somewhat conservative in 1997, in part to suppress the bycatch of yellowtail rockfish. The at-sea processing sector of the whiting fishery has agreed to monitor its bycatch more closely, using daily satellite transmissions to alert them to areas of high bycatch, as was done to monitor salmon bycatch in 1996. Bycatch of rockfish in the shrimp and prawn trawl fisheries is being addressed by reducing the groundfish trip limits from 1,500 lb (680 kg) and 1,000 lb (454 kg), respectively, to 500 lb (227 kg) of groundfish in 1997. Management of bocaccio is further complicated by a significant recreational harvest; bag limit reductions may be necessary in the future.

The declaration procedures, instituted by the States of Oregon and Washington for vessels operating on both sides of Cape Lookout, are no longer in effect because the cumulative limits no longer differ north and south of Cape Lookout.

POP

In 1996, the 2-month cumulative trip limit for POP of 10,000 lb (4,536 kg) continued until July 1, when it was reduced to 8,000 lb (3,629 kg). Landings were projected to be 771 mt in 1996, 4 percent above the HG. With the 1997 HG the same as in 1996, the 2-month cumulative limit will be set again at 8,000 lb (3,629 kg) beginning in January 1997. POP is managed to achieve a rebuilding schedule, so trip limits will not be increased to achieve the HG.

Sablefish

The sablefish HG is subdivided among several fisheries. The tribal fishery allocation is set aside prior to dividing the balance of the HG between the commercial limited entry and open access fisheries. These three fisheries are managed differently. The limited entry allocation is further subdivided into trawl (58 percent) and nontrawl (42 percent) allocations. Trawl-caught sablefish are managed together with Dover sole and thornyheads as the DTS complex because they often are caught together. A projection for landings of nontrawl sablefish is not yet available because data from the October mop-up fishery have not been confirmed.

DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish)

In 1996, the 2-month cumulative trip limits for the DTS complex remained in effect throughout the year, as follows: 70,000 lb (31,752 kg) north of Cape Mendocino and 100,000 lb (45,359 kg) south of Cape Mendocino. Within the cumulative limits for the DTS complex there were limits for Dover sole, thornyheads, and trawl-caught sablefish. The cumulative limits for thornyheads (20,000 lb (9,072 kg), of which no more than 4,000 lb (1,814 kg) could be shortspine thornyheads) and for trawl-caught sablefish (12,000 lb (5,443 kg)) remained in effect the entire year, as did the 500-lb (227-kg) "per trip" limit on sablefish smaller than 22 inches (56 cm) total length. Initially, the limit on Dover sole was the amount of the DTS cumulative limit remaining after subtracting sablefish and thornyheads. In July, this was changed north of Cape Mendocino to a specific trip limit of 38,000 lb (17,236 kg) to protect Dover sole in the Columbia area. Landings of sablefish (trawl-caught), Dover sole (coastwide and in the Columbia area), and shortspine thornyheads are expected to be within 10 percent of their respective HGs in 1996. Landings of longspine thornyheads are projected to be 33 percent below the HG in 1996. In 1997, the trip limits will continue at the same levels that have been in effect since July 1996.

Nontrawl Sablefish

Small daily trip limits were applied to the nontrawl fishery again in 1996 before and after the September 1-5, 1996 "regular" and October 1-14, 1996 "mop-up" seasons. A 300-lb (136-kg) daily trip limit was applied only north of the Conception subarea (36°00' N. lat.), the same area covered by the HG. In the Conception area, where there is

no HG and landings had been below the 425-mt ABC in 1996, the daily trip limit was set at 350 lb (159 kg) to accommodate most landings without encouraging excessive effort shifts into that area. The trip limit for sablefish smaller than 22 inches (56 cm) of 1,500 lb (680 kg) or 3 percent of all legal sablefish on board, whichever is greater, remained in effect during the regular and mop-up seasons.

In 1996, as in 1995, the regular (derby) season was preceded by a 72-hour closure for all limited entry and open access fixed gear used to take and retain groundfish, with one exception. Pot gear could be set 24 hours before the regular season because this gear takes longer to deploy.

In 1997, the same daily trip limits for the limited entry fishery will apply outside the regular and mop-up seasons and any closure. The "per trip" limit for nontrawl sablefish smaller than 22 inches (56 cm) will remain in effect during the regular and mop-up fisheries. The Council recommended a number of management changes for 1997 that have not yet been approved by NMFS. These recommendations are summarized in paragraph IV.E.(3)(c). The Council also is considering different management strategies for 1998 and beyond, but has not yet submitted a recommendation to NMFS.

Whiting

Approximately 212,900 mt of whiting was harvested in 1996, 85,125 mt by the shore-based fleet, 112,776 mt by the at-sea processing sector (which includes deliveries to motherships), and about 15,000 mt by the Makah tribal fishery. The 10,000-lb (4,536-kg) trip limit for whiting taken before and after the regular whiting season and inside the 100-fathom (183-m) contour in the Eureka subarea (40°30'-43°00' N. lat.) continues in effect in 1997. Additional regulations, including the allocation of whiting among non-tribal sectors, are found at 50 CFR 660.323(a)(4). The Council has recommended a number of changes that are summarized in paragraph IV.F. These changes have not yet been approved by NMFS.

Lingcod

The 2-month cumulative trip limit for lingcod is the same in 1997 as throughout 1996, 40,000 lb (18,144 kg) per 2-month period. As in 1996, lingcod smaller than 22 inches (56 cm) may not be landed in the commercial or recreational fisheries except for 100-lb (45-kg) per trip for trawl-caught lingcod. Landings of lingcod are projected at 2,708 mt in 1996, including estimated

recreational catch, 8 percent below the HG.

Black Rockfish

Black rockfish off the State of Washington continue to be managed under the regulations at 50 CFR 660.323(a)(1) for non-tribal fisheries. The State of Oregon implements trip limits for black rockfish off the Oregon coast.

B. Open Access Fishery

The trip limits for the open access fishery are designed to keep landings within the open access allocation, while allowing the fisheries to operate for as long as possible during the year. The overall open access limits for rockfish, sablefish, and "all groundfish" in 1997 are the same as in 1996 with several exceptions: (1) The thornyhead open access allocation of only 3 mt is expected to be taken entirely as incidental catch in open access fisheries for other species. Consequently, north of Pt. Conception thornyheads may not be taken and retained, possessed, or landed, as has been the case since May 1996; (2) the monthly cumulative trip limit for rockfish is applied coastwide in 1997, whereas in 1996, it differed north and south of Cape Lookout; (3) additional limits are established for bocaccio: For setnets or trammel nets, no more than 4,000 lb (1,814 kg) of bocaccio cumulative per month south of Cape Mendocino; and, for hook-and-line or pot gear, no more than 2,000 lb (907 kg) of bocaccio cumulative per month south of Cape Mendocino, of which no more than 300 lb (136 kg) may be taken per trip; (4) language is changed to clarify that open access nontrawl gear may not exceed limits that apply to limited entry nontrawl gear; (5) daily trip limits for sablefish will apply to all open access gear in 1997, not only to nontrawl gear as was the case in 1996; and (6) trip limits for groundfish are reduced from 1,500 lb (680 kg) in the shrimp trawl fishery and 1,000 lb (454 kg) in the prawn trawl fishery to 500 lb (227 kg), including the 300-lb (136-kg) daily trip limit for sablefish. The reduction in the groundfish limit is primarily to discourage bycatch of yellowtail and other rockfish.

C. Operating in Both Limited Entry and Open Access Fisheries

Vessels using open access gear are subject to the management measures for the open access fishery, regardless of whether the vessel has a valid limited entry permit endorsed for any other gear. In addition, a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or

size limit (for the same area) in the limited entry fishery.

A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit. For example: In January, a trawl vessel catches 7,000 lb (3,175 kg) of sablefish in the limited entry fishery, and in the same month catches 1,000 lb (454 kg) of sablefish with shrimp trawl (open access) gear, for a total of 8,000 lb (3,629 kg) of sablefish. Because the open access landings are counted toward the limited entry limit, the vessel would have exceeded its limited entry, cumulative limit of 7,200 lb (3,266 kg) (60 percent of the 12,000-lb (5,443-kg) 2-month cumulative limit for the limited entry fishery).

D. Operating in Areas With Different Trip Limits

Trip limits may differ for a species or species complex at different locations on the coast. Unless otherwise stated (as for black rockfish or for species with daily trip limits), the cross-over provisions at paragraph IV.A.(12) apply. In general, a vessel fishing for groundfish in a more restrictive area is subject to the more restrictive limit for the duration of that trip limit period. In 1997, these provisions are relaxed to apply only to vessels taking and retaining groundfish rather than any species. Since trip limits for the *Sebastes* complex and yellowtail rockfish will be the same in Washington and Oregon in 1997, Washington and Oregon State declaration procedures that enabled a vessel to operate on both sides of the line and harvest the larger limit no longer are in effect.

E. Changes to Trip Limits; Closures

Unless otherwise stated, a vessel must have initiated offloading its catch before the fishery is closed or before a more restrictive trip limit becomes effective. As in the past, all fish on board the vessel when offloading begins are counted toward the landing limits (See 50 CFR 660.302, formerly 50 CFR 663.2, for the definition of "landing").

F. Designated Species B Permits

Designated species B permits may be issued if the limited entry fleet will not fully utilize the HG for Pacific whiting, shortbelly rockfish, or jack mackerel north of 39° North latitude. The limited entry fleet has requested the full use of shortbelly rockfish and Pacific whiting, but less than half of the HG for jack mackerel in 1997. Since no applications were received before the November 1

deadline, NMFS does not expect to issue Designated Species B permits in 1997.

G. Recreational Fishing

Bag limits in the 1997 recreational fishery remain the same as in 1996 with one exception. The bag limit for rockfish in Washington State is reduced to 10 fish throughout the State to be consistent with State laws protecting black rockfish.

IV. NMFS Actions

For the reasons stated above, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurs with the Council's recommendations and announces the following management actions for 1997, including those that are the same as in 1996.

A. General Definitions and Provisions

The following definitions and provisions apply to the 1997 management measures, unless otherwise specified in a subsequent notice:

(1) *Trip limits.* Trip limits are used in the commercial fishery to specify the amount of fish that may legally be taken and retained, possessed, or landed, per vessel, per fishing trip, or cumulatively per unit of time, or the number of landings that may be made from a vessel in a given period of time, as explained below.

(a) *A trip limit* is the total allowable amount of a groundfish species or species complex, by weight, or by percentage of weight of legal fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(b) *A daily trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated during multiple day trips.

(c) *A cumulative trip limit* is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips.

(i) *Limited entry fishery.* Unless otherwise specified, cumulative trip limits in the limited entry fishery apply to 2-month periods. No more than 60 percent of the applicable 2-month cumulative limit may be taken and retained, possessed or landed in either month of a 2-month period; this is called the "60-percent monthly limit." The 2-month periods are: January–February, March–April, May–June,

July–August, September–October, and November–December. Different cumulative periods may be announced later in the year.

(ii) *Open access fishery.* Unless otherwise specified, cumulative trip limits apply to 1-month periods in the open access fishery. Within these limits, in any calendar month, no more than 50 percent of the applicable 2-month cumulative limit for the limited entry fishery may be taken and retained, possessed, or landed from a vessel in the open access fishery; this is called the "50-percent monthly limit."

(iii) *Platooning—limited entry trawl vessels.* Limited entry trawl vessels are automatically in the "A" platoon, which means a vessel's cumulative trip limit periods begin and end on the beginning and end of a calendar month as in the past. If a limited entry trawl permit is authorized for the "B" platoon (which, in 1997, will require a separate letter from NMFS to be attached to the limited entry permit), then cumulative trip limit periods will begin 2 weeks later than for the "A" platoon.

(A) For a vessel in the "B" platoon, cumulative trip limit periods begin on the 16th of the month and end on the 15th of the month. Therefore, the management measures announced herein that are effective on January 1, 1997, for the "A" platoon will be effective on January 16, 1997, for the "B" platoon. The effective date of any inseason changes to the cumulative trip limits also will be delayed for 2 weeks for the "B" platoon.

(B) A vessel authorized to operate in the "B" platoon may take and retain, but may not land, groundfish from January 1, 1997, through January 15, 1997.

(C) Special provisions will be made for "B" platoon vessels later in the year so that the amount of fish made available in 1997 to both "A" and "B" vessels is the same. For example, a vessel in the "B" platoon will have the same cumulative trip limit for the final period as a vessel in the "A" platoon, but the final period may be 2 weeks shorter so that both fishing periods end on the same date.

(2) Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. As stated in the regulations at 50 CFR 660.302 (formerly 50 CFR 663.2, the definition of "landing"), once offloading of any species begins, all fish aboard the vessel are counted as part of the landing.

(3) All weights are round weights or round-weight equivalents.

(4) Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) "Legal fish" means fish legally taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 660 (previously 50 CFR part 663), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), any notice issued under part 660 (previously subpart B of 50 CFR part 663), and any other regulation promulgated or permit issued under the Magnuson-Stevens Act.

(6) *Size limits and length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods.

(a) For a whole fish, total length will be measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(b) For a fish with the head removed ("headed"), the length will be measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(7) "Closure," when referring to closure of a fishery, means that taking and retaining, possessing, or landing the particular species or species group is prohibited. (See the regulations at 50 CFR 660.302 (previously 50 CFR 663.2).) Unless otherwise announced in the Federal Register, offloading must begin before the time the fishery closes.

(Note: The Council recommended requiring fixed gear to be out of the water at the end of the regular season for sablefish rather than requiring offloading to have begun. This recommendation has not yet been approved.)

(8) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nm offshore, bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed between 0–200 nm offshore, or landed in, Washington, Oregon, or California

are presumed to have been taken and retained from the EEZ, unless otherwise demonstrated by the person in possession of those fish.

(9) Inseason changes to trip limits are announced in the Federal Register. Most trip and bag limits in the groundfish fishery have been designated "routine," which means they may be changed rapidly after a single Council meeting. Information concerning changes to trip limits is available from the NMFS Northwest and Southwest Regional Offices (see **ADDRESSES**). Changes to trip limits are effective at the times stated in the Federal Register. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means, unless otherwise announced in the Federal Register, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect.

(10) It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open access fishery without having a valid limited entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish (50 CFR 660.306(p), formerly 50 CFR 663.7(t)).

(11) *Operating in both limited entry and open access fisheries.* The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open access gear will also be counted toward the limited entry trip limit.

(12) *Operating in areas with different trip limits.* Trip limits for a species or species complex may differ in different geographic areas along the coast. The following "crossover" provisions apply to vessels operating in different geographical areas that have different cumulative or "per trip" trip limits for the same species or species complex. They do not apply to species that are only subject to daily trip limits, or to the trip limits for black rockfish off the State of Washington (see 50 CFR 660.323(a)(1), previously 50 CFR 663.23(b)). In 1997, the trip limit period for cumulative trip limits is 2 months for the limited entry fishery and 1 month for the open access fishery, unless otherwise specified.

(a) *Going From A More Restrictive To A More Liberal Area:* If a vessel takes and retains any species of groundfish in an area where a more restrictive trip

limit applies, before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(b) *Going From A More Liberal To A More Restrictive Area:* If a vessel takes and retains a species (or species complex) in an area where a higher trip limit (or no trip limit) applies, and possesses or lands that species (or species complex) in an area where a more restrictive trip limit applies, then that vessel is subject to the more restrictive trip limit for that trip limit period.

(13) *Sorting.* Regulations at 50 CFR 660.306(h) (formerly 50 CFR 663.7(l)) make it unlawful for any person to "fail to sort, prior to the first weighing after off loading, those groundfish species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 lb (1,361 kg) (round weight or round weight equivalent)." This provision applies to both the limited entry and open access fisheries.

(Note: The Council has recommended that this regulation be changed to require all species or species groups with a trip limit, HG, or quota to be sorted. There would be no exception for landings under 3,000 lb (1,361 kg). The States of Washington and Oregon already have the same or similar requirements. If approved, the regulation is expected to be implemented in 1997, after publication in the Federal Register.)

(14) *Exempted fisheries.* U.S. vessels operating under an exempted (formerly experimental) fishing permit issued under 50 CFR part 600 (formerly 50 CFR 663.10) also are subject to these restrictions, unless otherwise provided in the permit.

(15) Paragraphs IV.B. through IV.I. pertain to the commercial groundfish fishery, but not to Washington coastal tribal fisheries which are described in paragraph V. The provisions in paragraphs IV.B. through IV.I. that are not covered under the headings "limited entry" or "open access" apply to all vessels in the commercial fishery that take and retain groundfish, unless otherwise stated. Paragraph IV.J. pertains to the recreational fishery.

(16) Commonly used geographical coordinates.

(a) Cape Falcon, OR—45°46' N. lat.

(b) Cape Lookout, OR—45°20'15" N. lat.

(c) Cape Mendocino, CA—40°30' N. lat.

(d) Point Conception, CA—34°27' N. lat.

(e) International North Pacific Fisheries Commission (INPFC) subareas (for more precise coordinates for the Canadian and Mexican boundaries, see 50 CFR 660.304 (formerly 663.5):

(i) Vancouver—U.S.-Canada border to 47°30' N. lat.

(ii) Columbia—47°30' to 43°00' N. lat.

(iii) Eureka—43°00' to 40°30' N. lat.

(iv) Monterey—40°30' to 36°00' N. lat.

(v) Conception—36°00' N. lat. to the U.S.-Mexico border.

B. Widow Rockfish (Commonly Called Brownies)

(1) *Limited entry fishery*. The cumulative trip limit for widow rockfish is 70,000 lb (31,752 kg) per vessel per 2-month period. The 60-percent monthly limit is 42,000 lb (19,051 kg).

(2) *Open access fishery*. Within the limits at paragraph IV.I. for the open access fishery, the 50-percent monthly limit for widow rockfish is 35,000 lb (15,876 kg).

C. *Sebastes* Complex (including Bocaccio, Yellowtail, and Canary Rockfish)

(1) *General. Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastobus* spp. (also called thornyheads, idiots, or channel rockfish). Yellowtail rockfish (*S. flavidus*) are commonly called greenies. Bocaccio (*S. paucispinis*) are commonly called rock salmon. Canary rockfish (*S. pinniger*) are commonly called orange rockfish.

(2) *Limited entry fishery*. (a) *Cumulative trip limits*. (i) *North of Cape Mendocino*. The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Mendocino is 30,000 lb (13,608 kg) per vessel per 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 6,000 lb (2,722 kg) may be yellowtail rockfish taken and retained north of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish.

(ii) *South of Cape Mendocino*. The cumulative trip limit for the *Sebastes* complex taken and retained south of Cape Mendocino is 150,000 lb (68,039 kg) per vessel per 2-month period. Within this cumulative trip limit for the *Sebastes* complex, no more than 12,000 lb (5,443 kg) may be bocaccio taken and retained south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish.

(iii) The 60-percent monthly limits are: For the *Sebastes* complex, 18,000 lb (8,165 kg) north of Cape Mendocino,

and 90,000 lb (40,823 kg) south of Cape Mendocino; for yellowtail rockfish, 3,600 lb (1,633 kg) north of Cape Mendocino; for bocaccio south of Cape Mendocino, 7,200 lb (3,266 kg); and for canary rockfish coastwide, 8,400 lb (3,810 kg).

(b) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(3) *Open access fishery*. If smaller than the limits at paragraph IV.I., the following cumulative monthly trip limits apply (within the limits at paragraph IV.I.): For the *Sebastes* complex, 15,000 lb (6,804 kg) north of Cape Mendocino, and 75,000 lb (34,019 kg) south of Cape Mendocino; for yellowtail rockfish, 3,000 lb (1,361 kg) north of Cape Mendocino; for bocaccio, 6,000 lb (2,722 kg) south of Cape Mendocino; and, for canary rockfish, 7,000 lb (3,175 kg) coastwide.

D. POP

(1) *Limited entry fishery*. The cumulative trip limit for POP is 8,000 lb (3,629 kg) per vessel per 2-month period. The 60-percent monthly limit is 4,800 lb (2,177 kg).

(2) *Open access fishery*. Within the limits at paragraph IV.I. below, the 50-percent monthly limit for POP is 4,000 lb (1,814 kg).

E. Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish)

(1) *1997 Management goal*. The sablefish fishery will be managed to achieve the 7,800-mt HG in 1997.

(2) *Limited entry fishery*. (a) *Gear allocations*. After subtracting the tribal-imposed catch limit and the open access allocation from the HG for sablefish, the remainder is allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

(Note: The 1997 HG for sablefish north of 36° N. lat. is 7,800 mt. The 780-mt tribal allocation is subtracted, and the limited entry and open access allocations are based on the remaining 7,020 mt. The limited entry allocation of 6,557 mt for 1996 is allocated 3,803 mt (58 percent) to the trawl fishery and 2,754 mt (42 percent) to the nontrawl fishery. The trawl and nontrawl gear allocations are HGs in 1997, which means the fishery will be managed not to exceed the HGs, but will not necessarily be closed if the HGs are reached.)

(b) *Limited entry trip and size limits for the DTS complex*. "DTS complex" means Dover sole (*Microstomus pacificus*), thornyheads (*Sebastobus* spp.), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads, also called idiots, channel rockfish, or

hardheads, include two species: Shortspine thornyheads (*S. alascanus*) and longspine thornyheads (*S. altivelis*). These provisions apply to Dover sole and thornyheads caught with any limited entry gear and to sablefish caught with limited entry trawl gear.

(i) *North of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 70,000 lb (31,752 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, no more than 38,000 lb (17,236 kg) may be Dover sole, and no more than 20,000 lb (9,072 kg) may be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads may be shortspine thornyheads.

(ii) *South of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 100,000 lb (45,359 kg) per vessel per 2-month period. Within this cumulative trip limit, no more than 12,000 lb (5,443 kg) may be sablefish, and no more than 20,000 lb (9,072 kg) may be thornyheads. No more than 4,000 lb (1,814 kg) of the thornyheads may be shortspine thornyheads.

(iii) The 60-percent monthly limits are: For the DTS complex, 42,000 lb (19,051 kg) north of Cape Mendocino, and 60,000 lb (27,216 kg) south of Cape Mendocino; for trawl-caught sablefish, 7,200 lb (3,266 kg); for Dover sole north of Cape Mendocino, 22,800 lb (10,342 kg); for both species of thornyheads combined, 12,000 lb (5,443 kg); and for shortspine thornyheads, 2,400 lb (1,089 kg).

(iv) In any trip, no more than 500 lb (227 kg) may be trawl-caught sablefish smaller than 22 inches (56 cm) total length. (See paragraph IV.A.(6) regarding length measurement.)

(v) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(c) *Nontrawl trip and size limits*. (i) *Daily trip limit*. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg) and south of 36° N. lat. is 350 lb (159 kg). The daily trip limit, which applies to sablefish of any size, is in effect until the closed periods before or after the regular season (as specified at 50 CFR 660.323(a)(2)(i) (formerly 50 CFR 663.23(b)(2)), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season.

(ii) *Limit on small fish*. During the "regular" or "mop-up" seasons, the only trip limit in effect applies to sablefish smaller than 22 inches (56 cm) total

length, which may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 22 inches (56 cm) (total length) or larger, whichever is greater. (See paragraph IV.A.(6) regarding length measurement.)

(d) For headed and gutted sablefish:

(i) The minimum size limit for headed sablefish, which corresponds to 22 inches (56 cm) total length for whole fish, is 15.5 inches (39 cm).

(ii) The conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the state conversion factors may differ; fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.)

(Note: The Council has recommended a number of changes to the regulations for the fixed gear sablefish fishery in 1997. Before these changes can be made effective, they must be approved by NMFS and then implemented by a regulation published in the Federal Register. The recommended changes are summarized below:

(1) A vessel must have an endorsement on its limited entry permit in order to participate in the regular or mop-up season north of 36° N. lat.; (2) the regular and mop-up seasons would apply only north of 36° N. lat., whereas in 1996, they applied coastwide; (3) for 48 hours prior to the regular season, all fixed gear used to take and retain groundfish would be removed from the water—no advance setting of pot gear would be allowed; (4) a 48-hour closed period would be added at the end of the regular season, and all fixed gear used to take and retain groundfish, including open access gear, would be removed from the water during this period; (5) a framework season would be established (from August 1–September 30), with the date being selected each year according to certain criteria. The starting date, which has not yet been recommended for 1997, remains at noon September 1 until the new regulation becomes effective.)

(3) *Open access fishery.* Within the limits in paragraph IV.I. below, a vessel in the open access fishery is subject to the 50-percent monthly limits, which are as follows: For the DTS complex, 35,000 lb (15,876 kg) north of Cape Mendocino, and 50,000 lb (22,680 kg) south of Cape Mendocino; for Dover sole north of Cape Mendocino, 19,000 lb (8,618 kg); south of Pt. Conception, for both species of thornyheads combined, 10,000 lb (4,536 kg) of which no more than 2,000 lb (907 kg) may be shortspine thornyheads. (The open access fishery for thornyheads is closed north of Pt. Conception.) Daily trip limits for

sablefish and for thornyheads south of Pt. Conception are announced at paragraph IV.I.

F. Whiting

(1) *Limited entry fishery.* Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 (formerly 50 CFR 663.7) and 50 CFR 660.323(a)(3) and (4) (formerly 50 CFR 663.23(b)(3) and (4)).

(a) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed, per vessel per fishing trip before and after the regular season for whiting, as specified at 50 CFR 660.323(a)(3) and (4) (formerly 50 CFR 663.23(b)(3) and (4)). This trip limit includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka subarea (see paragraph IV.F.(1)(b)).

(b) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka subarea.

(Note: The Council recommended a number of changes to the Pacific whiting fishery that are not yet in effect, particularly separate allocations for catcher/processor, mothership, and shore-based sectors. The Council also recommended separate opening dates for catcher/processers and mothership operations (but both sectors prefer the current opening date of May 15 in 1997), and for vessels delivering shoreside (June 15 north of 42° N. lat. and April 15 south of 42° N. lat.). The dates at 50 CFR 660.323(a)(3) remain in effect until otherwise announced in the Federal Register.)

(2) *Open access fishery.* See paragraph IV.I. below.

G. Lingcod

(1) *Limited entry fishery.* The cumulative trip limit for lingcod is 40,000 lb (18,144 kg) per vessel per 2-month period. The 60-percent monthly limit is 24,000 lb (10,886 kg). No lingcod may be smaller than 22 inches (56 cm) total length, except for a 100-lb (45-kg) trip limit for trawl-caught lingcod smaller than 22 inches (56 cm). Length measurement is explained at paragraph IV.A.(6).

(2) *Open access fishery.* Within the limits in paragraph IV.I. below, the 50-percent monthly limit for lingcod is 20,000 lb (9,072 kg).

(3) *Conversions.* (a) *Size conversion.* For lingcod with the head removed, the minimum size limit, which corresponds to 22 inches (56 cm) total length for whole fish, is 18 inches (46 cm).

(b) *Weight conversion.* The conversion factor established by the state where the

fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' conversion factors may differ and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor.) If a state does not have a conversion factor for lingcod that is headed and gutted, or only gutted, the following conversion factors will be used. To determine the round weight, multiply the processed weight times the conversion factor.

(i) *Headed and gutted.* The conversion factor for headed and gutted lingcod is 1.5. (The State of Washington currently uses a conversion factor of 1.5.)

(ii) *Gutted, with the head on.* The conversion factor for lingcod that has only been eviscerated is 1.1.

H. Black Rockfish

The regulations at 50 CFR 660.323(a)(1) (formerly 50 CFR 663.23(b)(1)(iii)) state: "The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-Canada border and Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), is 100 lb (45 kg) or 30 percent, by weight of all fish on board, whichever is greater, per vessel per fishing trip." The provisions at paragraphs IV.A.(12) do not apply.

I. Trip Limits in the Open Access Fishery

Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid limited entry permit for the Pacific coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), set net (south of 38° N. lat. only), and trawls used to target non-groundfish species (pink shrimp or prawns, and, south of Pt. Arena, CA (38°57'30" N. lat.), California halibut or sea cucumbers). A vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery; or for the same area in the limited entry fishery; or, in any calendar month, 50 percent of any 2-month cumulative trip limit for the same area in the limited entry fishery,

called the "50-percent monthly limit." For purposes of this paragraph, exempted trawl gear (that is used to harvest shrimp, prawns, California halibut or sea cucumbers as provided in this paragraph I.) may not exceed any limit for the limited entry trawl fishery, or 50 percent of any 2-month cumulative limit that applies to limited entry trawl gear. The cross-over provisions at paragraph IV.A.(12) that apply to the limited entry fishery apply to the open access fishery as well.

(1) *Rockfish*. Rockfish means all rockfish as defined at 50 CFR 660.302 (formerly 50 CFR 663.2), which includes the *Sebastes* complex (including yellowtail rockfish, bocaccio, and canary rockfish), shortbelly rockfish, widow rockfish, POP, and thornyheads.

(a) *All open access gear*. (i) North of Pt. Conception, thornyheads (shortspine or longspine) may not be taken and retained, possessed, or landed.

(ii) South of Pt. Conception, the daily trip limit for thornyheads is 50 lb (23 kg).

(b) *All open access gear except shrimp, prawn, or sea cucumber trawl*. The cumulative monthly trip limit for rockfish is 40,000 lb (18,144 kg) per vessel per month, and includes the daily trip limit for thornyheads. The following trip limits also apply, which count toward the cumulative monthly limit:

(i) *Hook-and-line or pot gear*: 10,000 lb (4,536 kg) of rockfish per vessel per fishing trip, of which no more than 300 lb (136 kg) per trip, not to exceed 2,000 lb (907 kg) cumulative per month, may be bocaccio taken and retained south of Cape Mendocino.

(ii) *Setnet or trammel net gear* (which are legal only south of 38° N. lat.): 4,000 lb (1,814 kg) cumulative of bocaccio taken and retained south of Cape Mendocino.

(c) For operating in areas with different trip limits for the same species, see paragraph IV.A.(12) above.

(2) *Sablefish*. (a) *North of 36°00' N. lat.* The cumulative trip limit for sablefish taken and retained north of 36°00' N. lat. is 1,500 lb (680 kg) per month. The daily trip limit for sablefish taken and retained north of 36°00' N. lat., which counts toward the cumulative limit, is 300 lb (136 kg).

(b) *South of 36°00' N. lat.* The daily trip limit for sablefish taken and retained south of 36°00' N. lat. is 350 lb (159 kg).

(3) *Groundfish taken by shrimp or prawn trawl*. The daily trip limits are: Sablefish, 300 lb (136 kg) coastwide; and thornyheads south of Pt. Conception, 50 lb (23 kg).

(a) *Pink shrimp*. The trip limit for a vessel engaged in fishing for pink shrimp is 500 lb (227 kg) of groundfish, multiplied by the number of days of the fishing trip, and includes the daily trip limits for sablefish and thornyheads, which may not be multiplied by the number of days of the fishing trip.

(b) *Spot and ridgeback prawns*. The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 500 lb (227 kg) of groundfish species per fishing trip, and includes the daily trip limits for sablefish and thornyheads.

(c) This rule is not intended to supersede any more restrictive state law relating to the retention of groundfish taken in shrimp or prawn pots or traps.

(4) *Groundfish taken by California halibut or sea cucumber trawl*. The trip limit for a vessel participating in the California halibut fishery or in the sea cucumber fishery south of Point Arena, CA (38°57'30" N. lat.) is 500 lb (227 kg) of groundfish per vessel per fishing trip, which includes a daily trip limit for sablefish of 300 lb (136 kg), and a daily trip limit for thornyheads south of Pt. Conception of 50 lb (23 kg).

(a) A trawl vessel will be considered participating in the California halibut fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 (formerly 50 CFR part 663) for trawl gear;

(ii) All fishing on the trip takes place south of Point Arena; and

(iii) The landing includes California halibut of a size required by California Fish and Game Code section 8392(a), which states: "No California halibut may be taken, possessed or sold which measures less than 22 inches in total length, unless it weighs four pounds or more in the round, three and one-half pounds or more dressed with the head on, or three pounds or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail."

(b) A trawl vessel will be considered participating in the sea cucumber fishery if:

(i) It is not fishing under a valid limited entry permit issued under 50 CFR part 660.333 (formerly 50 CFR 663) for trawl gear;

(ii) All fishing on the trip takes place south of Point Arena; and

(iii) The landing includes sea cucumbers taken in accordance with California Fish and Game Code section

8396, which requires a permit issued by the State of California.

J. Recreational Fishery

(1) *California*. The bag limits for each person engaged in recreational fishing seaward of the State of California are: 5 lingcod per day, which may be no smaller than 22 inches (56 cm) total length; and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) *Oregon*. The bag limits for each person engaged in recreational fishing seaward of the State of Oregon are: 3 lingcod per day, which may be no smaller than 22 inches (56 cm) total length; and 15 rockfish per day, of which no more than 10 may be black rockfish (*Sebastes melanops*).

(3) *Washington*. The bag limits for each person engaged in recreational fishing seaward of the State of Washington are: Three lingcod per day no smaller than 22 inches (56 cm) total length, and 10 rockfish per day.

V. Washington Coastal Tribal Fisheries

From 1991 through 1994, the Washington coastal treaty tribes conducted a tribal sablefish fishery of 300 mt that was accommodated in the annual management measures. In late 1994, the U.S. government formally recognized the treaty right to fish for groundfish of the four Washington Coastal Treaty tribes (the Makah, Hoh, Quileute, and Quinault), and concluded that in general terms the quantification of the right is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed fishing areas (defined at 50 CFR 660.304).

A tribal allocation is subtracted from the species HG before limited entry and open access allocations are derived. The treaty Indian fisheries for sablefish, black rockfish, and whiting allocations are separate fisheries, not governed by the limited entry or open access regulations or allocations. The tribes regulate their fisheries so as not to exceed their allocations. Tribal fishing for rockfish with fixed gear will operate under the same rules as the open access fishery. The tribal trawl fishery for rockfish will operate under the limited entry rules (50 CFR 660.324(j)). Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery (50 CFR 660.324(k)).

The tribal allocations for sablefish and black rockfish are the same as in 1996 and for the same reasons. The tribal allocation for whiting in 1997 differs from the 1-year allocation agreement with the Makah for 1996, as discussed below.

The Council recommended that no whiting be allocated to the Makah Tribe in 1997. The Council's recommendation of no allocation is not acceptable because Federal district court Judge Rafeedie held that tribes have a right to all fish in their usual and accustomed fishing areas, with no species limitation. Some fishermen have argued that this ruling should not apply to whiting. A subproceeding is pending in *U.S. v. Washington* that addresses the issue of a treaty right to whiting. In that whiting subproceeding, on November 4, 1996, the court ruled that "Judge Rafeedie's ruling in Subproceeding 89-3 should remain the binding law of the case until the Ninth Circuit decides the appeal of the decision now pending before it."

NMFS acknowledges that many difficult questions have been raised and that there is much uncertainty regarding what is a complex and difficult technical and legal issue. The Tribe's proposed allocation methodology would result in an allocation of 25 percent of the U.S. HG; NMFS's proposed allocation methodology would result in an allocation of 6.5 percent of the U.S. HG. The tribal compromise falls between these two positions. NMFS finds the tribal proposal of 25,000 mt (10.8 percent) in 1997 to be an acceptable compromise given all of the uncertainties. This compromise gives NMFS time to work with the tribes, the States, and other Federal agencies to develop an agreed-upon allocation. This is a short-term compromise and is not intended to set a precedent regarding either quantification of the Makah treaty right or future allocations. If an appropriate methodology or allocation cannot be developed through negotiations, the allocation will ultimately be resolved in the pending subproceeding in *U.S. v. Washington*. In the absence of a resolution of the appropriate allocation in 1998, NMFS may again provide the tribes 10.8 percent of the U.S. HG. NMFS expects the quantification issue to be resolved before the 1999 season. NMFS Actions

For the reasons stated above, the Assistant Administrator announces the following tribal allocations for 1997, including those that are the same as in 1996:

Sablefish: 780 mt, 10 percent of the HG.

Rockfish: For the commercial harvest of black rockfish off Washington State a

HG of: 20,000 lb (9,072 kg) north of Cape Alava (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.).

Whiting: 25,000 mt in 1997, 10.8 percent of the HG.

Response to Public Comments

NMFS received two written comments from the nontreaty whiting industry and one from the Makah Tribe on the proposed tribal whiting allocation. One commenter argued the Secretary of Commerce does not have the authority to make this allocation because such an allocation requires an amendment of the FMP. This is not so much a comment on the allocation for 1997, as on the rule implementing the framework for treaty tribe harvest of Pacific groundfish (tribal groundfish rule) that was adopted on May 31, 1996; the response to this comment is found in the preamble to the final tribal groundfish rule published at 61 FR 28786 (June 6, 1996), specifically on pages 28789 and 28790 under the heading "Magnuson Act".

The two commenters also objected to the process used this year to make the allocation because it does not provide a "formal public comment period." NMFS followed its regulation by considering the tribal request, the Council recommendation, and public comments, before announcing the allocation with the final groundfish specifications. As explained in the preamble to the tribal groundfish rule (specifically on page 28787), NMFS is using the Council's annual groundfish management process, as much as possible, for developing and implementing the tribal allocation request. This is the best way to provide information to all of the interested parties, since they are involved in the annual process, either through attending the meetings or through receiving the Council newsletters which are sent to all persons who request to be on the Council mailing list. The tribal whiting request for 1997 was announced at the August 1996 Council meeting when the initial proposals for the 1997 management measures and specifications were discussed and adopted by the Council. The Council adopted a preliminary range for a 1997 whiting set-aside of zero to 35,000 mt. This was announced in the Council's August newsletter, along with the other 1997 management recommendations. At the October Council meeting, the tribe modified its 1997 whiting proposal to be 25,000 mt. The Council recommended an allocation of zero for 1997. The NMFS representative announced NMFS would take additional comments on the

tribal allocation for another 3 weeks. The Council's October newsletter announced the tribal request for 25,000 mt, the Council's proposed tribal whiting allocation of zero, and that NMFS would "accept comments on the Council's recommendations until November 15, 1996 with special attention to yellowtail rockfish and the tribal whiting allocation decisions." This process conforms to the requirements of the tribal groundfish rule and provides the widest opportunity for the interested public to participate and provide comments, since it uses the same timeframe and public participation process as is used for the rest of the annual groundfish management decisions.

One commenter asserted the allocation violates many national standards of the Magnuson-Stevens Act, found at 16 U.S.C. 1851(a). Most of the arguments had been made last year and were responded to in the preamble to the tribal rule under the heading of "Magnuson Act." The commenter argued the allocation is not fair and equitable, does not promote conservation, and allows a particular entity to acquire an excessive share of fishing privileges in violation of national standard 4, 16 U.S.C. 1851(a)(4). This allocation is different from other discretionary allocations that the Council and NMFS might make. It is required by the treaties with the Northwest tribes as explained above, which are other applicable law with which management measures must be consistent. It promotes conservation as much as any allocation does in that the allocation is within the total allowable catch authorized for 1997. It does not provide an excessive share of fish to the tribe; it is implementing a treaty right, that is the supreme law of the land. The commenter alleged the allocation does not promote efficiency, in violation of national standard 5, 16 U.S.C. 1851(a)(5); and does not minimize costs or avoid unnecessary duplication in violation of national standard 7, 16 U.S.C. 1851(a)(7). National standard 5 (as revised by Public Law 104-297) requires that efficiency be "considered"; national standard 7 requires that measures shall, where practicable, minimize costs and avoid unnecessary duplication. The commenter has provided no specifics on why these standards have been violated or suggestions on how the treaty right can be accommodated in a way that would be more efficient, minimize costs, or avoid unnecessary duplication.

The two commenters argued that there should be a zero allocation to the tribe in 1997 because there is no

adjudicated treaty right to whiting, and they refer to their comments on the tribal groundfish rule and the 1996 allocations. NMFS addressed their arguments in the preamble to the tribal groundfish rule under the heading of "Treaty Entitlement." NMFS had determined there is a treaty right to whiting, in part, because in a subproceeding of *U.S. v. Washington* regarding tribal rights to shellfish, Federal district court Judge Rafeedie held that tribes have a right to all fish in their usual and accustomed fishing areas, with no species limitation. This ruling is currently on appeal in front of the Ninth Circuit Court of Appeals. The commenters argued this ruling should not apply to whiting. A subproceeding is pending in *U.S. v. Washington* that addresses the issue of a treaty right to whiting. In that whiting subproceeding, on November 4, 1996, the court ruled that "Judge Rafeedie's ruling in Subproceeding 89-3 should remain the binding law of the case until the Ninth Circuit decides the appeal of the decision now pending before it."

One commenter asserted the Makah tribe already has achieved a moderate living and, therefore, the treaty right has been satisfied without providing whiting to the Makah. The commenter provided no new information to support this assertion. This assertion was answered in the preamble to the tribal groundfish rule under the heading "Moderate Living".

One commenter asserted that since the harvest in the Vancouver statistical area (an area larger than, but including, the usual and accustomed fishing area) was 9.9 percent of the total harvest from 1981 to 1995, if the tribes were entitled to a 50 percent share of the whiting, they should at most be allocated 4.95 percent of the amount available to the U.S. He further asserted that since the whiting spend a small portion of the year in the Makah area and do not spawn there, the allocation should be even smaller than 4.95 percent. These comments were responded to in the preamble to the tribal groundfish rule.

One commenter alleges the allocation violates the ESA because it has not been subject to a formal consultation under the ESA. However, a biological opinion issued on May 14, 1996, found that "(t)he timing, method, and location of the tribal fishery are comparable with how the whiting fishery has operated in recent years. As a result, there is no reason to expect that the bycatch of salmon or the effect of the fishery to other listed species including marine mammals will be different from what has be(en) reported for the existing fishery." The tribal fishery authorized

for 1997 is still within the scope of what was analyzed in previous biological opinions, and thus reinitiation of consultation is not required. The other commenter argued that the tribal salmon bycatch appeared to exceed the level of concern in the fishery, which requires a new biological opinion. The current biological opinion considers salmon bycatch in the fishery as a whole, but does require consultation if the number of chinook salmon per metric ton of whiting exceeds 0.05 in either the shoreside, catcher/processor or the mothership components of the fishery (Biological Opinion, May 14, 1996). For purposes of the biological opinion, the tribal whiting fishery was considered as part of the mothership fleet. Therefore, salmon bycatch in the tribal fishery, by itself, does not necessarily trigger a requirement for reinitiation unless it results in the salmon bycatch for the mothership sector to exceed the reinitiation criteria. All three sectors were within the 0.05 rate in 1996.

VI. Issuance of EFPs in 1996

In 1995, applications were received and approved for three different types of EFPs (formerly called "experimental fishing permits") for the 1996 fishing year: (1) The first was from the State of Oregon (representing Washington and California as well) for the purpose of renewing the 1995 EFP to monitor the bycatch of salmon in the shore-based whiting fishery. Under this permit, 40 vessels were issued EFPs that required all salmon caught incidentally in the whiting fishery to be landed shoreside. A variation of the whiting EFP also was requested by the State of California so that a small number of fishers could be allowed to fish for whiting inside of the 100-fathom (183-m) contour in the Eureka Management Area, which currently is prohibited. The purpose was to see if the bycatch rate of salmon could be kept at acceptable levels by this small, shore-based sector of the fleet delivering to Eureka and Crescent City, CA. At-sea observers would be aboard all whiting trips. Even though this variation to the whiting EFP was approved, the industry declined to participate.

(2) The second EFP was for a new, enhanced data collection program that applied to the other groundfish fisheries. The application was submitted by the State of Oregon, but could include involvement by the States of Washington and California as well. This is a multi-year cooperative data collection program with the industry and state and Federal governments. Twenty vessels participated in 1996. The purpose of the experiment was to

monitor trip-limit-induced discards and the bycatch of salmon and non-target species in the groundfish trawl fishery. All participating vessels were required to land salmon caught incidentally in groundfish trawl gear and to keep enhanced logbooks required by the States. Some vessels were required to carry at-sea observers to monitor trip-limit induced discards, and some vessels could have been required to bring virtually their entire catch to shore for additional monitoring although this did not occur in 1996.

(3) The third EFP application was to collect reproductive samples for sablefish to test assumptions in the stock assessment for that species. An EFP was needed because the vessel would be authorized to land 500 lb (227 kg) in excess of the cumulative trip limit for trawl-caught sablefish (for a total of 5 mt in 1996), and could sell the scientific samples. A state or Federal scientist would be aboard every trip to gather the biological data. Although this permit was approved and issued, it had not been used at the time this notice was prepared in late 1996; sampling normally occurs late in the year.

VII. Renewal of EFPs in 1997

Renewal of all three EFPs was requested for 1997, some with slight modifications. First, the whiting EFPs described in paragraph VI.(1) would be continued, pending development and implementation of an FMP amendment that would authorize salmon to be retained and landed. Fishers also are concerned that their practice of dumping codends directly in the hold would make monitoring of trip limits difficult, if not impossible, and would like the EFP continued because overages are forfeited but no penalty results. The scope of the experiment and level of participation would be the same as in 1996.

Second, continuation of the enhanced data collection program described in paragraph VI.(2) also was requested, with some modifications. The major change would enable data to be obtained on a vessel throughout its fishing activities in a month, even if not fishing for groundfish. This would provide information on groundfish bycatch in other fisheries (particularly shrimp fisheries) and on a fisher's choice to pursue alternative fisheries or fishing strategies. The program also could be expanded to include whiting fisheries when the whiting EFP no longer is in effect.

The third is renewal of the EFP to gather biological information on sablefish, as described in paragraph VI.(3) to confirm or improve data used

in the stock assessment. This experiment would allow one vessel to retain 25 fish in excess of the trawl trip limit for sablefish and is not expected to exceed 10 mt per year. It differs from the 1996 permit in that a state or Federal scientist would not need to be aboard every trip, but would be required to be present when the vessel offloads to gather the scientific samples. Also, the scientific samples would not necessarily be sold; they also could be distributed to a food bank or otherwise disposed of consistent with state and Federal law.

Requests for these renewals were presented at the Council's October 1996 meeting. The Council recommended renewal of all three in 1997. Comments on the three EFP programs for 1997 were invited at the October 1996 Council meeting. If approved, the whiting EFPs could be issued as early as March 1 for vessels delivering in the State of California, and mid-April for vessels delivering in Washington and Oregon; and the EFP for sablefish could be issued early in 1997. The decision on whether to issue EFPs and determinations on appropriate permit conditions will be based on a number of considerations, including the Council's recommendations and comments received from the public.

Classification

The final specifications and management measures for 1997 are issued under the authority of, and are in accordance with, the Magnuson-Stevens Act and 50 CFR parts 600 and 660 subpart G (the regulations implementing the FMP).

Much of the data necessary for these specifications and management measures came from the current fishing year. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these specifications and management measures in effect at the beginning of the 1997 fishing year, there is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment for the specifications and management measures. Amendment 4 to the FMP, implemented on January 1, 1991, recognized these timeliness considerations and set up a system by which the interested public is notified, through Federal Register publication and Council mailings, of meetings and of the development of these measures and is provided the opportunity to comment during the Council process. The public participated in GMT, Groundfish Advisory Subpanel,

Scientific and Statistical Committee, and Council meetings in August and October 1996 where these recommendations were formulated. Additional public comments on the specifications and management measures will be accepted for 30 days after publication of this document in the Federal Register. The Assistant Administrator (AA) will consider all comments made during the public comment period and may make modifications as appropriate.

An Environmental Assessment (EA) was prepared for the tribal groundfish rule that supported the AA's determination that the proposed 1996 Makah allocation would have no significant impact on the human environment. NMFS has updated the 1996 EA and has concluded that the 1997 Makah allocation will have no significant impact on the human environment.

The Administrative Procedure Act requires that publication of an action be made not less than 30 days before its effective date unless the AA finds, and publishes with the rule, good cause for an earlier effective date (5 U.S.C. 553(d)(3)). These specifications announce the harvest goals and the management measures designed to achieve those harvest goals in 1997. A delay in implementation could compromise the management strategies that are based on the projected landings from these trip limits. Therefore, a delay in effectiveness is contrary to the public interest and these actions are effective on January 1, 1997.

The tribal whiting allocation is developed following, as much as possible, the annual process for developing fishery specifications and management measures. This is because the information developed in this process (such as the ABC and HG for whiting) is important in the allocation process. In addition, the annual groundfish process provides the best opportunity to the interested public to receive notification of the proposed allocation and to provide comments. As described above in the response to public comments, the public received notice through the August and October Council meetings and Council newsletters. It is important to announce the tribal allocation with the other specifications and management measures so the affected industry will know the amount of whiting available to the various sectors and will be able to plan accordingly.

Dated: December 30, 1996.
Gary C. Matlock,
*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*
[FR Doc. 96-33402 Filed 12-31-96; 2:35 pm]
BILLING CODE 3510-22-W

50 CFR Part 622

[Docket No. 961226370-6370-01; I.D. 111896A]

RIN 0648-A115

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). Amendment 2 would add brown and pink shrimp to the FMP's fishery management unit, define overfishing for brown and pink shrimp, define optimum yield (OY) for brown and pink shrimp, require the use of certified bycatch reduction devices (BRDs) in all penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic, and establish a framework procedure for adding to the list of certified BRDs or modifying their specifications. The intended effects are to minimize the bycatch of finfish in shrimp trawling operations in the South Atlantic and to implement consistent, and therefore more enforceable, Federal and state management measures requiring the use of BRDs for reducing finfish bycatch in the penaeid shrimp fishery.

DATES: Written comments must be received on or before February 20, 1997.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 2, which includes a regulatory impact review (RIR), a social impact analysis, and a supplemental final environmental impact statement (SFEIS), should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; Phone: 803-571-4366; Fax: 803-769-4520.