

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kihei, Channel 298C2.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99-23446 Filed 9-9-99; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 99-1707; MM Docket No. 99-179; RM-9582]

**Radio Broadcasting Services; Kurtistown, HI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 271A to Kurtistown, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 30291, June 7, 1999. Coordinates used for Channel 271A at Kurtistown are 19-35-36 NL and 155-03-36 WL. With this action, the proceeding is terminated.

**DATES:** Effective October 12, 1999. A filing window for Channel 271A at Kurtistown, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99-179, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.  
Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**Part 73—[Amended]**

1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kurtistown, Channel 271A.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 99-23445 Filed 9-9-99; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 581**

[Docket No. NHTSA 99-5458]

RIN 2127-AH59

**Bumper Standard; Correction**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; correction to technical amendment.

**SUMMARY:** This document corrects the technical amendment to S581.5(c)(1) of 49 CFR part 581 *Bumper Standard*, published on April 5, 1999. The technical amendment erroneously referred to "Table 2" of SAE J599 AUG97. The correct reference is to "Table 1."

**DATES:** The correction is effective September 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

**SUPPLEMENTARY INFORMATION:** On April 5, 1999, we amended part 581 of Title 49, Code of Federal Regulations, which contains the Federal bumper standard issued under the authority of 49 U.S.C. Chapter 325 (64 FR 16359). As amended, 49 CFR 581.5(c)(1) reads:

(c) *Protective criteria.* (1) Each lamp or reflective device except license plate lamps shall be free of cracks and shall comply with applicable visibility requirements of S5.3.1.1 of Standard No. 108 (Sec. 571.108 of this chapter). The aim of each headlamp installed on the vehicle shall be adjustable to within the beam aim inspection limits specified in Table 2 of SAE Recommended Practice J599 AUG97, measured with the aiming method appropriate for that headlamp.

Koito Manufacturing, Inc., brought to our attention that SAE J599 AUG97 has no Table 2. We examined SAE J599

AUG97 and found that Koito was correct, and that the reference should have been to Table 1. We are amending § 581.5(c) to correct this error.

Because this amendment creates no burdens on any person, we are not required to give notice and afford an opportunity to comment on this rulemaking action. The amendment is effective upon its publication in the **Federal Register**.

**List of Subjects in 49 CFR Part 581**

Imports, Motor vehicles.

In consideration of the foregoing, FR Doc. 99-8185 published on April 5, 1999 (64 FR 16359) is corrected as follows: amended as follows:

**PART 581—BUMPER STANDARD**

1. The authority citation for part 581 continues to read as follows:

**Authority:** 49 U.S.C. 32502; 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

2. The second sentence of § 581.5(c)(1) is corrected:

**§ 581.5 Requirements**

\* \* \* \* \*

(c) *Protective criteria.* (1) \* \* \* The aim of each headlamp installed on the vehicle shall be adjustable to within the beam aim inspection limits specified in Table 1 of SAE Recommended Practice J599 AUG97, measured with the aiming method appropriate for that headlamp.

\* \* \* \* \*

Issued on: August 31, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 99-23429 Filed 9-9-99; 8:45 am]

BILLING CODE 4910-59-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 990121026-9229-02; I.D. 112498A]

RIN 0648-AL52

**Pacific Coast Groundfish Fishery; Amendment 11**

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

**ACTION:** Final rule; announcement of partial approval of an amendment to a fishery management plan, and

announcement of stocks characterized as overfished.

**SUMMARY:** NMFS announces the approval of Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (FMP) except for the bycatch provisions which were disapproved. NMFS issues this final rule to implement portions of that amendment that define overfished, identify essential fish habitat, and comply with other requirements of the Sustainable Fisheries Act (SFA). This rule also implements Amendment 11's provisions governing the use of fish as compensation for fisher participation in collecting fishery resource information. NMFS also announces that it has informed the Pacific Fishery Management Council (Council) that three stocks managed under the Pacific Coast Groundfish FMP, Pacific ocean perch, lingcod, and bocaccio, are overfished. These regulations are intended to improve the types and amount of scientific information available for use in stock assessments and management of the Pacific Coast groundfish fishery.

**DATES:** Effective October 12, 1999.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for Amendment 11 are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW. Fifth Avenue, Suite 224, Portland, OR 97201.

Comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements contained in this rule should be sent to William Stelle, Jr. Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE. BIN C157000. Seattle, WA 98115-0070 or to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Katherine King or Yvonne de Reynier at 206-526-6140 or the Pacific Fishery Management Council at 503-326-6352.

**SUPPLEMENTARY INFORMATION:** The Council submitted Amendment 11 to bring the Pacific Coast Groundfish FMP into compliance with the requirements in Section 303 (a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that were added by the SFA.

Amendment 11 modifies the FMP framework that defines "optimum yield" (OY) for setting annual groundfish harvest limits; sets framework control rules on defining rates of "overfishing" and levels at which managed stocks are considered "overfished;" identifies Pacific Coast groundfish Essential Fish Habitat (EFH); sets a bycatch management objective and a framework for bycatch reduction measures; establishes a management objective to take the importance of fisheries to fishing communities into account when setting groundfish management measures; provides authority within the FMP for the Council to require groundfish use permits for all groundfish users; authorizes the use of fish for compensation for private vessels conducting NMFS-approved research; removes jack mackerel from the fishery management unit; and updates FMP objectives, definitions, and industry descriptions.

The Pacific Coast Groundfish FMP provides a framework for certain Council actions without requiring cumbersome amendment procedures for those actions. Portions of this amendment that are designed to meet several of the new Magnuson-Stevens Act requirements will change the way the Council manages the groundfish fishery without changing the regulations that implement the FMP. A new definition of OY, specific overfishing and overfished levels, and accounting for the needs of fishing communities in setting fishery management measures will become part of the guidelines the Council uses to set its annual specifications and management measures. Amendment 11 provides a framework to implement fishery management measures to protect groundfish EFH, which the Council will use to, among other things, investigate implementing marine research reserves. Amendment 11 also contains a bycatch management objective; however, NMFS has disapproved the bycatch provisions of Amendment 11 because they do not adequately meet § 303(a)(11) and National Standard 9 of the Magnuson-Stevens Act. These provisions require that conservation and management measures, to the extent practicable, minimize bycatch and bycatch mortality. Section 303(a)(11) also requires the establishment of a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.

This rule implements the portions of Amendment 11 that authorize the use of fish as compensation for private vessels conducting NMFS-approved research.

This action also makes minor changes to codified definitions of regulatory terms. Amendment 11 includes a provision to remove jack mackerel from the fishery management unit (FMU) of the Pacific Coast Groundfish FMP in order to place it in the FMU of the FMP for Coastal Pelagic Species. Amendment 8 to the Council's Northern Anchovy FMP, which renames that FMP as the Coastal Pelagic Species FMP and incorporates jack mackerel into the Coastal Pelagic Species FMU, was made available for public comment on March 12, 1999 (64 FR 12279) through May 25, 1999. Amendment 8 was partially approved on June 10, 1999. Therefore, jack mackerel has now been removed from the FMU of the Pacific Coast Groundfish FMP and placed in the FMU for the Coastal Pelagic Species FMP.

The notice of availability for Amendment 11 was published on December 1, 1998 (63 FR 66111), and NMFS requested public comments on Amendment 11 through February 1, 1999. A proposed rule to implement those portions of Amendment 11 that authorize the use of fish for compensation for private vessels conducting NMFS-approved research, and that changed some definitions, was published on February 10, 1999 (64 FR 6597). NMFS requested public comments on the proposed rule through March 29, 1999. During the comment period on the notice of availability for Amendment 11, NMFS received seven letters of comment, which are addressed later in the preamble to this final rule. During the comment period on the proposed rule, NMFS received one letter of comment, which is also addressed later in the preamble to this final rule, in the section entitled "Regulatory Definitions of Terms."

#### **Partial Approval of Amendment 11; Disapproval of Bycatch Provisions**

On March 3, 1999, NMFS approved all of Amendment 11 to the Pacific Coast Groundfish FMP, except for those portions concerning the reduction of bycatch and bycatch mortality. Amendment 11 addresses bycatch through the FMP's framework mechanism, by revising one of the objectives of the FMP to read, "Strive to reduce the economic incentives and regulatory measures that lead to wastage of fish. Also, develop management measures that minimize bycatch to the extent practicable and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. In addition, promote and support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those

to improve information necessary to determine the extent to which it is practicable to reduce bycatch and bycatch mortality.”

Although NMFS supports the Council's continued use of framework provisions in the FMP's regulatory structure, the bycatch provisions in Amendment 11 fail to respond meaningfully to the bycatch requirements of the Magnuson-Stevens Act. Requirements at Section 303(a)(11) of the Magnuson-Stevens Act clearly state that an FMP must “establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.” A framework FMP would not necessarily include regulatory recommendations to reduce bycatch; however, the FMP's bycatch provisions should fully analyze and describe the Council's past efforts and planned future efforts to reduce bycatch and to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the groundfish fishery, including a discussion of all reasonable alternatives to the current management regime.

The current Amendment 11 analysis on bycatch in the groundfish fisheries basically states that there is very little information on bycatch rates in the groundfish fisheries, and that this lack of information may or may not threaten the long-term health of the fish stocks and the long-term viability of the fishing industries and communities that depend on those stocks. There is no assessment of current bycatch levels in the groundfish fisheries; nor is there an analysis based on the best available scientific information of the biological and socio-economic effects of bycatch under current management measures. The bycatch provisions of Amendment 11 will be complete when the Council has submitted a full analysis of existing and possible future efforts to reduce bycatch in the groundfish fisheries, including a discussion of how bycatch is reduced to the maximum extent practicable under current management measures, a standardized reporting methodology that would be used to assess bycatch rates in the groundfish fishery, and an analysis of all practicable alternatives to the current year-round trip limit management system that could be expected to result in a reduction of bycatch rates.

The bycatch definition in Amendment 11 has also been disapproved because it is inconsistent with the definition of

bycatch provided by the Magnuson-Stevens Act that states, at 16 U.S.C. 1802 (2), “The term ‘bycatch’ means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.” According to Amendment 11, “[b]ycatch means fish which are harvested in a fishery, but which are not sold or kept for personal use or donated to a charitable organization and includes economic and regulatory discards.” While NMFS does not deny the positive community effects of donating landed bycatch to charitable organizations, the act of donating such fish does not alter the fact that those fish are defined as bycatch by the Magnuson-Stevens Act. The FMP should use the Magnuson-Stevens Act definition of bycatch.

#### Comments and Responses

NMFS received seven letters of comment on Amendment 11 during the 60-day public comment period for Amendment 11 as established by the Notice of Availability (December 1, 1999, 63 FR 66111). These letters addressed the major Magnuson-Stevens Act issues in Amendment 11. A summary of these comments and NMFS' responses thereto, as well as NMFS' response to one comment received on the proposed rule, appear below in the following responses to public comments. Of the letters received, three letters were from marine-focused environmental advocacy organizations, two letters were from public utilities interests, one letter was from a public wastewater disposal and sanitation interest, and one letter was from a law firm writing on behalf of a variety of unspecified, land-based, commercial interests. Some comments opposed certain aspects of Amendment 11 provisions on overfishing, bycatch, and EFH. The other comments concerned only the EFH portion of Amendment 11. In addition to commenting on the amendment, two of the letters cited concerns with the NMFS consultation process for non-fishing effects on EFH. These comments on the EFH consultation process were not directly on Amendment 11 or on the proposed implementing regulation. NMFS Northwest Regional Office of Habitat Conservation is dealing with these consultation concerns. All comments received on Amendment 11 are summarized and responded to below.

Some of the commenters expressed a concern about, or misunderstanding of, the mechanics of a framework FMP and

frameworking aspects of Amendment 11. The Council has been using the framework process since 1990, when it implemented Amendment 4 to the FMP. By frameworking the goals and actions of the FMP, the Council has maintained the FMP as a statement of principles with standards and procedures that allow a variety of implementing actions. Framework FMPs tend to be less confusing and less cumbersome than FMPs without frameworks. All Council actions, including those implementing the FMP and its amendments, are public processes with multiple opportunities for public review and comment on proposed actions. Public input is not lost under an FMP's framework procedure. On the contrary, FMP frameworks give the Council more flexibility to incorporate public-generated changes and corrections into its proposed actions than FMPs without frameworks. Framework FMPs also give the Council more flexibility in how it responds to problems, which, in turn, brings the public further into the policy-making process as a resource in reaching solutions to those problems. NMFS continues to support the Council's frameworking process as providing a public process.

#### Comments on Overfishing

*Comment 1:* Although the Council's default framework for avoiding overfishing is one of the strongest in the nation, the Council adopted two loopholes that allow excessive fishing. One loophole permits higher limits than the Council's own default policy, and the second loophole allows overfishing of single populations in a mixed population fishery. Both of these loopholes need to be deleted.

*Response:* NMFS disagrees with this suggested alteration of Amendment 11. The Magnuson-Stevens Act requires that FMPs be consistent with 10 national standards, the first of which reads, “Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the United States fishing industry.” Councils are also charged by the Magnuson-Stevens Act with rebuilding overfished fisheries. To meet these requirements, the Council had to amend its process for setting OYs for managed species to ensure that no OY would exceed the maximum sustainable yield (MSY) for a particular stock. In accordance with the national standard guidelines, OY would not exceed the acceptable biological catch (ABC) (or the sum of ABCs for a complex) unless the Council demonstrates that overfishing mixed stock exception criteria have been met.

This overfishing mixed stock exception is not a "loophole," but an implementation of a component of NMFS national standards guidelines, a tool for implementing the Magnuson-Stevens Act's broad policy requirements within the biological, ecological, and socio-economic realities of our nation's fisheries. According to the guidelines at 50 CFR 600.310(d)(6):

Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this type of overfishing only if all of the following conditions are satisfied: (i) It is demonstrated by analysis that such action will result in long-term net benefits to the Nation. (ii) It is demonstrated by analysis that mitigating measures have been considered and that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur. (iii) The resulting rate or level of fishing mortality will not cause any species or evolutionarily significant unit thereof to require protection under the ESA.

This careful language is clearly not a loophole, but rather, an acknowledgment that marine ecosystems support a wide variety of different fish species, and that fishing gear is often not selective enough to distinguish between species of healthy stock status and species of troubled stock status.

Amendment 11 calls for numerical OYs for individual species and species groups, and clarifies that the Council will decide on a case-by-case basis whether to establish OYs for individual species and species groups. A non-numerical OY may be retained for some species. For the Council to ensure that its OY recommendations do not exceed MSYs for managed species, it must know the MSYs of those species. Groundfish stock assessment processes are ongoing and primarily focus on the more heavily-targeted species, so for many managed species, there is no known species-specific MSY. Therefore, the Council recommended setting an "MSY control rule" for managed species that allows a conservative rate of fishing on those species for which there is no numerical MSY based on stock assessments. The MSY control rule for Pacific coast groundfish is a constant fishing mortality rate that serves as a limit. The default rate is  $F_{40\%}$  for rockfish and  $F_{35\%}$  for other species, both of which may be superseded based on better scientific information. ABC is defined as the appropriate F times the current biomass estimate. The default overfished/rebuilding threshold is 25 percent of  $B_{unfished}$ .

For stocks with biomass smaller than the MSY biomass, OY will be adjusted to be more conservative than ABC. Between  $B_{msy}$  and  $B_{10\%}$ , OY will be adjusted to be increasingly more conservative at lower biomass levels. A stock that is at or below  $B_{10\%}$  will have a zero OY. This conservative guideline would serve as a default interim rebuilding adjustment to OY for stocks below their overfished/rebuilding threshold, and would be in effect until a formal rebuilding plan is developed for those stocks. Once the Secretary of Commerce (Secretary) has identified a stock as overfished, the Council has 1 year to develop a rebuilding plan. Based on the definition of "overfished" in Amendment 11, NMFS notified the Council on March 3, 1999, that Pacific ocean perch, lingcod, and bocaccio were considered overfished. The Council has already begun work on rebuilding plans for these stocks.

The Council may set the harvest level for a stock higher than the default control rule, but not higher than the MSY harvest rate, as long as the higher harvest rate is not inconsistent with rebuilding the stock to  $B_{msy}$ . Commenters on this issue also identified this exception to the default control rule as a "loophole." Like the mixed-stock exception for overfishing, this exception provides the Council flexibility in dealing with the challenges of managing a mixed-stock complex while meeting the requirement to rebuild overfished stocks. Under this exception, an overfished stock within a mixed-stock complex could be harvested at a rate above the default control rate, but below MSY. Even management measures that keep harvest rates on an overfished stock to the lowest possible incidental interception rates may fall within that range between the default control rate and MSY.

#### *Comments on Bycatch*

*Comment 2:* The bycatch provision is not adequate and needs to be strengthened by including such provisions as: (1) Adopting a mandatory west coast observer program; (2) for some species, adopting an alternative to the year-round fishery and to the use of trip limits—management tools that have been shown to result in increased discards; (3) establishing bycatch caps based on harvest guidelines; (4) allowing stackable permits; and (5) creating incentives for clean fishing by developing "harvest priorities" with options such as extra allocations for fishers with lower bycatch rates.

*Response:* NMFS agrees that the bycatch provisions in Amendment 11 are not adequate and has disapproved

those provisions. Amendment 11, including the supporting analysis, neither assesses current bycatch rates, nor recommends management measures for reducing bycatch rates or gathering bycatch data. NMFS recognizes that the FMP is a framework FMP that sets the standards and procedures that govern the Council's actions. However, NMFS believes that the Amendment 11 framework objective for bycatch reduction by itself neither assesses bycatch in the groundfish fishery under current management measures nor addresses what steps the Council intends to take to assess and then reduce bycatch rates in the future.

NMFS recognizes that the Council has been exploring several alternatives to its current groundfish management system in order to address the waste issues in the groundfish fishery. There is no "silver bullet" that will solve all of the different problems in the fishery. Several different advisory committees have been formed to develop a suite of solutions to address the many challenges in groundfish management. At its April 1999 meeting, the Council proposed development of an observer program for Pacific Coast groundfish fisheries and appointed an Implementation Committee to design a statistically valid observer program. The Council's Total Catch Determination Committee has concluded that, in addition to an observer program, the fleet should move to enhanced logbook reporting. The Council is also convening a series of legal gear committees, with one committee for each gear group or fishing sector, that will address gear performance standards to reduce bycatch and to minimize gear impacts on EFH. Reducing overall fleet participation and capacity is being considered through development of programs for permit stacking and permit buyback. Many of the new ideas being explored by the Council would require a fundamental shift in how Pacific groundfish fisheries operate. NMFS will be working with the Council to develop new bycatch provisions through an FMP amendment, to implement management measures to minimize bycatch and discard mortality to the extent practicable, and to implement a data gathering system for bycatch.

#### *Comments on EFH*

*Comment 3:* By the terms of the SFA, EFH authorization is limited to "the description and identification of essential fish habitat in fishery management plans." 16 U.S.C. 1855(b)(1)(A). This limitation makes it clear that NMFS and the Council authority applies only to "fisheries".

There is no basis in the Magnuson-Stevens Act for the Councils to address, through plans, nonfishing activities or habitat outside of the Exclusive Economic Zone (EEZ) regulatory jurisdiction of the Council.

*Response:* NMFS disagrees with the commenter's interpretation of the Magnuson-Stevens Act. "Essential Fish Habitat" is defined at 16 U.S.C. 1802(3)(10) as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The Magnuson-Stevens Act requires at section 16 U.S.C. 1855(b)(1)(A) that NMFS "establish by regulation guidelines to assist the Councils in the description and identification of EFH in the fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat." The Council must also identify other actions to conserve EFH, which includes minimizing to the extent practicable adverse effects on EFH caused by fishing. Finally, the statute requires that every Federal agency consult with the Secretary of Commerce on any action (fishing or non-fishing) authorized, funded or undertaken by that agency that may adversely affect EFH. See 16 U.S.C. 1855(b)(3) and 16 U.S.C. 1953(a)(7). The statute and plan amendment make a clear distinction between what NMFS regulates, with Council input, under the plan (fishing that affects EFH) and what the Council and NMFS discuss and provide comments on (other activities that affect EFH). Amendment 11 does not take any regulatory action or require any regulations concerning non-fishing activities.

*Comment 4:* The EFH designations include "all waters from the mean higher high water line, or the upriver extent of saltwater intrusions into river mouths, along the coasts of Washington, Oregon, and California seaward to the boundary of the U.S. Exclusive Economic Zone (EEZ)." This area is too broad to be effectively managed as EFH. This limitless approach to identifying EFH is unlawful. It renders meaningless the terms "essential" and "necessary" as used in the Magnuson-Stevens Act, and otherwise clearly exceeds Congressional intent. If Congress had intended for EFH to include all waters in the general distribution of a species, it could have and would have done so. The proposed definition is too broad in that it unnecessarily identifies the entire geographic ranges of the managed species.

*Response:* The Magnuson-Stevens Act defines "essential fish habitat" as "those

waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity" 16 U.S.C. 1802(3)(10). When Congress amended the Magnuson-Stevens Act with the SFA, it did not limit how the phrase "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity" would apply to the different FMPs in different portions of the U.S. coast. As with the Magnuson-Stevens Act national standards, NMFS had to create a tool to implement these broad policy requirements within the realities of current scientific knowledge about managed fish stocks and their habitats. To address the difficult problem of describing EFH, NMFS issued an interim final rule to implement the EFH provisions of the Magnuson-Stevens Act (62 FR 66531, December 19, 1997; 50 CFR Part 600, Subparts J and K.)

This rule describes an approach for designating EFH under current information conditions and an ultimate goal for information about managed species EFH. Four levels of information range from (1) "Presence/absence distribution data are available for some or all portions of the geographic range of the species," to (4) "Production rates by habitat (for particular species) are available." 62 FR § 6552; 50 CFR § 600.815 (a)(2)(B). Under the Pacific Coast Groundfish FMP, the Council had to describe EFH for 82 different groundfish species, at life history stages ranging from eggs/parturition to adulthood and spawning adulthood. Over 400 EFH identifications were required to provide habitat descriptions for all life stages of all managed species. For most life stages of most species, only very basic presence/absence information was available. For some species, Level 2 information, "Habitat-related densities of the species are available" existed for adult life stages. However, identifying adult life stage EFHs for those species/stages for which there existed Level 2 information did not tend to diminish either the EFH of individual species over their entire life history or the entire EFH under the FMP. NMFS agrees that the Pacific Coast Groundfish FMP EFH is large. However, NMFS believes that the identified EFH is no larger than is supported by current scientific evidence. NMFS and the Council plan to continue research on Pacific Coast groundfish habitat with the aim of achieving the highest possible levels of information for all life stages of all managed species. NMFS cautions the public that while higher information levels will likely result in smaller

specific EFHs for each life stage of each managed species, the cumulative size and shape of the 400+ EFH definitions might not be significantly smaller than the current EFH description.

*Comment 5:* The highest level information available must be used in EFH designations. It appears that the EFH portion of Amendment 11 gives higher credence to Level 1 information than to Level 2 information. Because the Council dismissed Level 2 information, it does not appear that NMFS and the Council have used the best scientific information available in designating EFH. Furthermore, the EFH portion of Amendment 11 should include a schedule and research plan to fill identified data gaps. The research plan should demonstrate that it will lead to the development of higher level EFH information.

*Response:* NMFS believes that the Council did not dismiss Level 2 information. On the contrary, EFH descriptions for individual species and life stages provide summaries of the highest level of information available for each species' life stages. NMFS agrees with commenters on the importance of research to provide higher levels of information for all species at all life stages. NMFS expects to continue to conduct research on groundfish habitat, and to keep abreast of similar research being conducted by other Federal agencies, states and tribes, academia, and private organizations. Because information is limited or lacking for many species and/or life stages, further research cannot help but lead to the development of higher level EFH information. Amendment 11 provides research recommendations for further efforts to provide higher and more detailed information on groundfish EFH, as required by 50 CFR 600.815(a)(10). In addition, groundfish EFH research priorities have been adopted into the Council's biennial "Research and Data Needs for 1998-2000," which summarizes the Council's scientific research needs for all fisheries under the Council's authority.

*Comment 6:* Amendment 11 includes a limited number of broadly defined "composite EFHs" to address the complexity of dealing with numerous individual species and unique life stages. We are concerned that this approach will require consultation on the effects of our activities on species that either do not occur off of our portion of the Pacific Coast, or which are rarely or anomalously observed in our waters. It is clear that not all of the non-fishing activities described will potentially impact all groundfish species.

*Response:* NMFS agrees that not all of the non-fishing activities described in the EFH portion of Amendment 11 will affect all groundfish species. The approach of using "composite EFHs" is designed to make the consultation process more simple, not more complex. If a particular activity is known to adversely affect only the marine component of the estuarine composite, for example, consultation would be limited to EFH for those species and life stages associated with the estuarine composite in the geographic area of the activity considered.

*Comment 7:* EFH designations must be updated through FMP amendments, rather than through an administrative process, so that updates of EFH designations include an opportunity for public review and comment.

*Response:* NMFS disagrees with this comment, for the reasons stated earlier in the discussion on frameworking. Amendment 11 sets the process of updating EFH designations within a framework that allows the Council to include new information more frequently than would be possible if EFH designations were updated through FMP amendments. All discussions by the Council and its advisory bodies concerning EFH will be open to the public, and any decisions made on updating EFH designation will be made only after public comment has been considered. The Council publicly announces all of its meetings, and makes particular effort to keep a wide range of constituents informed of its activities, and of the activities of its advisory bodies.

*Comment 8:* Effects of non-fishing activities on marine waters are already well regulated at the present time under a wide range of state and Federal programs. No adequate scientific or other justification is presented in the amendment or in supporting materials for adoption of general prescriptive measures against non-fishing activities that may affect EFH. Overgeneralized conclusions about the effects of non-fishing activities on EFH unnecessarily encumber NMFS and the Councils, as well as other Federal and state agencies and a huge number of nonfishing sector enterprises and communities with an overly complex consultation and coordination process. The measures suggested are likely to be redundant or in conflict with measures being pursued under other regulatory programs. Therefore, these suggested conservation and management measures are not in compliance with the Magnuson-Stevens Act national standards, which state that conservation and management measures be based on the best available scientific

information, and that such measures shall, where practicable, minimize costs and avoid unnecessary duplication.

*Response:* The interim final rule (62 FR 66531, December 19, 1997; 50 CFR Part 600, Subparts J and K) discussed earlier, in the response to Comment 4, requires that FMPs "identify activities that have the potential to adversely affect EFH quantity or quality, or both." 50 CFR Section 600.815(a)(5). FMPs also must "describe options to avoid, minimize, or compensate for the adverse effects identified pursuant to (fishing and non-fishing activities)." 50 CFR Section 600.815(a)(7). The Council does not have regulatory authority over non-fishing activities affecting groundfish EFH. The FMP does not impose management measures on non-fishing interests. It provides the information called for in the statute and regulations, so that it can be used by the public and in the consultation process established in the statute.

The Magnuson-Stevens Act requires all Federal agencies whose activities may adversely affect EFH to consult with NMFS (16 U.S.C. 1855(b)(2)). According to 16 U.S.C. 1855(b)(4), NMFS is required to provide EFH conservation and enhancement recommendations to Federal and state agencies for actions that adversely affect EFH. State agencies and private parties are not required to consult directly with NMFS on their activities with EFH. However, if their activities are authorized, funded or undertaken by a Federal agency, then that Federal agency must consult with NMFS.

The EFH consultation requirements of the Magnuson-Stevens Act will be implemented, to the extent possible, through existing framework of established habitat conservation policies. EFH consultations will be combined with existing interagency consultations and environmental review procedures that may be required under other such statutes as the Endangered Species Act (ESA), Clean Water Act, the National Environmental Policy Act (NEPA), the Fish and Wildlife Coordination Act, the Federal Power Act, and the Rivers and Harbor Act. Combining habitat consultations for multiple laws minimizes possible conflicts between and redundancy in meeting the implementation requirements of those laws. Wherever possible, NMFS will also combine EFH consultations for multiple different projects in order to reduce the regulatory burden of consultation.

*Comment 9:* Potential effects of municipal wastewater discharge were too general, and, thus, not accurately described in Amendment 11.

Furthermore, conservation measures suggested for wastewater discharge, such as "improved treatment of sewage," are unnecessary and unfeasible, and therefore inappropriate for inclusion in the EFH portion of Amendment 11.

*Response:* NMFS recognizes that wastewater discharge and water quality standards are already regulated through laws other than the Magnuson-Stevens Act, and that those laws require implementation of a variety of conservation measures. However, as stated in the response to Comment 8, Magnuson-Stevens Act amendments to FMPs must identify activities that may adversely affect EFH quantity or quality, and must further describe options to avoid, minimize, or compensate for those effects. The feasibility of implementing particular conservation measures to avoid, minimize, or compensate for the effects of non-fishing activities on EFH will vary in different areas of the Pacific Coast, depending on the regulatory requirements currently in place for those areas.

*Comment 10:* The EFH provision is not complete. It does not include any specific measures to reduce the impacts of fishing on EFH. The EFH section lacks the following required elements: (1) identification of habitat areas of particular concern (HAPCs) to help guide the application of habitat protection measures; and (2) adoption of specific and identifiable conservation and management measures to protect habitat from the impacts of harmful fishing practices, such as restrictions on gear or fishing practices, time or area closures, and no-take reserves to preserve habitat or provide base-line information.

*Response:* Identifying HAPCs is not a required element in implementing the EFH provisions of the Magnuson-Stevens Act. The NMFS interim final rule (62 FR 66531, December 18, 1997; 50 CFR Part 600 subparts J and K) states at § 600.815(a)(9), in part, "FMPs should identify HAPCs within EFH." Identifying HAPCs is NMFS' highest habitat research priority for Pacific Coast groundfish. NMFS anticipates that the Council will incorporate HAPCs into its EFH designations as soon as adequate information is available. Identifying HAPCs should also strengthen EFH description information for several key species managed by the FMP.

In addition to projects that identify HAPCs, NMFS has been working to incorporate EFH information into geographic information system databases, to better map habitats used by Pacific Coast groundfish. NMFS is

also focusing Pacific Coast research on the effects of fishing gear on EFH, and on the habitat needs of different rockfish species assemblages. The NMFS Southwest Fisheries Science Center has been studying whether there are particular rockfish habitats that are already inaccessible to fishing gear, and if so, whether those areas could be used as unaltered habitat baselines for research into the effects of fishing gear on rockfish habitat. Additionally, NMFS is working in partnership with its sister agency, the National Ocean Service, which manages U.S. National Marine Sanctuaries, to conduct habitat surveys of the ocean floor through the use of human-operated and remotely-operated submersible vehicles. All of these efforts, in combination with the research work of other public agencies, academic and private institutions, should greatly improve the level of information available on groundfish EFH. The Magnuson-Stevens Act provisions on EFH have created the impetus to move these projects forward.

At 16 U.S.C. 1853(a)(7), the Magnuson-Stevens Act requires that FMPs include practicable measures that minimize to the extent practicable the adverse effects of fishing on EFH. Amendment 11 includes a consideration of how the effects of fishing activities on EFH could be minimized and provides a framework for the Council to implement future management measures to protect EFH. Through this framework, the Council has already begun investigations into measures that would reduce the effects of fishing gear on EFH, including time and area closures to protect overfished species' habitat, gear alterations to minimize bycatch and habitat damage, and no-take marine reserves. Amendment 11 also describes the dearth of information on the interaction between groundfish fishing gear and Pacific coast groundfish habitat. There is a great deal of uncertainty about the effects of fishing gear on EFH. NMFS and other agencies are working on defining those effects so that the Council may properly evaluate what management measures may be practicable and effective in protecting EFH. NMFS and the Council consider Amendment 11 to be a first step in the development of practicable management measures that minimize the effects of fishing gear on EFH. NMFS will be working with the Council and encouraging swift progress in this area.

*Comment 11:* The EFH section does not adequately conduct an assessment of the potential adverse effects of all fishing equipment types used in waters described as EFH. The amendment cites lack of information on the effects of

fishing gears on the habitat of Pacific Coast groundfish; however, we question why research from Georges Bank that shows that fishing gear that scrapes the bottom and has detrimental effects on benthic habitats would not be applicable to Pacific Coast groundfish habitat.

*Response:* The EFH portion of Amendment 11 does contain an assessment of potential adverse impacts of all fishing equipment types used in waters managed by the FMP. While describing these potential adverse effects based on information from other parts of the world, this assessment also discusses the dearth of information specific to Pacific Coast groundfish habitat. Georges Bank, a shallow plain on the continental shelf off eastern New England, is a different type of habitat from the rocky, high-relief habitat off the Pacific coast. Fishing strategies and gears used in Georges Bank are also quite different from fishing strategies off the Pacific coast. For example, there are no vessels using dredge gear in the Pacific Coast EEZ, and there are far fewer bottom trawlers operating off the Pacific coast than off the New England coast. As stated in the response to Comment 10, fishing effects on Pacific Coast groundfish EFH is a NMFS EFH research priority, and the Council has initiated an effort through its legal gear committee to begin considering changes to fishing gear to protect sensitive EFH.

*Comment 12:* The Council has neglected to evaluate the loss of prey species as an adverse effect on EFH and on a managed species. An evaluation of adverse effects from fishing activities must investigate whether and to what extent loss of prey from direct or indirect (i.e., bycatch) fishing activities is adversely affecting the feeding EFH of managed species.

*Response:* An evaluation of prey species stock status is not required for implementing the EFH provisions of the Magnuson-Stevens Act. The NMFS interim final rule (62 FR 66531, December 18, 1997) states at § 600.815(a)(8), in part, "FMPs should identify the major prey species for the species in the FMU and generally describe the location of prey species' habitat." Given the time constraints of meeting the October 1998 Magnuson-Stevens Act deadline for amendment approval, and the fact that there are 82 groundfish species in the Pacific Coast Groundfish FMP's fishery management unit, the Council chose to focus its efforts on required EFH elements. A description of EFH for 82 different groundfish species necessarily includes a great deal of marine habitat that is

used both by managed species and by the prey of managed species.

*Comment 13:* Finalizing EFH amendments to the Pacific Coast Groundfish FMP can await revision of the NMFS interim final regulations and guidelines, which is being vigorously pursued. Amending FMPs in advance of that reform will require redoing the process later, and is likely to lead only to further disagreement and confusion in the meantime.

*Response:* Section 108(b) of the SFA required that regional fishery management councils submit FMP amendments to the Secretary implementing the SFA amendments to the Magnuson-Stevens Act by October 11, 1998. If the NMFS interim final regulations on implementing EFH are revised in the future, FMPs will reflect those changes as necessary. Additionally, the interim final rule recommends at § 600.815(11) that the Councils conduct a complete review of the EFH provisions of their FMPs at least once every 5 years.

#### *Comments on the Environmental Assessment (EA)*

*Comment 14:* The EA does not adequately evaluate previous relevant actions (such as NMFS having approved excessively high total allowable catches in past years); future relevant actions; and other direct, indirect, and cumulative ecological and economic effects of the selected recommendations in Amendment 11. The EA does not proceed from an appropriate baseline of information—a healthy ecosystem and a healthy fishery, one that has not been so overexploited as to have caused stocks to be overfished or to be approaching an overfished condition.

*Response:* The Amendment 11 EA did consider the Council's previous relevant actions, proposed future relevant actions, and the effects of actions recommended by Amendment 11, while also discussing the benefits and/or detractions of taking those actions. The current evaluations of past actions are what have shown us that harvest levels on some species have been unsustainably high. The Council's management actions are always based on the most recent available information, including information about and assessments of previous relevant management actions, particularly past harvest rates. Not all future relevant actions can be predicted, but Council decisions do take account of their future expected activities.

*Comment 15:* The Amendment 11 EA is inadequate as a National Environmental Policy Act document. It does not contain an adequate range of

alternatives for designating EFH. We found neither a discussion of environmental impacts that might result from the amendment's EFH provisions, nor a Regulatory Impact Review (RIR) analysis. Socioeconomic impacts on non-fishing entities and communities are otherwise ignored, with the erroneous assertion that the action proposed is simply to describe and identify EFH for FMP species, which, in and of itself, will have no economic impact. An Environmental Impact Statement (EIS) must be prepared to address the potentially huge effects on the human environment of the pervasive and cumbersome EFH program reflected in the proposed amendment.

*Response:* NMFS disagrees. Operating under Magnuson-Stevens Act requirements to identify EFH and to describe fishing and non-fishing activities that may affect EFH, the Council considered the sum of the available information on groundfish habitat. The Council did not have the option of waiting to designate EFH until the scientific community builds a thorough database for all of the species managed under the groundfish FMP. As explained in the response to Comment 8, the Council does not have regulatory authority over non-fishing activities affecting groundfish EFH. Also explained in the response to Comment 8, any consultation activities resulting from the designation of Pacific Coast groundfish EFH will be conducted between NMFS and other Federal or state agencies, not between NMFS and private entities. The RIR in Amendment 11 focuses on fishery regulatory activity because the Council addresses fishing activities in the Pacific Coast EEZ.

#### **Amendment 11 Provisions to Provide Fish as Compensation for Participation in Resource Surveys**

The Magnuson-Stevens Act authorizes the Secretary to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to pay for these surveys through the sale of fish taken during the survey or, if the quality or amount of fish is not adequate, on a subsequent commercial fishing trip (see § 402(e)). Section 303(b)(11) of the Magnuson-Stevens Act further enables the Secretary to "reserve a portion of the allowable biological catch of the fishery for use in scientific research."

The fishing industry, environmental groups, and NMFS have actively explored various ways to expand and improve information used to manage the groundfish fishery and to involve the fishing industry in gathering that information. Amendment 11 includes a provision to allow NMFS to use fish as

compensation for fishers who participate in resource surveys. The preamble to the proposed rule to implement this provision (February 10, 1999, 64 FR 6597) provided a complete discussion of how owners of chartered vessels could be compensated for participation in resource surveys, of how commercial fishing vessel operations could be compensated for collecting resource information, of competitive bid solicitation, of scientific protocols for sample retention, of the issuance process for compensation exempted fishing permits, and of how compensation fish will be accounted for in the Council's annual process of setting ABCs and OYs. During the public comment period on this action, NMFS did not receive any comments addressing this portion of the proposed rule. There are no changes from the proposed rule to the regulatory text on compensation fishing.

#### **Regulatory Definitions of Amendment 11 Terms, Comment and Response, Change from the Proposed Rule**

Amendment 11 modified the FMP definitions of several terms, including terms used in groundfish regulations. In the proposed rule to implement Amendment 11, NMFS proposed amending the regulatory definitions of the terms "specification," and "processing or to process" to make those definitions consistent with the new Amendment 11 definitions, and proposed adding a definition for "optimum yield." NMFS received one public comment on the proposed rule to implement Amendment 11. The commenter asked that NMFS include the Amendment 11 definition of "processor" in the codified regulations because the current regulations do not directly regulate processor activities. However, including it in the regulations alerts the affected public, and provides notice to the persons who are newly defined as processors to pay attention to future Council actions that may affect them. Including this definition in the groundfish regulations will not alter the effect or enforcement of current Federal groundfish regulations. The definition of "processor" in Amendment 11 is, "Processor means a person, vessel, or facility that (1) engages in processing; or (2) receives live groundfish directly from a fishing vessel for retail sale without further processing." This definition is necessary to clarify that a person, vessel or facility that receives live fish directly from a fishing vessel for sale without further processing is

considered a processor. This differs from previous use of the term, which was ambiguous with respect to the receipt and subsequent sale of live fish. Including this definition in the codified groundfish regulations does not alter the effect or enforcement of current Federal groundfish regulations.

#### **Classification**

The Administrator, Northwest Region, NMFS, determined that Amendment 11 is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by OMB, under OMB Control Number 0648-0203 for Federal fishing permits. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The public reporting burden for applications for exempted fishery permits. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; the burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information. Send comments regarding this burden estimate or any other aspect of the data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to OMB, Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

NMFS issued Biological Opinions (BOs) under the ESA on August 10, 1990, November 26, 1991, August 28,

1992, September 27, 1993, and May 14, 1996, pertaining to the impacts of the groundfish fishery on Snake River spring/summer chinook, Snake River fall chinook, Sacramento River winter chinook, and on Snake River sockeye. The BOs concluded that implementation of the FMP for the Pacific Coast Groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This rule is within the scope of these consultations. Because the impacts of this action fall within the scope of the impacts considered in these BOs, additional consultations on these species are not required for this action. Since the last BO, additional species have been listed under the ESA, including: coho salmon as threatened (Oregon coast/southern Oregon-northern California/ central California); chinook salmon as threatened (Puget Sound/ lower Columbia River/upper Willamette River) and endangered (upper Columbia River); chum salmon as threatened (Hood Canal/Columbia River); sockeye salmon as threatened (Ozette Lake); steelhead as threatened (middle and lower Columbia River/Snake River Basin/upper Willamette River/central California/south-central California) and endangered (upper Columbia River/ southern California); and, Umpqua River cutthroat trout as endangered.

NMFS has reinitiated consultation under Section 7 of the ESA on the Pacific Coast Groundfish fishery to consider its effect on newly listed species. Review of the available information indicates that these fisheries are not likely to affect listed coho, chum, sockeye, steelhead, or cutthroat trout, as these species are rarely, if ever, encountered in the groundfish fishery. Chinook salmon are caught incidentally to some of the groundfish net fisheries, and those fisheries may take chinook salmon from some of the newly listed runs. However, all four of the newly listed chinook evolutionary significant units are north or far-north migrating species, which greatly limits the potential for take in the groundfish fisheries. NMFS has reviewed the effects of groundfish management under the FMP on newly listed Pacific salmon stocks and has determined that implementation of the Amendment 11 final rule will not result in irretrievable or irreversible commitments of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative

measures that may be developed and deemed necessary for future implementation in the Pacific Coast groundfish fishery.

**List of Subjects in 50 CFR Part 660**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

**Andrew A. Rosenberg,**  
Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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

**PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC**

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definitions “Optimum yield” and “Processor” are added in alphabetical order, and the definitions of “Commercial harvest guideline or commercial quota”, “Processing or to process”, and “Specification” are revised to read as follows:

**§ 660.302 Definitions.**

\* \* \* \* \*  
*Commercial harvest guideline or commercial quota* means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes, for recreational fisheries, and for compensation fishing under § 660.350. Limited entry and open access allocations are based on the commercial harvest guideline or quota.  
\* \* \* \* \*

*Optimum yield (OY)* means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as a harvest guideline, quota, or other specification) or non-numerically.  
\* \* \* \* \*

*Processing or to process* means the preparation or packaging of groundfish

to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

*Processor* means person, vessel, or facility that engages in processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing.  
\* \* \* \* \*

*Specification* is a numerical or descriptive designation of a management objective, including but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.  
\* \* \* \* \*

3. In § 660.306, paragraphs (d), (e), and (f) are revised to read as follows:

**§ 660.306 Prohibitions.**

\* \* \* \* \*  
(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.350.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP under § 660.350 or part 600 of this chapter.

(f) Take and retain, possess, or land more groundfish than specified under § 660.321 and § 660.323, or under an EFP issued under § 660.350 or part 600 of this chapter.  
\* \* \* \* \*

4. In § 660.321, paragraph (b) is revised to read as follows:

**§ 660.321 Specifications and management measures.**

\* \* \* \* \*  
(b) *Annual actions.* The Pacific Coast Groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations.  
\* \* \* \* \*

5. Section 660.350 is added to read as follows:

**§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.**

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to retain fish as compensation in excess of trip limits or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey.* NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a "compensation EFP" to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subpart G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch.* As part of the annual specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas. Fish authorized in an EFP too late in the year to be deducted from the following year's ABC will be accounted for in the next management cycle practicable.

(b) *Compensation for commercial vessels collecting resource information under a standard EFP.* NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If

compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications.* If the RA or designee agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 660.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

[FR Doc. 99-23486 Filed 9-9-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 990304062-9062-01; I.D. 090299A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of Pacific ocean perch in this area has been achieved.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 1999, until 2400 hrs, A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas Pearson 907-481-1780 or tom.pearson@noaa.gov.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and

Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of Pacific ocean perch in the Central Regulatory Area of the GOA was established as 6,760 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

#### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1999 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: September 2, 1999.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 990304062-9062-01; I.D. 090199C]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of northern rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of northern rockfish in this area has been achieved.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 1999, until 2400 hrs, A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas Pearson 907-481-1780 or tom.pearson@noaa.gov.

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

The amount of the 1999 TAC of northern rockfish in the Central Regulatory Area of the GOA was established as 4,150 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii). In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for northern rockfish in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of northern rockfish in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).