

On page 50465, Tables 5 and 6 are replaced in their entirety as follows.

TABLE 5. BLACK SEA BASS PRELIMINARY 1999 LANDINGS AND OVERAGES BY QUARTER

| Quarter | 1999 Quota ¹ | | Preliminary 1999 Landings | | 1999 Overage | |
|---------------------|-------------------------|-----------------|---------------------------|-----------------|--------------|-----------------|
| | Lb | Kg ² | Lb | Kg ² | Lb | Kg ² |
| 1. (Jan –Mar) | 1,168,860 | 530,186 | 712,196 | 323,052 | | |
| 2. (Apr –Jun) | 885,115 | 401,481 | 1,036,067 | 469,960 | 150,952 | 68,472 |
| 3. (Jul –Sep) | 372,983 | 169,182 | 507,139 | 230,038 | 134,156 | 60,853 |
| 4. (Oct –Dec) | 598,043 | 271,268 | 705,996 | 320,240 | 107,953 | 48,968 |
| Total | 3,025,000 | 1,372,117 | 2,961,398 | 1,343,290 | | |

¹ Reflects quotas as published on August 26, 1999 (64 FR 46596). ² Kilograms are as converted from pounds, and the column may not total correctly due to rounding.

TABLE 6. BLACK SEA BASS PRELIMINARY ADJUSTED 2000 QUOTAS BY QUARTER

| Quarter | 2000 Initial Quota | | 2000 Adjusted Quota | |
|---------------------|--------------------|-----------------|---------------------|-----------------|
| | Lb | Kg ¹ | Lb | Kg ¹ |
| 1. (Jan –Mar) | 1,168,760 | 530,141 | 1,168,760 | 530,141 |
| 2. (Apr –Jun) | 885,040 | 401,447 | 734,088 | 332,982 |
| 3. (Jul –Sep) | 372,951 | 169,168 | 238,795 | 108,317 |
| 4. (Oct –Dec) | 597,991 | 271,244 | 490,038 | 222,281 |
| Total | 3,024,742 | 1,372,000 | 2,631,681 | 1,193,721 |

¹Kilograms are as converted from pounds, and the column may not total correctly due to rounding.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 21, 2000.

Clarence Pautzke,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000927275-0347-02; I.D. 082800F]

RIN 0648-AO31

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 12

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

ACTION: Final rule; announcement of approval of an amendment to a fishery management plan, and announcement of disapproval of overfished species rebuilding plans.

SUMMARY: NMFS issues this final rule to remove references to foreign and joint venture fishing in the West Coast groundfish regulations. The Pacific Fishery Management Council (Council) prepared Amendment 12 to the Pacific Coast groundfish Fishery Management Plan (FMP) to provide framework procedures for developing overfished species rebuilding plans, for setting guidelines for rebuilding plan contents, and for sending rebuilding plans to NMFS for review and approval/disapproval. This action also announces NOAA approval of Amendment 12, and revocation of NMFS prior approval for the overfished species rebuilding plans for West Coast lingcod, bocaccio, and Pacific ocean perch (POP).

DATES: Effective January 29, 2001.

ADDRESSES: Copies of Amendment 12 to Pacific Coast Groundfish FMP, and the Environmental Assessment/Regulatory Impact Review are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Send comments regarding any ambiguity or unnecessary complexity arising from the language

used in this rule to Donna Darm or Rebecca Lent.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko at: phone, 206-526-6140; fax, 206-526-6736, and email, yvonne.dereynier@noaa.gov or becky.renko@noaa.gov; or Svein Fougner at: phone, 562-980-4000; fax, 562-980-4047; and email, svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: http://www.access.gpo.gov/su-docs/aces/aces_140.html.

Background

The Council prepared Amendment 12 to provide a framework within the Pacific Coast Groundfish FMP to set guidelines and requirements for overfished species rebuilding plans. This framework integrates the rebuilding plan development process into the Council's current stock assessment and annual specifications processes, to accommodate the complexities of the fishery and to ensure that rebuilding measures for overfished species may begin as soon as possible after the initial determination that a species is overfished. Amendment 12 also declares the West Coast groundfish resource to be fully utilized by domestic harvesting and processing entities.

The notice of availability for Amendment 12 was published on September 8, 2000 (65 FR 54475), and NMFS requested public comments on Amendment 12 through November 7, 2000. A proposed rule to implement Amendment 12 was published on October 6, 2000 (65 FR 59814). NMFS requested public comment on the proposed rule through November 20, 2000. During the comment period on the notice of availability for Amendment 12, NMFS received two letters of comment, which are addressed later in the preamble to this final rule. NMFS received no letters of comment on the proposed rule itself.

Approval of Amendment 12; Revocation of Approval of Overfished Species Rebuilding Plans

The Council first dealt with overfished species rebuilding issues in Amendment 11 to the FMP, which was approved on March 9, 1999. Following its work on Amendment 11, the Council determined that it needed to provide a framework within the FMP that would set guidelines and requirements for overfished species rebuilding plans that are required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). During Amendment 12 development, the Council was also developing rebuilding plans for the first three groundfish species to be declared overfished, which were lingcod, bocaccio, and POP.

West Coast groundfish management has undergone significant changes since the October 1996 passage of the Sustainable Fisheries Act, which amended the Magnuson-Stevens Act. In addition to addressing new legislative requirements, the Council has had to revise groundfish management to account for recent scientific information that shows that West Coast groundfish stocks are less productive than similar groundfish species around the world, and less productive than prevailing scientific studies had predicted in 1998 and prior years. This new information on the lower productivity of West Coast groundfish has made evident the need for more conservative groundfish management to both buffer against future stock declines and make up for historic, unintentional over-harvest. Based on these scientific revelations, the Council initially assumed that implementing the Magnuson-Stevens Act for West Coast groundfish fisheries would result in several species being declared overfished. Amendment 12's overfished species rebuilding plan framework was designed to ensure that rebuilding measures for overfished species could begin as soon as possible

after official determination of a species as overfished and to recognize the complexity of the fishery and the possible interaction of management measures for different species. Amendment 12 was also intended to provide the Council with overarching guidance on rebuilding plans for a fishery in which multiple rebuilding plans would be required at the same time.

During the Council's development phase for Amendment 12, the Council was also crafting its first rebuilding plans for lingcod, bocaccio, and POP. These plans were implemented for the year 2000 through the annual specifications and management measures, and were submitted for NMFS approval in March 2000. NMFS announced approval of the rebuilding plans on September 5, 2000 (65 FR 53646). Shortly afterward, on September 8, 2000 (65 FR 54475), NMFS announced availability of Amendment 12 for public review, and accepted comments through November 7, 2000.

Amendment 12 revised the FMP to define standards and the process for developing rebuilding plans for overfished species. Among other things, Amendment 12 requires that the Council submit rebuilding plans in the same time frame as the annual groundfish specifications and management measures process; requires that optimum yield (OY) recommendations within the annual specifications process be consistent with the goals and objectives of rebuilding plans; allows revision of species-specific allocations between the open access and limited entry fisheries to protect overfished stocks; sets goals and objectives for all rebuilding plans; and describes contents of rebuilding plans.

During the public comment period for Amendment 12, NMFS considered whether to approve or disapprove Amendment 12, and considered whether the earlier-approved rebuilding plans for lingcod, bocaccio, and POP met the guidelines of Amendment 12. On December 7, 2000, NMFS approved Amendment 12 to the Pacific Coast Groundfish FMP, and based on that amendment, revoked prior approval of overfished species rebuilding plans for lingcod, bocaccio, and POP. NMFS determined that while the three rebuilding plans specify adequately protective harvest limits for these three species, the rebuilding plans do not meet all of the rebuilding plan requirements described in Amendment 12, and are not adequately explained and analyzed. The groundfish fisheries will continue to operate under measures

implementing the rebuilding plans for lingcod, bocaccio, and POP in 2001; however, the Council has been instructed to re-submit rebuilding plans for these three species for the 2002 fishing year cycle and beyond, which begins January 1, 2002. NMFS rationale for approving Amendment 12 is further described in the responses to comments received on Amendment 12, which follows.

NMFS received two letters of comment on Amendment 12 during the 60-day public comment period for Amendment 12, as established by the Notice of Availability (65 FR 54475, September 8, 2000). NMFS received no letters of comment on the proposed rule to implement Amendment 12, nor did the letters commenting on Amendment 12 address the issues associated with proposed regulatory changes. Both of the letters of comment were received from environmental organizations. Comments received on Amendment 12 are summarized as follows:

The main concern from the commenters is that Amendment 12 does not require rebuilding plans to be plan amendments or regulations, and that the plans do not meet all of the requirements of the Magnuson-Stevens Act. NMFS believes the format of Amendment 12 is appropriate, and because of the complexity of the groundfish fishery, the flexibility of the framework process makes sense for rebuilding plans, just as it does for other aspects of the FMP. While the plans themselves will not be amendments or regulations, the process and standards for plans is established by plan amendment. Furthermore, the requirements of rebuilding plans will be as binding as the requirements of a plan amendment, and the rebuilding plans will be implemented through regulations (annual OY determinations, annual management measures, and possibly other regulations appropriate for the purpose).

The framework for rebuilding plans is similar to the framework for other management measures in this and other FMPs. Many management measures are not specifically established in the FMP; rather they are authorized by, and developed under, procedures set up in the FMP. Nonetheless, management measures still must comply with the requirements of the statute and other applicable law. The same will apply for the rebuilding framework. The rebuilding plans will need to be developed in accordance with Amendment 12, and after approval by NMFS, all management measures implementing the FMP must be consistent with the Magnuson-Stevens

Act, the FMP, and the approved rebuilding plans.

The process NMFS anticipates under Amendment 12 is more complex and more transparent than the process used for the initial three rebuilding plans. NMFS expects the Council to begin the process earlier, so there will be more time during the Council process in which to develop alternative rebuilding strategies, and the possible management measures to achieve rebuilding and assess the risks and benefits of these strategies and management measures. This will include more time for public review and comment during the Council development and adoption phase. In addition, NMFS will provide an opportunity for public comment after it receives the rebuilding plan from the Council before it makes the approval/disapproval decision.

While the plan itself that would be approved by NMFS may not contain a specific measure that will remain in place for the duration of the rebuilding plan, it would explain the types of measures that could achieve rebuilding. In addition, the Council must forward, along with the plan, its recommendations on how to initially implement the plan. These could be as simple as an initial OY level, and initial trip limit levels for specific species. Or, for other species, the initial implementing regulations could include new allocation schemes, closed areas, or closure of specific fisheries. There may be a variety of management measures that could affect rebuilding of specific stocks. The most logical rebuilding measure may change as the health and abundance of other related stocks change because of the interaction of management measures for different species. Therefore, under Amendment 12, the implementing management measures could change consistent with changes in the fishery, as long as they remain consistent with the approved rebuilding plans.

In short, a rebuilding plan must demonstrate how it will meet the rebuilding requirements of the Magnuson-Stevens Act. Once a rebuilding plan is approved, management measures under the FMP must be consistent with the rebuilding plan.

Comments and Responses

Comment 1: There is no need for Amendment 12, because it provides guidance on overfished species rebuilding plans when such guidance is already provided in the Magnuson-Stevens Act, NMFS national standard guidelines (50 CFR part 600) and in

NMFS Technical Guidance for complying with National Standard 1.

Response: NMFS disagrees. While the Magnuson-Stevens Act, NMFS national standard guidelines (50 CFR part 600) and NMFS Technical Guidance for complying with National Standard 1 do provide guidance on implementing National Standard 1, they do not provide a process for developing rebuilding plans that is tailored to the needs of the Pacific Coast groundfish fishery or its management challenges. FMPs and FMP amendments have traditionally served the purpose of providing fishery-specific goals, objectives, and guidance for Councils working to meet the requirements of the Magnuson-Stevens Act.

Comment 2: Amendment 12 violates the Magnuson-Stevens Act because it does not require that rebuilding plans take the form of an FMP, FMP amendment, or proposed regulations.

Response: NMFS disagrees. An FMP is not necessary for West Coast groundfish rebuilding plans because there already exists a West Coast Groundfish FMP. Amendment 12 does not contemplate FMP amendments for each rebuilding plan, because the time-consuming process and lack of flexibility associated with FMP amendments would hamper the Council's ability to implement appropriately conservative rebuilding measures as quickly and efficiently as possible. Under the rebuilding plan process described in Amendment 12, rebuilding plans will evolve swiftly out of the annual stock assessment process, and then regulations to implement those plans will be set in place as part of the annual groundfish specifications and management measures or through a separate rulemaking, as necessary. NMFS approves of this process for a large, multi-species FMP, where the Council is systematically developing information on depleted stocks to determine whether such stocks are "overfished." With 82 groundfish species managed under the FMP, NMFS supports a Council process to quickly identify overfished stocks and implement rebuilding measures for those stocks that can take into account the interaction of rebuilding measures for all overfished stocks.

Amendment 12 requires that rebuilding plans, among other things, "develop harvest sharing plans for the rebuilding period and for when rebuilding is completed, and set harvest levels that will achieve the specified rebuilding schedule." Under Amendment 12, long-term harvest levels or rates would be specified in each rebuilding plan, and annual harvest

levels would be implemented through annual specifications and management measures. A wide variety of other regulatory changes may also result from rebuilding plans, depending on the life history characteristics of the particular protected stock. For example, in the cowcod rebuilding plan adopted by the Council in November 2001, the Council recommended closing all groundfish fishing within certain areas of high cowcod abundance.

The concern that rebuilding plans be an FMP, FMP amendment, or regulation relates to NMFS's ability to make sure that the Council complies with Magnuson-Stevens Act requirements. NMFS believes that rebuilding plans and implementing measures must comply with the Magnuson-Stevens Act and provisions under the framework of Amendment 12. NMFS will review the annual specifications and management measures and other regulations recommended by the Council each year to make sure they fully meet the requirements of each rebuilding plan.

Comment 3: Rebuilding plans must modify the FMP to incorporate rebuilding optimum yields (OYs). There is no discussion in Amendment 12 as to how rebuilding plans will be set consistent with the OY definition in the Magnuson-Stevens Act. Nothing in Amendment 12 requires that a rebuilding plan specify constraints on fishing (or other activities) in order to rebuild a stock from its overfished condition.

Response: Amendment 11 to the FMP provided a definition of OY that matches the Magnuson-Stevens Act definition of that term, "Optimum yield means the amount of fish which will provide the greatest overall benefit to the U.S., 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 maximum sustainable yield 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 maximum sustainable yield in such fishery." Amendment 11 also defined the biomass level (generally B25%) at which a West Coast groundfish stock is considered to be overfished, and the harvest rate at which overfishing is considered to occur.

Section 5.3.2 of the FMP reads in part, "Reduction in catches or fishing rates for either precautionary or rebuilding purposes is an important component of converting values of ABC to values of OY." Additionally, at Section 5.3.6, the

FMP reads, "As required by the Magnuson-Stevens Act, within 1 year of being notified by the Secretary [of Commerce] that a stock is overfished or approaching a condition of being overfished, the Council will prepare a recommendation to end the overfished condition and rebuild the stock(s) or to prevent the overfished condition from occurring."

In short, Amendment 12 does not need to specifically address OY as suggested in the comment, because Amendment 11 of the FMP and the Magnuson-Stevens Act have done so and provide adequate guidance and constraints. NMFS annually reviews OY recommendations for all species, to ensure that they are consistent with the Magnuson-Stevens Act.

Amendment 12, as part of the Groundfish FMP, does require constraints on fishing in order to rebuild a stock from its overfished condition. Amendment 12 states that OYs will be consistent with rebuilding plans. Fishery management, under the Magnuson-Stevens Act, must achieve OY and rebuild the fishery. As explained above, NMFS' view is that management measures must be consistent with approved rebuilding plans.

Comment 4: Amendment 12 does not require that conservation measures be included in rebuilding plans.

Response: NMFS disagrees. Among other things, Amendment 12 requires that the rebuilding plan, "identify the types of management measures that will likely be imposed to ensure rebuilding in the specified period." This requirement is particularly useful for species that may benefit from a combination of different management revisions designed to rebuild that stock. Amendment 12, as part of the Groundfish FMP, does require constraints on fishing in order to rebuild a stock from its overfished condition. Amendment 12 states that OYs will be consistent with rebuilding plans. Fishery management, under the Magnuson-Stevens Act, must achieve OY and rebuild the fishery. As explained earlier, NMFS' view is that management measures must be consistent with approved rebuilding plans.

One of the main reasons for the flexibility of having a framework process for groundfish rebuilding plans is the complexity of the fishery and the interaction of different species and the different effects of different types of harvest. For example, for some overfished stocks, the main rebuilding response is to lower the OY, and to lower trip limits and bag limits for the

overfished stock. For other stocks, the types of management measures needed to achieve rebuilding involve harvest of associated species, and the appropriate measures may change depending on the level of abundance and location of the associated species. Or, different combinations of management measures could be used to achieve the rebuilding targets. The rebuilding plan must discuss the possible ways to achieve rebuilding targets (which could be one method, or a combination of methods), and the Council's overall management scheme must achieve the rebuilding target through OYs and associated management measures. NMFS has advised the Council that rebuilding plans must explain how rebuilding could be accomplished, and be accompanied with appropriate management measures. Under the process, the rebuilding plan could stay in place if the underlying science does not call for an amendment, but the method of implementation could change through regulatory changes if appropriate.

Comment 5: Amendment 12 does not prevent overfishing.

Response: Prevention of overfishing was addressed in Amendment 11. Amendment 11 to the FMP includes the Magnuson-Stevens Act definition of "overfishing," and adds that for any groundfish stock or stock complex, the maximum allowable mortality rate will be set at a level not to exceed the corresponding MSY rate (F_{msy}) or its proxy. As discussed earlier, the Council revised its default (proxy) exploitation rates for 2001 and beyond to more conservative levels that take into account recent information on the relatively low productivity of West Coast groundfish stocks. No acceptable biological catch (ABC) for any groundfish species is set higher than F_{msy} or its proxy, nor is any species OY set higher than its ABCs. Management measures such as landings limits, size limits, bag limits, time/area closures, seasons, and other measures are annually designed to keep harvest levels within specified OYs. Before Amendment 12 was developed, the FMP already required that groundfish management measures prevent overfishing.

Comment 6: Amendment 12 illegally allows for the mixed-stock exception and allows overfishing.

Response: NMFS disagrees. Amendment 12 does allow the Council to use the mixed-stock exception to adjust OYs for overfished species in appropriate circumstances. However, the mixed-stock exception is not illegal.

NMFS National Standard guidelines at 50 CFR 600.310(d)(6) state:

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.

Amendment 12 only allows the mixed-stock exception to be used if: (1) National Standards guidelines can be met, and (2) any applicable rebuilding plan's goals and objectives can be met. Thus far, the Council has not invoked the mixed-stock exception in managing groundfish. Instead, it has used a "weak-stock management" approach, in which harvest of healthy stocks is curtailed to protect depleted stocks.

Comment 7: Amendment 12 fails to require rebuilding plans to meet the bycatch-related requirements of the Magnuson-Stevens Act.

Response: NMFS disagrees. Amendment 12 requires, among other things, that rebuilding plans "promote innovative methods to reduce bycatch and bycatch mortality of the overfished stock." For overfished stocks at extremely low biomass levels, all harvest management is bycatch management, because these stocks cannot sustain directed fishing. Amendment 12 also deals with overfished species as bycatch by requiring that the Council address harvest allocation for overfished species. Each fishery with incidental harvest of a particular overfished species will be constrained to reduce sector-specific bycatch mortality of that species.

The Council originally dealt with Magnuson-Stevens Act bycatch provisions in Amendment 11 to the FMP; however, NMFS disapproved Amendment 11's bycatch provisions. In June 2000, the Council approved Amendment 13, which specifically addresses the Council's groundfish bycatch issues. NMFS published a Notice of Availability for Amendment 13 on September 22, 2000 (65 FR 57308), and the amendment is currently under NOAA consideration for approval/disapproval. Amendment 13 builds on Amendment 12 by giving the Council the authority to introduce new

management measures into the annual specifications process (commercial trip limits that are different by gear type, time/area closures, recreational bag limits, size limits, hook limits, boat limits, and dressing requirements) where those measures are needed to protect overfished species. In 2000, the Council used several of these measures by emergency authority to prevent incidental harvest and mortality of overfished species. For example, the Council limited the trawl harvest of many species to vessels using small footrope trawls or mid-water trawl. This measure was designed to reduce bocaccio and canary rockfish bycatch by moving trawlers away from the rocky habitats of those species. If Amendment 13 is approved, rebuilding plans and implementing measures will be subject to the requirements and provisions in Amendment 13, just as they are subject to the rest of the FMP. In any event, the plan and management regime as a whole must conform to Magnuson-Stevens Act requirements.

Comment 8: Amendment 12 fails to meet the Magnuson-Stevens Act requirements that rebuilding plans assess and minimize the effects of fishing gear on essential fish habitat (EFH).

Response: NMFS disagrees. One of Amendment 12's goals for rebuilding plans is that they, "protect the quantity and quality of habitat necessary to support the stock at healthy levels in the future." Further, Amendment 12 requires that rebuilding plans, "identify any critical or important habitat areas and implement measures to ensure their protection."

Thus far, the Council's recommended measures to protect overfished and depleted species have focused on reducing directed and incidental harvest of those species through either moving the fisheries out of areas where directed and incidental harvest is likely to occur, or reducing harvest levels for healthy stocks that are associated with rebuilding stocks. These measures have minimized opportunities for trawl vessels to use large footrope gear on rocky bottom, and have revised harvest strategies for several species that co-occur with overfished species so that those healthy stocks (yellowtail rockfish, chilipepper rockfish) are harvested by mid-water trawl gear. New measures for 2001 close large areas off southern California to protect cowcod from incidental catch. While all of these measures are primarily designed to ensure reduced incidental interception of overfished species, they also have the effect of reducing fishing gear interaction with EFH. As stated in the

response to Comment 6, the plan and management regime as a whole must conform to Magnuson-Stevens Act requirements.

Comment 9: The Environmental Assessment (EA) on Amendment 12 fails to comply with the National Environmental Policy Act (NEPA) because it fails to consider an adequate range of alternatives, and because it fails to adequately analyze the likelihood that sufficient measures to rebuild overfished species will actually take place as part of the annual specifications process.

Response: The Council did consider a range of alternatives for addressing overfished species rebuilding plans, but narrowed the discussions in the EA to alternatives that would accommodate the complexity of the fishery and the groundfish management cycle. As discussed earlier in the response to Comment 2, the Council rejected the option to amend the FMP with each new rebuilding plan primarily because it knew that several rebuilding plans would be forthcoming in the near future, and that requiring an FMP amendment for each rebuilding plan would create a time burden that would ultimately slow the implementation of rebuilding plans and reduce the Council's flexibility to rapidly implement and/or adjust management measures.

Because Amendment 12 creates a framework for rebuilding plans, it could not analyze the likelihood that all future rebuilding measures implemented through the annual specifications process or other regulatory mechanisms would adequately meet rebuilding plan goals. However, the Amendment 12 EA recognized the need for analysis of rebuilding proposals by providing an example of how rebuilding measures implemented in 2000 for lingcod, bocaccio, and canary rockfish could be expected to affect the human environment. Under Amendment 12, each rebuilding plan would include alternative rebuilding targets and measures for each species, and a discussion of how the recommended management measures could be expected to meet rebuilding plan goals. The plans will be accompanied by appropriate NEPA documents, as will implementing management measures. Any rebuilding plans must meet other statutory requirements in order to be approved.

Comment 10: We are opposed to using the framework process for preparing rebuilding plans because that process does not allow for adequate public notice and comment.

Response: While NMFS believes the Amendment 12 process allows adequate public comment and participation, NMFS agrees with the need to formalize the NMFS/NOAA review process for rebuilding plans and provide additional opportunity for public comment on those plans. NMFS will use the following procedure for future public review of rebuilding plans:

(1) The Council will submit each rebuilding plan within a year of initial NMFS declaration that a particular species is considered overfished, generally in January of each year.

(2) Upon receipt of the rebuilding plan from the Council, NMFS will review the rebuilding plan for compliance with the Magnuson-Stevens Act and Amendment 12, and work with the Council to expand the rebuilding plan as needed. NMFS will announce the availability of each rebuilding plan for public comment in the Federal Register.

(3) Rebuilding plans will have a 30-day public comment period, immediately following the date of the **Federal Register** announcement of rebuilding plan availability. (4) NMFS will respond to public comments on rebuilding plans by a second notice in the **Federal Register**, including an announcement of whether the rebuilding plans have been approved, disapproved, or partially approved. If the agency has determined that the Council needs to make further revisions to a particular rebuilding plan, those revisions will be discussed in that second **Federal Register** notice and in a letter to the Council requesting the changes be made.

In addition, NMFS has advised the Council that it should lengthen its rebuilding plan development process by beginning development of rebuilding plans earlier than it has in the past. The Council should begin the rebuilding analysis as soon as a stock assessment makes it clear that a stock will likely be designated as overfished (that is, even before NMFS has formally advised the Council the stock is overfished). This analysis, with its possible rebuilding targets, will then be available to the Council and the public much earlier. The Council will be able to begin developing measures necessary for rebuilding, and considering the social and economic impacts and the biological benefits and risks of the alternative measures earlier. As a result, the public should have greater opportunity for comment during the Council development process, as well as during the Secretarial review process described above.

Comment 11: NMFS should invalidate existing rebuilding plans for bocaccio, lingcod, and POP, based on objections to Amendment 12 (described above in Comments 2-7).

Response: NMFS is approving Amendment 12. In considering this approval and the comments provided on Amendment 12 and on the rebuilding plans for lingcod, bocaccio, and POP, NMFS has concluded that the rebuilding plans for those three species do not comply with Amendment 12.

NMFS and the Council have spent the past year and a half trying to create a standardized structure for rebuilding plans. Amendment 12 provides that structure, but the ideas and requirements in Amendment 12 were not fully developed by the time the Council had to submit rebuilding plans for lingcod, bocaccio, and POP. When NMFS announced approval of the rebuilding plans, the Council was just ready to send Amendment 12 out for NMFS review and approval. These two separate but connected processes were constrained by timing requirements in the Magnuson-Stevens Act, but now the three rebuilding plans must be reconciled with Amendment 12. To ensure that the rebuilding plans for these three species meet the requirements of Amendment 12 described earlier, NMFS will revoke its approval of the plans and return them back to the Council with specific guidance for revision. Revised rebuilding plans for lingcod, bocaccio, and POP will be due back to NMFS on January 1, 2002. Groundfish fisheries will operate under the rebuilding measures set out in the initial rebuilding plans until the new rebuilding plans are complete.

The final rule revises the West Coast groundfish regulations by removing references to foreign and joint venture fishing. No changes were made from the proposed rule.

Classification

The Administrator, Northwest Region, NMFS, determined that Amendment 12 to the FMP is necessary for the conservation and management of the West 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 Executive Order 12866.

The Chief Counsel for 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.

NMFS issued Biological Opinions (BOs) under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, southern California), and cutthroat trout (Umpqua River, southwest Washington/Columbia River). NMFS has 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. NMFS has re-initiated consultation on the Pacific whiting fishery associated with the BO issued on December 15, 1999. During the 2000 whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the BO's incidental take statement's incidental take estimates, 11,000 fish, by approximately 500 fish. The re-initiation will focus primarily on additional actions that the whiting fisheries would take to reduce chinook interception, such as time/area management. NMFS expects that the re-initiated BO will be complete by May 2001. During the reinitiation, fishing under the FMP is within the scope of the December 15, 1999 BO, so long as the annual incidental take of chinook stays under the 11,000 fish bycatch limit. NMFS has 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 action establishes a framework for implementing rebuilding plans, and declares the United States

groundfish fishery fully utilized by United States fishermen and processors. It does not authorize fishing beyond the scope of the existing FMP, and is within the scope of these consultations.

This rule restates a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0243. Public reporting burden for responding to telephone surveys on whiting availability is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a 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 President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule (see ADDRESSES).

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: December 21, 2000.

William T. Hogarth,

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 for "Reserve" and "Specification" are revised to read as follows:

§ 660.302 Definitions.

* * * * *

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates.

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 setaside or allocation for a recreational or treaty Indian fishery; an apportionment of the

above to an area, gear, season, fishery, or other subdivision.

* * * * *

3. In § 660.303, paragraph (a) is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic

industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323 (a)(4)(v). No Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

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