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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324-1265-02]

RIN 0648-BB88

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) [insert date of publication in the FEDERAL REGISTER]. Comments on this final rule must be received no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by FDMS docket number NOAA-NMFS-2010-0194 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: 206-526-6736, Attn: Colby Brady
- Mail: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Colby Brady.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Colby Brady (Northwest Region, NMFS), phone: 206-526-6117, fax: 206-526-6736, colby.brady@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Website at <http://www.gpo.gov/fdsys/search/home.action>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 3, 2010, NMFS published a proposed rule to implement the 2011-2012 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (75 FR 67810). The final rule to

implement the 2011-12 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by several inseason actions including the one that is referenced in this action, which published on December 21, 2011 (76 FR 79122).

This inseason action contains a modification to Washington state lingcod recreational management measures implemented in the December 21, 2011, final rule (76 FR 79122).

Background and Need for Clarification of Washington State Lingcod Recreational Fishery Management Measures

The Council recommended adjusting the biennial groundfish management measures for the remainder of the biennial period to respond to updated fishery information and other inseason management needs at its November 2 - November 6 meeting in Costa Mesa, California. One of the changes included adoption of regulations that would create a lingcod recreational fishing closure off Washington to conform with state regulations. NMFS implemented this change by inseason action on December 21, 2011 (76 FR 79122). As published, the final regulations contained errors within § 660.360 (c) (1) (i) (D) (2) of the Code of

Federal Regulations (CFR) that may mislead the public and needs to be clarified. This clarification will establish the appropriate language in that paragraph.

In establishing the new closure for lingcod, regulations unintentionally allowed lingcod fishing between a boundary line approximating the 30-fm (55-m) depth contour and the new lingcod closure area from March 15 through June 15. This is inconsistent with the intent of the regulations, which was to close the areas both seaward of the 30-fm (50-m) boundary line and the area seaward of the new lingcod closure line. Those area restrictions would both apply on the dates that were outlined, except on days that the primary halibut fishery is open. As published, the regulations in this paragraph do not fully implement the Council's recommendation. This regulation would be confusing to the public if it is not clarified.

Therefore, as the Council recommended, NMFS is implementing a lingcod recreational fishery area closure as follows: lingcod fishing is prohibited year round, except in Marine Area 2 on days when the Pacific halibut fishery is open, in the area seaward (West) of a straight line connecting all of the following points in the order stated: 47°31.70' N. lat., 124°45.00' W. long.; 46°38.17' N. lat.,

124°30.00' W. long.; 46°38.17' N. lat., 124°21.00' W.
long.; and 46°25.00' N. lat., 124°21.00' W. long.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

This inseason adjustment is also taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is in accordance with 50 CFR part 660, the regulations implementing the FMP. This action is based on the most recent information available.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in

effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available information upon which the changes to the Washington recreational management measure changes are based was originally provided to the Council, and the Council made its recommendations, at its November 2-6, 2011, meeting in Costa Mesa, California. The Council recommended that these changes be implemented by January 1, 2012 or as quickly as possible thereafter. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect recreational fisheries off Washington State.

These adjustments to management measures must be implemented in a timely manner: to conform federal regulations to the new Washington State lingcod recreational fishing area closure prior to the March 17 opening of the recreational fishery. If this rule is not implemented immediately, the public will have incorrect

information regarding boundaries used, and allowed fishing activities for groundfish fisheries management, which would cause confusion and be inconsistent with the intent of the December 21, 2011 inseason action. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change immediately allows harvest as intended by the Council in fisheries that are important to coastal communities in a manner that prevents ACLs of overfished species from being exceeded, preventing premature closure of the recreational fishery.

No aspect of this action is controversial and no change in operating practices in the fishery is required from those intended in this inseason adjustment, as state regulations are already in place to the effect of this conforming action.

Delaying these changes would also keep management measures in place that are not based on the best available information. Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: February 27, 2012

James P. Burgess,
Acting Director, Office of Sustainable 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

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

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et
seq., and 16 U.S.C. 7001 et seq.

2. In §660.360, paragraph (c)(1)(i)(D)(2) is
revised to read as follows:

§ 660.360 Recreational fishery – management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) * * *

(2) Between the Queets River (47°31.70' N. lat.) and Leadbetter Point (46°38.17' N. lat.) (Washington state Marine Area 2), recreational fishing for groundfish, is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from March 15 through June 15 with the following exceptions: Recreational fishing for lingcod is permitted within the RCA on days that the primary halibut fishery is open; Recreational fishing for rockfish is permitted within the RCA from March 15 through June 15; recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15. In addition to the RCA described above, between the Queets River (47°31.70' N. lat.) and Leadbetter Point (46°38.17' N. lat.) (Washington state Marine Area 2), recreational fishing for lingcod is prohibited year round seaward of a straight line connecting all of the following points in the order stated: 47°31.70' N. lat., 124°45.00' W. long.; 46°38.17' N. lat., 124°30.00' W. long. with the following exceptions: on days that the primary halibut fishery is open lingcod may be taken, retained and possessed within the lingcod area closure. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206) 526-6667 or (800)

662-9825. Retention of lingcod seaward of the boundary line approximating the 30 fm (55 m) depth contour south of 46°58' N. lat. is prohibited on Fridays and Saturdays from July 1 through August 31. For additional regulations regarding the Washington recreational lingcod fishery, see paragraph (c)(1)(iv) of this section. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.71.

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[FR Doc. 2012-4989 Filed 02/29/2012 at 8:45 am; Publication Date: 03/01/2012]