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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160808696–7010–02]

RIN 0648-BH86

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast

Groundfish Fishery; 2017–18 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.

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

DATES: This final rule is effective [*insert date of publication in the Federal Register*].

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SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) 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. The Pacific Fishery Management Council (Council) develops biennial groundfish specifications and management measures. NMFS published the final rule to implement the 2017–18 specifications and management measures for most species of the Pacific coast groundfish fishery on February 7, 2017 (82 FR 9634).

The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended the following changes to current groundfish management measures at its March 8-14, 2018 meeting in Rohnert Park, California: (1) increase the incidental halibut retention in the primary sablefish fishery, (2) increase the recreational sub-bag limit for canary rockfish and add a three flatfish limit through changes to Washington state recreational management measures, and (3) increase the recreational sub-limit for canary rockfish through changes to California recreational management measures.

Increase Incidental Halibut Retention in the Limited Entry Fixed Gear Sablefish Primary Fishery

Under the authority of the Northern Pacific Halibut Act of 1982, the Council developed a Catch Sharing Plan for the International Pacific Halibut Commission Regulatory Area 2A. The Catch Sharing Plan allocates the Area 2A annual total allowable catch (TAC) among fisheries off

Washington, Oregon, and California. Pacific halibut is generally a prohibited species for vessels fishing in Pacific coast groundfish fisheries, unless explicitly allowed in groundfish regulations and authorized by the Pacific halibut Catch Sharing Plan. In years where the Pacific halibut TAC is above 900,000 pounds (lb) (408 metric tons (mt)), the Catch Sharing Plan allows the limited entry fixed gear sablefish primary fishery an incidental retention limit for Pacific halibut north of Point Chehalis, WA (46°53.30' North latitude [N. lat.]). On March 24, 2018, NMFS implemented a 2018 Area 2A TAC of 1,190,000 lb (540 mt) (83 FR 13080; March 26, 2018). Consistent with the provisions of the Catch Sharing Plan, the limited entry fixed gear sablefish primary fishery north of Pt. Chelais, WA has an incidental total catch limit of 50,000 lb (22.7 mt) for 2018.

Current regulations at § 660.231(b)(3)(iv) provide for halibut retention starting on April 1 with a landing ratio of 140 lb (64 kilograms (kg)) dressed weight of halibut, for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to an additional 2 halibut in excess of this ratio. These limits were based on the 2017 Pacific halibut retention limit of 70,000 lb (32 mt) and resulted in a catch of 35,866 lb (16 mt) of incidental halibut. At the March 2018 Council meeting, based on 2017 catch totals, the number of vessels fishing that participated, and the average number of trips taken, which constitutes the best available information, the Council recommended an increase from 140 lb (64 kg) to 160 lb (73 kg) dressed incidental Pacific halibut retention per 1,000 lb (454 kg) dressed sablefish. This increase would allow total catch of Pacific halibut to approach, but not exceed, the 2018 allocation for the sablefish primary fishery north of Pt. Chelais, WA (50,000 lb or 22.7 mt) and provide greater opportunity for industry to attain a higher percentage of the sablefish primary fishery allocation. This ratio can be adjusted through routine inseason action based on participation and landings in the fishery, if warranted.

In order to allow increased incidental halibut catch in the sablefish primary fishery, the Council recommended and NMFS is revising incidental halibut retention regulations at § 660.231(b)(3)(iv) to increase the catch ratio to “160 lb dressed weight of halibut for every 1,000 lb dressed weight of sablefish landed and up to 2 additional halibut in excess of the 160 lb per 1,000 lb ratio per landing.”

Washington State Recreational Management Measures

At the Council’s March 2018 meeting, the Washington Department of Fish and Wildlife (WDFW) requested changes to their recreational groundfish regulations for the remainder of 2018. Specifically, WDFW proposed an increase to the canary rockfish sub-limit from one to two fish with retention allowed in all marine areas, and proposed to allow the retention of three flatfish in addition to the status quo aggregate daily groundfish limit of nine.

Increase the Canary Rockfish Sub-Limit

In June 2016, the Council recommended the Washington recreational groundfish seasons and regulations for the 2017 and 2018 fishing years. NMFS implemented the regulations through the 2017-18 harvest specifications and management measures, which permitted retention of up to one canary rockfish in Marine Areas 1 and 2 (Columbia River and south coast subareas) and prohibited canary rockfish retention in Marine Areas 3 and 4. Although the canary rockfish stock was declared rebuilt in 2017, retention had been prohibited in previous years due to poor stock condition. Because retention was previously prohibited, there has been uncertainty about angler behavior, including whether they would target canary rockfish. To address this uncertainty, the analysis for the existing landing limits assumed a high level of targeting to ensure management measures remained precautionary. The analysis projected that a two fish sub-limit in all management areas would result in between 66.1 mt and 137.1 mt of recreational canary rockfish

landings, however this analysis did not consider the estimated results of the 2017 Washington recreational fishery.

The 2017 final mortality estimate for canary rockfish in the Washington recreational fishery is 4.8 mt out of a 50 mt harvest guideline for 2017 and 2018. Because 2017 landings were much lower than expected, the Council updated the initial analysis to project landings for the 2018 fishing year. The updated analysis did not assume a high level of targeting because the final 2017 estimates suggests that anglers are not actively targeting canary rockfish. The updated analysis projected canary rockfish mortality to be 5.67 mt under a one canary sub-limit and 6.22 mt under a two canary sub-limit. While the two canary rockfish limit does produce slightly higher impacts to canary rockfish than the one canary sub-limit, a difference of about 0.6 mt, the overall projected impacts of either the one- or two-fish limit are well below the 2018 harvest guideline of 50 mt.

Therefore, the Council recommended, and NMFS is amending the regulations at § 660.360(c)(1) to increase in the limit in the Washington recreational fishery from one to two canary rockfish for all marine areas.

Three Flatfish Limit

In March 2017, the Council recommended that NMFS reduce the aggregate groundfish limit from 12 to 9 fish per angler per day, and the daily rockfish sub-limit from 10 to 7 fish per angler per day, resulting in a 7 rockfish sub-limit with two additional groundfish allowed to be kept for a total of 9 fish. The rockfish sub-limit was reduced in response to lower harvest levels in 2017 and 2018, but the aggregate groundfish limit was kept at two fish above the rockfish sub-limit to minimize rockfish bycatch associated with anglers targeting other groundfish, such as lingcod. At the time, Washington did not request excluding flatfish from the aggregate

groundfish limit. Since last year, when these limits went into effect stakeholders that target flatfish reported to WDFW that they have been negatively affected by the reduction in the aggregate limit, which was not the original intent of that reduction.

In response to stakeholder input, WDFW proposed a flatfish limit of three fish per angler per day, which would be in addition to the overall aggregate groundfish limit. The groundfish aggregate limit would remain at nine fish, and the sub-limits for all species, aside from canary rockfish, would all remain unchanged. This change to include a separate flatfish limit of three fish has no impact on the rockfish population given that flatfish prefer soft sand or muddy bottom, which is not the preferred habitat of rockfish. Additionally, flatfish retention would still only be allowed under current open season dates and status quo depth restrictions. Projected impacts to flatfish are expected to be similar to final estimates in 2016 before the aggregate limit was reduced.

Therefore, the Council recommended, and NMFS is amending the regulations at § 660.360(c)(1) to implement a three flatfish limit, not to be counted against the aggregate groundfish limit of nine fish, for the 2018 Washington recreational fishing year.

California Recreational Management Measures

Similar to the canary rockfish limit off Washington, the Council analyzed the current canary rockfish sub-limit in California in the 2017-18 harvest specifications and management measures. During that process, California Department of Fish and Wildlife (CDFW) evaluated a range of sub-bag limits (one to five) for canary rockfish given the stock had recently been declared rebuilt. Much like WDFW, CDFW expressed a need for caution in determining the initial sub-bag limit for canary rockfish due to uncertainty about targeting this newly rebuilt species. Therefore, NMFS implemented a one fish sub-bag limit for California in 2017.

The 2017 canary rockfish mortality in California was lower than expected. Preliminary estimates indicate canary rockfish mortality was 77.4 mt, or 57.3 percent of the California harvest guideline of 135 mt. Seasonal catch trends for canary were similar to other rockfish, with higher catches observed in the spring and summer months when weather is more favorable. Because of the low catch in the preliminary estimates for 2017, CDFW analyzed projected impacts under a two-fish sub-bag limit for 2018, taking into account the most recent fishery performance. Under the two-fish sub-bag limit, projected canary rockfish mortality would be 110.4 mt or 81.8 percent of the 2018 harvest guideline.

Therefore, based on the new preliminary attainment information for 2017, the Council recommended and NMFS is amending the regulations at § 660.360(c)(3) to increase the California recreational canary rockfish sub-bag limit from one fish to two fish.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations.

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

The aggregate catch data used to support these regulatory actions is available for public inspection in person at the Office of the Administrator, West Coast Region, NMFS, during normal business hours.

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) because notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in

this document affect commercial and recreational fisheries off the coasts of Washington, Oregon and California. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2017–18 (82 FR 9634). Accordingly, for the reasons stated below, NMFS finds good cause to waive prior notice and comment.

Increase Incidental Halibut Retention in the Limited Entry Fixed Gear Sablefish Primary Fishery

The Pacific halibut catch limit for Area 2A is large enough in 2018 to provide for incidental halibut retention, per the Pacific halibut Catch Sharing Plan for Area 2A, in the limited entry fixed gear sablefish primary fishery north of Point Chehalis. Therefore, at its March 2018 meeting, the Council recommended an increase from 140 lb (64 kg) to 160 lb (73 kg) of dressed weight halibut per 1,000 lb (454 kg) of dressed weight sablefish. The Council recommended this increased limit be implemented by April 1, 2018, the start of the limited entry fixed gear sablefish primary fishery, or as soon as possible thereafter. Therefore, there was not sufficient time after that meeting to undergo proposed and final rulemaking before this action needs to be implemented to increase Pacific halibut harvest opportunity, to allow Pacific halibut to be retained throughout the limited entry fixed gear sablefish primary season, and to achieve attainment of incidental Pacific halibut quota in this fishery given the most recent Pacific halibut catch data and the Area 2A catch limit.

Washington State Recreational Management Measures

During its March 2018 meeting, the Council recommended an increase to the Washington recreational canary rockfish sub-limit from one fish to two fish in all marine areas. The 2017-18 harvest specifications and management measures implemented precautionary landing limits just

as canary rockfish was declared rebuilt. The 2017 Washington recreational fishery catch data show that only 4.8 mt of the 50 mt harvest guideline was landed. Increasing the canary rockfish sub-limit should create additional opportunity to attain the harvest guideline in 2018.

Additionally, WDFW proposed a three fish limit for flatfish that would not count towards the aggregate groundfish limit. WDFW received stakeholder input that the 2017 decrease in the aggregate rockfish limit has constrained anglers targeting flatfish. Excluding flatfish from the aggregate limit eases this constraint.

Therefore, based on the new preliminary data, the input from stakeholders who target flatfish, and the need to provide additional economic opportunities to the recreational fleet while also potentially reducing discards, there was not sufficient time after the March meeting to undergo a full proposed and final rulemaking before this action needs to be in effect. Affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing this recreational fishery using the best available science to increase harvesting opportunities of canary rockfish and flatfish, as required by the PCGFMP and applicable law.

California State Recreational Management Measures

During the March 2018 meeting, CDFW proposed an increase to their canary rockfish sub-bag limit. The 2017-18 harvest specifications and management measures implemented precautionary landing limits just as canary rockfish was declared rebuilt. Preliminary data from CDFW shows that 2017 recreational canary rockfish catch was low in 2017. Increasing the canary rockfish sub-limit should create additional opportunity to attain the harvest guideline in 2018.

There was not sufficient time after the March meeting to undergo proposed and final rulemaking before this action needs to be in effect. The California recreational fishery begins on

April 15th. Affording NMFS the time necessary for prior notice and opportunity for the public to comment would prevent NMFS from managing the recreational fishery with the best available information to increase harvest opportunities for recreational anglers in California.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1), so that this final rule may become effective [*insert date of publication in the Federal Register*]. This inseason action implements a number of increases to incidental and directed landing limits based on updated fishery information and new supporting analyses provided to the Council at its March 2018 meeting. Affording the time necessary for prior notice and opportunity for public comment reduces the time these increased landing limits are available to fishing vessels during the 2018 fishing year, and delays the use of the best available information in managing the fishery.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: April 10, 2018.

Jennifer M. Wallace,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 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 § 660.231, revise paragraph (b)(3)(iv) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(iv) *Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30' N. lat.).*

From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30' N. lat.) may possess and land up to the following cumulative limits: 160 pounds (64 kg) dressed weight of Pacific halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional Pacific halibut in excess of the 160-pounds-per-1,000-pound ratio per landing. “Dressed” Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

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3. In § 660.360, revise paragraphs (c)(1) introductory text, (c)(1)(ii), and (c)(3)(ii)(B) to read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) *Washington*. For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 9 groundfish per day, including rockfish, cabezon and lingcod. Within the groundfish bag limit, there are sub-limits for rockfish, lingcod, and cabezon outlined in paragraph (c)(1)(i)(D) of this section. In addition to the groundfish bag limit of 9, there will be a flatfish limit of 3 fish, not to be counted towards the groundfish bag limit but in addition to it. The recreational groundfish fishery will open the second Saturday in March through the third Saturday in October for all species in all areas except lingcod in Marine Area 4 as described in paragraph (c)(1)(iv) of this section. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the Federal Register. The following seasons, closed areas, sub-limits and size limits apply:

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(ii) *Rockfish*. In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing, there is a 7 rockfish per day bag limit. There is a 2 fish sub-bag limit per day for canary rockfish in all Marine Areas. Taking and retaining yelloweye rockfish is prohibited in all Marine areas.

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(3) * * *

(ii) * * *

(B) *Bag limits, hook limits*. In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for the RCG complex and lingcod. The bag limit is 10 RCG Complex fish per day coastwide. Retention of yelloweye

rockfish, bronzespotted rockfish, and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 3 may be black rockfish, no more than 3 may be cabezon, and no more than 2 may be canary rockfish. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

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