



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210205-0015]

RIN 0648-BJ05

Fisheries off West Coast States; West Coast Salmon Fisheries; Rebuilding Coho Salmon Stocks

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to approve and implement rebuilding plans recommended by the Pacific Fishery Management Council (Council) for three overfished salmon stocks: Juan de Fuca, Queets, and Snohomish natural coho salmon. NMFS determined in 2018 that these stocks were overfished under the MSA, due to spawning escapement falling below the required level for the 3-year period 2014-2016. The MSA requires overfished stocks to be rebuilt, generally within 10 years.

DATES: This final rule is effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206-526-4323.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2018, NMFS notified the Council that three stocks of coho salmon managed under the Council's Pacific Coast Salmon Fishery Management Plan (FMP) met the overfished criteria of the FMP and the MSA, and the overfished determinations

were announced in the Federal Register on August 6, 2018 (83 FR 38292). Overfished is defined in the FMP to be when the 3-year geometric mean of a salmon stock's annual spawning escapement falls below the reference point known as the minimum stock size threshold (MSST). The 3-year geometric mean of spawning escapement fell below MSST for all three coho salmon stocks for the period 2014-2016. In response to the overfished determination, the Council developed rebuilding plans for these stocks, and the rebuilding plans were transmitted to NMFS on October 17, 2019, for approval and implementation. NMFS published a proposed rule (85 FR 61912, October 1, 2020) describing the rebuilding plans and soliciting comments from the public on the proposed rule and on the draft environmental assessments (EAs) that were prepared under the National Environmental Policy Act (NEPA).

In this final rule, NMFS approves and implements the rebuilding plans for the three overfished coho salmon stocks. For Juan de Fuca and Queets natural coho, this rule adopts the existing harvest control rules, which use an annual abundance-based stepped harvest rate control rule with stock-specific abundance levels governing the total exploitation rates applied to forecast stock abundance levels. For Snohomish natural coho, this final rule amends the existing harvest control rule by adding a 10-percent buffer to the existing escapement goal and adjusting the abundance steps during the rebuilding period. Additional information on these plans is available in the preamble of the proposed rule and is not repeated here.

Response to Comments

On October 1, 2020, NMFS published a proposed rule and requested public comment on the proposed rule (85 FR 61912). The comment period ended on November 2, 2020. Concurrent with the comment period on the proposed rule, NMFS made the related draft EAs available online for public comment. Eight individuals submitted comments on the proposed rule; no comments were submitted on the draft EAs. Most

comments were supportive of regulating fishing, but did not express specific support for, or opposition to, the proposed rebuilding plans. Specific comments and responses are discussed below.

Comment 1: Two commenters expressed concern about ensuring compliance with fishery regulations.

Response: NMFS agrees that compliance with fishery regulations is important. NMFS' Office of Law Enforcement participates on the Council's Enforcement Consultants advisory body, along with representatives from state police agencies, state fish and wildlife agencies, and the Coast Guard. The Enforcement Consultants provide advice to the Council about whether proposed management actions are enforceable and how they affect safety at sea. These agencies also work to enforce fishery regulations at sea and at various fishing ports on the West Coast. The input of these agencies was considered in the development of the Council's proposal, as included in the proposed rule.

Comment 2: One comment was specifically supportive of the proposed rebuilding plans as described in the proposed rule and felt they would benefit both fish and fishermen.

Response: NMFS agrees that the Council's recommended rebuilding plans are the most appropriate response to rebuild the overfished coho salmon stocks at this time, as they rebuild the overfished stocks in the shortest time possible while taking into account the needs of the fishing communities, as required by the MSA.

Comment 3: One comment opposed the proposed rebuilding plans as not being sufficiently restrictive of fishery impacts and suggested applying a 30-percent buffer on exploitation rates.

Response: NMFS disagrees with the suggestion that there is a need for more restrictive exploitation rates at this time. For all three coho salmon stocks, the Council's

Salmon Technical Team's (STT's) analysis, as detailed in the EAs, determined that freshwater and marine habitat conditions were the primary cause of these stocks meeting the FMP's criteria for being overfished rather than fishing. In addition, exploitation rates on these coho salmon stocks in Council-managed fisheries are a small fraction of the total exploitation rates in all fisheries, which include Alaskan and Canadian fisheries, and non-Council pre-terminal and terminal fisheries. The STT's analysis included exploitation rates for the overfished coho stocks in all fisheries for the period 2004-2017. For Juan de Fuca coho, the overall annual exploitation rate averaged 10.5 percent and the Council-area annual exploitation rate averaged 2.3 percent. For Queets coho, the overall annual exploitation rate averaged 38.5 percent and the Council-area annual exploitation rate averaged 7.2 percent. For Snohomish coho, the overall annual exploitation rate averaged 22.8 percent and the Council-area annual exploitation rate averaged 1.9 percent. Adding an additional 30 percent buffer to the already constrained exploitation rates in Council-area fisheries would have a severe impact on the fishing community, especially in the area from the U.S./Canada border to Cape Falcon, OR, and would not result in rebuilding these stocks substantially sooner than under the Council's rebuilding plans.

Comment 4: One comment opposed the rebuilding plans on the basis that they did not sufficiently address the impact of freshwater habitat and water quality on marine survival of salmon.

Response: NMFS understands and agrees with the concern about freshwater habitat for coho salmon. The STT's analysis found that both freshwater and marine productivity were the primary causes of these coho stocks meeting the overfished criteria, rather than fishery impacts. These rebuilding plans have been developed pursuant to the MSA, which regulates fishing in the exclusive economic zone (EEZ). NMFS's authority in adopting these rebuilding plans is therefore limited to that scope. The Council may direct its Habitat Committee to work with state, federal, and tribal fishery managers to

review freshwater habitat conditions and develop recommendations for habitat recommendations and restoration as an action separate and apart from these rebuilding plans.

Changes From Proposed Rule

There are no changes made to the regulatory text of the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the MSA, and other applicable law.

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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This final rule was developed after meaningful collaboration with the tribal representative on the Council; the tribal representative has agreed with the provisions that apply to tribal vessels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 8, 2021.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

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 § 660.413, add paragraphs (c) through (e) to read as follows:

§ 660.413 Overfished species rebuilding plans.

* * * * *

(c) *Juan de Fuca coho*. The Juan de Fuca coho salmon stock was declared overfished in 2018. The target year for rebuilding Juan de Fuca coho is 2023. The harvest control rule during the rebuilding period for Juan de Fuca coho is the abundance-based stepped harvest rate as shown in table 1 to this paragraph (c).

Table 1 to paragraph (c)

Juan de Fuca coho stepped harvest rates

Abundance category	Age-3 ocean abundance	Total allowable exploitation rate
Normal	Greater than 27,445	60 percent
Low	Between 11,679 and 27,445	40 percent
Critical	11,679 or less	20 percent

(d) *Queets coho*. The Queets coho salmon stock was declared overfished in 2018. The target year for rebuilding Queets coho is 2019. The harvest control rule during the rebuilding period for Queets coho is the abundance-based stepped harvest rate as shown in table 2 to this paragraph (d).

Table 2 to paragraph (d)

Queets coho stepped harvest rates		
Abundance category	Age-3 abundance	Total allowable exploitation rate
Normal	Greater than 9,667	65 percent
Low	Between 7,250 and 9,667	40 percent
Critical	Less than 7,250	20 percent

(e) *Snohomish coho*. (1) The Snohomish coho salmon stock was declared overfished in 2018. The target year for rebuilding Snohomish coho is 2020. The harvest control rule during the rebuilding period for Snohomish coho is the abundance-based stepped harvest rate as shown in table 3 to this paragraph (e).

Table 3 to paragraph (e)(1)

Snohomish coho stepped harvest rates		
Abundance category	Age-3 abundance	Total allowable exploitation rate
Normal	Greater than 137,000	60 percent
Low	Between 51,667 and 137,000	40 percent
Critical	Less than 51,667	20 percent

(2) In years when Snohomish coho abundance is forecast to exceed 137,000, the total allowable exploitation rate will be limited to target achieving a spawning escapement of 55,000 Snohomish coho.