

respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season - May 1 through September 30; minimum size - 21.5 inches (54.61 cm); and possession limit - two fish.

■ 4. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Season and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit specified in § 648.125(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 5. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

§ 648.122 Possession limit.

(a) No person shall possess more than 10 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.***

* * * * *

■ 6. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from May 22 through October 11 and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100617272-0271-02]

RIN 0648-AY94

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Final rule; harvest specifications; correction.

SUMMARY: This final rule revises the optimum yields in the 2010 Specifications for darkblotched rockfish, cowcod, and yelloweye rockfish. The U.S. District Court for the Northern District of California issued an Order on April 29, 2010, vacating the 2009–2010 specifications for those three species, and replaced the Specifications with the most recent optimum yields that were specified for 2007–2008. This rule amends the regulatory requirements for these three species in accordance with the court's order. This rule also corrects a technical error in a table establishing the 2010 canary rockfish optimum yield.

DATES: Effective July 2, 2010.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail: gretchen.hanshew@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register's** Web site at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>. Background information and documents are also available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm>.

Copies of the final environmental impact statement (FEIS) for the 2009–2010 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE.

Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

Background

On December 31, 2008, NMFS published a proposed rule to implement the 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516), including, among other species, darkblotched rockfish, cowcod, and yelloweye rockfish. A final rule was published on March 6, 2009 (74 FR 9874), which codified the specifications and management measures in the CFR (50 CFR part 660, subpart G). That action set the 2009–2010 harvest specifications and management measures for groundfish taken in the U.S. Exclusive Economic Zone (EEZ) off the coasts of Washington, Oregon, and California, and revised rebuilding plans for four of seven overfished species, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (FMP). The existing and revised rebuilding plans were consistent with Amendment 16–4 to the FMP, and were designed to comply with the rebuilding requirements of the MSA.

In response to the latest in a series of complaints filed in *Natural Resources Defense Council v. Locke*, Civil Action No. C 01–0421 JL, challenging the rebuilding provisions in the FMP, the U.S. District Court for the Northern District of California vacated the 2009 and 2010 specifications for darkblotched rockfish, cowcod, and yelloweye rockfish. Order on Remedy, Dkt. No. 342 (April 29, 2010) (Opinion). The Court held that NMFS violated National Standard 2 of the MSA by “failing to use the best scientific information available on the economic status of fishing communities in their 2009–2010 Biennial specifications and Management Measures for the Pacific Coast Groundfish Fishery (2009–2010 Specifications).” Further, the Court held that NMFS established “rebuilding plans for darkblotched rockfish, cowcod, and yelloweye rockfish in the 2009–2010 Specifications that do not rebuild those species in time periods that are ‘as short

as possible' within the meaning of section 304(e)(4)(A)(i)" of the MSA.

The Court remanded the 2009–2010 specifications and ordered the agency "within one year of the date of issuance of the Order on Remedy," to establish new specifications for the Pacific Coast Groundfish Fishery that "are based on the 'best scientific information available' within the meaning of MSA National Standard 2, 16 U.S.C. 1851(a)(2); and establish rebuilding periods for darkblotched rockfish, cowcod, and yelloweye rockfish that are 'as short as possible' within the meaning of MSA section 304(e)(4)(A)(i), 16 U.S.C. 1854 (e)(4)(A)(i)."

In response, NMFS is considering the extent to which the current development of the 2011–2012 specifications for all species managed under the FMP must be modified to comply with the Court's Order. The Pacific Fishery Management Council (Council) is near the end of the two-year development of the new specifications and management measures. Under the current schedule, the Council would adopt its preferred alternatives at its June 2010 meeting and submit them to NMFS for consideration and, following additional public comment, possible adoption and implementation by January 1, 2011.

The Court's Order also vacated the 2009–2010 specifications for darkblotched rockfish, cowcod and yelloweye rockfish, stating that "for the remainder of 2010, the most recent annual harvest levels (also known as optimum yields, or 'OYs') that NMFS specified for darkblotched rockfish, cowcod, and yelloweye rockfish in its 2007–2008 Biennial Specifications and Managements for the Pacific Coast Groundfish Fishery are in effect. For yelloweye rockfish, the OY in 2010 is 14 metric tons."

In order to implement the Court's Order, NMFS is taking the following actions with respect to the 2010 groundfish regulations and management. This rule specifies that the 2010 OYs for three species are: darkblotched rockfish, 330 metric tons; cowcod, 4 metric tons; and yelloweye rockfish, 14 metric tons. The agency has requested that the Council, through its inseason management process, review the anticipated catch of these species and recommend to the agency the appropriate management measures, including modifications to set asides or harvest guidelines, to manage the fishery within the OY levels set by the Court, consistent with the following guidance.

These OY amounts are based on a strict reading of the Court's Opinion and

the subsequent Order on Remedy, Dkt. No. 342 (April 29, 2010). For darkblotched rockfish, NMFS notes that modifying the current 2010 OY of 291 mt by increasing it to the 2008 OY of 330 mt, as required by the Order, does not appear to be consistent with the Court's underlying reasoning in its Opinion. Thus, although NMFS is modifying the 2010 OY to be consistent with the Court's Order (an OY of 330 mt), NMFS is recommending that the Council's management measures be designed to keep the 2010 fishery within 290 mt, which is equivalent to the 2007 OY level for darkblotched rockfish. The 2010 OY for cowcod remains 4 mt, which is the same OY specified in 2008. The 2010 OY for yelloweye rockfish is reduced from 17 mt to 14 mt.

At its June meeting, the Council recommended the management measures to keep the fishery within the necessary levels published in this rule. These measures were published on July 1, 2010 (75 FR 38030).

This rule also corrects the 2010 OY in Table 2a to 660 Subpart G for canary rockfish. In the final rule for the 2009–2010 groundfish harvest specifications and management measures (74 FR 9874, March 6, 2009), NMFS established a 2010 OY for canary rockfish of 105 mt. In June 2009, after receiving some updated stock assessments, the Council recommended consideration of lowering the OYs for 2010 for both canary rockfish and petrale sole. In response, NMFS issued a proposed rule (74 FR 46714, September 11, 2009) with a proposed canary rockfish OY for 2010 that ranged from 44 mt to 105 mt. After review of the canary rockfish rebuilding analyses at its November 2009 meeting, the Council recommended no change to the existing canary rockfish OY of 105 mt. The preamble of the final rule (74 FR 65480, December 10, 2009), which implemented a change in the petrale sole OY, explained that the 2010 canary rockfish OY was not being changed and remained at 105 mt. The final rule did not change preexisting trip limits for the fishery implementing the 105 mt OY, nor did it change a footnote to the 2010 ABC/OY Table, Table 2a to Part 660, Subpart G–2010, that described the canary rockfish OY as being 105 mt. However, Table 2a still indicated the canary rockfish OY range of 44–105 from the proposed rule. This was a mistake. Therefore, in this action, NMFS is revising the OY table to be consistent with the decision announced in the December 10, 2009, final rule.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the April 29, 2010, Court Order and the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive notice and public procedure on this action because it is unnecessary and contrary to the public interest, as provided by 5 U.S.C. 553(b)(B). This action ensures that regulatory text provides accurate information to the regulated public consistent with a duly issued court order. For darkblotched rockfish, cowcod, and yelloweye rockfish, NMFS does not have discretion to take other action, as there is no alternative to complying with the court order. With regard to canary rockfish, correction of the OY number in the table is a minor, merely technical amendment, thus prior notice and comment is unnecessary. The December 10, 2009, final rule did not change preexisting trip limits implementing the 105 mt OY, and these trip limits are the basis for regulation of the fishery. Clarifying in the table that the canary rockfish OY is 105 mt as opposed to 44–105 mt does not affect regulation of the fishery. Providing for public comment on this action is contrary to the public interest. It would have no effect other than to slow the process of making the affected regulations consistent with the court order. The public would be best served by having accurate information in regulatory text immediately. Furthermore, the Assistant Administrator for Fisheries waives the 30-day delayed effectiveness period, as provided by 5 U.S.C. 553(d)(3), for the reasons stated above. In addition, the impacts of this action (the change in the 2010 OYs for three rockfish species) is already effective based on the court order, and this will bring the codified regulations into compliance with currently effective harvest levels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: July 2, 2010.

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 is amended to read as follows:

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

■ 2. Table 2a to Part 660, Subpart G, and footnotes “y/”, “z/” and “aa/” following Tables 2a through 2c to Part 660, Subpart G are revised to read as follows:

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Table 2a. To Part 660, Subpart G - 2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area							Commercial	Recreation- al
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Lingcod c/ N of 42 N. lat. S of 42 N. lat. Pacific Cod e/ Pacific Whiting f/ Sablefish g/ N of 36 N. lat. S of 36 N. lat. Cabezon h/ S of 42 N. lat.	4,058 3,200		771 d/			4,829 3,200 336,560 9,217 86	4,829 1,600 193,935 6,471 79		
ROUNDFISH:									
Pacific Whiting f/ Sablefish g/ N of 36 N. lat. S of 36 N. lat.									
Cabezon h/ S of 42 N. lat.									
FLATFISH:									
Dover sole English sole j/ Petrale sole k/ Arrowtooth flounder l/ Starry Flounder m/ Other flatfish n/									
	</								

Species	ABC Specifications						OY	HG b/ Commercial Recreation- al	
	ABC Contributions by Area								
	Vancouver a/	Columbia	Eureka	Monterey	Conception	ABC			
Shortbelly p/			6,950			6,950	6,950		
Widow q/			6,937			6,937	509	447.4	7.2
Canary r/			940			940	105		
Chilipepper s/		d/		2,576		2,576	2,447	2,447	
Bocaccio t/		d/		793		793	288	206.4	67.3
Splitnose u/		d/		615		615	461		
Yellowtail v/		4,562		d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.			2,411			2,411	1,591	1,591	
S of 34 27' N. lat.							410		
Longspine thornyhead									
x/ N of 34 27' N. lat.			3,671			3,671	2,175		
S of 34 27' N. lat.							385		
Cowcod y/		d/		14		14	4		
Darkblotched z/			440			440	330	288.05	
Yelloweye aa/						32	14	1.9	7.6
California Scorpionfish bb/					155	155	155		
Black cc/ N of 46 16' N. lat.	464					464	464		
S of 46 16' N. lat.				1,317		1,317	1,000		

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation- al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Minor Rockfish dd/ N of 40 10' N. lat.		3,678			--	3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.		--			3,382	3,382	1,990		
Remaining		1,640			1,318				
bank ff/		d/			350				
blackgill gg/		d/			292				
blue		28			211				
bocaccio north		318			--				
chilipepper north		32			--				
redstripe		576			d/				
sharpchin		307			45				
silvergrey		38			d/				
splitnose north		242			--				
yellowmouth		99			d/				
yellowtail		--			116				
gopher		d/			302				
Other rockfish hh/		2,038			2,066				
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/			3,269			3,269	1,349		
Other fish jj/			11,200			11,200	5,600		

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* * * * *

y/Cowcod in the Conception area was assessed in 2007 and the stock was estimated to be between 3.4 to 16.3 percent of its unfished biomass. The ABC for the Monterey and Conception areas is 14 mt and is based on the 2007

rebuilding analysis in which the Conception area stock assessment projection was doubled to account for both areas. A single OY of 4 mt is being set for both areas. The OY of 4 mt is based on the need to conform the 2010 cowcod harvest specifications to the Court's Order in *Natural Resources*

Defense Council v. Locke, Civil Action No. C 01-0421 JL. The amount anticipated to be taken during scientific research activity is 0.2 mt and the amount expected to be taken during EFP activity is 0.24 mt.

z/Darkblotched rockfish was assessed in 2007 and a rebuilding analysis was

prepared. The new stock assessment estimated the stock to be at 22.4 percent of its unfished biomass in 2007. The ABC is projected to be 440 mt and is based on the 2007 stock assessment with an F_{MSY} proxy of $F^{50\%}$. The OY of 330 mt is based on the need to conform the 2010 darkblotched rockfish harvest specifications to the Court's Order in *Natural Resources Defense Council v. Locke*, Civil Action No. C 01-0421 JL. The amount anticipated to be taken during scientific research activity is 2.0 mt and the amount anticipated to be taken during EFP activity is 0.95 mt.

^{aa}/Yelloweye rockfish was fully assessed in 2006 and an assessment update was completed in 2007. The 2007 stock assessment update estimated the spawning stock biomass in 2006 to be at 14 percent of its unfished biomass coastwide. The 32 mt coastwide ABC was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F^{50\%}$. The 14 mt OY is based on the need to conform the 2010 yelloweye rockfish harvest specifications to the Court's Order in *Natural Resources Defense Council v. Locke*, Civil Action No. C 01-0421 JL. The amount anticipated to be taken during scientific research activity is 1.3 mt, the amount anticipated to be taken in the tribal fisheries is 2.3 mt, and the amount anticipated to be taken incidentally in non-groundfish fisheries is 0.3 mt. The catch sharing harvest guidelines for yelloweye rockfish in 2010 are: Limited entry non-whiting trawl 0.3 mt, limited entry whiting 0.0 mt, limited entry fixed gear 0.8 mt, directed open access 1.2 mt, Washington recreational 2.6 mt, Oregon recreational 2.3 mt, California recreational 2.7 mt, and 0.2 mt for exempted fishing.

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[FR Doc. 2010-16632 Filed 7-2-10; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362-0087-02]

RIN 0648-XX39

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

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 2010 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 2,895 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached.

Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,595 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 1, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 1, 2010.

Carrie Selberg,

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

[FR Doc. 2010-16639 Filed 7-2-10; 4:15 pm]

BILLING CODE 3510-22-P