

APPENDIX D
OTHER APPLICABLE LAWEndangered Species Act (ESA) of 1973

The purposes of the ESA are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the objectives of the treaties and conventions created for these purposes. Those species listed as endangered under the ESA and which could be encountered in the groundfish fishery are: gray whale (Eschrichtius robustus), blue whale (Balaenoptera musculus), humpback whale (Megaptera novaeanglie), right whale (Balaena glacialis), fin whale (Balaenoptera physalus), sei whale (Balaenoptera borealis), sperm whale (Physeter macrocephalus), and leather back sea turtle (Dermodochelys coriacea).

The Council and the NMFS have conducted a biological assessment as required under Section 7(c) of the ESA and have determined that the conservation and management measures that are proposed in the first amendment to the FMP are not likely to affect any listed threatened or endangered species under NMFS jurisdiction.

Marine Mammal Protection Act (MMPA) of 1972

The purpose of the MMPA is to protect marine mammals and to prevent certain marine mammal species and stocks from falling below their optimum sustainable population which is defined in Section 3(8) as "...the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element."

Recreational and commercial groundfish fishermen occasionally will have an incidental involvement with marine mammals. Any commercial fishermen that may expect to become involved with marine mammals incidental to normal fishing operations should apply to the NMFS for a free certificate of inclusion. The certificate of inclusion prevents the fishermen from being in violation of the MMPA in the event a marine mammal is taken incidental to normal fishing operations.

Taking marine mammals incidental to commercial fishing is only permitted by the MMPA for marine mammals which are not depleted as defined by Section 3(1). Fishing under the first amendment to the FMP will not deplete any marine mammal resource.

Paperwork Reduction Act of 1980.

The major purposes of the Paperwork Reduction Act of 1980 are: (1) to minimize the federal paperwork burden for individuals, small businesses, state and local governments; (2) to minimize the cost to the federal government of collecting, maintaining, using, and disseminating information; and (3) to ensure that the collection, maintenance, use and dissemination of information by the federal government is consistent with applicable laws relating to confidentiality. NMFS has determined that neither the FMP amendment nor the regulations that will implement the amendment will involve any federal government collection of information that would violate the purposes and requirements of the Paperwork Reduction Act. Some slight modification of current record-keeping requirements could be necessary to record the progress of new joint venture fisheries, but no new reporting requirements would be imposed.

Plan (FMP) were published October 5, 1982 (47 FR 43964). Regulations proposed to implement Amendment 1 to the FMP were published April 18, 1984 (49 FR 14994) with a 45-day comment period. No comments were received.

The revisions to the regulations implementing the FMP include providing increased flexibility to achieve the 20-year rebuilding schedule for Pacific ocean perch; deleting a requirement (which had been deferred indefinitely) to mark intermediate miles of fixed gear groundlines; exempting recreational vessels and commercial passenger fishing vessels from vessel identification provisions; adding species to the groundfish management unit; slowing achievement of the OY for sablefish without providing a competitive advantage to either fixed or trawl gear; deleting a pelagic trawl footrope requirement; and establishing a separate, numerical optimum yield (OY) estimate for jack mackerel caught north of 39° N. latitude. This final specification of OY is established in the following section. Several technical revisions announced in the proposed regulations dealing with the definition of "landing" at § 663.2 and with increases to OYs and ABCs at § 663.24 also are made final; the evolution of these revisions, including the history of public involvement, was discussed at length in the proposed regulations and amendment and is not repeated here. The regulation proposed at § 663.27(b)(3) allocating the last ten percent of the sablefish OY between fixed and trawl gears is revised to

clarify that, as long as OY has not been reached, landings will be prohibited only for the gear type that has taken its five percent allocation of OY. However, landings will be prohibited for all gears when OY is reached, even if the five percent allocation has not been taken. Typographical errors in the proposed rule also have been corrected, notably the citation for the definition section which is at § 663.2 not "§ 663.4", and the incidental percentage allowance for rockfish excluding Pacific ocean perch which is 0.738 percent rather than "0.73 percent".

The Quinault, Hoh, Quileuts, and Makah Indian tribes have informed the Council that they will adopt regulations governing tribal members who fish for groundfish off the Washington coast in 1984, and that these regulations will be consistent with the Federal regulations implementing the FMP.

Management Specifications and Retention Amounts

Amendment 1 establishes a numerical OY for jack mackerel (north of 39° N. latitude). Accordingly, table 2 (published at 49 FR 1061 on January 9, 1984 and corrected at 49 FR 3190 on January 28, 1984) which announced 1984 specifications of OY and its components is revised to include jack mackerel. Footnote 1 also is modified to include the incidental allowances in a jack mackerel target fishery, and footnote 4 is revised to clarify the meaning of "other species." The amended table is reprinted in its entirety below.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1984

(In thousands of metric tons)

(Amended)

Species	Total OY	DAP	JVP ¹	DAH	Reserve	TALFF ²
Pacific whiting	173.5	10.0	100.0	110.0	35.0	30.5
Sablefish	³ 17.4	17.4	0.0	17.4	0.0	0.0
Pacific ocean perch	⁴ 1.55	1.55	0.0	1.55	0.0	0.0
Shortbelly rockfish	40.0	3.4	0.0	3.4	0.0	8.6
Widow rockfish	9.3	9.3	0.0	9.3	0.0	0.0
Jack mackerel (north of 39° N. latitude)	12.0	2.0	10.0	12.0	0.0	0.0
Other species	(*)					

¹ In foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention percentages (based on JVP) are: Sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding Pacific ocean perch 0.738%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. In foreign and joint venture fisheries for jack mackerel (north of 39° N. latitude), incidental allowance percentages are the same as in the Pacific whiting fisheries, except that the Pacific whiting allowance is 3.0% and, by definition, there is no incidental catch of jack mackerel. In foreign trawl and joint venture fisheries, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. If a foreign trawl or joint venture fishery develops for species other than Pacific whiting or jack mackerel, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

² Of this 17,400 metric tons, 2,500 metric tons is for part of the Monterey subarea. See § 663.21(a)(2).

³ Of this 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).

⁴ The total OY for "other species" (listed at §§ 663.2 and 663.21 (a)(3)) is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663.

Classification

The Regional Director determined that these regulations are necessary for the conservation and management of the

Pacific coast groundfish fishery and that they are consistent with the Magnuson Fishery Conservation and Management Act and other applicable law. The notice

50 CFR Parts 611 and 663

[Docket No. 40446-4072]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This document announces final regulations implementing the first amendment to the Pacific Coast Groundfish Fishery Management Plan (FMP). Experience has demonstrated that seven requirements of the FMP should be modified to accommodate more flexible, fair, and reasonable management of the fishery. The amendment revises these requirements so that regulations are less burdensome to most fishermen, the groundfish resource will be conserved as necessary and fairly allocated, and the optimum yield will be achieved.

EFFECTIVE DATE: These regulations are effective 0001 Pacific Daylight Time, July 29, 1984.

ADDRESS: Copies of the amendment, combined with the environmental assessment and the regulatory impact review/final regulatory flexibility analysis, are available from the Pacific Fishery Management Council, 528 SW. Mill Street, Portland, OR 97201, 502-221-8352.

FOR FURTHER INFORMATION CONTACT: Dr. T.E. Kruse (Acting Director, Northwest Region, NMFS) 206-526-6150; or Mr. E.C. Fullerton (Director, Southwest Region, NMFS) 213-548-2575.

SUPPLEMENTARY INFORMATION: Regulations implementing the Pacific Coast Groundfish Fishery Management

of availability of the amendment was published on March 20, 1984. More detailed summaries of the following classifications appear in the preamble to the proposed regulations at 49 FR 14994.

The Council prepared an environmental assessment for Amendment 1 to the FMP and concluded that there will be no significant impact on the environment as a result of this rule. The environmental assessment is available from the Council at the address given above.

The NOAA Administrator determined that these regulations are not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review which appends the amendment and explains the reason for this determination.

The General Counsel of the Department of Commerce certified to the Small Business Administration that these regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. The initial regulatory flexibility analysis which was prepared in conjunction with the regulatory impact review states that the total impact of these proposed regulations is expected to be beneficial but minor (see the summary at 49 FR 14994).

These regulations do not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that these regulations do not directly affect the coastal zone of any state with an approved coastal zone management program.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

Dated: June 29, 1984.

Carmen J. Bloodin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Parts 611 and 663 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.70, a new paragraph (j)(5)(xiv) is added; paragraphs (j)(6), (7), and (8) are redesignated as (j)(7), (8), and (9), respectively; a new paragraph (j)(6) is added; newly redesignated paragraph (j)(7) is revised; and a new paragraph (j)(8)(iii) is added to newly redesignated paragraph (j)(8) to read as follows—

§ 611.70 Pacific coast groundfish fishery.

(j) * * *

(5) * * *

(xiv) For each haul in which Pacific whiting is not the directed species, the name of the directed species must be entered in the daily catch or daily receipt log following the trawl or receipt number.

(6) *Daily cumulative catch logs.* In addition to the requirements of § 611.9, information for each directed fishery must be maintained on a separate page of this log. If the directed (allocated) species is not Pacific whiting, the name of the directed species must be entered on the line below the permit number.

(7) *Daily cumulative receipt logs.* Operators of foreign vessels receiving U.S.-harvested fish must maintain a daily cumulative receipt log and must record on a daily basis the round weight of all species received during the permit period, whether retained or discarded. Information for each directed species and each fishing area must be maintained on a separate page of the log. (If the directed species is not Pacific whiting, the name of the directed species must be entered on the line below the permit number.) Data for a day (0001 GMT to 2400 GMT) must be recorded before the end of the next day. The following information must be recorded accurately in the daily cumulative receipt log:

(8) * * *

(iii) Any weekly catch report (CATREP) submitted under § 611.9(e) or weekly report of receipt of U.S.-harvested fish (RECREP) submitted under § 611.9(f) must state if it pertains to a directed species other than Pacific whiting by following the word "CATREP" or "RECREP" with the name of the directed species. If more than one directed fishery is conducted in the same week, a separate CATREP or RECREP must be submitted for each such species.

PART 663—[AMENDED]

3. The authority citation for Part 663 is as follows:

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

4. In § 663.2 the definitions of "Groundfish" and "Land or landing" are revised to read as follows:

§ 663.2 Definitions.

Groundfish means species managed by the Pacific Coast Groundfish Plan, specifically:

Common Name and Scientific Names

Sharks:

leopard shark, *Triakis semifasciata*
souppin shark, *Galeorhinus zyopterus*
spiny dogfish, *Squalus acanthias*

Skates:

big skate, *Raja binoculata*
California skate, *R. inornata*

longnose skate, *R. rhina*

Ratfish: ratfish, *Hydrolagus colliiei*

Morids: finescale codling, *Antimora microlepis*

Grenadiers: Pacific rattail, *Coryphaenoides acrolepis*

Roundfish:

cabezon, *Scorpaenichthys marmoratus*
"jack mackerel (north of 39° N. latitude),

Trachurus symmetricus

kelp greenling, *Hexagrammos decagrammus*

lingcod, *Ophiodon elongatus*

Pacific cod, *Gadus macrocephalus*

"Pacific whiting, *Merluccius productus*

"sablefish, *Anoplopoma fimbria*

Rockfish:

aurora rockfish, *Sebastes aurora*

bank rockfish, *S. rufus*

black rockfish, *S. melanops*

black and yellow rockfish, *S. chrysomelas*

blackgill rockfish, *S. melanostomus*

blue rockfish, *S. mystinus*

bocaccio, *S. paucispinis*

bronzespotted rockfish, *S. gilli*

brown rockfish, *S. auriculatus*

calico rockfish, *S. dalli*

California scorpionfish, *Scorpaena guttata*

canary rockfish, *Sebastes pinniger*

chilipepper, *S. goodei*

China rockfish, *S. nebulosus*

copper rockfish, *S. caurinus*

cowcod, *S. levis*

darkblotched rockfish, *S. crameri*

dusty rockfish, *S. ciliatus*

flag rockfish, *S. rubrivinctus*

gopher rockfish, *S. carnatius*

grass rockfish, *S. rastrelliger*

greenblotched rockfish, *S. rosenblatti*

greenspotted rockfish, *S. chlorostictus*

greenstriped rockfish, *S. elongatus*

harlequin rockfish, *S. variegatus*

honeycomb rockfish, *S. umbrosus*

kelp rockfish, *S. atrovirens*

longspine thornyhead, *Sebastolobus altivelis*

Mexican rockfish *Sebastes macdonaldi*

olive rockfish, *S. serranoides*

"Pacific ocean perch, *S. alutus*

pink rockfish, *S. eos*

quillback rockfish, *S. maliger*

redbanded rockfish, *S. babcocki*

redstripe rockfish, *S. proriger*

rosethorn rockfish, *S. helvomaculatus*

rosy rockfish, *S. rosaceus*

rougheye rockfish, *S. aleutianus*

sharpchin rockfish, *S. zacentrus*

"shortbelly rockfish, *S. jordani*

shortraker rockfish, *S. borealis*

shortspine thornyhead, *Sebastes*
alascanus
silvergray rockfish, *Sebastes brevispinis*
speckled rockfish, *S. ovalis*
splitnose rockfish, *S. diploproa*
squarespot rockfish, *S. hopkinsi*
starry rockfish, *S. constellatus*
stripetail rockfish, *S. saxicola*
tiger rockfish, *S. nigrocinctus*
treefish, *S. serriiceps*
vermillion rockfish, *S. miniatus*
widow rockfish, *S. entomelas*
yelloweye rockfish, *S. ruberrimus*
yellowmouth rockfish, *S. reedi*
yellowtail rockfish, *S. flavidus*

All genera and species of the family Scorpaenidae that occur off Washington, Oregon, and California are included, even if not listed above. The Scorpaenidae genera and *Sebastes*, *Scorpaena*, *Scorpaenodes*, and *Sebastes*.

Flatfish:

arrowtooth flounder [arrowtooth turbot],
Atheresthes stomias
butter sole, *Isopsetta isolepis*
curlfin sole, *Pleuronichthys decurrens*
Dover sole, *Microstomus pacificus*
English sole, *Parophrys vetulus*
flathead sole, *Hippoglossoides elassodon*
Pacific sanddab, *Citharichthys sordidus*
petrale sole, *Eopsetta jordani*
rex sole, *Glyptocephalus zachirus*
rock sole, *Lepidopsetta bilineata*
sand sole, *Psettichthys melanostictus*
starry flounder, *Platichthys stellatus*

Note.—Only those species marked with an asterisk (*) have a numerical OY; the others are in the "other species" complex. See § 663.21.

* * * * *
Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

5. Section 663.6 is revised to read as follows:

§ 663.6 Vessel identification.

(a) **Display.** The operator of a vessel which is over 25 feet in length and is engaged in commercial fishing for groundfish must display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weather deck so as to be visible from above. The number must contrast with the background and be in block arabic numerals at least 18 inches high for vessels over 65 feet long and at least 10 inches high for vessels between 25 and 65 feet in length. The length of a vessel for purposes of this section is the length set forth in U.S. Coast Guard records or in State records if no U.S. Coast Guard record exists.

(b) **Maintenance of numbers.** The operator of a vessel engaged in commercial fishing for groundfish shall keep the identifying markings required

by paragraph (a) of this section clearly legible and in good repair, and must ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

(c) **Commercial passenger vessels.** This section does not apply to vessels carrying fishing parties on a per-capita basis or by charter.

6. In § 663.21, paragraph (a)(1) is revised to read as follows:

§ 663.21 General limitations.

(a) **Optimum yield.** (1) Numerical optimum yields (OYs) for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and jack mackerel (north of 39°00' N. latitude) in the regulatory subareas are published in the Federal Register. OYs for those six species are the maximum amount which may be retained or landed shoreside each year in the fishery management area or relevant subarea and include fish caught in the territorial sea (0-3 nautical miles). The "other species" complex has no numerical OY and is regulated by the gear, area, and catch restrictions set forth in this Subpart B.

7. In § 663.22, paragraph (c) is added to read as follows:

§ 663.22 Inseason adjustments.

(c) **Modifications to catch restriction for Pacific ocean perch.** (1) Catch restrictions applicable to Pacific ocean perch are specified at § 663.27(b)(2). After receiving a recommendation and written report from the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to modify these catch restrictions if it is determined that such modification is necessary to achieve the OY based on the 20-year rebuilding schedule.

(2) A public hearing will be held before any determination is made that modification of catch restrictions applicable to Pacific ocean perch is necessary to achieve OY, and before the Secretary publishes any notice to implement such modification.

8. In § 663.24, paragraph (a) is revised to read as follows:

§ 663.24 Annual adjustments.

(a) Each year, the Secretary will publish a notice in the Federal Register specifying optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for

Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and jack mackerel (north of 39°00' N. latitude). The Secretary may publish season and area restrictions, incidental catch and receipt allowance restrictions, and any other restrictions, for any TALFF or JVP amount that may be specified for species other than Pacific whiting. The Secretary also will publish the annual ABCs for groundfish in the Federal Register. Annual specifications of numerical OYs and ABCs by the Secretary will not exceed by more than 30 percent the OYs and ABCs specified at the beginning of the previous fishing year.

9. In § 663.26, paragraphs (b)(6), (d)(4), and (f)(2) are revised to read as follows:

§ 663.26 Gear restrictions.

(b) * * *
(6) **Pelagic trawls.** Pelagic trawl nets must have unprotected footropes at the trawl mouth (without rollers or bobbins). Sweepines, including the bottom leg of the bridle, must be bare.

(d) * * *
(4) Traps laid on a groundline must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(f) * * *
(2) Longlines must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

10. In § 663.27, paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 663.27 Catch restrictions.

(b) * * *
(2) **Pacific ocean perch.** The trip limit for Pacific ocean perch is 5,000 pounds or 10 percent by weight of all fish on board, whichever is greater, per vessel per fishing trip, except as modified under § 663.22(c).

(3) **Sablefish.** When it is determined that 90 percent of the OY will be reached for that portion of the Monterey subarea between 37°00' N. latitude and 36°30' N. latitude, or for the fishery management area as a whole, the Secretary will publish a notice in accordance with § 663.23 applicable to the relevant area dividing the 10 percent balance of OY equally (5 percent apiece) between trawl gear and fixed gear, and

establishing a percentage trip limit for trawl gear. The trip limit will be based on the most recent data available for the season and will equal the average percentage of sablefish in all trawl landings containing sablefish in the area to which the trip limit applies (between 37°00' N. latitude and 36°30' N. latitude, or the fishery management area as a whole), but in no event will the trip limit exceed 30 percent by weight of all fish on board. If the Secretary determines that either trawl or fixed gear in the relevant area will take its 5 percent balance of OY, the Secretary will publish a notice of closure under § 663.23 prohibiting retention and landing of sablefish taken by that gear type in the relevant area. The provisions at § 663.21(b) prohibiting landings when OY is reached will apply even if fixed or trawl gear has not landed its 5 percent balance of OY.

[FR Doc. 84-17713 Filed 6-28-84; 4:27 pm]
BILLING CODE 3510-22-01