

■ b. In paragraph (c) remove “BTU” and add in its place “NTU” in the first column of the table.

■ 22. In § 141.570, revise paragraph (b)(2) in the table to read as follows:

§ 141.570 What does subpart T require that my system report to the State?

* * * * *

Corresponding requirement	Description of information to report	Frequency
* * *	* * *	* * *
(b) Individual Filter Turbidity Requirements (§§ 141.560–141.564).	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, and the cause (if known) for the exceedance(s), but only if 2 consecutive measurements exceeded 1.0 NTU.	By the 10th of the following month.
* * *	* * *	* * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 23. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

§ 142.14 [Amended]

■ 24. Section § 142.14 is amended as follows:

■ a. In paragraph (d)(12)(iv) remove the citation “§ 142.16(f)(2)” and add in its place “§ 142.16(h)(2)”; and

■ b. In paragraph (d)(13) remove the citation “§ 142.16(f)(5)” and add in its place “§ 142.16(h)(5)”.

§ 142.16 [Amended]

■ 25. Section 142.16 is amended as follows:

■ a. In paragraph (l)(2) remove the citation “§ 142.16(e)(5)” and add in its place “§ 142.16(e)(2)”;

■ b. Add and reserve paragraphs (m), (n), and (o);

■ c. Redesignate paragraph (j) which was added on January 14, 2002, at 67 FR 1812 as paragraph (p); and

■ d. In newly designated paragraph (p)(2)(ii) remove the citation “141.536” and add in its place “141.535”.

§ 142.62 [Amended]

■ 26. Section 142.62(g)(2) is amended by removing the citation “103.35” and add in its place “165.110”.

[FR Doc. 04–14604 Filed 6–28–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031216314–3314–01; I.D. 062304A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Inseason Adjustments

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

ACTION: Inseason adjustments to management measures; request for comments.

SUMMARY: NMFS announces changes to the commercial limited entry fixed gear primary season sablefish tier limits for the Pacific Coast groundfish fishery. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) June 29, 2004, until the 2005–06 annual specifications and management measures are effective; unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through July 28, 2004.

ADDRESSES: You may submit comments, identified by (I.D. 062304A), by any of the following methods:

- E-mail:

GroundfishInseason#4.nwr@noaa.gov: Include the I.D. number in the subject line of the message.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

- Mail: D. Robert Lohn, Administrator, Northwest Region,

NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

- Fax: 206–526–6736

FOR FURTHER INFORMATION CONTACT:

Jamie Goen (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office’s website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region website at: *www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council’s website at: *www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the 2004 fishing year (January 1 - December 31, 2004) were initially published in the **Federal Register** as an emergency rule for January 1 - February 29, 2004 (69 FR 1322, January 8, 2004), and as a proposed rule for March 1 - December 31, 2004 (69 FR 1380, January 8, 2004). The emergency rule was amended at 69 FR 4084, January 28, 2004, and the final rule for March 1 - December 31, 2004, was published in the **Federal Register** on March 9, 2004 (69 FR 11064), and subsequently amended at 69 FR 23440 (April 29, 2004), 69 FR 23667 (April 30,

2004), 69 FR 25013 (May 5, 2004) and 69 FR 28086 (May 18, 2004).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the states of Washington, Oregon, and California, at its June 14–18, 2004, meeting in Foster City, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding the 2004 optimum yields (OYs).

Limited Entry Fixed Gear Primary Sablefish Fishery

NMFS made an error in calculating the limited entry fixed gear primary sablefish fishery tier limits for the 2004 season. Initially, the 2003 tier limits were used as a placeholder for the 2004 primary season in the final rule (69 FR 11064, March 9, 2004) until the new observer data was released in the spring of 2004. Bycatch rates from the new observer data were used to update the model which calculates the sablefish tier limits. The 2004 tier limits were expected to be higher than the 2003 limits based on the new, lower bycatch rates and the higher sablefish OY for 2004. Updated, higher tier limits for 2004 were published in the **Federal Register** on May 5, 2004 (69 FR 25013) after the start of the primary sablefish season. Subsequently, NMFS discovered an error in its calculation of the 2004 tier limits. The tier limits were calculated from the 2004 sablefish acceptable biological catch (ABC) rather than from the OY. Thus, the 2004 tier limits were substantially higher than they should have been and, if fully harvested, may result in allowing the fisheries to exceed the sablefish OY by approximately 172 mt (78 kg), which is 2 percent of the total 2004 sablefish OY. The primary sablefish season started on April 1 and tier limits through April in PacFIN show landings are tracking slower this year than last year. However, due to the delay in reported landings data into PacFIN, it is likely that more of the higher, erroneous tier limits have already been landed. NMFS estimates that between 50 and 75 percent of the sablefish tier limits may have already been landed at the higher, erroneous tier limits. Based on those percentages, and assuming the same tier limit tonnage that was not landed in 2003 will remain unlanded in 2004, the primary sablefish fishery may be 40 to 83 mt over the amount originally planned for that fishery. Presumably, additional tonnage will remain unharvested from the

limited entry fixed gear and open access daily trip limit fisheries and total harvest will remain below the sablefish OY. With the delay in landings reported into PacFIN from fish tickets, along with the uncertainty on how many fishermen are actively fishing their tiers, it is difficult to determine at this time if the sablefish OY will be exceeded in 2004. NMFS will continue to track landings in this fishery, and if landings are tracking high and approaching the sablefish OY, NMFS will consult with the Pacific Council at its September 12 - 17, 2004, meeting to determine what further adjustments may be necessary in this fishery.

The Pacific Council recommended, and NMFS is implementing, reductions in the primary season sablefish tier limits as follows: Tier 1 will be reduced from 69,600 lb (31,570 kg) to 64,300 lb (29,166 kg), Tier 2 will be reduced from 31,600 lb (14,334 kg) to 29,200 lb (13,245 kg), and Tier 3 will be reduced from 18,100 lb (8,210 kg) to 16,700 lb (7,575 kg). These are the limits that should have been set in place in May, had they been calculated from the sablefish OY instead of the ABC.

A permit holder who has already landed his or her tier limits is not in violation of these regulations if the holder was complying with the regulations in effect at the time of landing. For permit holders who at this time have only partially achieved their tier limits, any past catch during the 2004 primary season will count toward the adjusted, lower tier limit. For example, a stacked Tier 1 and Tier 2 permit would have previously had a cumulative limit of 101,200 lb (45,904 kg) and now has a cumulative limit of 93,500 lb (42,411 kg). If 70,000 lb (31,752 kg) have already been landed on a stacked Tier 1 and Tier 2 permit prior to this inseason action, 23,500 lb (10,659 kg) would remain to be fished on those stacked permits.

NMFS Actions

For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2004 specifications and management measures (69 FR 11064, March 9, 2004), as subsequently amended at 69 FR 23440 (April 29, 2004), 69 FR 23667 (April 30, 2004), 69 FR 25013 (May 5, 2004) and 69 FR 28086 (May 18, 2004), to read as follows:

1. In section IV., under B. Limited Entry Fishery, paragraph (2)(b)(i) is revised to read as follows:

* * * * *

B. Limited Entry Fishery

(2) * * *

(b) * * *

(i) *Primary season.* The primary season begins at 12 noon l.t. on April 1, 2004, and ends at 12 noon l.t. on October 31, 2004. There are no pre-season or post-season closures. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2004, the following limits are in effect: Tier 1, 64,300 lb (29,166 kg); Tier 2, 29,200 lb (13,245 kg); and Tier 3, 16,700 lb (7,575 kg). All limits are in round weight. If a vessel is registered for use with a sablefish-endorsed limited entry permit, all sablefish taken after April 1, 2004, count against the cumulative limits associated with the permit(s) registered for use with that vessel.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(3)(B), because providing prior notice and opportunity for comment would be impracticable. Providing prior notice and comment on the inseason adjustment would be impracticable because the data upon which these recommendations were based was provided to the Pacific Council and the Pacific Council made its recommendations at its June 14–18, 2004, meeting in Foster City, CA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect as explained below. The adjustments to management measures in this document are changes to the limited entry primary sablefish fishery tier limits. Changes are being made to correct an error in the calculation of the sablefish tier limits. The tier limits implemented on May 1, 2004 were incorrectly calculated using

the sablefish ABC rather than the OY. Thus, tier limits were higher than they should have been. Leaving these in place would result in allowing fisheries to exceed the sablefish OY if all tier limits were achieved. The sablefish tier limits in this inseason action are recalculated using the sablefish OY to reduce the take of sablefish in an effort to keep harvest within the OY set for the year. Delaying these changes to management measures could lead to early closures of the fishery. This would contradict one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long

as practicable during the fishing year. Alternatively, delay could lead to exceeding the OY. Finally, providing prior notice and public comment would provide most permit holders an opportunity to take their higher tier limits before the effective date of this notice, which would negate any benefit from this notice. As explained above, prior notice and opportunity for comment would be impracticable because affording prior notice and opportunity for public comment would take too long, thus impeding the Agency's function of managing fisheries to approach without exceeding the OYs for federally managed species.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under Executive Order 12866.

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

Dated: June 23, 2004.

Alan D. Risenhoover,

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