

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.193, paragraph (h) is suspended and paragraphs (z) and (aa) are added to read as follows:

### § 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

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(z) *Deep-water complex (including yellowedge grouper, silk snapper, misty grouper, queen snapper, sand tilefish, black snapper, and blackfin snapper)*—(1) *Commercial sector*—(i) If commercial landings for the deep-water complex, as estimated by the SRD, reach or are projected to reach the commercial ACL of 60,371 lb (27,384 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for this complex for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of deep-water complex species is prohibited and harvest or possession of these species in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If commercial landings exceed the ACL, and at least one of the species in the deep-water complex is overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the ACL for that following year by the amount of the overage in the prior fishing year.

(2) *Recreational sector*. If recreational landings for the deep-water complex, as estimated by the SRD, exceed the recreational ACL of 19,313 lb (8,760 kg), round weight, then during the following fishing year, recreational landings will be monitored for a persistence in increased landings and, if necessary, the AA will file a notification with the Office of the Federal Register, to reduce the length of the following recreational fishing season by the amount necessary to ensure recreational landings do not exceed the recreational ACL in the following fishing year. However, the

length of the recreational season will also not be reduced during the following fishing year if the RA determines, using the best scientific information available, that a reduction in the length of the following fishing season is unnecessary.

(aa) *Blueline tilefish*—(1) *Commercial sector*. If commercial landings for the blueline tilefish, as estimated by the SRD, reach or are projected to reach the commercial ACL of 112,207 lb (50,896 kg), round weight, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. On and after the effective date of such a notification, all sale or purchase of blueline tilefish is prohibited and harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the bag and possession limit. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(2) *Recreational sector*. If recreational landings of blueline tilefish, as estimated by the SRD, reach or are projected to reach the recreational ACL of 111,893 lb (50,754 kg), round weight, then the AA will file a notification with the Office of the Federal Register to close the recreational sector for blueline tilefish for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit of blueline tilefish in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 130808694-4318-02]

RIN 0648-BD37

### Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Commercial Groundfish Fishery Management Measures; Rockfish Conservation Area Boundaries for Vessels Using Bottom Trawl Gear

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

**ACTION:** Final rule.

**SUMMARY:** This final rule will implement revisions to the boundaries of the Rockfish Conservation Area (RCA) that is currently closed to vessels fishing groundfish with bottom trawl gear. This rule will affect the limited entry bottom trawl sector managed under the Pacific Coast Groundfish Fishery Management Plan (FMP) by liberalizing RCA boundaries to improve access to target species.

**DATES:** Effective on April 17, 2014.

**ADDRESSES:** NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the IRFA, FRFA the Small Entity Compliance Guide, and the Environmental Assessment (EA) NMFS prepared for this action are available from the NMFS West Coast Regional Office: William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Colby Brady. This final rule also is accessible via the Internet at the Federal eRulemaking portal at <http://www.regulations.gov>, identified by NOAA-NMFS-2013-0134, or at the Office of the Federal Register Web site at <http://www.access.gpo.gov>. Background information and documents, including electronic copies of the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be available at the NMFS West Coast Region Web site at <http://www.westcoast.fisheries.noaa.gov/fisheries/management.html> and at the Council's Web site at <http://www.pcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** Colby Brady, 206–526–6117; (fax) 206–526–6736; *Colby.Brady@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

Since 2002 NMFS has used large-scale, depth-based closures to reduce catch of overfished groundfish, while still allowing the harvest of healthy stocks to the extent possible. RCAs are gear specific closures, and apply to vessels that take and retain groundfish species. Through this final rule, NMFS is changing portions of the boundaries defining the RCA that is closed to vessels fishing for groundfish with bottom trawl gear, or the “trawl RCA.” This rule will not change how the trawl RCA applies to vessels fishing for groundfish using bottom trawl gear; rather, it will only change the boundaries of the trawl RCA.

This final rule implements the RCA boundary modifications as recommend by the Pacific Fishery Management Council (Council), and as proposed at 78 FR 56641 (September 13, 2013), with the exception of the seaward boundary change between 45°46’ N. lat. and 40°10’ N. lat. NMFS originally proposed moving the seaward boundary line between 45°46’ N. lat. and 40°10’ N. lat. from a line approximating 200 fathoms (fm) (366-m) to a line approximating 150 fm (274-m), during periods 1–6 (note that the “modified 200 fm (366-m)” line, which is a version of the 200 fm (366-m) line modified to increase access to stocks such as petrale sole, is currently in place in periods 1 and 6). However, after considering comments received on the proposed rule and the record as a whole, NMFS has determined that there is an insufficient basis to proceed with the seaward boundary change between

45°46’ N. lat. and 40°10’ N. lat. prior to the conclusion of the Council’s groundfish Essential Fish Habitat (EFH) review. Therefore, as explained more fully below, this rule maintains the seaward trawl RCA boundary between 45°46’ N. lat. and 40°10’ N. lat. as currently established through the 2013–2014 harvest specifications and management measures. 78 FR 580 (January 3, 2013). The remaining boundary changes are implemented as proposed.

A detailed description of the trawl RCA boundaries that NMFS proposed, and the alternative boundaries that NMFS considered in the EA, can be found in the proposed rule 78 FR 56641 (September 13, 2013), and in the tables below. The changes from the proposed rule are discussed more fully in the section titled “Changes from Proposed Rule.”

**Table 1: Status Quo Trawl RCA Boundaries (48°10’ N. latitude to 40°10’ N. latitude).**

|                                 | JAN-FEB                           | MAR-APR                  | MAY-JUN                   | JUL-AUG | SEP-OCT                           | NOV-DEC |
|---------------------------------|-----------------------------------|--------------------------|---------------------------|---------|-----------------------------------|---------|
| 48°10’ N. lat. - 45°46’ N. lat. | 75 fm line - modified 200 fm line | 75 fm line - 150 fm line | 100 fm line - 150 fm line |         | 75 fm line - 150 fm line          |         |
| 45°46’ N. lat. - 40°10’ N. lat. |                                   | 75 fm line - 200 fm line | 100 fm line - 200 fm line |         | 75 fm line - modified 200 fm line |         |

**Table 2: Council Recommended Trawl RCA Boundaries (Alternative 1) as proposed at 78 FR 56641.**

|                                 | JAN-FEB                   | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---------------------------------|---------------------------|---------|---------|---------|---------|---------|
| 48°10’ N. lat. - 40°10’ N. lat. | 100 fm line - 150 fm line |         |         |         |         |         |

**Table 3: Alternative 2, Considered in the EA and described further at 78 FR 56641.**

|                                 | JAN-FEB                            | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---------------------------------|------------------------------------|---------|---------|---------|---------|---------|
| 48°10’ N. lat. - 45°16’ N. lat. | 100 fm line - 150 fm line          |         |         |         |         |         |
| 45°46’ N. lat. - 40°10’ N. lat. | 100 fm line - modified 200 fm line |         |         |         |         |         |

**Changes From the Proposed Rule**

As mentioned above, the only change from the proposed rule is maintaining the status quo seaward boundary line between 40°10’ N. latitude to 45°46’ N. latitude. This final rule implements

trawl RCA boundaries as follows, and as reflected in table 4:

- Shoreward 100 fm (183-m)(year-round) between 40°10’ N. latitude to 48°10’ N. latitude, and;
- Seaward 150 fm (274-m)(year-round) north of 45°46’ N. latitude to 48°10’ N. latitude, and;

- Seaward 200 fm (366-m) between 40°10’ N. latitude to 45°46’ N. latitude during periods 2–5, and modified 200 fm (366-m) in periods 1 and 6 (i.e., status quo).

**Table 4: RCA boundaries implemented through this final rule.**

|                                 | JAN-FEB                                    | MAR-APR             | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC                         |
|---------------------------------|--|---------------------|---------|---------|---------|---------------------------------|
| 48°10' N. lat. - 45°46' N. lat. | 100 fm line- 150 fm line                   |                     |         |         |         |                                 |
| 45°46' N. lat. - 40°10' N. lat. | Shoreward 100 fm line (Seaward line below) |                     |         |         |         |                                 |
| 45°46' N. lat. - 40°10' N. lat. | Seaward modified<br>200 fm line            | Seaward 200 fm line |         |         |         | Seaward modified<br>200 fm line |

As described in the proposed rule, in addition to the Council recommended boundaries, NMFS considered and requested comments on alternative boundaries that were somewhat different from what the Council recommended in April 2013. The alternative trawl RCA boundaries would have been the same as the Council's recommended trawl RCA boundaries, except that they would have kept closed the area between the boundary line approximating the 150 fm (274-m) depth contour and the boundary line approximating the modified 200 fm (366-m) depth contour off Southern Oregon and Northern California (between 40°10' N. latitude to 45°46' N. latitude); this area has been largely closed to groundfish bottom trawling since 2004 and would have been opened under the initial recommendations of the Council from its April 2013 meeting.

At the Council's September 12–17, 2013 meeting in Boise, Idaho, NMFS consulted with the Council and provided additional information from the draft EA regarding the alternative boundaries. After considering the information NMFS presented, reports from the Council's advisory bodies, and public comment, the Council reaffirmed its recommendation to modify the trawl RCA boundaries as originally proposed.

After reviewing public comment on the proposed rule, information being developed through the Council's groundfish EFH review, the Council's recommendations, and the EA for this action, NMFS has determined that there is an insufficient record to conclude that the seaward boundary modification between 45°46' N. lat. and 40°10' N. lat., as originally proposed, minimizes adverse effects on groundfish EFH caused by fishing to the extent practicable. Therefore, NMFS is not implementing that seaward boundary change at this time.

NMFS and the Council initially established trawl RCAs to minimize catch of overfished species while still allowing the harvest of target stocks to the extent possible. Despite the fact that the trawl RCAs were not established to serve as habitat protection, the seaward

areas between 45°46' N. lat. and 40°10' N. lat., between the 150 fm (274-m) and modified 200 fm (366-m) lines have largely been closed since 2004. The EA for this action indicates that this is the only large-scale area that would be opened under the originally proposed boundaries where benthic habitats may have, to some extent, recovered from previous groundfish bottom trawling impacts.

The Council's ongoing groundfish EFH review will likely address whether any changes to EFH designations or measures to minimize adverse effects to the extent practicable are warranted. This includes consideration of whether areas currently closed year-round to groundfish bottom trawling by the RCAs should receive additional protection through management measures designed to minimize to the extent practicable adverse effects on groundfish EFH caused by fishing. During the public comment period for the proposed rule, it became evident that some of the groundfish EFH proposals that may be considered by the Council during its review include proposals for new EFH conservation areas within the portion of the RCA that has essentially been closed to groundfish bottom trawling year-round since 2004. In light of that information, opening year-round closed areas to groundfish bottom trawling now, before the merits of those proposals have been considered and additional progress has been made on the groundfish EFH review, is premature. This final rule will only increase year-round access to areas that are already open to bottom trawling at some times during the year. NMFS and the Council have yet to determine whether groundfish EFH changes are warranted or practicable, but at its November 2013 and March 2014 meetings, the Council indicated its intent to continue with the EFH review process.

This final rule will increase year-round groundfish bottom trawl access to approximately 2,389 square miles of fishing grounds in a fishery where participants are motivated by Individual Fishing Quota (IFQ) to keep bycatch of

overfished species low, irrespective of trawl RCA boundaries. The increased access may enable higher attainment of available quota pounds for several valuable species that are currently not fully harvested, while still protecting overfished rockfish species.

The trawl RCA boundaries being implemented are expected to have a favorable economic impact on groundfish fishing vessels and for businesses and ports where groundfish are landed. The benefits of not opening the upper slope area between 45°46' N. lat. and 40°10' N. lat., compared to the majority of areas that will be opened are unknown at this time. Accordingly, the potential cost and safety benefits and the increased access to target stocks on the slope would be somewhat reduced as compared to the proposed boundaries. However, it would still be an overall improvement compared to not making any changes.

Finally, NMFS notes that at the Council's September 2013 meeting several industry groups and environmental nongovernmental organizations submitted a joint letter indicating their intent to collaborate on long term RCA proposals (Agenda Item G.9.d, Supplemental Public Comment 2). That effort, coordinated with the ongoing EFH review, could provide one option for considering the catch control aspects of RCAs along with the habitat aspects, potentially yielding increased access to fishing grounds while continuing to protect areas with extremely sensitive habitat or unacceptably high bycatch risks.

#### Comments and Responses

NMFS solicited public comment on the trawl RCA proposed rule (78 FR 56641, September 13, 2013). The comment period ended October 15, 2013. NMFS received five letters of comments on the proposed rule submitted by individuals or organizations.

*Comment 1:* Bottom trawl gear should be declared illegal. Trawl gear exacerbates the problem of whales and other large ocean fish becoming entangled in lines. Instead of opening

the trawl RCAs, NMFS should consider expanding them.

*Response:* This rule does not affect the types bottom trawl gear allowed in the Pacific coast groundfish fishery, it only affects where vessels may fish with that gear. NMFS disagrees with the commenter that bottom trawl gear should be declared illegal. Bottom trawl gear is particularly efficient at targeting high volumes of species such as various flatfish (e.g., dover sole, English sole), roundfish such as Pacific cod, and other healthy bottom dwelling species such as thornyhead species; all of which are more inefficiently harvested with other groundfish gears. Therefore, groundfish bottom trawl gear can offer substantial benefits to the Nation in terms of providing consistent healthy protein supply and economic benefits when carefully managed. In addition, entanglements with marine mammals or other large ocean fish are comparatively rare in the groundfish bottom trawl fishery. For example, the groundfish bottom trawl fishery is considered a Category III fishery under the Marine Mammal Protection Act, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals. See 78 FR 73477 (December 6, 2013), which may have been updated prior to publication of this final rule.

With respect to expanding RCAs, NMFS notes that expansion of trawl RCAs continues to be an option available to the Council and NMFS through inseason modifications to the Code of Federal Regulations if needed. However, the purpose of this rule includes increasing access to target stocks, not reducing access.

*Comment 2:* The rule as proposed (Alternative 1) provides increased access to target stocks and better achieves optimum yield, consistent with National Standard 1 of the Magnuson Stevens Fishery Conservation and Management Act (MSA). The rule as proposed will provide vessels opportunities seaward of the RCAs to catch target species, primarily Dover Sole.

*Response:* NMFS agrees that the Council's recommendation as contained in the proposed rule would provide IFQ vessels fishing with bottom trawl gear increased access to target species catch, including Dover sole. However, even in the most uninhibited regulatory scenarios, attainment of all groundfish ACLs is affected by natural inter-annual ecosystem changes, market priorities, and other business realities. This final rule will still allow some increased opportunities seaward of the RCA North of 45°46' N. latitude, will liberalize all of the shoreward RCA boundaries as

recommended by the Council, and is consistent with National Standard 1. The trawl RCA boundaries being implemented are expected to have a favorable economic impact on groundfish fishing vessels and for businesses and ports where groundfish are landed. Moreover, additional refinements of RCA boundaries can still occur once habitat and other aspects associated with opening long-term RCA closures have been addressed.

*Comment 3:* Under the IFQ program, the Pacific groundfish trawl fishery operates with enhanced monitoring and individual accountability. Bycatch of overfished species and discard of target species has decreased dramatically from pre-IFQ years, as noted by NMFS own scientists. Therefore the boundaries as proposed in the rule will not create problems with increased catch of overfished species. The risk of exceeding bycatch of overfished species is minimal given the draft EA results and the IFQ program. The chances of an overfished species "lightning strike" are slim to none, as evidenced by NMFS' trawl surveys, which fish in these areas and presumably do not try to avoid overfished species. If NMFS believes the IFQ system has not been responsible for reducing bycatch, then NMFS must immediately direct the Council to end the IFQ program.

*Response:* NMFS agrees with the commenter that the IFQ program has been very effective at reducing bycatch of some overfished species. NMFS also agrees that increased bycatch of overfished species as a result of this rule, either as proposed or as implemented, is unlikely to result in exceeding annual catch limits. However, NMFS notes that at some point a large unanticipated tow of overfished species may occur, and management measures are in place for action should the Council and NMFS need to respond. Regarding NMFS' trawl surveys, although those vessels are not actively trying to avoid certain rockfish species, and survey activities have not resulted in high overfished species catch events that would threaten continued commercial activities, the scientific surveys have dramatically different aims than that of commercial vessels. Trawl surveys typically use 15 minute tows, while commercial bottom trawl gear deployments of 3–6 hours are common, and may even exceed that, in which case undesired bycatch events of overfished species may be more likely to occur.

*Comment 4:* There is no reason to keep RCA areas closed until habitat areas of particular concern (HAPC) are modified. When the Council established

its first groundfish HAPC designations, it included areas that had been subjected to extensive trawling. If the Council determines through the groundfish EFH review that all or a portion of the RCA that will be opened under this rule deserves additional protection, the Council can still do that later through the existing process. In addition, the RCA being considered in the proposed rule has been subject to trawling prior to the establishment of the RCA and restrictions on trawl gear use. The area has also been subject to fishing by other bottom contact gears and research surveys. This is not virgin wilderness that has been and should remain untouched. NMFS should implement the rule as proposed. Furthermore, EFH concerns are not the intent of RCAs, which were implemented to reduce catch of rebuilding rockfish stocks, and EFH should not be considered when deciding whether to liberalize RCAs.

*Response:* NMFS agrees that benthic habitat that would be exposed to groundfish bottom trawling by opening the seaward areas between 45°46' N. lat. and 40°10' N. lat. has likely been impacted to some degree in the past. NMFS further acknowledges that prior to the closure of these areas, substantially less restrictive trawl gear regulations were in place. Historical bottom trawl gear types were more destructive to sensitive habitat than current bottom trawl gear restrictions. Current restrictions have reduced incentives to deploy bottom trawl gear in hard and mixed substrate areas, particularly high-relief hard pinnacle areas where the greatest abundance of sensitive biogenic habitat (corals and sponges) are found. NMFS also agrees that the seaward areas between 45°46' N. lat. and 40°10' N. lat. have been subject to fishing by other gear types and some limited trawling activity by NMFS' scientific surveys.

Nevertheless, the seaward areas between 45°46' N. lat. and 40°10' N. lat., between the 150 fm (274-m) and modified 200 fm (366-m) line have largely been closed to groundfish bottom trawling since 2004, and the other gear types and survey activities have relatively lower impacts to benthic habitats. The EA indicates that this area is more likely than others to have recovered from the impacts of groundfish bottom trawling. In fact, this area may currently have greater conservation value than portions of the actual "core" RCA (between the 100 fm and 150 fm lines, 183-m and 274-m). That core RCA has been closed to groundfish bottom trawling since at least 2003, but some of the areas are

currently impacted by pink shrimp bottom trawl gear, whereas the seaward areas between 45°46' N. lat. and 40°10' N. lat., between the 150 fm (274-m) and modified 200 fm (366-m) are not. The recovery estimates provided in the 2005 EFH Environmental Impact Statement and subsequent 2012 and 2013 EFH review reports (excluding coral and sponge regeneration/recovery time) support NMFS' conclusion that this area has had some opportunity to recover from trawling impacts.

NMFS agrees that the trawl RCAs were implemented primarily to reduce the catch of rebuilding rockfish stocks by closing off areas to bottom trawl activity where those species of concern were found in higher densities or where larger bycatch events had previously occurred. However, when long term closures such as the seaward area at issue have allowed for some level of habitat recovery, NMFS must take that into account.

While it is true that the Council and NMFS adopted EFH conservation areas through Amendment 19 encompassing habitat that had been previously been trawled, opening the seaward area between 45°46' N. lat. and 40°10' N. lat., between the 150 fm (274-m) and modified 200 fm (366-m) line now has the potential to adversely impact habitat that has partially recovered, prior to the Council considering whether additional protections are warranted. Doing so could negate some of the recovery that has occurred. At its November 2013 meeting, the Council decided to move forward with phase III of its groundfish EFH review after determining that there was sufficient new information to warrant continuing evaluation of its existing groundfish EFH designations. Liberalizing the seaward RCA boundary between 40°10' N. latitude and 45°46' N. latitude, between the 150 fm (274-m) and modified 200 fm (366-m), may ultimately be consistent with the Council's EFH responsibilities. This rulemaking did not address the question of whether any of the seaward areas between 45°46' N. lat. and 40°10' N. lat. and the 150 fm (274-m) and modified 200 fm (366-m) lines, should ultimately receive additional protection through management measures designed to minimize, to the extent practicable, adverse effects on EFH from fishing. It did, however, highlight that additional analysis of this area is needed. Prior to the completion of the phase III review of EFH proposals, or additional consideration of whether practicable measures exist that could minimize impacts of bottom trawling between 40°10' N. latitude and 45°46' N. latitude and the 150fm (274-m) and modified

200fm (366-m) RCA lines, NMFS believes there is an insufficient basis to open this year-round closed area to bottom trawling.

*Comment 5:* The proposed rule provides increased harvest opportunities consistent with National Standards 5, 7, and 8 by considering efficiency in the utilization of fishery resources, minimizing costs, and taking into account the importance of fishery resources to fishing communities. The costs for participating in the west coast groundfish fishery continue to increase with the pending 3 percent cost recovery fee, the annual 5 percent buyback loan payments, state landing taxes, observer costs, and the possible implementation of the adaptive management program that could reduce 10 percent of the available quota pounds. Harvesters need the access to fishing grounds allowed by the rule as proposed.

*Response:* NMFS is aware that fishermen have costs associated with the buyback repayment, state landing taxes, observer coverage, and cost recovery. However, participants in the IFQ program have already started realizing the benefits of the program even with these costs. Preliminary data from the mandatory economic data collection program compares data from 2009 and 2010 (pre-trawl rationalization) versus 2011 (post-trawl rationalization) (see Agenda Item F.2 from the Council's June 2013 meeting), and shows that when looking at net revenue, the fleet is still profitable even with increased costs (e.g., high fuel prices, observer costs). However, with only one year of data post-trawl rationalization, it is too early to make conclusions on the economic benefits of the program.

While buyback loan repayment is a cost to industry, the harvesters that remained and are now in the Shorebased IFQ program have benefitted from the buyback program. NMFS also understands that fishermen are petitioning Congress to approve legislation that would refinance the buyback loan, extending the term of the loan and capping the fee rate at three percent of ex-vessel value, down from five percent.

NMFS is evaluating whether electronic monitoring could reduce the cost of monitoring the fishery. With respect to the adaptive management program, it is unclear at this time how it will be structured or affect the fleet. Ultimately, this final rule will increase access to fishing grounds and is consistent with the National Standards.

*Comment 6:* The potential for gear conflicts resulting from liberalized

RCAs was an issue raised at the Council's September 2013 meeting. However, fishing gears of various types are already in use throughout the area currently open to fishing with no indication that extensive gear conflicts are occurring. Allowing trawling in deeper water on the continental shelf out to 100 fathoms instead of the current 75 fathoms could actually reduce gear conflicts because there would be more area for vessels to operate.

*Response:* The Groundfish Advisory Subpanel and Groundfish Management Team considered the possibility of gear conflicts at the September 2013 Council meeting. By increasing the areas available to trawlers, including the deeper water on the continental shelf out to 100 fathoms, this final rule could potentially reduce concentration of gear between the trawl and fixed gear sectors in the areas where they currently overlap. Additionally, the shoreward boundary change could potentially reduce gear conflicts between crab and groundfish bottom trawl vessels. During public comment under this agenda item at the September Council meeting, trawl and fixed gear industry representatives commented and agreed with the above-mentioned assumptions. Any ancillary gear conflict consequences that might result from implementation of RCA boundary changes through this rule could likely be avoided through increased communications among vessels.

*Comment 7:* Alternative 2 in the EA falls short of providing meaningful access to healthy target species while the risks associated with both alternatives are virtually the same. The rule as proposed provides increased access to currently closed trawl RCA areas in a manner that allows trawl IFQ fishermen to continue to demonstrate the benefits of 100 percent accountability of catch and discards. Trawl RCAs are a relic of pre-IFQ management.

*Response:* NMFS agrees that trawl RCAs are to some extent a relic of pre-IFQ trawl fishery management, which depended largely on trip limits and area closures to control catch in the groundfish trawl fishery. On the other hand, RCAs can still serve as an additional tool for controlling catch in areas with unacceptably high bycatch risks. NMFS also agrees that increased access to currently closed trawl RCA areas allows trawl IFQ fishermen to continue to demonstrate the benefits of the program, including individual accountability of catch and discards.

However, NMFS disagrees that the trawl RCA boundaries implemented through this final rule fall short of

providing meaningful access to healthy target species. This final rule provides approximately 2,389 square miles of additional year-round access to groundfish compared to taking no action (similar to Alternative 2 considered in the EA, which provide increased year-round access to approximately 2,600 square miles). This is still a meaningful increase in access to fishing grounds. Both the rule as proposed and the boundaries as implemented would provide more benefit than the no-action alternative. This increased access should provide greater access to healthy groundfish stocks, which could improve efforts to more fully attain harvest levels. The Council and NMFS can still consider additional modifications to trawl RCA boundaries in the future in manner that addresses the catch control aspects of RCAs along with the habitat aspects.

With respect to the risks associated with the different trawl RCA boundary configurations, NMFS notes that while the EA determined that the boundaries as proposed presented relatively little risk of greatly increased overfished species catch, the trawl RCA boundaries implemented through this final rule would not increase access beyond the seaward line of the current RCA between 45°46' N. lat. and 40°10' N. lat. Therefore, to the extent there are any increased impacts to overfished species by opening new fishing areas, they are expected to be lower in frequency and magnitude under this final rule, particularly for slope species, than under the proposed action.

*Comment 8:* NMFS should not implement the rule as proposed. The draft EA makes several erroneous assertions about past impacts to benthic habitat, arguing that the degraded baseline state of the benthic environment means that the impacts from opening the RCA to groundfish bottom trawling will be relatively lower. Illegal incursions into the RCA, fishing by other gears and fisheries, NMFS' trawl surveys, and pre-RCA trawling do not mean that the rule as proposed will have insignificant impacts. Most of these activities are relatively less harmful to benthic habitat, but trawl nets still bring up sponges and corals even in areas frequently trawled, as evidenced by NMFS West Coast Groundfish Observer Program (WCGOP) bycatch data.

*Response:* NMFS disagrees that prior impacts to benthic habitat in the RCAs are irrelevant to assessing the state of the affected environment and the types of impacts that could be anticipated from opening up areas to groundfish bottom trawling. The EA demonstrates

that various activities have impacted benthic habitat in the past, including those activities mentioned by the commenter. NMFS agrees that fixed gear is generally ranked lower with respect to overall benthic habitat impacts when compared to bottom trawl gear. However, fixed gear is particularly adept at accessing some rocky areas such as hard/mixed rocky pinnacles with substantially less risk of damage to fishing gear, as compared to bottom trawl gear. Fixed gear impacts, in practice, can be greater in areas that bottom trawl vessels actively avoid or are considered untrawlable. NMFS also notes that although coral and sponges are present in trawlable habitat of all substrate types (soft, medium, hard), the magnitude of coral and sponges generally increases in hard areas that are untrawlable, and in which other fixed gear types are actively engaged in fishing activities.

Ultimately, recognizing the degree of previous and ongoing impacts to benthic habitat within the RCA boundaries under consideration contributed to NMFS' conclusion that the upper slope area should remain closed, at least until additional groundfish EFH consideration has occurred. The area between 40°10' N. latitude and 45°46' N. latitude and the 150fm (274-m) and modified 200fm (366-m) RCA lines has not been trawled in almost a decade by groundfish bottom trawl gear, and in practice is not trawled by pink shrimp trawl gear. As such, this area has at least partially recovered from the relatively more substantial trawl impacts, despite still being subjected to fixed gear effort and occasional research trawls or inadvertent incursions.

In addition, while intensive trawling from the 1970s through early 2000s likely did destroy a significant amount of biogenic habitat, NMFS agrees that any assumption that none remains would be unwarranted and that NMFS bottom trawl survey and WCGOP data show coral and sponge bycatch, even in areas of high fishing effort. Trawling effort is heterogeneously distributed, with some areas trawled repeatedly and others less often or in some cases not at all. Ultimately, NMFS concluded that the RCA boundaries implemented through this final rule will not significantly affect the quality of the human environment. All of the additional areas opened through this rule are currently subjected to groundfish bottom trawling at some point during the year. This rule would only change the boundaries to allow year-round access.

*Comment 9:* The proposed rule could have significant impacts on corals, sponges, and other marine life. Removal by bottom trawling of slow growing corals could cause long-term changes in associated megafauna, which provide shelter and food sources for juvenile fish and shellfish. Corals, sponges, and Pennatulacea (sea whips and sea pens) also create three-dimensional structures that form habitat for bottomfish, shellfish, invertebrates, and other marine life, and impacts by bottom trawling may impact fish stocks. Some corals may live in excess of 2,000 years, some sponges may be over 220 years old, and some mounds formed by sponges appear have been estimated to be between 9,000 to 125,000 years old. NMFS needs to consider impacts to biogenic habitat in conjunction with impacts to substrate. The impacts to ocean floor substrate and impacts to biogenic habitat such as corals and sponges may be different.

*Response:* NMFS agrees that corals, sponges, and Pennatulacea (sea whips and sea pens) have the potential to create three-dimensional structures that form habitat for marine life, and impacts by bottom trawling may have an impact on fish stocks. This was considered in the EFH synthesis review documents that informed the EA associated with this final rule. As the EA points out, recolonization and recovery rates and recovery times may be greater than 100 years for deep-sea corals. NMFS agrees that some corals may live in excess of 2,000 years, some sponges may be over 220 years old, and that some mounds formed by sponges appear to have been estimated to be between 9,000 to 125,000 years old. However, many of these habitats and mounds are particularly inaccessible to bottom trawl gear given current gear restrictions. In addition, all of the areas opened through this rule are currently subjected to groundfish bottom trawling at some point during the year.

NMFS agrees that impacts to ocean floor substrate and impacts to biogenic habitat, such as corals and sponges, may be different and that the physical environment of the seafloor is formed by the combination of invertebrates with sediment structures. NMFS fully considered the physical environment of the seafloor formed by the combination of invertebrates with sediment structures in the EA for this action. The recovery tables and other information provided by the EFH habitat synthesis review products are utilized in the EA, which considers impacts to biogenic habitat in conjunction with impacts to substrate types. Citing recovery times from those reviews, the EA specifically

excludes structure-forming invertebrates in the recovery table, and qualifies the limitations of biogenic habitat recovery estimates regarding the available analysis. Although the recovery tables in the EA are mostly relevant to seafloor areas lacking biogenic habitat, impacts to biogenic habitat such as corals, sponges, and sea whips/pens are explained elsewhere in detail in the EA (as well as in the 2005 EFH EIS and recent EFH synthesis analysis review documents). NMFS notes that the majority of scientific peer-reviewed literature on biogenic habitat abundance suggests that the abundance of slow growing epibenthic coral and sponge fauna tends to be greater in mixed/hard and hard substrates, as opposed to soft sand and mud habitat. Soft sandy/mud habitat is estimated to comprise over 90 percent of groundfish habitat substrate within all RCA areas, including those that will remain closed after this final action. This rule would only change the boundaries to allow year-round access. NMFS disagrees that this rule will have significant impacts.

*Comment 10:* Trawl vessels do not avoid hard and mixed substrate sufficiently to mitigate impacts to areas with coral or sponge. The rule as proposed will allow trawling in areas with mixed and hard substrate and adversely impact corals and sponges.

*Response:* NMFS agrees that not all areas of hard and mixed substrate are untrawlable or actively avoided by vessels, and that trawling has the potential to impact corals and sponges when encountered. However, as the commenter acknowledged, at least some areas may be avoided due to potential negative impacts on trawl gear. Despite the fact that trawl vessels do tow over some trawlable smooth hard and mixed substrates, some high relief areas are considered untrawlable because of the potential for severe damage to trawl gear. These areas provide a financial and safety disincentive for vessels to engage in trawling, regardless of RCA configuration.

*Comment 11:* The proposed rule raises doubts about the adequacy of the existing measures to protect groundfish EFH habitat from the adverse effects caused by fishing to the extent practicable, as required by the MSA.

*Response:* As described earlier in the preamble to this final rule, after reviewing public comment on the proposed rule, information developed through the Council's groundfish EFH review, the Council's recommendations, and the EA for this action, NMFS has determined that additional consideration regarding the impacts of the seaward boundary modification on

groundfish EFH between 45°46' N. lat. and 40°10' N. lat., between the 150 fm (274-m) and modified 200 fm (366-m) is warranted. Therefore, NMFS is not implementing that seaward boundary change at this time.

*Comment 12:* Changes to the RCA should be made through a comprehensive coastwide process in coordination with revisions to EFH.

*Response:* NMFS agrees that addressing changes to RCAs and revisions to EFH in a more coordinated and comprehensive manner could have some benefits. However, there are numerous procedural avenues available to the Council and NMFS that could accomplish these goals. As mentioned previously, at the Council's September 2013 meeting several industry groups and environmental nongovernmental organizations submitted a joint letter indicating their intent to collaborate on long term RCA proposals (Agenda Item G.9.d, Supplemental Public Comment 2). That effort, coordinated with the ongoing EFH review, could provide one option for considering the catch control aspects of RCAs along with the habitat aspects.

#### Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law. To the extent that the regulations in this final rule differ from what was deemed by the Council, NMFS invokes its independent authority under 16 U.S.C. 1855(d).

An Environmental Assessment (EA) was prepared for this action. The EA includes socio-economic information that was used to prepare the RIR and FRFA. A copy of the final EA is available online at [www.westcoast.fisheries.noaa.gov](http://www.westcoast.fisheries.noaa.gov).

NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d), so that this final rule may become effective April 17, 2014. This rule reduces regulatory restrictions by allowing trawl vessels access to areas previously closed to fishing at certain times during the year. Failure to waive the 30-day delayed effectiveness would result in missed opportunities for trawl vessels to increase profits by attempting to increase their catch of healthy fish stocks that are under harvested. Implementing this rule quickly will allow these additional fishing opportunities during the months of March and April that would otherwise be forgone. Moreover, this rule adds no requirements, duties, or obligations on the affected entities, and therefore they do not need time to modify their

behavior to come into compliance with the rule. Accordingly, NMFS finds good cause to waive the delay in effectiveness.

A Regulatory Impact Review (RIR) was prepared on the action and is included as part of the final regulatory flexibility analysis (FRFA) on the regulatory changes. The FRFA and RIR describe the impact this rule will have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 603(a), follows:

The trawl RCA is an area is closed to vessels fishing groundfish with bottom trawl gear. This action would revise the bimonthly boundaries of the RCA that is closed to vessels fishing groundfish with bottom trawl gear. This rule affects the limited entry bottom trawl sector managed under the Pacific Coast Groundfish FMP. This RCA was designed to prevent the fleet from exceeding harvest quotas when fishing under trip limits. Since the implementation of the IFQ program, the industry has shown a remarkable ability to avoid bycatch. Therefore, the industry is seeking a reduction in the RCA area so that it can have a greater chance to fish more of their individual quotas.

NMFS considered three alternative RCA boundary configurations, as described above, and the RCA boundaries of Alternative 1 as modified in this final rule. The alternative considered were: The current trawl RCA boundaries for 2014 (no action), the Council recommended proposed trawl RCA boundaries between 48°10' N. lat. and 40°10' N. lat., (Alternative 1, Table 1), alternative trawl RCA boundaries between 48°10' N. lat. and 40°10' N. lat. added by NMFS (Alternative 2, Table 2), and the proposed trawl RCA boundaries between 48°10' N. lat. and 40°10' N. lat., as recommended by the Council in April 2013 with no seaward action between 45°46' N. lat. and 40°10' N. lat.

The amount of increased catch and reduced costs resulting from the proposed alternatives is not known due to limitations of the available data and models. However, the regulatory changes associated with Alternative 1, Alternative 2, and Alternative 1 as modified will have positive economic effects including reduced fuel, improved safety, and increased access to important target species. Overall, the most likely potential impacts are higher

attainments of the trawl allocations than would be expected under the No-Action alternative. Alternative 1 as implemented in this final rule is slightly more restrictive than Alternative 2; Alternative 2 is more restrictive compared to the non-implemented Alternative 1; Alternative 2 opens some areas that have been intermittently closed, but not as much new areas as Alternative 1 as proposed would have done.

This rulemaking directly affects bottom trawlers participating in the IFQ fishery. To fish in the IFQ fishery, a vessel must have a vessel account. As part of this year's permit application processes for the non-tribal fisheries, applicants indicate if they are "small" business based on a review of the Small Business Administration (SBA) size criteria. These criteria have recently changed. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million (Id. at 37400-Table 1). Based on the new size standard (\$19 million), NMFS reassessed those businesses considered large under the old size standard (\$4 million) based on information provided by these companies under the NMFS Northwest Fisheries Science Center's (NWFSC) Economic Data Collection Program. After taking into account NWFSC economic data, NMFS permit and ownership information, PacFIN landings data for 2012, and affiliation between entities, NMFS estimates that there are 66 entities affected by these proposed regulations, of which 56 are "small" businesses. As noted below,

these small entities are not negatively impacted by this rule.

There were no significant issues raised by the public comments in response to the IRFA. Several comments to the proposed rule had economic content (see especially Comments 2, 3, and 5 and associated responses of the Final Rule.) Based upon comments explained above in the preamble, NMFS is implementing Alternative 1 with the exception of the seaward boundary change between 45°46' N. lat. and 40°10' N. lat., to provide IFQ participants with the increased flexibility to attain underutilized target species.

This final rule will increase access to fishing grounds in a fishery where the individual accountability of the IFQ program has a three-year track record of providing strong incentives to keep bycatch of overfished species low, irrespective of trawl RCA boundaries. The changes to the trawl RCA boundaries would continue to refine groundfish fishery management measures to enable higher attainment of available quota pounds for several valuable species, while still protecting overfished species. The EA demonstrates that the upper slope area benthic habitat between 45°46' N. latitude to 40°10' N. latitude, 150 to 200 fm, which would be opened under the Council-preferred Alternative 1, may have experienced some recovery from the effects of bottom trawling. This area has been closed to bottom-trawl gear impacts for almost a decade. NMFS has determined that the area between 45°46' N. latitude to 40°10' N. latitude, from the 150 fm to modified 200 fm lines should remain closed pending completion of the groundfish EFH review or additional consideration of whether opening that area is consistent with minimizing the adverse effects on groundfish EFH caused by fishing to the

extent practicable. However, this final rule will still increase year-round access to areas that are already open to bottom trawling at some times during the year. This rule opens up approximately 2,389 square miles of additional year-round access to the bottom trawl fleet compared to taking no action.

Accordingly, NMFS believes that this rule will have a positive impact on small entities and will not have significant adverse economic impacts on a substantial number of small entities.

This final rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council.

No Federal rules have been identified that duplicate, overlap, or conflict with the final action. Public comment is hereby solicited, identifying such rules.

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

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: April 11, 2014.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated 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.* and 16 U.S.C. 773 *et seq.*

■ 2. Table 1 (North) to part 660, subpart D, is revised to read as follows:



Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table

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|  | JAN-FEB  | MAR-APR   | MAY-JUN  | JUL-AUG                           | SEP-OCT                           | NOV-DEC  |
|--|--|---|--|-----------------------------------|-----------------------------------|--|
| <b>Rockfish Conservation Area (RCA)<sup>1/</sup>:</b>  |  |   |  |                                   |                                   |  |
| 1  | North of 48°10' N. lat.                              |   | shore - modified <sup>2/</sup> 200 fm line <sup>1/</sup> | shore - 200 fm line <sup>1/</sup> | shore - 150 fm line <sup>1/</sup> | shore - 200 fm line <sup>1/</sup>                        |
| 2  | 48°10' N. lat. - 45°16' N. lat.                      |   | 100 fm line <sup>1/</sup> - 150 fm line <sup>1/</sup>    |                                   |                                   |  |
| 3  | 45° 10' N. lat. - 40°10' N. lat.                     |   | Shoreward 100 fm line (Seaward line below) <sup>1/</sup> |                                   |                                   |  |
| 4  | 45° 10' N. lat. - 40°10' N. lat.                     |   | Seaward modified <sup>2/</sup> 200 fm line <sup>1/</sup> | Seaward 200 fm line <sup>1/</sup> |                                   | Seaward modified <sup>2/</sup> 200 fm line <sup>1/</sup> |
| <p>Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. <b>Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.</b></p> |  |   |  |                                   |                                   |  |
| <p>See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).</p>  |  |   |  |                                   |                                   |  |
| <p>State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.</p>   |  |   |  |                                   |                                   |  |
| 3  | <b>Minor nearshore rockfish &amp; Black rockfish</b> |   | 300 lb/ month  |                                   |                                   |  |
| 4  | <b>Whiting</b>                                       |   |  |                                   |                                   |  |
| 5  | midwater trawl                                       | Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED. |  |                                   |                                   |  |
| 6  | large & small footrope gear                          | Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.   |  |                                   |                                   |  |
| 7  | <b>Cabezon</b>                                       |   |  |                                   |                                   |  |
| 8  | North of 46°16' N. lat.                              |   | Unlimited  |                                   |                                   |  |
| 9  | 46°16' N. lat. - 40°10' N. lat.                      |   | 50 lb/ month   |                                   |                                   |  |
| 10   | <b>Shortbelly</b>                                    |   | Unlimited  |                                   |                                   |  |
| 11   | <b>Spiny dogfish</b>                                 |   | 60,000 lb/ month   |                                   |                                   |  |
| 12   | <b>Longnose skate</b>                                |   | Unlimited  |                                   |                                   |  |
| 13   | <b>Other Fish<sup>3/</sup></b>                       |   | Unlimited  |                                   |                                   |  |

TABLE 1 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.