

various factors may have had adverse impacts on the gray whale stock; however, these factors were not likely to jeopardize the continued existence of the stock. Similarly there is not substantial information in this petition, in light of the evidence to the contrary, indicating that the Eastern North Pacific stock of gray whales is in danger of extinction throughout all or a significant portion of its range or likely to become endangered in the foreseeable future. Therefore, NMFS finds that the petition does not present substantial scientific or commercial information indicating that the petitioned action (listing Eastern North Pacific gray whales as threatened or endangered) may be warranted.

Electronic Access

Updated versions of the stock assessment reports for the Eastern North Pacific stock of gray whales are available at the following Internet address: <http://www.nmfs.noaa.gov/prot-res/PR2/Stock-Assessment-Program/individual-sars.html>

Authority: 16 U.S.C. 1531, *et seq.*

Dated: June 8, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010607147-1147-01; I.D. 052101A]

RIN 0648-AP26

Pacific Halibut Fisheries; Primary Sablefish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to provide a regulatory framework that would implement an Area 2A Pacific halibut Catch Sharing Plan (CSP) allocation to the Pacific Coast, limited entry primary sablefish fishery. This rule would allow halibut taken incidentally in the primary sablefish fishery to be retained and landed and would provide a framework that would allow the Pacific Fishery Management Council (Council) to recommend halibut

catch limits for the sablefish fishery when a halibut quota is available to that fishery.

DATES: Comments must be submitted in writing by July 16, 2001.

ADDRESSES: ADDRESSES: Send comments to Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115. Copies of the environmental assessment/regulatory impact review (EA/RIR) for this action are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea (Convention), signed at Ottawa, Ontario, Canada, on March 2, 1953, and amended by a Protocol Amending the Convention, signed at Washington, D.C., United States of America, on March 29, 1979, authorizes the International Pacific Halibut Commission (Commission) to promulgate regulations for the conservation and management of the Pacific halibut fishery. Before these regulations have any effect on U.S. fishermen, they must be approved by the Secretary of State of the United States pursuant to section 4 of the Northern Pacific Halibut Act (Halibut Act), 16 U.S.C. 773-773k) that executes the above Convention. Section 5 of the Halibut Act gives the Secretary of Commerce (Secretary) the responsibility to carry out the Convention between the United States and Canada and requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA. Section 5 of the Halibut Act also provides that the regional fishery management council, having authority for the geographical area concerned, may recommend to NMFS management measures governing Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the Commission.

The Commission describes the waters off the coasts of Washington, Oregon, and California as "Area 2A." The Council recommends management policies affecting Area 2A through the annually updated CSP, and NMFS and

the Commission adopt them for implementation.

This CSP has been in place since 1995, when the Council re-considered its management of non-tribal fisheries in order to accommodate a court-ordered increase to the tribal halibut allocation. The tribal fisheries for halibut occur north of Pt. Chehalis, Washington. Under the CSP, non-tribal fisheries are divided into three shares, with the Washington sport fishery receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The non-tribal commercial fisheries included a directed commercial fishery south of Pt. Chehalis and a coastwide incidental halibut retention opportunity for the salmon troll fishery. This CSP ended non-tribe directed commercial fishing north of Pt. Chehalis.

In 1998, Washington State and the Council decided to allow non-tribal commercial longliners who had traditionally taken halibut off the Washington coast to have access to some commercial halibut in years of greater halibut abundance. Amendments to the CSP in 1998 included a halibut allocation for longline vessels participating in the Pacific coast, limited entry primary sablefish fishery north of Pt. Chehalis. Longliner participants in the primary sablefish fishery were generally the same fishermen who had lost a directed commercial fishing opportunity in 1995. Under 1998 changes to the CSP, this halibut allocation would be available only to the sablefish fishery when the overall total allowable catch (TAC) for Area 2A was above 900,000 lb (408.2 mt). Implementing regulations for this portion of the CSP were not promulgated in 1998 because there were no fish available for this fishery. For the first time since 1998, the Area 2A TAC is above 900,000 lb (408.2 mt); therefore, NMFS is now proposing implementing regulations. Because most of the non-tribal halibut quota for waters off Washington State is allocated to the sport fisheries, the CSP takes the commercial sablefish fishery allocation from the percentage previously set aside for the Washington recreational fishery allocation.

At its January 22-25 meeting, the Commission set an Area 2A TAC of 1,140,000 lb (517 mt). According to the CSP, the primary sablefish fishery would receive an allocation of the amount of halibut from the portion of the Washington sport fishery allocation (36.6 percent of the Area 2A TAC) that is in excess of 214,110 lb (97.1 mt), provided that a minimum of 10,000 lb

(4.5 mt) is available to the sablefish fishery. Under the 2001 Area 2A TAC of 1,140,000 lb (517 mt), the primary sablefish fishery allocation would be 47,946 lb (21.7 mt).

While the CSP provides the formula for calculating the primary sablefish fishery's halibut allocation, it does not specify a regulatory framework for the retention of halibut taken incidentally during the sablefish fishery. Similarly, the CSP specifies a formula for determining the amount of halibut available for incidental retention in the salmon troll fishery without setting a regulatory framework managing per-vessel retention levels. To implement the CSP for the salmon troll fishery, Federal halibut regulations at 50 CFR 300.63(a)(2) state: "A portion of the commercial [halibut] TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council (Council) at its spring meetings and will be published in the **Federal Register** along with the annual salmon management measures." The Council has recommended revising the Federal halibut regulations to provide a similar framework for allowable incidental halibut retention for the limited entry, primary sablefish fishery.

At the March and April 2001 Council meetings, following the Commission's adoption of a 1,140,000 lb (517 mt) TAC for Area 2A, the Council discussed how to best manage incidental halibut retention in the primary sablefish fishery. According to the CSP, only longline vessels fishing for sablefish in the limited entry, primary sablefish fishery north of Pt. Chehalis, WA (46°53'18" N. lat.) are eligible to retain halibut taken in a sablefish fishery. Commission regulations, which govern fisheries off both Canada and the United States, do not allow fishermen to retain, possess, or land halibut taken with gear other than hook-and-line gear. Commission regulations also require that all non-tribal commercial vessels in Area 2A carry a commercial license issued by the Commission, which is free to an applicant. In Area 2A, commercial hook-and-line vessels south of Pt. Chehalis participate in a directed halibut fishery managed with per vessel cumulative limits. Longliners fishing for sablefish north of Pt. Chehalis may only retain and land halibut taken incidentally during the primary sablefish fishery. Participation in the primary sablefish fishery is restricted by Federal groundfish regulations to

limited entry permit holders with sablefish endorsements.

Under the combined constraints of the CSP, Commission regulations, and groundfish regulations, only limited entry longline vessels with sablefish endorsements fishing for sablefish north of Pt. Chehalis during the primary sablefish fishery are eligible to retain incidentally caught halibut.

Approximately 55 longline vessels with sablefish endorsements commonly fish in waters north of Pt. Chehalis. For 2001 and beyond, the Council had to design a regulatory structure that would allow these vessels access to their halibut quota without exceeding that quota. Council priorities were to (1) ensure that halibut could only be retained and landed if they were taken incidentally to sablefish fishing rather than targeted, and (2) provide a regulatory framework similar to the salmon troll framework that could be used each year.

At its April 2001 meeting, the Council recommended amending Federal halibut regulations to add a framework for the primary sablefish fishery that would be similar to the existing regulatory framework for halibut retention limits in the salmon troll fishery. This framework would allow the Council to annually determine limits for halibut retention in the primary sablefish fishery based on the halibut quota for this fishery, number of vessels licensed to participate, and the expected sablefish harvest by the participating vessels. Each year, NMFS would publish the Council's recommended halibut retention limit in the **Federal Register**.

The Commission's commercial licensing process requires that applicants submit their license requests by April 30. Thus, the Council will not know the exact number of vessels expected to land halibut during the primary sablefish fishery until its June meeting. At its June meeting, the Council will set a ratio of allowable landed halibut to landed sablefish. For example, with the 2001 quota of 47,946 lb (21.7 mt) and the estimated 55 participating vessels, the halibut landing limit would be one halibut for every 480 lb (0.22 mt) of sablefish landed and up to two additional halibut in excess of the one fish per 480 lb (0.22 mt) ratio per landing. Ratios would be set to ensure, as much as possible, that halibut would be available to sablefish fishery participants throughout the sablefish season. Higher halibut limits might encourage vessels to either target halibut or to race each other for access to the halibut, possibly allowing the fleet to exceed the halibut quota before the sablefish season closes. The program under which vessels participating in the

sablefish fishery fish under vessel-specific cumulative sablefish limits simplifies managers' efforts to calculate the ratio between available halibut and expected sablefish landings.

There are no other expected biological effects of this proposed action beyond those contemplated by the Commission when it set the Area 2A TAC. The only expected socio-economic effects of this proposed action are positive, in that fishermen operating north of Pt. Chehalis who have not been permitted to land commercially harvested halibut in past years because there was no allocation of halibut will be able to do so in 2001.

Classification

The Council has prepared an EA/RIR for this proposed rule that describes the management background, the purpose and need for action, the management action alternatives, and the environmental and socio-economic impacts of the alternatives. Copies of the EA/RIR are available from the Council (see **ADDRESSES**).

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

The Chief Council for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a substantial number of small entities as follows:

A fish-harvesting business is considered a "small" business by the SBA if it has annual receipts not in excess of \$3.0 million. The approximately 55 businesses that would be affected by this rule are all small businesses, and all are expected to benefit from this proposed rule. In years when the Area 2A Pacific halibut TAC is high enough to allow halibut retention in the primary, fixed gear sablefish fishery, these businesses will be able to supplement their income by landing incidentally caught halibut. Participating vessels would be allowed to land halibut that they would normally discard during the course of fishing, thus these vessels will incur no extra expenses in harvesting this quota. Depending on the halibut quota available to this fishery, the proposed action could result in about \$1,500 to \$15,000 additional annual income per vessel. Thus, the effect of this action on small businesses would be modest but positive. Because this quota is taken off the top of the Washington State recreational fishery quota only in years of an overall Area 2A TAC above 900,000 lb (408.2 mt) and because the TAC has not been this high in many years, it does not leave Washington recreational anglers and charter businesses with less halibut than they have had in recent years. A catch-sharing plan governs the allocation of halibut in Area 2A. That plan was amended in 1998 to establish this quota. The Commission has already set

aside this quota for this year. This proposed rule merely establishes the framework to annually distribute that quota among the affected fishers.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 11, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E continues to read as follows:

Authority: 16 U.S.C. 773–773k

2. In § 300.63, paragraphs (a) (3) and (a) (4) are redesignated as (a) (4) and (a) (5), respectively, and a new paragraph (a) (3) is added to read as follows:

§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.

* * * * *

(a) * * *

(3) A portion of the Area 2A Washington recreational TAC is allocated as incidental catch in the primary directed longline sablefish fishery north of 46°53'18" N. lat., (Pt. Chehalis, Washington), which is regulated under 50 CFR 660.323(a)(2). This fishing opportunity is only available in years in which the Area 2A TAC is greater than 900,000 lb (408.2 mt), provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). Each year that this harvest is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. These restrictions will be designed to ensure the halibut harvest is incidental to the sablefish harvest and will be based on the amounts of halibut and sablefish available to this fishery. The restrictions may include catch or landing ratios, landing limits, or other means to control the rate of halibut landings.

(i) In years when this incidental harvest of halibut in the directed sablefish fishery north of 46°53'18" N. lat. is allowed, it is allowed only for vessels using longline gear that are

registered under groundfish limited entry permits with sablefish endorsements and that possess the appropriate incidental halibut harvest license issued by the Commission.

(ii) It is unlawful for any person to possess or land halibut south of 46°53'18" N. lat. that were taken and retained north of 46°53'18" N. lat. as incidental catch in the directed sablefish fishery authorized by this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 010601143–1143–01; I.D. 050201B]

RIN 0648–AO62

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic States; Recreational-for-hire Fisheries in the Gulf; Control Date

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

ACTION: Advance notice of proposed rulemaking; establishment of a revised control date.

SUMMARY: This document announces that the Gulf of Mexico Fishery Management Council (Council) has adopted an amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that would, if approved and implemented by NMFS, establish a moratorium on the issuance of additional charter vessel and headboat (recreational-for-hire) permits for these fisheries in the exclusive economic zone (EEZ) of the Gulf of Mexico. The Council has not yet submitted the final amendment or its proposed implementing regulations to NMFS for approval and implementation. The Council has established March 29, 2001, as a revised control date for determining eligibility for charter vessel/headboat permits under the permit moratorium

contained in the amendment. Therefore, consistent with the Council's intent, this notice announces March 29, 2001, as the revised control date for these recreational-for-hire fisheries in the Gulf of Mexico EEZ, thereby superseding the Council's prior control date of November 18, 1998. This control date is intended to discourage new entry into these recreational-for-hire fisheries prior to review by NMFS of the amendment and its regulatory implementation.

DATES: Comments on the revised control date must be submitted no later than 5 p.m., eastern daylight savings time, July 16, 2001.

ADDRESSES: Comments on the revised control date should be directed to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; telephone: 813–228–2815; fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Phil Steele, Southeast Region, NMFS, telephone: 727–570–5305; fax: 727–570–5583; e-mail: Phil.Steele@noaa.gov.

SUPPLEMENTARY INFORMATION: The recreational-for-hire fisheries for reef fish and coastal migratory pelagic fish in the EEZ of the Gulf of Mexico are managed under the Reef Fish FMP and the Coastal Migratory Pelagic Resources of the Gulf and South Atlantic (Coastal Migratory Pelagics FMP), respectively. The Reef Fish FMP was prepared by the Council; the Coastal Migratory Pelagics FMP was prepared jointly by the Council and the South Atlantic Fishery Management Council (South Atlantic Council). Both FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The FMPs regulate these two recreational-for-hire fisheries and require permits for charter and headboat vessels participating in them. Landings of these vessels are regulated through fish bag, possession, and size limits. There also is an annual recreational quota for red snapper under the Reef Fish FMP.

The recreational sector of both the red snapper and king mackerel fisheries, including recreational-for-hire vessels, has frequently exceeded the annual allocation set for that sector when total allowable catch (TAC) for the whole fishery (recreational and commercial catch) is established annually. To prevent the recreational sector of these fisheries from exceeding its annual allocation, the Council must either reduce the bag limit or take some other action to reduce the fishing effort and/or landings (e.g., seasonal closures and/