

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990219053-9114-02; I.D. 011999B]

RIN 0648-AK83

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Amendment 13

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 13 to the Pacific Coast Salmon Plan (FMP) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 13 changes the management of Oregon coastal natural (OCN) coho salmon (coho), *Oncorhynchus kisutch*, by disaggregating the OCN stock into four components, restricting total harvest exploitation rates to a maximum of 35 percent, and linking increases in harvest rates to increases in marine survival and proven reproductive success of the present brood year. The only regulatory change that is required is a technical change to a provision regarding coho allocation south of Cape Falcon to make it consistent with the new OCN harvest levels. The intended effect of the final rule is to make the requisite technical change.

DATES: Effective June 14, 1999.

ADDRESSES: Copies of the amendment, including the environmental assessment and the regulatory impact review/regulatory flexibility analysis are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201-5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Svein Fougner at 562-980-4040, or Lawrence D. Six at 503-326-6352.

SUPPLEMENTARY INFORMATION:**Background**

The Pacific Fishery Management Council (Council) developed the FMP, and the Secretary approved it under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, in 1978. Since then, the FMP has been amended 12 times, with implementing regulations codified at 50 CFR part 660, subpart H. From 1979 to

1983, the FMP was amended annually. In 1984, a framework amendment was implemented that provided the mechanism for making preseason and inseason adjustments in the regulations without annual amendments.

The Council prepared Amendment 13 to the FMP under the provisions of the Magnuson-Stevens Act and submitted it on January 15, 1999, for Secretarial review. NMFS published a notice of availability for Amendment 13 in the **Federal Register** on January 27, 1999 (64 FR 4065), announcing a public 60-day comment period. The proposed rule was published on March 4, 1999 (64 FR 10439). The public comment period for the proposed rule ended on April 5, 1999; one comment was received. Amendment 13 was approved on April 28, 1999.

The amendment resulted from an intensive effort by the State of Oregon, led by the Governor, to develop the Oregon Coastal Salmon Restoration Initiative (OCSRI). The OCSRI was intended to restore coastal coho populations and to prevent the need for listing the stock under the Endangered Species Act (ESA). While the OCN coho have since been listed as threatened, NMFS considers the OCSRI important for the recovery of the stock. The Oregon Department of Fish and Wildlife (ODFW) proposed Amendment 13 to the Council to implement the fisheries management provisions of the OCSRI throughout both state and Federal waters wherever OCN coho are harvested. The amendment changes the management basis for OCN coho from maintaining spawner objectives to meeting exploitation rates. The determination of appropriate exploitation rates is based on the habitat production potential, incorporating the effects on the stocks of the condition of both freshwater and marine environments. This determination relies heavily on habitat-based assessment and modeling of OCN coho production. One of the amendment's primary goals is to remove fishery-related impacts as a significant impediment to the recovery of depressed OCN coho and to allow rebuilding the component population subgroups to higher levels.

Although Amendment 13 changes the management goals for OCN coho, the major provisions of this amendment are not codified because the salmon escapement goals are in the FMP rather than in the codified regulations. Therefore, the modification of the OCN escapement goals required only a minor modification of the regulations that explain that the coho allocation provisions for south of Cape Falcon apply only when coho abundance

allows a directed harvest of coho. The existing regulatory language is tied to the existing level of harvest allowed on OCN coho. Implementation of Amendment 13 requires minor changes to the regulatory language in 50 CFR part 660 to make it more generic and accurate.

Comments and Responses

NMFS received no comments on the proposed rule, but received one comment regarding the Amendment.

Comment: The National Audubon Society and Oregon Trout in a joint letter supported the overall direction of the Amendment, but commented that the Council should have adopted the alternative using the fishery impact limit and spawning rebuilding criteria of full seeding of spawning habitat. The comment also maintained that the estimated production potential parameters for freshwater habitat derived from the Habitat-Based Life Cycle Model developed by Nickelson and Lawson (1996) overestimates egg-to-spawner parr survival.

Response: NMFS has some of the same concerns. However, the framework of the Amendment was designed to be flexible so that when new information is produced from the various monitoring and data collection activities required under the Amendment, the results would be incorporated into the management regime. The whole process is scheduled for a comprehensive adaptive review in 2000.

Classification

The Administrator, Northwest Region, NMFS, determined that the FMP Amendment 13 is necessary for the conservation and management of the ocean salmon fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification. The basis for certification has not changed.

A formal section 7 consultation under the Endangered Species Act was conducted on the effects of Amendment 13 and the Pacific Coast Salmon Plan on three distinct population segments, or evolutionarily significant units (ESU), of coho: The central California Coastal

(CCC) ESU, the Southern Oregon Northern California Coastal (SONCC) ESU, and the Oregon Coastal (OC) ESU (61 FR 56138, October 31, 1996; 62 FR 43937 August 18, 1997; 63 FR 42587, August 10, 1998). The biological opinion issued by NMFS dated April 28, 1999, states that fishing activities under the FMP and Amendment 13 and its implementing regulations are not likely to jeopardize the continued existence of the OC coho ESU, but because of the lack of specific conservation goals in the FMP for either SONCC coho or CCC coho, ocean salmon fisheries conducted in accordance with the FMP and Amendment 13 are likely to jeopardize the continued existence of SONCC and CCC coho ESUs. The biological opinion included Reasonable and Prudent Alternatives (RPAs) that would avoid jeopardy. The FMP requires that annual management measures must comply with NMFS jeopardy standards. Therefore, fisheries to be conducted

under the Amendment will be crafted to meet the RPAs of the biological opinion, and thus will avoid jeopardy.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Marianas Islands, Reporting and recordkeeping requirements.

Dated: May 10, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.408, paragraph (c)(2)(iv) is revised to read as follows:

§ 660.408 Annual actions.

* * * * *

(c) * * *

(2) * * *

(iv) *Oregon coastal natural coho.* The allocation provisions in paragraph (c)(2) of this section provide guidance only when coho abundance permits a directed coho harvest, not when the allowable harvest impacts are insufficient to allow coho retention south of Cape Falcon. At such low levels, allowable harvest impacts will be allocated during the Council's preseason process.

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