

Transportation, telephone 202-366-5149.

Dated: August 20, 2001.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 010105005-1206-02; I.D. 120600A]

RIN 0648-AO64

#### Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 9

**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 9 to the Coastal Pelagic Species Fishery Management Plan (FMP), which was submitted by the Pacific Fishery Management Council (Council) for review and approval by the Secretary of Commerce (Secretary) and which was approved on March 22, 2001. Amendment 9 was prepared to provide for documentation of bycatch in the coastal pelagic species fishery (CPS), to ensure that a standardized reporting methodology to assess the amount and type of bycatch is in place, to put in place any necessary conservation and management measures to minimize bycatch, and to ensure that Indian fishing rights are implemented according to treaties between the U.S. and the tribes. The final rule implements Amendment 9 with respect to Indian fishing rights and codifies a provision in the FMP that authorizes the Regional Administrator, Southwest Region, to require observers on fishing vessels for scientific purposes should such observers be necessary. The intent of this final rule is to implement Amendment 9 and to codify the authorization to require observers.

**DATES:** Effective September 26, 2001.

**ADDRESSES:** Copies of Amendment 9, which includes an environmental assessment/regulatory impact review, may be obtained from Donald O. McIssac, Executive Director, Pacific

Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon, 97201.

**FOR FURTHER INFORMATION CONTACT:** James Morgan, Sustainable Fisheries Division, NMFS, at 562-980-4036.

**SUPPLEMENTARY INFORMATION:** The Council submitted Amendment 9 for Secretarial review on November 21, 2000. NMFS published a notice of availability for Amendment 9 in the **Federal Register** on December 21, 2000 (65 FR 80411), announcing a 60-day public comment period, which ended on February 20, 2001. The Secretary approved Amendment 9 on March 22, 2001. The proposed rule implementing Amendment 9 was published in the **Federal Register** on March 30, 2001 (66 FR 17395). The comment period ended on May 14, 2001. No comments were received. The regulatory text remains the same as that in the proposed rule.

On June 10, 1999, Amendment 8 to the Northern Anchovy Fishery Management Plan was partially approved by the Secretary. The portions of Amendment 8 approved by the Secretary added four species to the plan, implemented limited entry to prevent overcapitalization, and changed the name of the plan to the Coastal Pelagic Species Fishery Management Plan. Other provisions were not approved. The optimum yield (OY) for squid and the bycatch provisions in Amendment 8 were not approved because they did not conform to National Standards 1 and 9, respectively, of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 8, contrary to the requirements of National Standard 9, failed to include a standardized reporting methodology to assess the amount and type of bycatch in the CPS fishery and did not explain whether additional management measures to minimize bycatch and the mortality of unavoidable bycatch were practicable. Also, Amendment 8 failed to provide an estimate of maximum sustainable yield (MSY) for squid, which is necessary in order to determine OY.

Background on the preparation and review of Amendment 9 was summarized in the preamble to the proposed rule and is not repeated here. Based on testimony concerning MSY for squid, the Council decided to include in Amendment 9 only the bycatch provision and a provision establishing a framework to ensure that Indian fishing rights are implemented according to treaties between the U.S. and the specific tribes. Since implementation of the FMP, the CPS fishery has expanded to Oregon and Washington. As a result,

the FMP must discuss Indian fishing rights in these areas.

A stock assessment workshop on squid was held at the Southwest Fisheries Science Center on May 14-16, 2001, to review the research being conducted in California. Based on the results of this workshop, the Council will prepare an amendment that will address OY and MSY for squid.

#### Classification

The Administrator, Southwest Region, NMFS, determined that Amendment 9 is necessary for the conservation and management of the coastal pelagic species fishery and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This rule only implements provisions of Amendment 9 that relate to Indian fishing rights and codifies existing elements of the FMP requiring observers. The other provisions of Amendment 9 do not require regulatory text.

This rule does not contain policies with tribal impacts within the meaning of Executive Order 13175.

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

The Chief Counsel for 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 the economic impacts of this rule on small entities, and the basis for this certification has not changed. Accordingly, a regulatory flexibility analysis was not prepared.

NMFS initiated an informal consultation with the Protected Resources Division, Southwest Region, on January 12, 1999, with regard to the effects of Amendment 8 on endangered and threatened marine mammals and salmon under NMFS' jurisdiction. On June 3, 1999, NMFS determined that Amendment 8 would not likely adversely affect listed species under NMFS jurisdiction.

On June 8, 1999, NMFS provided the U.S. Fish and Wildlife Service (FWS) with background information on the harvest strategies in Amendment 8 and their potential impact on other species. NMFS requested that FWS concur with NMFS' determination that Amendment 8 would not likely adversely affect any threatened or endangered birds under FWS' jurisdiction. On June 10, 1999, FWS stated that Amendment 8 would

not adversely affect endangered or threatened birds under its jurisdiction.

NMFS reinitiated consultation with its Protected Resources Division, Southwest Region, following the publication of additional listed species. On, September 2, 1999, NMFS determined that the FMP was not likely to adversely affect Central Valley spring-run chinook and coastal California chinook. However, since the CPS fishery has expanded to Oregon and Washington, NMFS reinitiated consultation on April 19, 2000. This consultation is pending. The existing consultations remain adequate because this rule does not affect how the coastal pelagic fisheries impact listed species.

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

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

Dated August 21, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out 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. Sections 660.518 and 660.519 are added to subpart I to read as follows:

#### **§ 660.518 Pacific Coast Treaty Indian Rights.**

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest CPS in their usual and accustomed fishing areas in U.S. waters.

(b) For the purposes of this section, “Pacific Coast treaty Indian tribes” and their “usual and accustomed fishing areas” are described at § 660.324(b) and (c).

(c) Boundaries of a tribe’s fishing area may be revised as ordered by a Federal court.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented in accordance with the procedures and requirements of the framework contained in Amendment 9 to the FMP and in this Subpart.

(1) The Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public, will implement Indian fishing rights.

(2) The rights will be implemented either through an allocation of fish that will be managed by the tribes or through regulations that will apply specifically to the tribal fisheries.

(3) An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS Southwest Regional Administrator at least 120 days prior to the start of the

fishing season as specified at § 660.510 and will be subject to public review according to the procedures in § 660.508(d).

(4) The Regional Administrator will announce the annual tribal allocation at the same time as the annual specifications.

(e) The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

#### **§ 660.519 Scientific observers.**

All fishing vessels operating in the coastal pelagic species fishery, including catcher/processors, at-sea processors, and vessels that harvest in Washington, Oregon, or California and land catch in another area, may be required to accommodate NMFS-certified observers aboard to collect scientific data. An observer program will be considered only for circumstances where other data collection methods are deemed insufficient for management of the fishery. Any observer program will be implemented in accordance with § 660.517.

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