Only one copy of electronically-filed comments must be submitted. Further information on the process of submitting comments electronically is available at that location and at <http://www.fcc.gov/e-file/>.

X. Ordering Clauses

115. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4, 201, 202, 222, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201, 202, 222, 251, and 303(r), a *notice of proposed rulemaking is adopted*

116. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Notice of proposed rulemaking,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. 605(b).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–12971 Filed 5–14–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 98050115–8115–01; I.D. 032498A]

RIN 0648–AK86

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Compensation for Collecting Resource Information

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

ACTION: Proposed emergency rule; request for comments.

SUMMARY: This action, authorized by the Magnuson-Stevens Act, proposes provisions by which a vessel owner or operator who has collected resource information according to a NMFS-approved protocol may be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions. This action is intended to improve the types and amounts of scientific information available for use in stock assessments and management of the Pacific coast groundfish fishery. It is necessary to implement this action under the Magnuson-Stevens Act emergency rulemaking authority so that NMFS may contract with commercial fishing vessels to conduct resource surveys during the summer of 1998. The Pacific Fishery Management Council (Council) is considering an amendment to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) that would continue this compensation initiative beyond 1998.

DATES: Comments will be considered if received on or before June 5, 1998.

ADDRESSES: Send comments to William Stelle, Jr., Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or William T. Hogarth, Administrator, Southwest Region, (Regional Administrator) NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Other information relevant to this proposed emergency rule is available for public review during business hours at the Office of the Administrator, Northwest Region, NMFS. Copies of the environmental assessment/regulatory impact review are also available from that address. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirements in this proposed emergency rule, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office on Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: NMFS is proposing an emergency rule and requesting comments on the proposal to allow owners or operators of vessels that collect resource information to be compensated with the opportunity to harvest fish in excess of current vessel limits and/or outside other restrictions [hereinafter ''compensated with fish'']. The Council recommended at its November 1997 meeting in Portland, OR, that NMFS proceed with this proposal immediately so that NMFS may so contract with commercial fishing vessels to conduct resource surveys during the summer of 1998.

The fishing industry, environmental groups, and NMFS have actively explored various ways to expand and improve information used in management of the groundfish fishery and to involve the fishing industry in gathering that information. Part of this effort involves finding more creative means of compensating a fishing vessel's owner or operator with fish for participating in collecting resource information. On October 11, 1996, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was amended to authorize the Secretary of Commerce (Secretary) to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to pay for these surveys through the sale of fish taken during the survey or, if the quality or amount of fish is not adequate, on a subsequent, commercial fishing trip (sec. 402(e)). Section 303(b)(11) of the Magnuson-Stevens Act enables the Secretary to ''reserve a portion of the allowable biological catch of the fishery for use in scientific research.'' A vessel that is chartered by NMFS to conduct resource surveys becomes a ''scientific research vessel'' as defined at 50 CFR 600.10, and it may not conduct commercial fishing on the same trip during which a resource survey is conducted.

Background

These provisions must be implemented as quickly as possible in order to include compensation with fish as a component of contracts NMFS will award to commercial fishing vessels to conduct resource surveys during the summer of 1998. Stock assessments for the Dover sole/thornyhead/trawl-caught sablefish (DTS) complex are controversial and have resulted in serious concern over the amount and accuracy of survey data. NMFS is committed to addressing these concerns. However, Federal fiscal constraints have precluded gathering the information needed. This is further compounded by the unavailability of the NOAA ship *Miller Freeman*, the principle vessel used for conducting resource surveys in this fishery, during much of 1998. Implementation of these provisions would enable NMFS to expand sampling in the annual slope survey which provides data for the stock assessments for these and other groundfish species. There is inadequate time to amend the PCGFMP to provide for using fish as compensation (and subtracting the compensation fish from acceptable biological catch (ABC)) before the slope survey is scheduled to begin on August 1, 1998. Therefore, NMFS is proposing this rule under the Secretary's emergency rulemaking authority of the Magnuson-Stevens Act so that these provisions may be implemented in time to support the 1998 slope survey. Concurrently, the Council is preparing an amendment to the PCGFMP for later implementation.

Compensation for a Vessel Conducting a Resource Survey

The Magnuson-Stevens Act authorizes the Secretary, in consultation with the Council and the interested public, to structure competitive solicitations by which a vessel's owner or operator may compete for a contract with NMFS to conduct a resource survey. Resource surveys generally are conducted from chartered fishing vessels, chartered university vessels, and dedicated NOAA vessels. In a resource survey, all samples (fish) are collected according to a specified research plan or protocol. NMFS distinguishes survey activities by a scientific research vessel from commercial fishing activities according to a process of acknowledging scientific research described at 50 CFR 600.745(a). NMFS frequently uses this mechanism to conduct surveys from chartered fishing vessels, and, in some cases, some of the sample has been retained by the vessel owner/operator for sale to reduce waste and to defray some of the costs of the charter. However, any additional harvest taken on a subsequent, commercial trip as payment for the resource survey would not be considered scientific research, and thus, was not authorized under the old provisions of the Magnuson-Stevens Act.

The new provisions of the Magnuson-Stevens Act provide the authority to go beyond allowing the retention and sale of fish caught during the course of a resource survey by providing compensation through the opportunity to harvest fish in excess of current vessel limits and/or outside of other restrictions. This rule proposes to authorize such ''compensation fishing'' through the issuance of an exempted fishing permit (EFP) in the Pacific Coast groundfish fishery, which would enable the vessel to exceed trip limits (and/or to be exempt from other specified management restrictions) so that the compensation amount could be achieved. The compensation EFP would include terms and conditions that would limit the authorized activities. Conditions for disposition of bycatch or any excess catch and for reporting the value of the amount landed and other appropriate terms and conditions would be specified in the EFP. If the PCGFMP is amended, it is anticipated that compensation fishing would occur no later than the end of September of the year after the survey occurred. Compensation fishing must take place during the period specified in the EFP and must be conducted according to the terms and conditions of the EFP. The compensation EFP may also require the vessel owner or operator to keep separate records of compensation fishing conducted after the survey is completed and to submit them to NMFS within a specified period of time after the compensation fishing is completed. NMFS and the States of Washington, Oregon, and California may need to modify their catch reporting systems, if necessary, so that fish taken under the compensation EFP are counted separately from commercial landings.

Process

The process incorporates selection of commercial vessels to be used to conduct the resource surveys, issuance of compensation EFPs to provide for compensation with fish, and adjustment of the ABC to account for the compensation fish used.

Competitive Offers

NMFS may initiate a competitive solicitation (request for proposals, or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation. The RFP would be publicized in the *Commerce Business Daily* and would specify factors that NMFS would use in evaluating the proposals. Vessel owners would be expected to submit offers to conduct the resource survey for a combination of dollars and compensation fish.

Consultation

At a Council meeting, NMFS would consult with the Council and receive public comment on upcoming resource surveys to be conducted with groundfish used as whole or partial compensation. For each proposal, NMFS would present (1) the maximum number of vessels expected or needed to conduct the survey, (2) an estimate of the species and amount of fish likely to be needed to compensate the vessel, (3) when the survey and the compensation fish would be taken, and (4) the year in which the compensation fish would be deducted from the ABC before determining the harvest guideline (HG) or quota. This is, in effect, equivalent to NMFS presenting a compensation EFP application to the Council for the compensation amounts. In general, compensation fish should be similar to surveyed species, but there may be reasons to provide compensation with healthier, more abundant, less restricted, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also want to take into account other factors such as expected discards and incidental catches of other species. If the Council does not approve the proposal to use fish as compensation to pay for a resource survey, NMFS would not use fish, other than fish taken during the scientific research, as compensation for that survey.

Awarding the Contract

NMFS would negotiate and award the resource survey contracts

in accordance with normal Federal procurement procedures. The

contract would include any conditions and limits on compensation fishing, including a requirement to carry on board (1) a letter of acknowledgment of research signed by the Regional Administrator or designee, while conducting any resource survey, and (2) the compensation EFP while conducting compensation fishing and for a period of at least 15 days after the end of any applicable cumulative trip limit period in which compensation fishing occurred.

Retention of Samples

All fishing on a resource survey trip would be required to be conducted according to scientific protocol and would be

considered scientific research. However, some fish caught while conducting the survey could be retained and sold as compensation for the vessel's participation. Retention of samples for sale would be at the discretion of the chief scientist aboard, who would consult with the vessel captain. Collection of scientific information and samples would be the highest priority and might interfere with the vessel's ability to retain market-quality fish.

Issuance of the Compensation EFP

Upon successful completion of the resource survey and determination of the amount and/or value of the survey sample that was retained for sale as payment for conducting the survey, NMFS would issue a compensation EFP to the owner or operator of the vessel if full compensation has not been achieved by the cash payment and retention of the survey sample. The compensation EFP would allow the vessel an opportunity to exceed the current commercial fishing limits by the total amount of compensation fish needed. The amount of compensation fish needed is the amount of fish specified in the contract less the amount and/or value of the survey sample retained for sale. The compensation EFP

also would exempt the vessel from other specified management measures.

Accounting for Compensation Fish

Because the species and amounts of fish used as compensation would not be determined until the contract is awarded, it may not be possible to deduct the amount of compensation fish from the ABC or HG in the year that the fish are caught. Even if this could be done, it would cause great confusion with the many allocations and limits that were set before the compensation amounts were known. NMFS, therefore, proposes that the compensation fish be deducted from the ABC the year after they are caught. During the annual specification process (50 CFR 660.321(b)), NMFS would advise the Council of the total amount of fish caught during the year as compensation for conducting a resource survey, which then would be deducted from the following year's ABCs before setting the HGs or quotas.

Compensation for a Commercial Vessel Collecting Resource Information—an EFP With a Compensation Clause

NMFS also intends to conduct smaller-scale cooperative projects on vessels that are operating in the commercial fishery. This type of activity would not be considered scientific research under 50 CFR 600.745(a) because it would not be conducted by a scientific research vessel, even though the vessels would be collecting resource information according to strict scientific standards approved by NMFS. For small-scale cooperative projects, NMFS could issue EFPs to fishing vessels collecting the resource information. The EFP would require the vessel to conduct specific activities and allow it to retain and sell a limited amount of fish above the amount it could take under its regular trip limit. After the resource information has been obtained, the EFP could authorize the vessel to sell the fish that were in the sample. This would be a standard EFP, issued under the procedures at 50 CFR 600.745(b). Fish caught under this EFP would be counted against the ABCs and HGs or quotas in the year they are caught.

In some circumstances, NMFS might want to allow the vessel to harvest slightly more fish than necessary for the particular project. (For the sablefish depth-specific sampling EFP expected in 1998, a vessel would be able to retain the sample plus a modest compensation amount, no larger than the size of the sample, above its normal trip limits. Samples in these cases generally would be expected to involve less than 500–1,500 lb (227–680 kg) of fish per vessel per month. The extra fish would compensate the vessel for the extra work involved in collecting the samples, may encourage vessels to participate in surveys, and would utilize more of the fish taken during the surveys that is surplus to sampling needs. NMFS could propose the amount of fish that would be used as compensation, or the EFP applicant could propose an amount in the EFP application. In these cases, when NMFS announces receipt of the EFP application and requests comments as required under 50 CFR 600.745(b), NMFS would also announce a window period during which vessels would have an opportunity to submit EFP applications. NMFS contemplates two ways of issuing such EFPs: First, the EFPs could be issued to individuals implementing a protocol approved by NMFS. NMFS would consider the qualified applicants, issue EFPs to all of them, select participation by lottery, issue EFPs to the first applicants, or use other impartial selection methods. Second, NMFS could issue the EFP to a NMFS element, or a state or other Federal research agency, and the research agency's proposal would include an impartial way of selecting fishing vessel participants that would receive individual EFPs under the umbrella EFP held by the research agency.

The following analysis focuses on the use of compensation fishing in the context of chartering vessels to conduct resource surveys because the issues and impacts are of a much greater magnitude than those involved in an EFP with a compensation clause.

Biological Impacts

The biological impacts of using fish as compensation would be

expected to be neutral in the short term and positive in the long term. In the short term, the amount of fish used as compensation is intended to be within the ABC, and therefore, would be within current acceptable biological levels. In general, NMFS would be most likely to compensate the owner or operator of a vessel with identical or similar species to those taken in the resource survey. However, NMFS may decline to compensate a vessel with certain species, particularly stocks that are (or are expected to be) overfished, subject to overfishing, or have bycatch that are overfished (or are expected to be) or are subject to overfishing. In the long term, the additional information that is gathered because NMFS is able to compensate vessels with fish will provide more and better data for use in stock assessments, which should result in better management of the stock and less likelihood of overfishing.

Socio-economic Impacts

The amount of the compensation fish (as a percentage of the ABC) would depend on the value of the compensation species and the cost of the survey. The cost of the survey is relatively fixed, regardless of the abundance and value of the species surveyed. The contract for an extensive survey (e.g., 2 vessels for 60 days at sea each), such as the current NMFS triennial trawl survey, would probably cost less than $450,000, under 0.5 percent of the landed value of all Pacific coast groundfish, 590 million, or approximately 1 percent of the $45 million value of the 1996 fisheries for the Dover sole, thornyheads, trawl-caught sablefish complex (DTS). A smaller scale survey targeted on nearshore flatfish (e.g., Petrale sole, English sole, rex sole) would cost close to $175,000, 2.5 percent of the value of this $7 million flatfish fishery. However, not all components of the groundfish fishery are useful as compensation fish. Only those groundfish species for which there is a constraining trip limit, season, or other management restriction would be desirable targets as compensation because a vessel is not limited in its catch of other groundfish species. Thus, the above comparison that is most relevant to this discussion is the one for the DTS complex. An unfortunate aspect is that most depressed stocks (such as Pacific ocean perch) cannot afford an allocation of compensation fish, while most healthy stocks (like English sole) have no trip limits or allocations that would be desirable compensation. These considerations do not diminish the utility of using fish as compensation, but they do limit the range of species that could be considered as payment.

Vessels engaged in extended resource surveys may not have an adequate opportunity to take their monthly commercial trip limit. The contract and EFP may address the possibility of allowing the take of a monthly trip limit outside the normal period as one of the activities that might be provided as compensation for conducting the survey.

The amount of compensation fish awarded to a survey vessel would be deducted from the subsequent year's ABC. If compensation fish comprise a large proportion of an HG or quota, then potentially trip or bag limits for that species could be lowered, or other constraints on the fishery could be necessary. However, the amounts used as compensation are expected to be less

than 5 percent of an ABC, well within the range of uncertainty associated with ABCs, inseason catch monitoring, and trip limit derivations. Therefore, it is not likely that awarding fish for compensation would result in lower trip limits or additional or earlier restrictions, although potentially this could occur.

Because the amount of fish used for compensation would be subtracted ''off the top'' of the ABC, the loss of compensation fish would be shared among all sectors and vessels (commercial, recreational, and tribal) in the fishery.

Use of compensation fish would reduce the Federal outlay of capital, although it would increase the Federal workload by adding additional EFP procedures and potentially complicating the determination of acceptable charter offers for resource surveys.

Use of fish as compensation for conducting resource surveys should increase the participation and interest by members of

the fishing industry, many of whom have been skeptical of NMFS's data and survey procedures. The resulting cooperation between industry and government would provide scientists with valuable guidance from veteran fishers and would provide industry with first-hand insight into scientific sampling procedures.

A survey vessel would receive an extra financial benefit under this proposed process; however, the recipient and level of the benefit would be determined through a competitive process.

Using fish as compensation would enable more data to be gathered than would otherwise be possible. This should lead to better stock assessments and a better long-term prognosis for a sustainable fishery and thus contribute to stability in the fishing industry and in the resources upon which the industry depends.

Classification

This emergency rule has been determined to be not significant for purposes of Executive Order 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

NMFS has established standards for determining whether an action will have a significant economic impact on a substantial number of small entities. NMFS has determined that, in general, a substantial number of small entities would be 20 percent of those small entities affected by the rule. Economic impacts on small entities are considered to be ''significant'' if the proposed action would result in any of the following: (a) reduction in annual gross revenues by more than 5 percent; (b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; (c) compliance costs as a percent of sales for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; (d) capital cost of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or, (e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations. The proposed rule would result in no additional compliance costs, and therefore items (b), (c), and (d) are not at issue. Item (e) is not relevant as this action would not force any business to cease operations. Only (a) appears potentially relevant to this issue.

This proposed rule could affect a maximum of 2,270 vessels. Of these, approximately 2,260 (almost 100 percent) are considered small entities. The rule is expected to have several different types of impacts. For vessels that obtain contracts to conduct research in exchange for fish, this rule would provide increased opportunity for profit. This rule is also expected to lead to the availability of increased scientific data on the status of the fishery. The availability of this data will enhance the ability of the agency to manage the fishery and is likely to lead to long-term benefits for all participants.

There is also the small possibility that this rule could result in negative economic impacts on some fishery participants. The fish that are awarded as compensation would be deducted from next year's acceptable biological catch. The amounts likely to be diverted for compensation would be so small as to be within the range of accuracy expected for inseason monitoring of harvest guidelines and quotas, and most likely would not change the size of trip limits or their date of achievement. However, there is a remote possibility that some trip limits would be lowered, or lowered earlier, as a result of the small compensation allocation for survey vessels. If this happens, those vessels that routinely achieve their Dover sole, thornyhead, and trawl-caught sablefish (DTS) limits could experience some degree of economic loss. NMFS estimates that approximately 208 limited entry vessels achieved these limits during at least one trip-limit period between July 1996-June 1997. Thus, 9 percent (208 vessels/2,260 vessels of the affected small entities) could hypothetically experience some economic loss as a result of this rule. NMFS estimates that the total cost of the 1998 compensation fish would be $135,000. If this amount is divided between the limited entry and open access fleets in proportion to their share of the fishery, then the cost to the limited entry fleet would be approximately $128,000 and the cost to the open access fleet would be approximately $7,000.

If the entire $128,000 share of the survey cost for the limited entry fleet were supported by the 208 vessels that achieved a cumulative trip limit of one DTS species during one trip-limit period, the average cost to each of these 208 vessels would be $615. The average annual fishing revenue for limited entry vessels in 1996 was $204,000. Thus, the average cost per vessel of spreading the $128,000 cost among 208 vessels would be 0.3 percent ($615 divided by $204,000). In addition, NMFS notes that the smallest 12-month revenue for any of these 208 vessels was $15,000, 5 percent of which is $750, which is higher than the $615 average cost of the compensation fish for these 208 vessels. As the vessel revenue increases, which it does for the remaining 207 vessels, the relative impact of the cost of compensation fish becomes smaller, and remains less than 5 percent. From a slightly different perspective, if the cost associated with using fish as compensation were $128,000 and were distributed amongst the limited entry vessels in proportion to the number of periods in which they attained a limit (during July 1996-June 1997), then the largest reduction in annual revenue for any vessel would be 0.5 percent. NMFS does not anticipate lowering trip limits in the open access fishery, because the maximum amount of fish that this rule could possibly reduce the open access fishery by ($7,000 worth) is so small.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under OMB control number 0648–0203 for Federal fishing permits. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Public comment is invited regarding: Whether this proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information

technology. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects 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: May 11, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

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

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

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

2. In § 660.306, paragraph (d) is revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under 50 CFR 600.745 or 660.350.

* * * * *

3. In subpart G, a new § 660.350 is added to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. The EFP would allow a vessel to retain fish as compensation in excess of trip limits, or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP.* A compensation EFP may be issued to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or tons of fish and including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish that may be retained by the vessel after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the harvest guideline or quota. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS also may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey.

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a ''compensation EFP'' to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR Part 660, subpart G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions will be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation fish.* As part of the annual specification process (50 CFR 660.321), NMFS will advise the Council of the amount of fish retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas.

(b) *EFP with a compensation clause.* An EFP may be issued to a commercial fishing vessel for the purpose of collecting resource information in excess of current management limits (50 CFR 600.745(b)). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at 50 CFR 600.745(b).

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can

reasonably be obtained at less cost to the resource.

(3) *Window period for other applications.* If the RA or designee agrees that compensation should be considered, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 660.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS and NMFS approves the selection method, the permit applicant may chose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that are waived while fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, are counted toward the current year's catch or landings.

[FR Doc. 98–13049 Filed 5–14–98; 8:45 am]

BILLING CODE 3510–22–F