of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Recordkeeping and reporting requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 7, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(164) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(164) On October 9, 2001, the Illinois Environmental Protection Agency submitted new emissions tests averaging provisions for the state of Illinois. The new provisions provide that when conducting a compliance test, a source is considered in compliance with the relevant standard if the average of 3 emissions test runs is at or below the level specified in the emissions standard. The emissions tests averaging provisions only apply to units that produce a consistent pattern of emissions. The provisions may not be used for determining the compliance status of emissions units that are subject to Sections 111 (Standards of Performance for New Stationary Sources) and 112 (Hazardous Air Pollutants) of the Clean Air Act or for units that are being tested for emissions generated by hazardous waste or municipal waste. Also submitted on October 9, 2001 was a non-substantive correction in section 283.120 Applicability which corrected typographic errors in citing testing requirements contained in Section 111 and Section 112 of the Federal Clean Air Act.

(i) Incorporation by reference.

(A) Emissions tests averaging provisions for Illinois contained in Illinois Administrative Code Title 35: Environmental Regulations for the State of Illinois, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 283: General Procedures For Emissions Tests Averaging. Adopted at 24 Ill. Reg. 14428. Effective September 11, 2000.

(B) Correction to Section 283.120 of the Emissions tests averaging provisions for Illinois contained in Illinois Administrative Code Title 35: Environmental Regulations for the State of Illinois, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 283: General Procedures For Emissions Tests Averaging. Expedited Correction Adopted at 24 Ill. Reg. 9657. Effective September 11, 2000.

[FR Doc. 02–8948 Filed 4–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077–2077–01; I.D. 032502A]

RIN 0648–AP85

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications; Pacific Whiting

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

ACTION: Emergency rule to establish final 2002 groundfish fishery specifications for Pacific whiting; announcement of overfished status of Pacific whiting.

SUMMARY: This emergency rule establishes the 2002 fishery specifications for Pacific whiting (whiting) in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to establish allowable harvest levels of whiting based on the best available scientific information. Table 1a and Section IV (B)(3) (the whiting specifications) of the annual specifications and management measures for the Pacific coast groundfish fishery, which was published in the **Federal Register** on March 7, 2002, are being revised by this emergency rule.

With this **Federal Register** document NMFS announces that the whiting resource is considered overfished.

DATES: Effective April 15, 2002 until October 15, 2002. Comments must be received no later than 5 p.m., local time on May 15, 2002.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070. Comments also may be sent via fax to 206–526–6736. Comments will not be accepted if submitted via e-mail or internet. Copies of the environmental assessment (EA)/Regulatory Impact Review may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201, or by contacting Don McIsaac at 503–326–6352, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140; or Svein Fougner (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: This rule is accessible via the Internet at the Office of the Federal Register's Website at *http://www.access.gpo.gov/su--docs/aces/aces140.htm.* Background information and documents are

available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm*and at the Council's website at *http://www.pcouncil.org.*

Background

The FMP requires the Council to develop management specifications for groundfish species or species groups that it proposes to manage, each calendar year. These specifications include ABCs and, harvest levels (OY, harvest guidelines, or quotas).

A proposed rule to establish the 2002 Pacific Coast groundfish fishery specifications and management measures was published in the **Federal Register** on January 11, 2002 (67 FR 1555), followed by a final rulemaking on March 7, 2002 (67 FR 10490).

NMFS and the Council realized that the whiting biomass had decreased throughout the 1990s. In anticipation of a new whiting stock assessment that would be available in early 2002 and given the small amount of whiting typically landed under trip limits prior to the April 1 start of the primary season, the Council chose to delay its final whiting recommendation until its March 2002 meeting. Therefore, the whiting harvest specifications from 2001 were carried over into 2002 and remain in place until new specifications are established through a Federal rulemaking.

The new assessment, which incorporated the 2001 hydroacoustic survey data, was complete and made available for examination by the Council's groundfish stock assessment review team (STAR) for whiting in late February. As a result of the new whiting stock assessment, it has been determined that the spawning stock biomass has substantially declined and has been lower during the past several years than previously estimated. The stock assessment estimated that the biomass in 2001 was 0.7 million mt, and that the female spawning biomass was less than 20 percent of the unfished biomass. This is substantially lower than the 1998 assessment which estimated the biomass to be at 39 percent of its unfished biomass. The overfished threshold under the FMP is 25 percent of the unfished biomass; therefore, the whiting stock was overfished in 2001. The stock is estimated to be near 25 percent of the unfused biomass in 2002. In retrospect, revised biomass estimates based on the results of the new assessment indicate that the exploitation rates in 1999 (28 percent), 2000 (24 percent) and 2001 (31 percent), were above the overfishing level.

Although a large amount of juvenile fish, spawned in 1999, are expected to mature and enter the fishery in the near future, the spawning biomass is not expected to increase above the maximum sustainable yield (MSY) biomass level of B40% for several years. Any increases in biomass will depend on the vigor of juvenile fish that mature and enter the fishery as well as the exploitation rates.

With the publication of this document, NMFS is designating whiting as overfished. Because the whiting stock has been judged to be below its overfished/rebuilding threshold (B25%), the Council is required to develop a rebuilding plan to return the stock to greater than 40 percent of its unfished biomass (B40%-the MSY biomass level).

At its March 2002 meeting in Sacramento, CA, the Council reviewed the results of the new stock assessment. The Council was presented with a range of coastwide harvest levels based on three alternative harvest rates and three different assumptions about the amount (recruitment level) of juvenile fish that are expected to become part of the exploitable biomass in 2002. The three recruitment assumptions included a low recruitment of 2.11 billion fish (10 percent probability), a medium recruitment of 2.89 billion fish (80 percent probability), and a high recruitment of 3.87 billion fish (10 percent probability). At the time of the 2001 survey, the fish spawned in 1999 had only partially recruited to the fishery and were not well estimated by the model resulting in uncertainty about the effect these young fish would have on the exploitable stock biomass. As fish that spawned in 1999 mature, the whiting stock is expected to increase in size under each of the three recruitment assumptions. At the low recruitment level the biomass is projected to increase to between 25 percent and 28 percent of its unfished condition by 2003, for the range of 2002 harvest levels examined. At the high recruitment level, the biomass is projected to increase to between 38 percent and 42 percent of its unfished level by 2003, using the same range of 2002 harvest amounts.

These three recruitment level assumptions represent different degrees of risk in characterizing the amount of juvenile fish entering the fishery. A low recruitment assumption is most precautionary and represents a risk-averse approach, the medium recruitment is risk neutral, and the high recruitment assumption carries greater risk for a timely stock recovery. The Council's Scientific and Statistical Committee (SSC) chose to forward all three recruitment assumptions to the Council, while noting that the medium recruitment assumption was the risk neutral characterization of the incoming recruits to the fishery.

In addition to the three recruitment assumptions, the SSC forwarded three harvest rates to the Council; these rates were based on the proxies of F40%, F45% and F50% (See the 2001 annual specification and management measures (66 FR 2338, January 11, 2001) for a description of harvest policies). Because the harvest rate is dependent on the stock productivity, different harvest rates can mean very different things for individual stocks. For a fast-growing stock, one that has a strong ability to maintain a moderate level of recruitment even when the spawning biomass is reduced, a higher fishing mortality rate, such as F40%, may be used. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing) and is therefore a more aggressive harvest strategy than F45% or F50%.

The OYs presented to the Council were reduced by the 40/10 default harvest policy (See the 2000 annual specification and management measures (65 FR 221, January 4, 2000) for a full description of the 40/10 default harvest policy) because the stock biomass was estimated to be below B40%. When a stock is below B40%, the 40/10 policy is applied as a precautionary measure and is effectively a default rebuilding policy. The further a stock is below the B40% threshold, the greater the reduction in the OY, until at B10% the OY would be set at zero. This default rebuilding policy is intended to reduce the fishing pressure or mortality so that a stock b iomass below B40% will increase more rapidly than with a constant exploitation rate.

Following discussion and public testimony, the Council recommended adopting a U.S.-Canada coastwide OY of 190,500 mt with a U.S. OY of 152,400 mt (80 percent of the coastwide OY - the proportion caught in U.S. waters) the associated ABC was not available, but would be based on a harvest rate of F40% and assuming a medium-high recruitment scenario. NMFS is disapproving the Council's recommendation to adopt an ABC based on F40% with a medium-high recruitment scenario and will instead implement an ABC based on F40% with a medium recruitment scenario, which the Council's SSC characterized as a risk-neutral approach. The U.S.-Canada coastwide ABC will be set at 208,000 mt

with a U.S. ABC of 166,000 mt. NMFS also is disapproving the Council recommended OY of 152,400 mt and will instead implement a U.S.-Canada coastwide OY of 162,000 mt and a U.S. OY of 129,600 mt. The OY is the ABC adjusted by the 40/10 harvest policy as a precautionary measure.

NMFS believes that the risk neutral medium recruitment scenario, instead of one that accepts greater risk, is supported by the best available science given the current biomass estimate and the uncertainty associated with the estimates of recent year class strength. The 2002 retrospective analysis of recruitment estimates from the 1998 assessment resulted in recent recruitment strengths and biomass estimates being revised downward. This suggests that future stock assessments also have a reasonable expectation of revising the estimated strength of the 1999 year class to a lower value. It should be noted that the two most recent year classes prior to the 1998 assessment (at an age equivalent to the 1999 year class in the new assessment) were estimated to be about 40 percent lower in the 2002 assessment than in the 1998 assessment. Relative to the medium-high recruitment chosen by the Council, the 2002 stock assessment results suggest that a lower 1999 recruitment is two to three times more likely than a higher 1999 recruitment. The STAR Panel recognized the high variance associated with forecasting recruitment and suggested caution in using the projections for forecasting future biomass levels. The Council's choice to use a 1999 year class estimate midway between the medium and high estimates is inconsistent with the STAR Panel recommendation.

The F40% harvest proxy will remain in place for 2002. The Council's STAR panel recommended moving to a more conservative level of F45%. The SSC did not make the same recommendation, but noted that the STAR panel recommendation was a risk-adverse policy and not risk-neutral advice. The SSC identified the F40% rate as reflecting a risk-neutral policy. While the F45% is by definition more conservative than the F40%, neither the STAR nor the SSC were presented with an analysis to evaluate the suitability of the F45% harvest rate proxy. Such an analysis was beyond the scope of the assessment. An evaluation of the harvest rate proxies for whiting should be completed before setting the 2003 harvest level.

The Council-recommended harvest level represents a 15.0-–percent exploitation rate which based on what NMFS finds to be the best available science, is intermediate between the coastwide ABC of 208,000 mt (the overfishing level) which represents a 16.4-percent exploitation level, and the default OY of 162,000 mt with the 40/10 adjustment, which represents a 12.8 percent exploitation level. Given the overfished status of whiting, NMFS believes the precautionary measures built into the 40/10 rule are necessary while a rebuilding plan is being developed.

Projections indicate that if mean levels of recruitment occurred annually, an F40% harvest policy adjusted by the 40/10 rule, would rebuild the spawning stock to B40% within 7 to 9 years (2009–2011). However, it must be noted that given the highly skewed nature of the historical recruitment distribution, there is less than a 50 percent likelihood that annual recruitments would average the long-term mean during this short period.

Economic Impacts

The U.S. OY recommended by the Council (152,400 mt) represents a 20–percent reduction from the 2001 whiting OY, while the OY which NMFS is adopting (129,600 mt) represents a 32 percent reduction from the 2001 whiting OY. In 2001, the ex-vessel value of whiting taken by all sectors was estimated to be approximately $13,415,000. Under the OY being adopted by NMFS (129,600 mt), the ex-vessel value of whiting is expected to be approximately $10,000,000; this is 25 percent less than the ex-vessel value in 2001. Reduced revenues from production will likely affect the ability of operations to not only cover their variable costs, but also their fixed costs. If it is not economically feasible for some shoreside or at-sea processors to participate in the fishery, the financial impacts of the reduction may be distributed disproportionately among recent participants. In the short term, the reduced OY is expected to have a major economic impact on harvesters and processors; however, NMFS believes the reductions are necessary for the long-term health of the whiting fishery.

Concerns about the impacts on other groundfish fisheries were considered. Participants in the shore-based whiting fleet have accounted for roughly 50 percent of the annual harvest of species in the Dover sole, thornyhead, and sablefish (DTS) species complex, as well as at least 20 percent of the non-Dover sole flatfish species. Many whiting vessels target flatfish and DTS species after the whiting season. It is expected that the length of the whiting season would be reduced proportionately with the OY. Therefore, a drastically reduced OY would likely result in a shorter whiting season and increased fishing pressure on already constrained non-whiting fisheries, resulting in higher than expected landings, inseason reductions in trip limits, and possibly early closures.

Sector Allocations

Each year, the whiting OY is allocated between the specific sectors of the fishery. The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.324, allow for the allocation of fish to the tribes through the annual specification and management process.

Beginning in 1999, NMFS has set the tribal allocation according to an abundance-based sliding scale allocation method proposed by the Makah Tribe in 1998. See 64 FR 27928, (May 29, 1999); 65 FR 221, 247 (January 4, 2000); 66 FR 2338, 2370 (January 11, 2001). Under the sliding scale allocation method, the tribal allocation varies in relation to the level of the U.S. whiting OY, ranging from a low of 14 percent (or less) of the U.S. OY at OY levels above 250,000 mt, to a high of 17.5 percent of the U.S. OY at an OY level at or below 145,000 mt. For 2002, the Makah Tribe has requested, and the Council has recommended, a tribal allocation of 22,680 mt, using the sliding scale allocation method. No other tribes have requested allocations for 2002.

The sliding scale allocation method is the subject of two recent court decisions. In the treaty fishing rights case of *U.S.* v. *Washington*, Case No. C70–9213, Phase I, Sub-proceeding No. 96-2 (W.D. Wash., April 5, 2001), the Court considered several scientific affidavits submitted by NMFS and the Makah Tribe, and found that ≥the allocation agreed on by the Secretary is a lawful exercise of his obligation to comply with the treaties guaranteeing Indian tribes their aboriginal right to take fish at their usual and accustomed fishing grounds.≥ 143 F. Supp. 2d 1218, at 1224. The Court concluded: ''The sliding scale allocation method advocated by the Secretary and Makah shall govern the United States aspect of the Pacific whiting fishery until the Secretary finds just cause for alteration or abandonment of the plan, the parties agree to a permissible alternative, or further order issues from this court.'' Id.

In *Midwater Trawlers Cooperative* v. *U.S. Department of Commerce*, 282 F. 3d. 710, 2002 WL 338406 (9th Cir. 2002), the Ninth Circuit Court of Appeals upheld the tribal treaty right to Pacific whiting, upheld the usual and accustomed fishing area of the Makah Tribe, and found that the Makah Tribe

is entitled, pursuant to the Treaty of Neah Bay, ''to one-half the harvestable surplus of Pacific whiting that passes through its usual and accustomed fishing grounds, or that much of the harvestable surplus as is necessary for tribal subsistence, whichever is less.'' However, the Court also found that the specific allocation in 1999 to the Makah Tribe was inconsistent with the scientific principles set forth in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (which requires that NMFS base fishery conservation and management measures on the best scientific information available), because NMFS did not adequately support the 1999 allocation set forth in the 1999 **Federal Register** document. Accordingly, the Court issued instructions to the District Court to remand to the agency for more specific findings. On remand, NMFS will be required ''to either promulgate a new allocation consistent with the law and based on the best available science, or to provide further justification for the current allocation that conforms to the requirements of the Magnuson-Stevens Act and the Treaty of Neah Bay.''

The *Midwater Trawlers* decision was just issued, and the case has not yet been formally remanded to the agency by the District Court. However, prior to the formal remand, NMFS must announce the 2002 Pacific whiting allocations. NMFS has reviewed the best available scientific information, including the information contained in documents in the administrative record in the *Midwater Trawlers* case, and has also reviewed scientific information submitted by NMFS and the Makah Tribe in *U.S.* v. *Washington*, Sub-proceeding 96–2. NMFS has no additional information that alters the existing information on the distribution and migration pattern of the stock. Therefore, NMFS is relying on the existing information as the best scientific information available.

Based on the information referenced above, NMFS concludes that an allocation of 22,680 mt of Pacific whiting to the Makah Tribe in 2002 is within the tribal treaty right as described by the District Court in *U.S.* v. *Washington*, Sub-proceeding 96–2, and by the Ninth Circuit in the *Midwater Trawlers* decision. Since this is the amount requested by the Tribe, NMFS also concludes that it is sufficient to meet tribal subsistence needs for 2002, even though it may be less than the full treaty entitlement. NMFS will address these issues in more detail in its formal response to the Ninth Circuit decision.

The non-tribal commercial OY for whiting is 106,920 mt (the 129,600 mt OY minus the 22,680 mt tribal allocation). Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery. The catcher/processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process but do not harvest whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (36,353 mt), motherships getting 24 percent (25,661 mt), and the shore-based sector getting 42 percent (44,906 mt).

All whiting caught in 2002 before the effective date of this action will be counted toward the new harvest guideline. During the primary season, discards of whiting are estimated inseason from observer data and counted toward the OY. As in the past, the specifications include fish caught in state ocean waters (0–3 nautical miles (nm) offshore) as well as fish caught in the EEZ (3–200 nm offshore).

U.S.-Canada

The 2002 allocation of the whiting resources between the U.S. and Canada is not yet resolved. The stock assessment was a collaborative effort between the two nations. However, the results of the new stock assessment were not available in time to hold formal negotiations with Canada before the March Council meeting. Consequently, the Council assumed continuation of the 80 percent share that the U.S. has set harvest levels at in recent years. NMFS believes that the F40 harvest rate with a medium recruitment assumption and a 40/10 harvest policy approach shows adequate precaution. The Council recommended that the future whiting negotiations between the U.S. and Canada be scheduled.

NMFS Actions

For the reasons stated here, NMFS is amending the 2002 annual specifications and management measures (67 FR 10490, March 7, 2002) with the following changes:

(1) Revise Table 1a. 2002 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

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Table 1a. 2002 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) Areas (weights in metric tons).

	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total catch)	Allocations (Total catch)			
Species	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROUNDFISH												
Lingcod b/	745					745	577	251	203	81.0	48	19.0
Pacific Cod	3,200		c/			3,200	na	3,200	--	--	--	--
Pacific Whiting d/	166,000					166,000	129,600	106,920	--	--	--	--
Sablefish e/ (north of 36°)	4,644				--	4,644	4,367	3,906	3,539	90.6	367	9.4
Sablefish f/ (south of 36°)	--				333	333	229	229	--	--	--	--
FLATFISH												
Dover sole g/	8,510					8,510	7,440	7,368	--	--	--	--
English sole	2,000		1,100			3,100	na	–	–	–	–	–
Petrale sole h/	1,262		500	800	200	2,762	na	–	–	–	–	–
Arrowtooth flounder	5,800					5,800	na	–	–	–	–	–
Other flatfish i/	700	3,000	1,700	1,800	500	7,700	na	–	–	–	–	–

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total catch)	Allocations (Total catch)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
ROCKFISH:												
Pacific Ocean Perch j/	640			--		640	350	350	--	--	--	--
Shortbelly k/	13,900					13,900	13,900	13,900	--	--	--	--
Widow l/	3,727					3,727	856	853	827	97.0	26	3.0
Canary m/	228					228	93	44	39	87.7	5	12.3
Chilipepper n/	c/			2,700		2,700	2,000	1,985	1,106	55.7	879	44.3
Bocaccio o/	c/			122		122	100	44	25	55.7	19	44.3
Splitnose p/	c/			615		615	461	461	--	--	--	--
Yellowtail q/	3,146			c/		3,146	3,146	3,131	2,871	91.7	260	8.3
Shortspine thornyhead r/	1,004					1,004	955	948	945	99.73	3	0.27
Longspine thornyhead s/ (north of 36°)	2,461				--	2,461	2,461	2,455	--	--	--	--
Longspine thornyhead t/ (south of 36°)	--				390	390	195	195	--	--	--	--
Cowcod u/	c/			19	--	19	2.4	0	--	--	--	--
	c/			--	5	5	2.4	0	--	--	--	--
Yelloweye w/	22			5	--	27	13.5	3.69	--	--	--	--
Darkblotched v/	187					187	168	168	163	--	5	–

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (Total catch)	Commercial OY (Total Catch)	Allocations (Total catch)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch			Limited Entry		Open Access	
									Mt	%	Mt	%
Minor Rockfish North x/	4,795			--		4,795	3,115	2,442	2,239	91.7	203	8.3
Minor Rockfish South y/	--			3,506		3,506	2,015	1,283	714	55.7	569	44.3
Remaining Rockfish	2,727			854		--	--	--	--	--	--	--
bank z/	c/			350		350	--	--	--	--	--	--
black aa/	615		500			1,115	--	--	--	--	--	--
blackgill bb/	c/			75	268	343	--	--	--	--	--	--
bocaccio - (north)	318					318	--	--	--	--	--	--
chilipepper- (north)	32					32	--	--	--	--	--	--
redstripe	576			c/		576	--	--	--	--	--	--
sharpchin	307			45		352	--	--	--	--	--	--
silvergrey	38			c/		38	--	--	--	--	--	--
splitnose	242			c/		242	--	--	--	--	--	--
yellowmouth	99			c/		99						
yellowtail- (south)				116		116						
Other rockfish cc/	2,068			2,652		--	--	--	--	--	--	--
OTHER FISH dd/	2,500	7,000	1,200	2,000	2,000	14,700	na	–	–	–	–	–

Table 1b. 2002 OYs for minor rockfish by depth sub-groups (weights in metric tons).

Species	Total Catch ABC	OY (Total catch)			Harvest Guidelines (Total catch)			
		Total Catch OY	Recreational Estimate	Commercial OY	Limited Entry		Open Access	
					Mt	%	Mt	%
Minor Rockfish North x/	4,795	3,115	673	2,442	2,239	91.7	203	8.3
Nearshore		987	663	324	161	na	163	na
Shelf		968	10	958	928	na	30	na
Slope		1,160	0	1,160	1,150	na	10	na
Minor Rockfish South y/	3,506	2,015	732	1,283	714	55.7	569	44.3
Nearshore		662	532	130	23	na	107	na
Shelf		714	200	514	194	na	320	na
Slope		639	0	639	497	na	142	na

a/ ABC applies to the U.S. portion of the Vancouver area, except as noted under individual species.

b/ Lingcod was designated as overfished in 1999. Coastwide, lingcod is estimated to be at 15 percent of its unfished biomass. An assessment was conducted in 2000 and updated for 2001. The stock assessment included parts of Canadian waters, therefore the U.S. portion of the ABC for the Vancouver area was set at 44 percent of the total for that area. The ABC of 745 mt was calculated using an Fmsy proxy of F45%. The total catch OY of 577 mt is based on a 60 percent probability of rebuilding the stock to Bmsy by the year 2009. The total catch OY is reduced by 326 mt, the amount that is estimated to be taken by the recreational fishery, resulting in a commercial OY of 251 mt. The open access total catch allocation is 48 mt (19 percent of the commercial OY) and the open access landed catch value is 38 mt. The limited entry total catch allocation is 203 mt and the landed catch value is 163 mt. The landed catch value is based on a discard mortality rate of 20 percent. Tribal vessels are expected to land a small amount of lingcod (4-5 mt), but do not have a specific allocation at this time.

c/ "Other species" - These species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly for convenience, Pacific cod is included in the "other fish" category for the areas footnoted and rockfish species are included in either "other rockfish" or "remaining rockfish" for the areas footnoted only.

d/ A new assessment was prepared in 2002 for whiting and the stock is believed to be below 25 percent of its unfished biomass. The U.S.-Canada ABC of 208,000 mt is based on the 2002 assessment results with the application of an Fmsy proxy harvest rate of F40% and is based on a mid-level recruitment assumption. The U.S. whiting ABC is 80% or 166,000 mt. Application of the 40/10 default harvest policy to the ABC results in a coastwide OY of 162,000 mt. The U.S. whiting OY is 80 percent or 129,600 mt. The commercial OY for whiting is 106,920 mt (the 129,600 mt OY minus the 22,680 mt tribal allocation), and is allocated with 42 percent (44,906 mt) going to the shore-based sector, 24 percent (25,661 mt) going to the mothership sector, and 34 percent (36,353 mt) going to the catcher/processor sector. Discards of whiting are estimated from observer data and counted towards the OY inseason.

e/ Sablefish north of 36° N lat. - A new sablefish assessment was done in 2001 for the area north of Point Conception (34°27'N lat.). Sablefish north of 34°27'N lat. is

estimated to be between 27 percent and 38 percent of its unfished biomass. The ABC for the surveyed area (4,786 mt) is based on an environmentally driven model with an Fmsy proxy of F45%. The ABC for the management area north of 36° N lat. is 4,644 mt (97.04 percent of the ABC from the surveyed area). The total catch OY for the area north of 36° N lat is 4,367 mt, which is based on the application of the 40-10 harvest rate policy, and is 97.04 percent of the OY from the surveyed area. The total catch OY is reduced by 10 percent for the tribal set aside (437 mt) and by 24.7 mt for compensation to vessels that conducted resource surveys. The remainder (3,906 mt) is the commercial total catch OY. The open access allocation of 9.4 percent of the commercial OY, results in an open access total catch OY of 367 mt. The limited entry total catch OY is 3,539 mt, 90.6 percent of the commercial OY. The limited entry total catch OY is further divided with 58 percent (2,052 mt) allocated to the trawl fishery and 42 percent (1,486 mt) allocated to the non-trawl fishery. Discard rates will be applied as follows: 22 percent for limited entry trawl, 8 percent for limited entry fixed gear and open access, and 3 percent for the tribal fisheries. The resulting landed catch values are: 1,601 mt for limited entry trawl, 1,367 mt for limited entry fixed gear, 338 mt for open access, and 424 mt for the tribal fisheries.

f/ Sablefish south of 36° N lat. - The ABC of 333 mt is the sum of 142 mt (2.96 percent of the ABC from the new 2001 survey based assessment) and 191 mt (based on historical landings). The total catch OY (229 mt) is the sum of 133 mt (2.96 percent of the OY from the new 2001 survey based assessment with the application of the 40-10 harvest rate policy) and 96 mt (that portion of the ABC based on historical landings south of Pt. Conception that was reduced by 50 percent to address uncertainty due to limited information). There are no limited entry or open access allocations in the Conception area at this time. The assumed discard value is 8 percent, resulting in a landed catch value of 211 mt.

g/ Dover sole north of 34°27'N lat. was assessed as a unit in 2001 and is estimated to be at 29% of its unfished biomass. The ABC (8,510 mt) is based on an Fmsy proxy of F40%. Because the biomass is estimated to be in the precautionary zone, the total catch OY of 7,440 mt is based on the application of the 40-10 harvest rate policy. The OY is reduced by 71.6 mt for compensation to vessels that conducted resource surveys, resulting in a commercial OY of 7,368 mt. Discards are assumed to be 5 percent, resulting in a landed catch value of 7,000 mt.

h/ Petrale sole was estimated to be at 42 percent of its unfished biomass following a 1999 assessment. For 2002, the final ABC for the Vancouver-Columbia area (1,262 mt) is based on an F40% Fmsy proxy. The ABCs for the Eureka, Monterey, and Conception areas (1,500 mt) continue at the same level as 2001.

i/ "Other flatfish" are those species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, sand sole, and starry flounder. The ABC is based on historical catch levels.

j/ Pacfic ocean perch (POP) was designated as overfished in 1999. The ABC (640 mt) is based on the 2000 assessment which was updated for 2001. The total catch OY (350 mt) is based on a 70 percent probability of rebuilding the stock to Bmsy by the year 2042. The landed catch value is 294 mt. The landed catch value is based on a discard rate of 16 percent. Tribal vessels are expected to land only trace amounts of POP in 2002 and do not have a specific allocation at this time.

k/ Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. The 1989 assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY therefore are set at 13,900 mt, the low end of the range in the assessment.

l/ Widow rockfish was assessed in 2000 and is estimated to be at 24 percent of its unfished biomass. Therefore, it was declared overfished in 2001. The ABC (3,727 mt) is based on an F50% Fmsy proxy. The OY (856 mt) is based on a 60 percent probability of rebuilding the stock to Bmsy within 37 years. The OY is reduced by 3 mt for the amount estimated to be taken as recreational catch, resulting in a commercial OY of 853 mt. The commercial OY is divided with open access receiving 3 percent (26 mt) and limited entry receiving 97 percent (827 mt). The landed catch equivalent for the open access fishery is 21 mt. The limited entry allocation is reduced by 150 mt for anticipated bycatch in the at-sea whiting fishery and an additional 40 mt for anticipated bycatch in the shore-based sector of the whiting fishery. The remainder of the limited entry allocation is reduced by 16 percent to account for discards in the trip limit fisheries. The landed catch equivalent, excluding the at-sea whiting fishery, is 575 mt. Tribal vessels are expected to land about 27 mt of widow rockfish

in 2002, but do not have a specific allocation at this time.

m/ Canary rockfish is estimated to be at 22 percent of its unfished biomass in the north (north of Cape Blanco) and 8 percent of its unfished biomass in the south (south of Cape Blanco). Canary rockfish was declared overfished in 2000. The coastwide ABC (228 mt) is based on an Fmsy proxy of F50%. The coastwide OY of 93 mt (the sum of 73 mt for the northern area, plus 20 mt for the southern area) is based on a 52 percent probability of rebuilding the stock to Bmsy by the year 2056. The OY is reduced by 5 mt for research surveys and 44 mt for the estimated recreational catch, resulting in a commercial OY of 44 mt. The commercial OY is divided with open access receiving 12.3 percent (5 mt) and limited entry receiving 87.7 percent (39 mt). The landed catch value for the open access fishery is 4.5 mt. The 39 mt limited entry allocation is further reduced by 3 mt for anticipated bycatch in the offshore whiting fishery. The limited entry landed catch value is 30 mt. The landed catch value is based on a discard rate of 16 percent. However, the specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are expected to land about 2.5 mt of canary rockfish in 2002, but do not have a specific allocation at this time.

n/ Chilipepper rockfish - The ABC (2,700 mt) for the Monterey-Conception area is based on the 1998 stock assessment with the application of an F50% Fmsy proxy. Because the unfished biomass is estimated to be above 40 percent, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt, near the recent average landed catch, to discourage effort on chilipepper, which is known to have bycatch of overfished bocaccio rockfish. The OY is reduced by 15 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,985 mt. Of the commercial OY, open access is allocated 44.3 percent (879 mt) and limited entry is allocated 55.7 percent (1,106 mt). The assumed discard is 16 percent, resulting in a open access landed catch value of 739 mt and a limited entry landed catch value of 929 mt. In the north, chilpepper is included in the minor shelf rockfish OY.

o/ Bocaccio rockfish is estimated to be at 2 percent of its unfished biomass and was designated as overfished in 1999. The ABC of 122 mt for the Monterey and Conception areas are based on an F50% Fmsy proxy. The OY (100 mt) is based on the rebuilding plan, which has a 67% probability of rebuilding the stock to Bmsy by the year 2033. The OY is reduced by 56 mt for the amount estimated to be taken as recreational harvest, resulting in a 44 mt commercial OY. Open access is allocated 44.3 percent (19 mt) of the commercial OY and limited entry is allocated 55.7 percent (25 mt) of the commercial OY. The open access landed catch value is 16 mt and the limited entry landed catch value is 21 mt. The landed catch value is based on a discard rate of 16 percent. In the north, bocaccio is included in the minor shelf rockfish OY.

p/ Splitnose rockfish - The 2001 ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt total catch OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. The assumed discard is 16 percent for a landed catch value of 387 mt.

q/ Yellowtail rockfish is estimated to be at 63 percent of its unfished biomass. The ABC of 3,146 mt is based on a 2000 stock assessment for the Vancouver-Columbia-Eureka areas with an Fmsy proxy of F50%. The OY (3,146 mt) was set equal to the ABC. To derive the commercial OY (3,131 mt) the total catch OY is reduced by 15 mt, the amount estimated to be taken in the recreational fishery. The open access allocation (260 mt) is 8.3 percent of the commercial OY. The limited entry allocation (2,871 mt) is 91.7 percent the commercial OY. For anticipated bycatch in the at-sea whiting fishery, 400 mt is subtracted from the limited entry allocation. An additional 150 mt is deducted for the shore-based whiting fishery. The remainder (2,471 mt) is further reduced by 20 percent for assumed discard. The limited entry landed catch equivalent, excluding the at-sea whiting fishery, is 2,007 mt. The open access landed catch equivalent is 218 mt, given the assumed discard of 16 percent. Tribal vessels are expected to land about 300 mt of yellowtail rockfish outside their directed whiting fishery in 2002, but do not have a specific allocation at this time.

r/ Shortspine thornyhead - A new assessment was done for shortspine thornyhead in 2001 and the stock is estimated to be between 25 and 50 percent of its unfished biomass. The ABC (1,004 mt) for the area north of Pt. Conception (34°27'N lat.) is based on a F50% Fmsy proxy. The OY of 955 mt is based on the new survey with the application of the 40-10 harvest policy, resulting in a commercial OY of 948 mt. Open access is allocated 0.27 percent (3 mt) of the commercial OY and limited entry is allocated 99.73 percent (945 mt) of the commercial OY. A 20 percent rate of discard is applied to obtain a limited entry landed catch value of 757 mt. There is no ABC or OY for the southern Conception area. Tribal vessels are expected to land about 1 mt of

shortspine thornyheads, but do not have a specific allocation at this time.

s/ Longspine thornyhead is estimated to be above 40 percent of its unfished biomass. The ABC (2,461 mt) in the north (Vancouver-Columbia-Eureka-Monterey) is based on the average of the 3-year individual ABCs at an F50% Fmsy proxy. The total catch OY (2,461 mt) is set equal to the ABC. The OY is further reduced by 6 mt for compensation to vessels that conducted resource surveys, resulting in a commercial OY of 2,455 mt. To derive the landed catch equivalent of 2,037 mt, the limited entry allocation is reduced by 17 percent for estimated discards.

t/ Longspine thornyhead - A separate ABC (390 mt) is established for the northern Conception area and is based on historical catch for the portion of the Conception area north of 34°27' N. lat. (Point Conception). The ABC was reduced by 50 percent to obtain the OY (195 mt), this reduction addresses uncertainty in the stock assessment due to limited information. There is no ABC or OY for the southern Conception Area.

u/ Cowcod in the Conception area was assessed in 1999 and is estimated to be at less than 10 percent of its unfished biomass. Therefore cowcod was declared overfished in 2000. The ABC in the Conception area (5 mt) is based on the 1999 assessment, while the ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. An OY of 4.8 mt (2.4 mt in each area) is based on a 55 percent probability of rebuilding the stock to Bmsy by the year 2094. Cowcod retention will not be permitted in 2002.

v/ Darkblotched rockfish was assessed in 2000 and estimated to be at 22 percent of its unfished biomass. The stock was declared overfished in 2001. An update to the assessment which incorporated new data indicates that the stock may be at 12 percent of the unfished biomass. The ABC of 187 mt is based on the updated assessment with an Fmsy proxy of F50%. The OY of 168 mt is based on a 70 percent probability of rebuilding the stock to Bmsy by 2034. For anticipated bycatch in the at-sea whiting fishery, 5 mt is subtracted from the limited entry allocation. The landed catch value for the remaining limited entry fisheries is 130 mt. The landed catch value is based on a discard rate of 20 percent. Specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks. Tribal vessels are expected to land minimal amounts of darkblotched rockfish in 2002, but do not have a specific allocation at this time.

w/ Yelloweye rockfish was assessed in 2001 and is estimated to be at 7 percent of its unfished biomass off northern California and at 13 percent of its unfished biomass off Oregon, indicating that it is overfished at this time. The 27 mt coastwide ABC (5 mt for the Monterey area and 22 mt for the areas north of 40°10'N lat.) is based on an Fmsy proxy of F50%. As a precautionary measure, until rebuilding measures can be adopted, the coastwide ABC has been reduced by 50 percent to obtain the OY of 13.5 mt (2.5 mt for the Monterey area and 11 mt for the areas north of 40°10'N lat.) The OY is reduced by 8.81 mt for the amount estimated to be taken as recreational harvest, and 1 mt for the amount expected to be taken in the tribal fishery, resulting in a commercial OY of 3.69 mt. Specific open access/limited entry allocation has been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

x/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC (4,795 mt) is the sum of the individual "remaining rockfish" ABCs (2,727 mt) plus the "other rockfish" ABCs (2,068 mt). The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain the total catch OY (3,115 mt) the remaining rockfish ABCs are further reduced by 25 percent with the exception of black rockfish (see footnote aa/), and other rockfish ABCs are reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 673 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 2,442 mt. Open access is allocated 8.3 percent (203 mt) of the commercial OY and limited entry is allocated 91.7 percent (2,239 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish, resulting in a an open access landed catch value of 188 mt and a limited entry landed catch value of 1,852 mt. Tribal vessels are expected to land about 10 mt of minor rockfish (2 mt of minor nearshore rockfish, 4 mt of shelf rockfish, and 4 mt of slope rockfish) in 2002, but do not have a specific allocation at this time.

y/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish" which includes species that do not have quantifiable assessments. The ABC (3,506 mt) is the sum of the individual "remaining rockfish" ABCs (854 mt) plus the "other rockfish" ABCs (2,652). The remaining rockfish ABCs continue to be reduced by 25 percent (F=0.75M) as a precautionary adjustment. To obtain total catch OY (2,015 mt), the remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote bb/), and the other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The OY is reduced by 732 mt for the amount estimated to be taken in the recreational fishery, resulting in a commercial OY of 1,283 mt. Open access is allocated 44.3 percent (569 mt) of the commercial OY and limited entry is allocated 55.7 percent (714 mt) of the commercial OY. The discard is assumed to be 5 percent for nearshore rockfish, 16 percent for shelf rockfish, and 20 percent for slope rockfish, resulting in an open access landed catch value of 484 mt and a limited entry landed catch value of 582 mt.

z/ Bank rockfish - The ABC of 350 mt is based on a 2000 assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

aa/ Black rockfish - The ABC (1,115 mt) which is based on a 2000 assessment, is the sum of the assessment area (615 mt) plus the average catch in the unassessed area (500 mt). To obtain the OY for the southern portion of this area, the ABC has been reduced by 50 percent as a precautionary measures due to limited information. For the assessed area the OY was set equal to the ABC. This stock contributes 865 mt towards the minor rockfish OY in the north.

bb/ Blackgill rockfish is estimated to be at 51 percent of its unfished biomass. The ABC (343 mt) is the sum of the Conception area ABC of 268 mt, based on the 1998 assessment with an Fmsy proxy of F50%, and the Monterey area ABC of 75 mt. This stock contributes 306 mt towards minor rockfish south (268 mt for the Conception area ABC and 38 mt for the Monterey area). The OY for the Monterey area is the ABC reduced by 50 percent for precautionary measures because of lack of information.

cc/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302 and California scorpionfish. The ABC is based on the 1996 review of commercial Sebastes landings and includes an estimate of recreational landings. These species have never been quantifiably assessed. Beginning in 2002, an ABC and OY have been specified for yelloweye rockfish, in the Monterey and Conception areas. Therefore, it has been removed from the "other rockfish" category.

dd/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

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(2) Section IV *NMFS Actions*, B. *Limited Entry Fishery*, (3)*Whiting* is revised; and Section V *Washington Coastal Tribal Fisheries*, D. *Pacific Whiting*is revised.

B. Limited entry

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(3) Whiting. Additional regulations that apply to the whiting fishery are found at 50 CFR 660.306 and at 50 CFR 660.323(a)(3) and (a)(4).

(a) Allocations. The non-tribal allocations, based on percentages that are applied to the commercial OY of 106,920 mt in 2002 (see 50 CFR 660.323 (a)(4)), are as follows:

(i) Catcher/processor sector—36,353 mt (34 percent);

(ii) Mothership sector—25,661 mt (24 percent);

(iii) Shore-based sector—44,906 mt (42 percent). No more than 5 percent (2,245 mt) of the shore-based whiting allocation may be taken before the shore-based fishery begins north of 42° N. lat. on June 15, 2002.

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V. Washington Coastal Tribal Fisheries

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D. Pacific Whiting The tribal allocation is 22,680 mt.

Classification

The final whiting specifications and management measures for 2002 are issued under the authority of the Magnuson-Stevens Act and are in accordance with 50 CFR part 660, the regulations implementing the Pacific Coast groundfish FMP.

For the reasons described below, the Assistant Administrator for Fisheries NOAA, finds that good cause exists to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment procedures are impracticable and contrary to the public interest. The Pacific Coast Groundfish FMP requires that fishery specifications be evaluated each year using the best scientific information available. A stock assessment for whiting was prepared in early 2002, using the most recent survey data.

Because of the timing of the resource survey upon which the assessment is based, it was not available for use in a stock assessment that could be ready for the September-November management cycle when the rest of the groundfish

specifications were set. In addition, the survey for this species is done only every 3 years. Therefore, the Council and NMFS decided it was best to use the newest data for the adoption of the 2002 ABC and OY in order, rather than use 4-year-old data from the prior survey. The preliminary indication from survey data was that the biomass had declined in recent years and the ABC and OY recommended for 2002 would be substantially lower than those for 2001. Therefore, for resource conservation purposes, it was particularly important to use the most recent data. Finally, since the major fishery for whiting does not start until April 1, there was time to delay the adoption of the new ABC and OY, until the new information was available in March. Last year's whiting specifications were carried over in the interim for 2002 and were announced in a final rule published on March 7, 2002 (67 FR 10490). In the final rule, it was explained that the specification would be adjusted following the Council's March meeting and announced in the **Federal Register** as an emergency rule. This action has been publicized widely through the Council process. It will not go through prior notice and opportunity for public comment as doing so would be impracticable and contrary to the public interest. It is impracticable and contrary to the public interest because NMFS needs to take immediate action to ensure that the whiting fishery stays within its overall harvest allocation (which is substantially lower than the harvest allocation for 2001) while allowing the various sectors of the fishery the opportunity to fully harvest their sector's allocations. To delay the rule beyond the start of the fishery could result in some sector allocations being exceeded and possible early closures for other sectors as a result of excessive harvest in the early season.

The reasons described above, pursuant to 5 U.S.C. 553(d)(3), constitute good cause to waive the 30-day delay in effectiveness, so that this emergency rule may become effective before the fishery begins on April 1, 2002.

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

NMFS issued Biological Opinions (BOs) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California). NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS has re-initiated consultation on the Pacific whiting fishery associated with the (whiting BO) issued on December 15, 1999. During the 2000 whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the whiting BO's incidental take statement's incidental take estimates, 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was well below the 11,000 fish incidental take estimates. The re-initiation will focus primarily on additional actions that the whiting fisheries would take to reduce chinook interception, such as time/area management. NMFS is gathering data from the 2001 whiting fisheries and expects that the re-initiated whiting BO will be completed by April 2002. During the reinitiation, fishing under the FMP is within the scope of the December 15, 1999, whiting BO, so long as the annual incidental take of chinook stays under the 11,000 fish bycatch limit.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

Dated: April 10, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–9083 Filed 4–12–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010914227–2063–02; I.D. 080201E]

RIN 0648–AM40

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 67 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action is necessary to stabilize fully utilized Pacific cod resources harvested with hook-and-line and pot gears in the Bering Sea and Aleutian Islands Area (BSAI). This will be accomplished by issuing endorsements for exclusive participation in the hook-and-line and pot gear BSAI Pacific cod fisheries by long-time participants. This final rule also adds a new definition for directed fishing for Community Development Quota (CDQ) fisheries and clarifies discard provisions for the individual fishing quota (IFQ) and CDQ fisheries. The intended effect of this action is to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective May 15, 2002, except for § 679.4(k)(9)(i), which will be effective on January 1, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel-Durall, or Room 413–1 on the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228 or email at *jay.ginter@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone in the BSAI off Alaska under the Fishery Management